

**Year-End Tool Kit**

**Director Independence, Audit Committee and Compensation Committee Matters Questionnaire for NYSE Companies**

**2022-2023**

**PREPARER NOTES:**

This document is provided with the understanding that it does not constitute the rendering of legal or other professional advice by Goodwin Procter LLP or its attorneys. This document (which is in Microsoft Word® format) may be saved and edited so that it can be modified for a specific company (for example, name of the company, name of the contact person, etc.). This document may also require other revisions to render it suitable for a specific company’s circumstances. In the event this document is substantively modified (for example, to shorten or simplify), the preparer should verify that the questionnaire, as modified, will still gather the information necessary to assist the Board of Directors in considering and making its independence and other determinations.

Please note that this questionnaire does not address independence-related matters other than those required by NYSE and SEC rules, such as independence criteria used by institutional investor advisory or corporate governance ratings services. A separate questionnaire that reflects the objective director independence standards of Institutional Shareholder Services Inc. and the Council of Institutional Investors is available to supplement this questionnaire. Companies that are seeking to monitor director independence under the ISS and/or CII ratings should consider circulating that questionnaire to outside directors.

Additional separate questionnaires addressing the following matters are also available in our Year-End Tool Kit to supplement this questionnaire:

1. information required with respect to directors, officers and control persons;
2. independence standards of Institutional Shareholder Services Inc. and the Council of Institutional Investors;
3. Iran Threat Reduction and Syria Human Rights Act matters;
4. Foreign Corrupt Practices Act matters;
5. annual Form 5 reporting and disclosure under Section 16; and
6. Rule 506(d) and Rule 506(e) “bad actor” events.

This document has been prepared for use by domestic public companies with common stock listed on the New York Stock Exchange, and is not appropriate for companies subject to different SEC or stock exchange requirements, including but not limited to asset backed issuers, foreign private issuers or investment companies, nor does it reflect SEC rules applicable to smaller reporting companies or emerging growth companies.

**Please note especially that Question 18, relating to the diversity of the Company’s directors, is not suitable for use by any company that is a “foreign private issuer” as defined by the rules of the Securities and Exchange Commission, any company that has its principal executive offices located outside the United States****, or any other company if the company may be subject to, or any of its directors may be protected by, any legal or regulatory requirements related to the privacy or confidentiality of any personal information about the company’s directors in any jurisdiction. These companies should not use Question 18 or otherwise solicit or disclose any information about director self-identification without first obtaining qualified legal advice concerning compliance with any laws, rules and regulations that may apply to solicitation or disclosure of this information. Please review the cautionary notes and instructions in Section 6 carefully.**

This questionnaire is intended to be used in connection with preparation of the company’s Annual Report on Form 10-K and proxy statement and should not be used in connection with preparation of registration statements without further review and revision. This document is not a substitute for advice of qualified attorneys. We recommend that you consult with your regular Goodwin Procter LLP attorney prior to using this document.

**\* \* \***

NAME:

**[EDIT – Insert Company Name]**

**Questionnaire for Non-Employee Members of the Board of Directors
for
Director Independence, Audit Committee and Compensation Committee Matters**

IN CONNECTION WITH THE
PROXY STATEMENT FOR THE 2023 ANNUAL STOCKHOLDERS MEETING AND
FORM 10-K ANNUAL REPORT FOR FISCAL 2022

This questionnaire is being circulated to the non-employee directors of **[EDIT – Insert Company Name]** (the “Company”) to assist the Board of Directors in making determinations concerning the qualifications of non-employee members of the Company’s Board of Directors and Audit Committee that are required by New York Stock Exchange listing standards and Securities and Exchange Commission rules. This questionnaire will also be used to assist the Board of Directors in determining whether members of the Compensation Committee qualify as “non-employee directors” under SEC rules and as “outside directors” under the Internal Revenue Code of 1986 and the related regulations of the Internal Revenue Service. This questionnaire supplements the separate questionnaire that we are circulating to all directors and executive officers of the Company. The purpose of this questionnaire is to enable the Board of Directors to evaluate the Company’s compliance with the following requirements:

***Independence of Non-Employee Directors (Questions 1-6).*** NYSE rules require that a majority of the Company’s directors must qualify as “independent” under NYSE rules. In order for a director to qualify as an “independent director” under the NYSE rules, the Board of Directors must affirmatively determine that the director has no material relationship with the Company. The NYSE rules also include a list of relationships that would prevent the Board of Directors from determining that a director is independent. The Company must disclose in its proxy statement the identity of its independent directors and any transactions, relationships or arrangements considered by the Board of Directors in determining that its independent directors are independent.[[1]](#footnote-1)

***Qualifications of Audit Committee Members (Questions 7-12).*** NYSE and SEC rules impose additional qualifications on members of the Audit Committee. SEC rules require Audit Committee members to satisfy two supplemental independence standards not required for directors who are not members of the Audit Committee: (1) no Audit Committee member may accept any direct or indirect consulting, advisory or other compensatory fee from the Company or any of its subsidiaries other than normal compensation for service on the Board of Directors or a committee of the Company or a subsidiary, and (2) no person who is an “**affiliate**” of the Company may serve on the Audit Committee. In addition to the requirements of SEC rules, NYSE rules also require that (1) each member of the Audit Committee must be “financially literate,” or become financially literate within a reasonable period of time after appointment to the Audit Committee and (2) at least one member of the Audit Committee have accounting or related financial management expertise; this requirement is separate from status as an “audit committee financial expert” discussed below, but a director who is qualified in that capacity will satisfy this NYSE requirement.

