

## NEW ENGLAND BANCSHARES, INC.

### NOMINATING AND CORPORATE GOVERNANCE COMMITTEE CHARTER

#### I. Purpose

The primary objectives of the Nominating and Corporate Governance Committee (the “Committee”) are to: (i) assist the Board of Directors (the “Board”) of New England Bancshares, Inc. (the “Company”) by identifying individuals qualified to become Board members and recommending that the Board select a group of director nominees for each annual meeting of the Company’s stockholders; (ii) ensuring that the Audit, Compensation and Nominating and Corporate Governance Committees of the Board shall have the benefit of qualified and experienced “independent” directors; and (iii) assist the Board in developing and implementing the Company’s corporate governance policies, procedures and practices.

#### II. Organization

The Committee shall consist of three or more directors, each of whom shall satisfy the definition of independent director as defined in any qualitative listing requirements for Nasdaq Stock Market, Inc. issuers and any applicable Securities and Exchange Commission rules and regulations.

Committee members shall be elected by the Board and shall serve until their successors are appointed or they are removed by the Board. The Committee’s chairperson shall be designated by the full Board or, if it does not do so, the Committee members shall elect a Chairman by vote of a majority of the full Committee. The Committee may form and delegate authority to subcommittees when appropriate.

#### III. Structure and Meetings

The chairperson of the Committee will preside at each meeting and, in consultation with the other members of the Committee, will set the frequency and length of each meeting and the agenda of items to be addressed at each meeting. The chairperson of the Committee shall ensure that the agenda for each meeting is circulated to each Committee member in advance of the meeting.

#### IV. Goals and Responsibilities

**A. Selection of Director Nominees.** In assisting the Board in identifying individuals qualified to become Board members and recommending director nominees for each annual meeting of the Company’s stockholders, the Committee shall have the following authority and responsibilities:

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Responsibility of: President & Chief Executive Officer

Date Reviewed & Approved by Bank Board: **December 12, 2011**

Date Reviewed & Approved by NEBS Bank Board: **December 12, 2011**

- Develop policies on the size and composition of the Board and its committees;
- Review possible candidates for Board and Board committee membership consistent with the Board’s criteria for selecting new directors as set forth in Attachment 1 hereto;
- Annually recommend a slate of nominees to the Board with respect to nominations for the Board at the annual meeting of the Company’s stockholders;
- Annually recommend to the Board candidates for membership on, and to chair, committees of the Board, as set forth in Attachment 1 hereto;
- As the need arises to fill vacancies, actively seek individuals qualified to become Board members for recommendation to the Board; and
- Consider unsolicited nominations for Board membership in accordance with guidelines developed by the Committee as set forth in Attachment 2 hereto.

**B. Ensuring that the Audit, Compensation and Nominating and Corporate Governance Committees of the Board Shall Have the Benefit of Qualified and Experienced “Independent” Directors.** In assisting the Board in identifying individuals qualified to become Board and committee members the Committee shall regularly conduct a review of the independence of its members under the rules of The NASDAQ Stock Market (“Nasdaq”).

**C. Corporate Governance Policies, Procedures and Practices.** In assisting the Board in developing and implementing the Company’s Corporate Governance Policies, Procedures and Practices, the Committee shall have the following authority and responsibilities:

- The Committee shall, at least annually, review the Company’s Corporate Governance Policy, included as Attachment 3 hereto, including the implementation and effectiveness of the policy, and recommend to the Board changes in the policy and its implementation as necessary.
- To develop policies on the size and composition of the Board for Board approval.
- To develop and recommend for Board approval a Policy and Procedures for Approval of Transactions with Related Persons, included as Attachment 4 hereto, for the review and approval of “transactions with related persons” as such term is used in the regulations of the Securities and Exchange Commission (“SEC”).
- As set forth in the Corporate Governance Policy, develop and recommend to the Board for its approval an annual self-evaluation process of the Board and its committees using the self evaluation forms included as Attachment 5 hereto. The Committee shall oversee the annual self-evaluations.