***Qualifications of Compensation Committee Members (Questions 7-9 and 15).*** As required by SEC rules, the NYSE has adopted rules that impose additional qualifications on members of the Compensation Committee. **[EDIT – revise this section if the Company is a smaller reporting company or is otherwise exempt from compliance with the NYSE rules]** NYSE rules require the Company’s Board of Directors to consider additional factors when making independence determinations for Compensation Committee members. Under NYSE rules, the Board of Directors must consider all factors specifically relevant to determining whether a director has a relationship to the Company that is material to that director’s ability to be independent from management in connection with the duties of a member of the Compensation Committee, including but not limited to the following two factors: (1) the source of compensation of the director, including any consulting, advisory or other compensatory fees paid by the Company to the director, and whether the source of any such compensation would impair the director’s ability to make independent judgments about the Company’s executive compensation, and (2) whether the director is an **affiliate** of the Company, any of its subsidiaries, or any of its subsidiaries’ affiliates, including whether the **affiliate** relationship places the director directly or indirectly under the control of the Company or its senior management, or creates a relationship between the director and members of the Company’s senior management, in either case in a manner that would impair the director’s ability to make independent judgments about the Company’s executive compensation.

***“Audit Committee Financial Expert” Status (Questions 13-14).*** SEC rules require the Company to disclose in its Form 10-K or proxy statement whether there is at least one “audit committee financial expert” serving on the Audit Committee. The Board of Directors must determine whether one or more members of the Audit Committee qualifies as an audit committee financial expert. This determination requires the Board of Directors to review the qualifications of potential experts under SEC rules. Questions 13 and 14 summarize the elements of the audit committee financial expert definition.

***Compensation Committee “Outside Director” and “Non-Employee Director” Status (Questions 16-17).*** Members of the Compensation Committee should, in addition to qualifying as “independent” directors under NYSE rules, satisfy the requirements for certain exemptions under SEC and IRS rules. In order for certain compensatory transactions involving the Company’s securities to qualify for the exemption from “short swing” profits recapture under Section 16(b) of the Securities Exchange Act of 1934 that is provided by SEC Rule 16b-3, members of the Compensation Committee must qualify as “non-employee directors” under SEC rules. In addition, in order to preserve the deductibility of certain compensation paid to executive officers, Compensation Committee members must qualify as “outside directors” under Section 162(m) of the Internal Revenue Code. Questions 16 and 17 are intended to assist the Board of Directors in determining whether members of the Compensation Committee satisfy these requirements.

**[INSTRUCTION TO BE DELETED – Question 18 in Section 6, “Director Diversity,” is not suitable for use by any company that is a “foreign private issuer” as defined by the rules of the Securities and Exchange Commission, any company that has its principal executive offices located outside the United States, or any other company if the company may be subject to, or any of its directors may be protected by, any legal or regulatory requirements related to the privacy or confidentiality of any personal information about the company’s directors in any jurisdiction. These companies should not use Question 18 or otherwise solicit or disclose any information about director self-identification without first obtaining qualified legal advice concerning compliance with any laws, rules and regulations that may apply to solicitation or disclosure of this information. Please review the cautionary notes and instructions in Section 6 carefully.]**

**[INSTRUCTION TO BE DELETED – Revise the following paragraph as appropriate to reflect (1) whether or not the Company intends to disclose publicly any personally identifiable information about director diversity, (2) whether or not the Company is subject to California laws regarding director diversity and (3) any revision or modification of Question 18.]**

***Director Diversity (Question 18).*** **[Question 18 is intended to assist the Company in determining whether the Company is in compliance with California laws that require the Company to have specified minimum numbers of directors who satisfy gender and demographic diversity requirements under California law.]** **[The Company [also] intends to use the information provided in response to Question 18 as the basis for disclosure regarding the gender and demographic diversity of the members of the Board of Directors in its [proxy statement] for the next annual meeting of shareholders. Please review the information that precedes Question 18 before responding to Question 18.]**

————

**Please note that NYSE listing standards and SEC rules effectively require the Company to monitor the independence of directors and members of the Audit Committee, Compensation Committee and Nominating/Corporate Governance Committee throughout the year.** As a result, if there is any change or proposed change in the facts on which your answers to this questionnaire are based, it is important that you to notify \_\_\_\_\_\_\_\_\_\_\_\_\_ at the Company by telephone (\_\_\_-\_\_\_-\_\_\_\_), telecopier (\_\_\_-\_\_\_-\_\_\_\_) or by email (\_\_\_\_\_\_\_\_\_\_@\_\_\_\_\_\_\_\_) at the earliest possible time.