- To review all new transactions with related persons covered by the Policy and Procedures for Approval of Transactions with Related Persons and determine to permit or prohibit such transaction.
- To periodically review all existing transactions with related persons, including an annual review of all transactions with related persons in connection with the preparation of the Company's proxy statement for its annual meeting of stockholders.
- To periodically review the independence of directors under the rules of the Nasdaq Stock Market, Inc. ("Nasdaq") and the SEC, and to ensure compliance of the Board and Board committees with Nasdaq and SEC independence requirements. A memorandum regarding Nasdaq and SEC independence requirements is included as Attachment 6 hereto.
- To consult with the Nominating Committee of the Board regarding the independence of potential Board nominees for election as directors.
- To advise the Board on (i) committee member qualifications, including meeting independence requirements, (ii) committee member appointments and removals, (iii) committee structure and operations (including authority to delegate to subcommittees), and (iv) committee reporting to the Board.
- To assist the Board in new director orientation and the continuing education of directors.
- The Committee shall also advise the Board on (i) committee member qualifications, including meeting independence requirements, (ii) committee member appointments and removals, (iii) committee structure and operations (including authority to delegate to subcommittees), and (iv) committee reporting to the Board.

The Committee will annually review and reassess the adequacy of this charter and recommend any proposed changes to the Board for approval.

The Committee shall perform any other activities consistent with this charter, the Company's bylaws and governing law and regulations as the Committee or the Board deems appropriate.

## **V. Performance Evaluation**

The Committee shall conduct an annual self-evaluation of its performance.

## **VI. Committee Resources**

The Committee shall have the authority to obtain advice and seek assistance from internal or external legal, accounting or other advisors. The Committee shall have the sole authority to retain and terminate any search firm to be used to identify director candidates, including sole authority to approve such search firm's fees and other retention terms.

**JOINT NOMINATING AND CORPORATE GOVERNANCE COMMITTEE  
CRITERIA FOR DIRECTOR NOMINEES**

Pursuant to the Joint Nominating and Corporate Governance Committee Charter as approved by the Board of Directors of New England Bancshares, Inc. (the “Company”), the Nominating Committee and Corporate Governance (the “Committee”) is charged with several duties and responsibilities relating to director nominations, including considering criteria for identifying and selecting individuals who may be nominated for election to the Board of Directors. In connection with the fulfillment of such duties and responsibilities, the Committee is hereby setting forth the following criteria the Committee will consider when it selects individuals to be nominated for election to the Board of Directors.

**Eligibility Requirements**

A candidate must meet the eligibility requirements set forth in the Company’s bylaws, which include an age limitation requirement. A candidate also must meet any qualification requirements set forth in any Board or committee governing documents.

**Selection Considerations**

If the candidate is deemed eligible for election to the Board of Directors, the Committee will consider the following criteria in selecting nominees:

- ***Contribution to Board*** – The Company endeavors to maintain a Board of Directors that possesses a wide range of abilities. Thus, the Committee will assess the extent to which the candidate would contribute to the range of talent, skill and expertise appropriate for the Board of Directors.
- ***Experience*** – The Company is the holding company for an insured depository institution. Because of the complex and heavily regulated nature of the Company’s business, the Committee will consider a candidate’s relevant financial, regulatory and business experience and skills, including the candidate’s knowledge of the banking and financial services industries, familiarity with the operations of public companies and ability to read and understand fundamental financial statements.
- ***Familiarity with and Participation in Local Community*** – The Company is a community-orientated organization that serves the needs of local consumers and businesses. In connection with the local character of the Company’s business, the Committee will consider a candidate’s familiarity with the Company’s market area (or a portion thereof) and participation in local business, civic, charitable or religious organizations, as well as the candidate’s ties to local businesses.
- ***Integrity*** – Due to the nature of the financial services provided by the Company and its subsidiaries, the Company is in a special position of trust with respect to its customers. Accordingly, the integrity of the Board of Directors is of utmost importance to developing and maintaining customer relationships. In connection with

upholding that trust, the Committee will consider a candidate's personal and professional integrity, honesty and reputation.