Please complete the following questionnaire, date and sign it on page Q-1, and return it to me by [\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_]. Please note that it may be necessary to supplement this questionnaire with in-person interviews in order to allow the Board of Directors to make the determinations referred to above. Please call me at (\_\_\_) \_\_\_\_\_\_\_\_\_\_\_, [or our outside counsel, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of Goodwin Procter LLP at \_\_\_-\_\_\_-\_\_\_\_,] if you have any questions about the questionnaire.

**NON-EMPLOYEE DIRECTOR INDEPENDENCE AND
AUDIT COMMITTEE AND COMPENSATION COMMITTEE QUALIFICATION QUESTIONNAIRE**

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Director’s name:

**I have completed the following questionnaire to the best of my knowledge as of the date below and understand that the Company and the Board of Directors will rely upon this information in complying with requirements of the federal securities laws, federal tax regulations, NYSE listing standards, preparation and filing of SEC disclosure documents and disclosure on the Company’s website. I will promptly notify the Company if any of this information changes or becomes incorrect at any time after the date below.**

|  |  |
| --- | --- |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ |   |
|  | Signature |
|  |   |
|  | Name: Please print or type |

Definitions and General Instructions

Please review the terms below before answering this questionnaire. These terms are indicated in this questionnaire in **bold underscored text**.

“***Affiliate***” means, with respect to any person, a person who directly, or indirectly through one or more intermediaries, **controls**, or is **controlled** by, or is under common **control** with, that other person.

“***Beneficial* *ownership***” is determined under SEC Rule 13d-3, which generally means having or sharing any direct or indirect voting or investment power over a company’s equity securities through any contract, arrangement, understanding, relationship, trust, proxy or otherwise (including the right to acquire equity securities within 60 days through the exercise of any option, warrant, conversion right, revocation right or other right).

“***Control***” means, for purposes of the definition of **affiliate** above, having direct or indirect power to direct or cause the direction of the management and policies of the Company, whether through the ownership of voting securities, by contract, or otherwise. A person will be deemed not to **control** another person for this purpose if the person is not an executive officer or director of the other person and is not a **beneficial** **owner**, directly or indirectly, of more than 10% of any class of equity securities of the other person.

Any majority-owned subsidiary, or less-than-majority owned business entity which is in fact **controlled** by a person, is an **affiliate** of the person owning the majority interest or **controlling** the business entity. Directors who are also employees, executive officers, general partners and managing members of an **affiliate** of another person will also be deemed to be **affiliates** of that other person.

“***Immediate family***” includes your spouse, parents, stepparents, children, stepchildren, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law and anyone (other than unrelated persons employed by you) who shares your home.

**As used in this questionnaire, any reference to the “Company” includes any parent, subsidiary or predecessor of the Company, unless otherwise stated.**

Section 1: Independence Standards for Non-Employee Directors

**All non-employee directors and nominees for director should answer questions 1-6 below.** Questions 1-5 are required by NYSE rules and relate to circumstances that would prevent the Board of Directors from determining that each director is “independent” under NYSE listing standards. If you answer “no” to each of these questions, the Board of Directors must still consider any information provided in response to question 6 in making a determination that you are independent.

1. Are you now, or have you been within the last three years, employed **in any capacity** by the Company, or is there any member of your **immediate family** who is now, or has been within the last three years, an executive officer of the Company, other than prior employment as Chairman, CEO or other executive officer on an interim basis?

☐ Yes ☐ No

1. Have you, or has any member of your **immediate family**, received during the last three years any direct compensation from the Company other than:
* compensation for service on the Board of Directors or any of its committees;
* pension or other forms of deferred compensation for prior service (provided that any such compensation is not contingent in any way on continued service);
* compensation for former service as an interim Chairman, CEO or other executive officer; or
* compensation paid to a member of your **immediate family** for service as an employee (other than an executive officer) of the Company?

☐ Yes ☐ No

If you answered “yes” above, please describe the compensation received, including who received the compensation, what it was received for, the amount of any such compensation and when it was paid:

Please note that the receipt by you or a member of your **immediate family** of more than $120,000 in direct compensation (not including any amounts in the four categories of exempt compensation above) during any 12-month period within the last three years will automatically disqualify you from being considered independent.

1. Are you, or is any member of your **immediate family**, a current partner of a firm that is the Company’s internal or external auditor?

☐ Yes ☐ No

Are you a current employee of such a firm?

☐ Yes ☐ No

Does any member of your **immediate family** who is a current employee of such a firm personally work on the Company’s audit?

☐ Yes ☐ No

Were you, or was any member of your **immediate family**, at any time within the past three years, a partner or employee of such a firm who personally worked on the Company’s audit within that time period?

☐ Yes ☐ No

1. Are you, or is any member of your **immediate family**, now employed, or have you or any member of your **immediate family** been employed within the last three years, as an executive officer of another company for which any of the Company’s present executive officers serve or served at the same time on the other company’s compensation committee?

☐ Yes ☐ No

1. Please list all companies of which you are a current employee or any member of your **immediate family** is a current executive officer:

To your knowledge, has the Company made any payments to, or received any payments from, any of the companies listed above for property or services in any of the last three fiscal years or the current fiscal year (or are payments proposed to be made to or received from any such company in the future)?

☐ Yes ☐ No

If you answered “yes” above, please list the dates and amounts of such payments for each fiscal year (separately listing payments made to or received from each company), the other company receiving or making the payment and the amount of the other company’s consolidated gross revenues for each fiscal year in which payments were made or are proposed to be made:

*Please note that you will be automatically disqualified from being considered independent if the Company has made payments to, or received payments from, any of the companies listed above for property or services in an amount which, in any of the last three fiscal years, exceeds the greater of $1 million or 2% of the other company’s consolidated gross revenues for the relevant year.*

Contributions to tax exempt organizations are not considered “payments” for purposes of the questions above. However, if you serve as an executive officer of any tax exempt organization to which the Company has, within the preceding three years, made any contributions in a single fiscal year exceeding the greater of $1 million or 2% of the tax exempt organization’s consolidated gross revenues, the Company must disclose such contributions either in its proxy statement or on its website. Please list all tax exempt organizations for which you currently serve as an executive officer:

1. Under NYSE rules, in order for a director to be classified as independent, the Board of Directors must make an affirmative determination that the director has no material relationship with the Company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the Company). Accordingly, the Board of Directors must evaluate – in addition to the answers to questions 1-5 above – the materiality of **all existing and proposed relationships and all prior relationships** between any director who is to be determined independent under NYSE rules and the Company. In addition to the relationships with the Company referred to in this questionnaire, the Board of Directors should consider all relevant facts, which may include information about relationships with the Company’s executive officers if appropriate under the circumstances. In this regard, NYSE rules state:

. . . it is best that boards making “independence” determinations broadly consider all relevant facts and circumstances. In particular, when assessing the materiality of a director’s relationship with the company, the board should consider the issue not merely from the standpoint of the director, but also from that of persons or organizations with which the director has an affiliation. Material relationships can include commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships, among others. However, as the concern is independence from management, the Exchange does not view ownership of even a significant amount of stock, by itself, as a bar to an independence finding.

Please list below **all direct and indirect relationships** (including, for example, relationships involving any business, nonprofit or other entity in which you serve as a partner, manager, director, trustee, officer, or significant stockholder or investor, or in which you have any significant financial interest) which the Board of Directors should consider in evaluating your independence.

* Please consider current and past relationships as well as any that are proposed.
* Please consider for this purpose any kind of relationship, such as commercial, industrial, banking, investment, consulting, legal, accounting, charitable, social or familial relationships.
* Please consider any current, past or proposed relationships that may be attributable to you indirectly as a result of a relationship or transaction that involves any member of your **immediate family**.
* Please consider for this purpose any passive investments in any privately held or publicly traded companies.

Please list any such relationships below or, if none, check “none.”

☐ None

☐ I am disclosing the following relationships:

Section 2: Additional Independence Standards for Audit Committee and Compensation Committee Members

**Please answer questions 7-9 only if you are a member of or nominee for the Audit Committee or the Compensation Committee.** Members of the Audit Committee and Compensation Committee must meet the independence standards set forth in Section 1 and the additional independence standards set forth below. For the Audit Committee: if you answer “yes” to any of questions 7, 8 or 9, or “yes” to question 10 or “no” to question 11 in Section 3 below, it is unlikely that you will be able to serve on the Audit Committee. Under NYSE rules, at least one member of the Audit Committee must be able to answer “yes” to question 12. For the Compensation Committee: if you answer “yes” to any of questions 7, 8 or 9, or “yes” to any of questions 15, 16 or 17 in Section 5 below, it is unlikely that you will be able to serve on the Compensation Committee.

1. Do you directly or indirectly **beneficially own** more than 10% of any class of the Company’s voting equity securities?

☐ Yes ☐ No

Please note that under SEC rules, **beneficial ownership** of 10% or less of any class of the Company’s voting equity securities is deemed not to result in **affiliate** status. If your **beneficial ownership** exceeds 10%, your status as an **affiliate** of the Company will depend on facts and circumstances to be evaluated by the Board of Directors.

1. Are you an “**affiliate**” of the Company, any subsidiary of the Company or any **affiliate** of any subsidiary of the Company, other than because of your service as a member of the Board of Directors or any of its committees? Please review the definition of “**affiliate**” when answering this question.