- ***Stockholder Interests and Dedication*** – A basic responsibility of directors is the exercise of their business judgment to act in what they reasonably believe to be in the best interests of the Company and its stockholders. In connection with such obligation, the Committee will consider a candidate's ability to represent the best interests of the Company and its stockholders, the potential for conflicts of interests with the candidate's other pursuits, and the candidate's ability to devote sufficient time and energy to diligently perform his or her duties, including the candidate's ability to personally attend board and committee meetings.
- ***Independence*** – A majority of the Board of Directors and all members of the Board's Audit, Compensation, Nominating and Corporate Governance Committees are required to be independent. In considering a candidate, the Committee will consult with the Corporate Governance Committee of the Board of Directors regarding the absence or presence of any relationships between the candidate and the Company (as set forth in the rules of the Securities and Exchange Commission ("SEC") and the Nasdaq Stock Market, Inc.), that would result in the candidate not being an independent director if elected. In addition, the Committee will consider the candidate's ability to serve on any Board committees that are subject to additional regulatory requirements.
- ***Additional Factors*** – The Committee will also consider any other factors it deems relevant to a candidate's nomination, including the extent to which the candidate helps the Board of Directors reflect the diversity of the Company's stockholders, employees, customers and communities. The Committee also may consider the current composition and size of the Board of Directors, the balance of management and independent directors, and the need for audit committee expertise.

The Committee may weigh the foregoing criteria differently in different situations, depending on the composition of the Board of Directors at the time. The Committee will strive to maintain at least one director who meets the definition of "audit committee financial expert" under SEC regulations.

### **Re-Election of Directors**

Prior to nominating an existing director for re-election to the Board of Directors, the Committee shall consider and review the existing director's: (i) Board and committee attendance and performance; (ii) length of Board service; (iii) experience, skills and contributions that the existing director brings to the Board; and (iv) independence.

### **Recommendations for Appointments to Board Committees**

In addition, prior to recommending to the Board that a director serve on, or chair, a Board committee, the Committee shall conduct a review of the director's: (i) Board and committee attendance and performance; (ii) length of Board service; (iii) experience, skills and contributions that the director brings to the specific Board committee; and (iv) whether such

director has the requisite independence under Nasdaq and SEC rules to serve on such Board committee.

Adopted as of \_\_\_\_\_, 2011

**JOINT NOMINATING AND CORPORATE GOVERNANCE COMMITTEE  
POLICY AND PROCEDURES FOR STOCKHOLDER RECOMMENDATIONS OF  
BOARD NOMINEES FOR ELECTION AS DIRECTORS AND  
FOR STOCKHOLDER COMMUNICATIONS WITH DIRECTORS**

*Recommendations for Nominations by Stockholders.* The Joint Nominating and Corporate Governance Committee (the “Committee”) will consider candidates for Director recommended by a stockholder in accordance with the policy and procedures outlined herein.

In reviewing a candidate recommended by a stockholder, the Committee will apply the criteria for candidates generally utilized by the Board of Directors from time to time, and will consider the additional information referred to below. Stockholders wishing to suggest a candidate for Director should write to the Company’s Corporate Secretary and should include:

- The name of the person recommended as a director candidate;
- All information relating to such person that is required to be disclosed in solicitations of proxies for election of directors pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended;
- The written consent of the person being recommended as a director candidate to being named in the proxy statement as a nominee and to serving as a director if elected;
- As to the stockholder making the recommendation, the name and address of such stockholder as they appear on the Company’s books; provided, however, that if the stockholder is not a registered holder of the Company’s common stock, the stockholder should submit his or her name and address along with a current written statement from the record holder of the shares that reflects ownership of the Company’s common stock; and
- A statement disclosing whether such stockholder is acting with or on behalf of any other person and, if applicable, the identity of such person.

To be timely, the submission by a stockholder of a recommendation for nomination as a candidate for election as Director must be received by the Corporate Secretary at least 120 days prior to the anniversary date of the proxy statement relating to the preceding year’s annual meeting of stockholders, or no later than ten days after public announcement (by press release or a Form 8-K filed with the SEC) of the date of the annual meeting in the case of the Company’s first annual meeting of stockholders.