☐ Yes ☐ No

If yes, please describe the affiliation:

1. Have you accepted payments, or are you a party to any existing or proposed written or oral contract or other arrangement that provides for payments, directly or indirectly, to you from the Company or any of its subsidiaries of any accounting, consulting, advisory, legal, investment banking or financial advisory or any other compensatory fee (excluding fixed payments under retirement plans and deferred compensation for prior service to the Company, provided that such compensation is not contingent in any way on continued service), other than compensation for service as a member of the Board of Directors or any of its committees (or the board of directors or committees of a subsidiary of the Company)?[[2]](#footnote-2)

☐ Yes ☐ No

Has your spouse, any minor child or stepchild of yours, or any child or stepchild of yours who shares your home, accepted payments, or is any such person a party to any existing or proposed written or oral contract or any other arrangement that provides for payments, directly or indirectly, of any accounting, consulting, advisory, legal, investment banking or financial advisory or any other compensatory fee from the Company or any of its subsidiaries to that individual? Please note that the family members included in this question differ from those defined as your “**immediate family**” for purposes of answering questions 1-6 above.

☐ Yes ☐ No

Has any entity (1) in which you are a partner, member, managing director or executive officer, or in which you occupy a similar position, and (2) which provides accounting, consulting, advisory, legal, investment banking, financial advisory or any similar services, accepted payments, or is such entity a party to any existing or proposed written or oral contract or any other arrangement which provides for payments, directly or indirectly, to that entity of any accounting, consulting, advisory, legal, investment banking or financial advisory or any other compensatory fee from the Company or any of its subsidiaries?

☐ Yes ☐ No

If you answered “yes” to any of the questions above, please provide details of such payments or arrangements in the space below.

***Audit Committee members and nominees should also complete Section 3 (and Section 4 if they may be designated as an “audit committee financial expert”).***

***Compensation Committee members and nominees should also complete Section 5.***

Section 3: Additional Qualifications for Audit Committee Members

**Please answer questions 10-12 only if you are a member of or nominee for the Audit Committee.**

1. Do you currently, or did you during the past year, serve on the audit committees of more than three public companies, including current or proposed service on the Company’s audit committee? Please note that service on more than three audit committees may require the Board of Directors to determine that such service will not impair your ability to serve effectively on the Company’s audit committee and may require the Company to include related disclosure either in its proxy statement or on its website.

☐ Yes ☐ No

If “yes,” please list those companies below:

1. *Financial Literacy.* Do you believe that you are able to read and understand fundamental financial statements, including a company’s balance sheet, income statement and cash flow statement?

☐ Yes ☐ No

If you answered “yes” to this question please provide a brief description of your background and/or the circumstances that support your answer unless you have previously provided this information and there has been no change in the relevant facts and circumstances:

1. *Accounting/Financial Expertise.* NYSE rules require that at least one member of the Audit Committee must have accounting or related financial management expertise, as determined by the Board of Directors in its business judgment. This requirement is separate from status as an “audit committee financial expert,” which is the subject of Section 3 of this questionnaire. Do you believe that you have accounting or related financial management expertise?

☐ Yes ☐ No

If you answered “yes” to this question, please provide a brief description of your education, experience and/or any other factors that support your answer:

Section 4: “Audit Committee Financial Expert” Status

**Please answer questions 13-14 only if you have been asked to do so in connection with possible designation as an “audit committee financial expert” as defined in the SEC rules summarized below.**

1. **Audit Committee Financial Expert Status**
2. *Expertise Criteria.* Do you have each of the following measures of financial expertise (to qualify, each item in (a) must be “yes”):
* an understanding of U.S. generally accepted accounting principles and financial statements;

☐ Yes ☐ No

* the ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

☐ Yes ☐ No

* 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;

☐ Yes ☐ No

* an understanding of internal control over financial reporting and procedures for financial reporting; and

☐ Yes ☐ No

* an understanding of audit committee functions?

☐ Yes ☐ No

1. *Experience Criteria.* Have you acquired the above financial expertise through one or more of the following ways? Please note that an audit committee financial expert must have acquired the attributes listed in subsection (a) above in at least one of the ways listed below.
* Do you have education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions?

☐ Yes ☐ No

If you answered “yes” to the preceding question, please list applicable education and experience:

* Do you have experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions? For purposes of this question, “actively supervising” means a person who participates in, and contributes to, the process of addressing, although at a supervisory level, the same general types of issues regarding preparation, auditing, analysis or evaluation of financial statements as those addressed by the person or persons being supervised, and the person with active supervisory experience should have experience that has contributed to the general expertise necessary to prepare, audit, analyze or evaluate financial statements that is at least comparable to the general expertise of those being supervised. Note that the SEC has stated that “[a] principal executive officer should not be presumed to qualify” as an active supervisor, and the SEC has further stated that “[a] principal executive officer with considerable operations involvement, but little financial or accounting involvement, likely would not be exercising the necessary active supervision.”

☐ Yes ☐ No

If you answered “yes” to the preceding question, please list applicable supervisory positions:

* Do you have experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements?

☐ Yes ☐ No

If you answered “yes” to the preceding question, please list applicable oversight or assessment positions:

* Do you have other relevant experience that you believe is equivalent to the experience listed in any of the three bullet points above?