The Committee intends to identify nominees by first evaluating the current members of the Board of Directors willing to continue in service. Current members of the Board with skills and experience that are relevant to the Company’s business and who are willing to continue in

service are considered for re-nomination. Accordingly, the Committee may choose not to consider an unsolicited recommendation if no vacancy exists on the Board and the Committee does not perceive a need to increase the size, or change the composition, of the Board.

***Communications with Directors.*** A Company stockholder who wants to communicate with the Board or with any individual Director should write to:

New England Bancshares, Inc.  
Attention: Board of Directors  
855 Enfield Street  
Enfield, Connecticut 06082

The letter should indicate that the author is a Company stockholder and if shares are not held of record, should include appropriate evidence of stock ownership. Depending on the subject matter, the Corporate Secretary will:

- Forward the communication to the Director or Directors to whom it is addressed;
- Attempt to handle the inquiry directly (for example, where it is a request for information about the Company or it is a stock-related matter); or
- Not forward the communication if it is primarily commercial in nature, relates to an improper or irrelevant topic, or is unduly hostile, threatening, illegal or otherwise inappropriate.

At each Board meeting, the Corporate Secretary shall present a summary of all communications received since the last meeting that were not forwarded and make those communications available to the Directors on request.

Adopted as of \_\_\_\_\_, 2011

**NEW ENGLAND BANCSHARES, INC.  
CORPORATE GOVERNANCE POLICY**

**1. *Duties and Responsibilities of the Board of Directors and Each Director***

The Board of Directors (the “Board”) of New England Bancshares, Inc. (the “Company”) is responsible for promoting and acting in the best interests of all shareholders of the Company. The Board is the ultimate decision-making body of the Company except with respect to those matters reserved to shareholders. The business and affairs of the Company are managed by its officers under the direction of the Board.

Each director owes fiduciary duties of loyalty and care to the Company. The duty of loyalty requires directors to exercise their powers in the interests of the Company and not in the directors’ own interest or in the interest of another person (including a family member) or organization. The duty of care requires that directors exercise the care that a person in a like position would exercise under the circumstances.

**2. *Composition of the Board; Board Operation***

**Size.** The number of directors of the Company shall be at least five (5) and no more than fifteen (15). The Board believes that twelve is currently an appropriate number of directors, but that a smaller or larger Board may be appropriate at any given time, depending on the circumstances.

**Board Membership Criteria.** Membership criteria shall be provided by the Nominating Committee, after consultation with the Board. The criteria should take into consideration diversity, age, skills, experience and other relevant factors.

**Invitation to Join Board.** The invitation to join the Board should be extended by the Chairman of the Board, on behalf of the entire Board.

**Mix of Inside and Outside Directors.** In no event will the Board consist of less than a majority of independent directors. The definition of “independent director” shall conform to the definition contained in the rules of the Nasdaq Stock Market, Inc. issuers and in any applicable rules and regulations of the Securities and Exchange Commission.

**Term Limits.** The Board does not believe it should establish term limits.

**Age Limits/Retirement Age.** No person 70 years of age or older shall be eligible for election, reelection, appointment, or reappointment to the Board, and no director shall serve as such beyond the date of the annual meeting of shareholders of the Company immediately following the date on which the director becomes age 70 years of age; provided, however, that the age limitations set forth in this section shall not apply to any director that was a director of the Company, or that was a director of a predecessor corporation or entity of the Company, as of December 12, 2003. This age limitation does not apply to an advisory director.

**Board Agenda.** The Chief Executive Officer sets the agenda for Board meetings with the understanding that certain items necessary for appropriate Board oversight, such as annual budgets and long range plans, must appear periodically on the agenda. Board members may suggest that particular items be placed on the agenda.

**Frequency of Meetings.** The Board of Directors generally meets quarterly. In addition, special meetings may be called from time to time as determined by the needs of the business. It is the responsibility of the directors to attend meetings.

**Corporate Strategy.** From time to time, the Board devotes an extended meeting to a review of the Company's long-term strategic and business plans.