☐ Yes ☐ No

If you answered “yes” to the preceding question, please describe the relevant experience:

Please note that if the Board of Directors determines that you qualify as an audit committee financial expert under the factors listed in the last question above, the Company is required to disclose the relevant experience that is the basis for its determination in the Company’s proxy statement.

1. **Board Review of Financial Expert Status:**

If you answered “yes” to all items in question 13(a) and at least one item in question 13(b), SEC guidelines provide that the Board of Directors will consider all available facts and circumstances in making its determination whether you qualify as an “audit committee financial expert,” including your answers to the following questions:

* Please describe the level of your accounting or financial education, including whether you earned an advanced degree in finance or accounting:
* Are you a certified public accountant, or the equivalent, in good standing?

☐ Yes ☐ No

If “Yes,” please state the length of time that you actively have practiced as a certified public accountant, or the equivalent:

* Are you certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards with respect to such expertise, and are you in good standing with the recognized private body?

☐ Yes ☐ No

If you answered “yes” to the preceding question, please state the length of time that you have been actively certified or identified as having this expertise:

* Have you served as a principal financial officer, controller or principal accounting officer of a company that, at the time you held such position, was required by law to file periodic reports with the SEC?

☐ Yes ☐ No

If you answered “yes” to the preceding question, please state for how long:

* Describe your specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions:
* Describe your level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934:
* Describe the level and amount of your direct experience reviewing, preparing, auditing or analyzing financial statements that must be included in reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934:
* Describe your past or current membership on audit committees of companies that, at the time you held such membership, were required to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934:
* Describe your level of familiarity and experience with the use and analysis of financial statements of public companies:
* Describe any other relevant qualifications or experience you have that would assist you in understanding and evaluating the Company’s financial statements and other financial information and to make knowledgeable and thorough inquiries whether:
* the financial statements fairly present the financial condition, results of operations and cash flows of the Company in accordance with generally accepted accounting principles; and
* the financial statements and other financial information, taken together, fairly present the financial condition, results of operations and cash flows of the Company (i.e., whether or not technically compliant with GAAP).

Section 5: Additional Qualifications for Compensation Committee Members

**Please answer questions 15-17 only if you are a member of or nominee for the Compensation Committee.**

In addition to the questions in Sections 1 and 2 above, NYSE rules require that the Board of Directors must consider all factors specifically relevant to determining whether a director who will serve as a member of the Compensation Committee has a relationship to the Company that is material to that director’s ability to be independent from management in connection with the duties of a Compensation Committee member when the Board of Directors makes its affirmative determination regarding the independence of any director who will serve on the Compensation Committee of the Company, including, but not limited to:

* the source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the Company or any other person or entity to the director, considering specifically whether the source of such compensation would impair the director’s ability to make independent judgments about the Company’s executive compensation; and
* whether the director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company, considering specifically whether the affiliate relationship places the director under the direct or indirect control of the Company or its senior management, or creates a direct relationship between the director and members of senior management, in each case of a nature that would impair the director’s ability to make independent judgments about the Company’s executive compensation.
1. Are you aware of any additional factors (including any compensation you receive, directly or indirectly, from the Company or any other source) that could be material to your ability to be independent from the Company’s management in connection with the duties of a member of the Compensation Committee, including your ability to make independent judgments about the Company’s executive compensation?

☐ Yes ☐ No

If yes, please describe such additional factors:

1. *Non-Employee Director Status under SEC Rule 16b-3.* This rule provides an exemption from short swing profit recovery under Section 16(b) of the Securities Exchange Act of 1934 for certain transactions under the Company’s equity incentive plans if approved in advance by the Company’s Board of Directors or by a committee composed solely of two or more “non-employee directors.”

(a) Since the beginning of the Company’s last fiscal year, have you or any member of your **immediate** **family** received payments of more than $120,000 from the Company, directly or indirectly, other than for service as a director of the Company?

☐ Yes ☐ No

(b) Is there any currently proposed transaction or relationship involving you or any member of your **immediate family** that would potentially result in you or an **immediate family** member receiving payments of more than $120,000 from the Company, directly or indirectly, other than for service as a director of the Company?

☐ Yes ☐ No

*Please note that although a “yes” answer to any of part of this question 16 will not necessarily disqualify you from serving as a “non-employee director,” additional review will be required to determine whether you satisfy the SEC requirements for service in that capacity.*

1. *Section 162(m) Outside Director Status.* **[Note: the Company should review with counsel whether it has any performance-based compensation to which Section 162(m) could still apply. If it does not, question 17(a)-(c) may be omitted.]** The Internal Revenue Code limits the Company’s ability to deduct certain grandfathered performance-based compensation paid to certain officers if, among many other conditions, a committee of “outside directors” (as defined in the tax regulations) has not approved the compensatory arrangement and certified achievement of the relevant performance criteria.

(a) Are you a former employee of the Company receiving, or who has received in the previous taxable year, compensation from the Company for past services (other than tax-qualified retirement plan benefits)?

☐ Yes ☐ No

(b) Have you ever been an officer of the Company?

☐ Yes ☐ No

(c) Either:

* Do you receive or have you received from the Company, in the Company’s current or previous taxable year, any direct or indirect payments, or is the Company now contractually obligated to pay you directly or indirectly, for goods or services in any capacity other than as a director?

*or*

* Does the Company make or has the Company made in the Company’s current or previous taxable year, or is the Company now contractually obligated to make, any payments for goods or services to any business, professional or other entity (1) that employs you, (2) to which you render any substantial services, or (3) in which you have at least a 5% ownership interest?

☐ Yes ☐ No

*Note: This section (c) does not set forth the full, complex remuneration test of the income tax regulations under Section 162(m). If you answer “yes,” further review will be required in order to determine whether you qualify as an “outside director” under Treas. Reg. Section 1.162-27(e)(3). There are “de minimis” and timing exceptions that may or may not permit service on the committee depending on an analysis of the applicable facts (including your percentage ownership of an entity, amount of payments, amount of gross revenues of the entity, timing and other factors).*

Section 6: Director Diversity

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| --- | --- |
| **Director Diversity****General Instructions****[Delete this box and the instructions in this box before distributing this questionnaire.]**

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| --- |
| **Companies that are “foreign private issuers” as defined by the rules of the Securities and Exchange Commission may be subject to legal restrictions or prohibitions that apply to solicitation and/or disclosure of information about the self-identification of directors. These companies, and any other company if the company may be subject to, or any of its directors may protected by, any legal or regulatory requirements related to the privacy or confidentiality of any information about the company’s directors in any jurisdiction or if the company has its principal executive offices located outside the United States, should not use Question 18** **or otherwise solicit or disclose information about director self-identification without first obtaining qualified legal advice concerning compliance with any laws, rules and regulations that may apply to solicitation and disclosure of this information.** |

**Important Note: The instructions and information in this section discuss public disclosure of directors’ gender and demographic diversity, including the requirements of California law, among others. These instructions and discussions and Question 18, like all of the other instructions, discussions and questions in this document, are not intended as legal advice and must not be relied upon as such. You are urged to obtain legal advice on these and any other matters that relate to this questionnaire and the legal matters upon which this questionnaire is based.****Introduction**Question 18 is intended to assist California-based publicly-traded companies that are NYSE-listed to comply with California laws that require these companies to report to the California Secretary of State with respect to whether the company has the numbers of directors who satisfy California gender and demographic diversity requirements. “California-based” means a company that lists a California address as the address of its principal executive offices on the company’s Form 10-K annual report for that year. Companies that are subject to these California laws must have at least the minimum number of female directors and directors from underrepresented communities, as defined by the applicable California laws, and must report information about the composition of the Board of Directors to the California Secretary of State annually. As used in this questionnaire, “assist” is limited to assistance with soliciting gender and demographic information from the company’s directors and does not include legal advice about compliance with California laws.Information about director diversity is provided to the California Secretary of State on an aggregated basis for each category; individually identifiable diversity information is not required. Unlike the diversity rules adopted in 2021 by Nasdaq that apply to Nasdaq-listed companies, these California laws do not require public disclosure in proxy statements or other SEC filings. If a company proposes to disclose gender, demographic or other information on an individually identifiable basis, the company should consider making that clear to directors in this questionnaire. In particular, companies should review the statement highlighted in yellow in the second paragraph of the introduction to Version 1 and Version 2 of Question 18 below and revise that statement as necessary.An alternate version of Question 18 can be used by NYSE-listed companies that are not California-based to assist with solicitation of information about the gender and/or demographic self-identification of the company’s directors.Note that the California laws that require disclosure of the gender and demographic diversity of a company’s directors are subject to legal challenges that could affect the validity of these requirements. Companies should confirm the current status of these challenges before distributing a questionnaire that includes this section of the questionnaire. Update (September 30, 2022): Earlier in 2022, California trial courts ruled that S.B. 826, relating to directors who self-identify as female, and A.B. 979, relating to directors who self-identify as a member of specified underrepresented minorities, violate the California constitution and issued orders that prohibit any use of taxpayer funds to administer or enforce the law. California has appealed these rulings and a court has issued an order prohibiting enforcement of the orders of the trial courts. The timing of decisions on these appeals is uncertain. Until there is a change in the status of the litigation on S.B. 826 and A.B. 979, we recommend that companies consult with counsel regarding compliance with S.B. 826 and A.B. 979.**Which Version of the Director Diversity Questions to Use** The difference between Version 1 and Version 2 of Question 18 is that Version 1 is intended for use by NYSE-listed companies that are California-based and therefore need to comply with California laws that require California-based NYSE-listed companies to report to the California Secretary of State with respect to whether the company has at least the specified number of directors who satisfy California gender and demographic diversity requirements. Version 2 is intended for use by NYSE-listed companies that are not California-based and therefore do not need to comply with these California laws.**NYSE-listed companies that *are* California-based** should use Version 1 of Question 18, which is based on the specific diversity categories specified by applicable California laws, if the company wishes to use this questionnaire in connection with its obligation to report to the California Secretary of State on the diversity of its Board of Directors.**NYSE-listed companies that *are not* California-based** can, if they choose to do so, use version 2 of Question 18 to assist with solicitation of information about the gender and/or demographic self-identification of the company’s directors.**Voluntary Self-Identification**Diversity as reported to the California Secretary of State is based solely on each director’s voluntary self-identification. Both versions of Question 18 include a “prefer not to disclose” option for director responses, although California does not include a “did not disclose” option for director diversity reporting by companies. Because the California requirements that companies have at least a specified number of directors who self-identify as female or members of underrepresented communities are stated as numbers rather than percentages, the only practical impact of a director choosing not to self-identify as female or a member of an underrepresented community is that a director who would otherwise be counted as satisfying one or both requirements would not be so counted.**Modification of Question 18**This section discusses the gender and demographic categories used in version 1 and Version 2 of Question 18. If a company is not subject to the California director diversity laws, the company can use Version 2 of Question 18 with any modifications it wishes, subject to applicable legal requirements.***Gender and Demographic Self-Identification.*** The California director diversity reporting form is not capable of being modified by companies. Companies that modify version 1 of Question 18 should ensure that they will be able to report accurately with respect to the director diversity requirements provided in the applicable California laws.The relevant California laws include only a male/female choice and define “underrepresented community” as follows: Black; African American; Hispanic; Latino; Asian; Pacific Islander; Native American; Native Hawaiian; Alaska Native; gay; lesbian; bisexual; transgender.Version 2 of Question 18 is based on the categories used in the current federal EEO-1 form, which include; Black or African American; Hispanic or Latino; American Indian or Alaska Native; Asian; Native Hawaiian or Other Pacific Islander; and White.***Other Self-Identification.***  If it chooses to do so, a company can include additional categories that portray the diverse backgrounds and experiences of directors. As non-exclusive examples, a company could include categories such as “Persons with Disabilities” or “Military Veteran.” Companies can modify or delete these categories, and should consider obtaining legal advice about including additional categories. |