### **3. *Selection of Chairman and CEO***

The Board is free to make the selection in the manner and upon the criteria that the Board deems appropriate at the time of the selection. The Board has no policy with respect to the separation of the role of Chairman of the Board and Chief Executive Officer.

### **4. *Lead Director Concept***

The Board believes that designating a lead independent director may or may not serve the best interests of the Company and its shareholders at any give time, depending upon circumstances at that time. If a lead director is designated, his or her duties would include: assisting the Board in assuring compliance with and implementation of the Company's Corporate Governance Policy, coordinating the agenda for and moderating sessions of the Board's independent directors and acting as principal liaison between the independent directors and the Chairman of the Board on sensitive issues.

### **5. *Committees***

**Number and Structure.** The Board has four standing committees: Audit; Compensation; Nominating; and Corporate Governance, each of which shall consist solely of independent directors. The Company may also utilize committees consisting of Board members and officers for the purpose of advising the Board on various operational matters.

**Assignment of Committee Members.** The Board does not have a firm policy mandating rotation of committee assignments since special knowledge or experience may mitigate in favor of a particular director serving for an extended period on one committee.

**Frequency and Length of Committee Meetings.** The Chairman of each committee, in consultation with committee members, will determine the frequency and length of committee meetings.

**Committee Agenda.** The Chairman of the committee, in consultation with appropriate members of management, will develop the committee's agenda. Each Board member may recommend agenda items for any committee meeting.

### **6. *Executive Sessions of Independent Directors***

The independent directors will meet in executive session at least twice a year. Issues to be discussed in executive session may include the evaluation of the Chief Executive Officer, management succession planning and such other matters as they may deem appropriate.

### **7. *Succession Planning***

The Board plans for the succession to the position of Chief Executive Officer. To assist the Board, the Chief Executive Officer annually provides the Board with an assessment of senior managers and their

potential to succeed him or her. He or she also provides the Board with an assessment of persons considered potential successors to certain senior management positions, including a review of any development plans recommended for such individuals. The results of these reviews are reported to and discussed with the Board.

## **8. *Board Access to Management***

**General.** Board members have complete access to management. Board members will use judgment to assure that this contact is not distracting to the business operation of the Company, and that such contact, if in writing, be copied to the Chief Executive Officer.

**Attendance of Non-Directors at Board Meetings.** The Board encourages the Chief Executive Officer to bring members of management from time to time into Board meetings to:

- (a) provide management insight into items being discussed by the Board which involve the manager;
- (b) make presentations to the Board on matters which involve the manager; and
- (c) bring managers with high potential into contact with the Board. Should the Chief Executive Officer desire to add additional members of management as attendees on a regular basis, this should be suggested to the Board for its concurrence.

## **9. *Board Materials Distributed in Advance***

Information and data are important to the Board's understanding of the business and are essential to prepare Board members for productive meetings. Presentation materials relevant to each meeting will be distributed in writing to the Board in advance of the meeting, unless doing so would compromise the confidentiality of competitive information. Under normal circumstances, materials should be delivered at least three days in advance of the meeting. In the event of a pressing need for the Board to meet on short notice, it is recognized that written materials may not be available in advance of the meeting. Management will make every effort to provide presentation materials that are brief and to the point, but yet communicate the essential information.

## **10. *Evaluation***

**Annual Self-Assessment.** The Corporate Governance Committee should periodically sponsor a self-assessment of the Board's performance, the results of which will be discussed with the full Board. The assessment should include a review of any areas in which the Board or management believes the Board can make a better contribution to the governance of the Company. The purpose of the review will be to improve the performance of the Board as a unit, and not to target the performance of an individual Board member. The Corporate Governance Committee will utilize the results of the Board evaluation process in assessing and determining the characteristics and critical skills required of prospective candidates for election to the Board.

**Annual Evaluation of CEO.** The independent directors should perform an annual evaluation of the Chief Executive Officer. The evaluation should be based on objective criteria, including performance of the business, accomplishment of long-term strategic objectives and development of management succession.

**11. *Share Ownership of Directors***

It is the policy of the Board that directors should be shareholders of the Company.

**12. *Director Compensation Review***

Senior management of the Company reports periodically to the Board on the status of the Company's director compensation practices in relation to other companies of comparable size and the Company's competitors. Changes in director compensation, if any, should come upon the recommendation of senior management, but with full discussion and concurrence by the Compensation Committee of the Board and be consistent with the compensation practices of the Company's competition.

**13. *Board Interaction with Third Persons***

The Board believes management speaks for the Company. Individual Board members may from time to time communicate with various constituencies that are involved with the Company, such as the press, investors and customers. However, it is expected that this communication would be made with the concurrence of management.

**14. *Periodic Review***

The Board is responsible for periodically reviewing these principles, as well as considering other corporate governance principles that may, from time to time, merit consideration by the Board.

**15. *Orientation of New Directors and Continuing Education***

New directors, upon election to the Board, will be provided with a comprehensive set of materials on the operations, finances and business plan of the Company and meet informally with as many members of senior management as practical.

Adopted as of \_\_\_\_\_, 2011

**NEW ENGLAND BANCSHARES, INC.  
POLICY AND PROCEDURES FOR APPROVAL OF  
RELATED PERSON TRANSACTIONS**

**I. Purpose**

The purpose of the Policy and Procedures for Approval of Related Person Transactions (the “Policy”) is to establish a procedure for the review and approval of material transactions between New England Bancshares, Inc. (the “Company”) and “Related Persons”, as defined below.

**II. Definitions**

“Related Person Transaction” means any financial transaction, arrangement or relationship or series of similar transactions, arrangements or relationships involving the Company where the amount involved exceeds or is expected to exceed \$25,000 and in which any Related Person, as defined herein, had or will have a direct or indirect material interest.

Related Person Transaction also includes any material amendment or modification to an existing Related Person Transaction. Related Person Transaction excludes certain transactions, including:

- any compensation paid to an executive officer of the Company if the Compensation Committee of the Board of Directors approved (or recommended that the Board of Directors approve) such compensation;
- any compensation paid to a director of the Company if the Board or an authorized committee of the Board of Directors approved such compensation; and
- any transaction with a Related Person involving consumer and investor financial products and services provided in the ordinary course of the Company’s business and on substantially the same terms as those prevailing at the time for comparable services provided to persons unrelated to the Company, or to the Company’s employees on a broad basis (and, in the case of loans, in compliance with the Sarbanes-Oxley Act of 2002).

“Related Person” means any of the following:

- directors (which term when used herein includes any director nominee);
- executive officers;
- persons known by the Company to be the beneficial owners of more than 5% of the Company’s common stock (a “5% Stockholder”); or
- persons known by the Company to be Immediate Family Members of any of the foregoing.

“Immediate Family Member” means a child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of such director, executive officer or 5% Stockholder, and any person (other than a tenant or employee) sharing the household of such director, executive officer or 5% Stockholder.

### **III. Review and Approval of Related Person Transactions**

The Corporate Governance Committee of the Board of Directors, or such other committee of the Board of Directors as the Board determines (the “Committee”), shall review periodically, but no less frequently than twice a year, a summary of the Company’s Related Person Transactions, including the terms of the transactions, the business purpose of the transactions, and the benefits to the Company and to the relevant Related Person. In determining whether to approve or ratify a Related Person Transaction, the Committee will consider, among other factors, the following factors to the extent relevant to the Related Person Transaction:

- if the terms of the proposed transaction are at least as favorable to the Company as those that might be achieved with an unaffiliated third party;
- the size of the transaction and the amount of consideration payable to the Related Person;
- the nature of the interest of the Related Person;
- if the transaction may involve a conflict of interest; and
- if the transaction involves the provision of goods and services to the Company that are available from unaffiliated third parties.

A member of the Committee that has an interest in the transaction will abstain from voting on the decision to recommend approval or ratification of the transaction, but may participate in some or all of the discussion. Upon completion of its review of the transaction, the Committee may determine to permit or to prohibit the Related Party Transaction.

A Related Party Transaction entered into without pre-approval of the Committee shall not be deemed to violate this Policy, or be invalid or unenforceable, so long as the transaction is brought to the Committee as promptly as reasonably practical after it is entered into or after it becomes reasonably apparent that the transaction is covered by this policy.

Adopted as of \_\_\_\_\_, 2011

**ATTACHMENT 5**

**SELF-EVALUATION FORMS**

## MEMORANDUM

**To:** Board of Directors December 2011  
New England Bancshares, Inc.

**From:** Luse Gorman Pomerenk & Schick, P.C.

**Re:** Board Committee and Director Independence Considerations

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**I. Introduction**

New England Bancshares, Inc. (the “Company”) is subject to SEC and Nasdaq rules regarding the independence of the Company’s board of directors and certain key committees of the board. We have prepared this memorandum to assist the Company’s board of directors in determining director independence and complying with SEC and Nasdaq independence requirements. SEC disclosure requirements regarding “audit committee financial experts” are also discussed.

As discussed further below, the Company must satisfy the following independence requirements:

1. A majority of the Company’s directors must be independent (as defined in Nasdaq’s rules); and
2. The Company’s Audit Committee, Compensation Committee and Nominating Committee must be comprised *solely* of directors meeting the independence requirements of Nasdaq. In addition, members of the Audit Committee must meet heightened audit committee independence requirements of both Nasdaq and the SEC.

**II. Board Composition and Independence Requirements**

Companies listed on Nasdaq must have a board of directors comprised of at least a majority of independent directors. Director independence is determined by the board of directors based on Nasdaq rules. Additionally, Nasdaq rules provide that independent directors must have regularly scheduled meetings at which only independent directors are present (“executive sessions”) and Nasdaq recommends that such executive sessions occur at least twice annually and, perhaps more frequently, in conjunction with regular board meetings.

Under Nasdaq’s rules, an independent director is an individual *other than* (i) an executive officer or employee of the Company or (ii) any other individual having a relationship that, in the

opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

In addition to this general definition of independence, the Nasdaq rules list certain disqualifying "bright line" relationships that, if applicable to a director, *automatically preclude* a director from being considered independent. ***It is important to note, however, that a director is not per se independent solely because none of the bright line disqualifying relationships apply to him or her.*** The board of directors is still responsible for making an independence determination as to each director based on all relevant facts and circumstances. The disqualifying "bright line" relationships are as follows:

1. A director who is, or at any time during the past three years was, employed by the Company;
2. A director who accepted or who has a family member who accepted any compensation from the Company in excess of \$120,000 during any period of 12 consecutive months within the three years preceding the determination of independence, other than the following:
  - (i) compensation for board or board committee service;
  - (ii) compensation paid to a family member who is an employee (other than an executive officer) of the Company; or
  - (iii) benefits under a tax-qualified retirement plan, or non-discretionary compensation.
3. A director who is a family member of an individual who is, or at any time during the past three years was, employed by the Company as an executive officer.
4. A director who is, or has a family member who is, a partner in, or a controlling shareholder or an executive officer of, any organization to which the Company made, or from which the Company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or \$200,000, whichever is more, other than (i) payments arising solely from investments in the Company's securities, or (ii) payments under non-discretionary charitable contribution matching programs.
5. A director of the Company who is, or has a family member who is, employed as an executive officer of another entity where at any time during the past three years any of the executive officers of the Company served on the compensation committee of such other entity.
6. A director who is, or has a family member who is, a current partner of the Company's outside auditor, or was a partner or employee of the Company's

outside auditor who worked on the Company's audit at any time during the past three years.

With respect to the disqualifying relationships outlined above, reference to the "Company" includes any parent or subsidiary of the Company. In addition, Nasdaq rules define "family member" to mean a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.

The three year look-back periods referenced in paragraphs (1), (3), (5) and (6) above commence on the date the relationship ceases. For example, a director employed by the Company is not independent until three years after such employment terminates.

For purposes of paragraph (1) above, employment by a director as an executive officer on an interim basis will not disqualify that director from being considered independent following such employment, provided such interim employment did not last longer than one year. However, the Company's board of directors still must consider whether such former employment and any compensation received would interfere with the director's exercise of independent judgment. A director would not be considered independent while serving as an interim officer.

Paragraph (2) above is generally intended to capture situations where compensation is made directly to (or for the benefit of) the director or a family member. For example, consulting or personal service contracts with a director would be analyzed under paragraph (2). Non-preferential payments made in the ordinary course of providing business services, such as payments of interest or proceeds related to banking services or loans, will not preclude a finding of director independence as long as the payments are non-compensatory in nature. Depending on the circumstances, a loan or payment could be compensatory if, for example, it is not on terms generally available to the public.

Paragraph (4) above is generally intended to capture payments to an entity with which the director or family member of the director is affiliated by serving as a partner (other than a limited partner), controlling shareholder or executive officer of such entity.

### **III. Committee Composition Requirements**

#### **A. Audit Committee**

Nasdaq rules require that the Company must have an audit committee satisfying the following requirements:

1. The committee must have at least three members;
2. Each member must be independent under the Nasdaq definition discussed in Section II above;
3. Each member must meet the SEC independence standards for audit committee members. Under SEC rules, no audit committee member may (other than as a

member of the board or any committee of the board) accept, directly or indirectly, *any* consulting, advisory, or other compensatory fee from the Company or any subsidiary of the Company, or otherwise be an “affiliated person” (i.e., an executive officer or an employee) of the Company or any subsidiary of the Company.

Indirect payments include payments made to a director’s spouse, minor children or stepchildren, or adult children or stepchildren who share a home with the director. Indirect payments also include payments made to an entity that provides accounting, consulting, legal, investment banking or financial advisory services to the Company or any of its subsidiaries where the director is a partner, member, executive officer, officer equivalent to a managing director or officer who occupies a similar position.

4. No member may have participated in the preparation of the financial statements of the Company or any subsidiary of the Company at any time during the past three years.
5. Each member must be able to read and understand fundamental financial statements, including the Company’s balance sheet, income statement and cash flows statement.
6. At least one member of the committee must have past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background that results in financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities (referred to herein as the “Nasdaq Financial Sophistication Requirement”).

## **B. Compensation Committee**

The Compensation Committee of the Company must be comprised solely of independent directors meeting the standard of independence set forth in Section II above.

**Note:** Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) requires Nasdaq to adopt certain enhanced independence requirements for members of an issuer’s compensation committee. The Act requires that these enhanced requirements consider “relevant factors”, including (i) the source of compensation of a member of the compensation committee, including any consulting, advisory, or other compensatory fee paid by the issuer to such member of the committee; and (ii) whether a member of the compensation committee is affiliated with the issuer, a subsidiary of the issuer, or an affiliate of a subsidiary of the issuer. It is unclear when these new requirements will be adopted by Nasdaq.

### **C. Nominating Committee**

The Nominating Committee of the Company must be comprised solely of independent directors meeting the standard of independence set forth in Section II above.

### **IV. Audit Committee Financial Expert Disclosure Requirement**

Under SEC rules, the Company must disclose in its proxy statements and registration statements whether one or more of its audit committee members is an “audit committee financial expert” as that term is defined in the SEC rules, and, if not, the reason why. To qualify as an “audit committee financial expert,” an individual must have the following attributes:

1. An understanding of generally accepted accounting principles and financial statements;
2. An ability to assess the general application of these principles in connection with accounting for estimates, accruals and reserves;
3. Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the Company’s financial statements, or experience actively supervising one or more persons engaged in such activities;
4. An understanding of internal control over financial reporting; and
5. An understanding of audit committee functions.

The SEC rules provide that a person shall have acquired such attributes through:

1. Education and experience as a principal financial officer, principal accounting officer, controller, public accountant, auditor or experience in one or more positions performing similar functions;
2. Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;
3. Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or
4. Other relevant experience.

Generally, the audit committee member(s) that satisfies the Nasdaq Financial Sophistication Requirement also meets the criteria for an “audit committee financial expert.”