**[Version 1]**

**[for NYSE-listed companies that are California-based]**

**Question 18**

The purpose of this question is to assist the Company to report to the California Secretary of State about the diversity of its directors, as required by California laws that require the company to have at least a specified number of directors who satisfy California diversity requirements. All directors and nominees for director should answer the questions below by checking the appropriate boxes in each part of the table. Your responses below should be based solely on how you choose to identify yourself.

California laws require the Company to report information about the gender and demographic self-identification of directors on an aggregated, rather than individual, basis. **[****Important: review and confirm that the following statement is true, or revise as necessary** **if the Company intends to disclose director diversity information publicly]** **[**California law does not require the Company to disclose how individual directors self-identify, and the Company will not disclose information about how individual directors self-identify except to the extent that you have consented to disclosure of gender and/or demographic information in connection with your biography that is included in the Company’s proxy statement and/or on the Company’s website**.]** Although California law does not require you to respond, the Company requests that each director identify the gender and demographic category or categories in which you identify yourself below. You may also indicate that you prefer not to disclose your self-identification. Because not responding may affect the Company’s ability to satisfy the California diversity requirements, the Company would appreciate your willingness to indicate how you self-identify in each of the categories below, instead of checking the “prefer not to disclose” responses.

|  |
| --- |
| **Director Diversity Self-Identification****NYSE-Listed Companies that are California-Based** |
| **Part I: Gender Self-Identification*****Check one*** |
| Female | ☐ |
| Male | ☐ |
| Prefer not to disclose | ☐ |
| **Part 2: California Underrepresented Communities Self-Identification*****Check each that applies*** |
| African American | ☐ |
| Alaskan Native | ☐ |
| Asian | ☐ |
| Black | ☐ |
| Hispanic | ☐ |
| Latino | ☐ |
| Native American | ☐ |
| Native Hawaiian | ☐ |
| Pacific Islander | ☐ |
| White | ☐ |
| Gay | ☐ |
| Lesbian | ☐ |
| Bisexual | ☐ |
| Transgender | ☐ |
| Prefer not to disclose | ☐ |

**[End of Version 1]**

**[Version 2]**

**[OPTIONAL – for NYSE-listed companies that are not California-based and wish to solicit information about director self-identification****]**

**Question 18**

The purpose of the questions below is to **[Important: review and revise as necessary]** solicit **[**and permit the Company to disclose publicly**]** **[**on an aggregated basis**]** information about the gender and demographic diversity of its directors. Your responses below should be based solely on how you choose to identify yourself. **[**The Company will not disclose information about how individual directors self-identify except to the extent that you have consented to disclosure of gender and/or demographic information in connection with your biography that is included in the Company’s proxy statement and/or on the Company’s website.**]** The Company requests that each director identify the gender and demographic category or categories in which you identify yourself below. If you prefer not to respond, you can indicate your preference by checking the appropriate box(es) below.

|  |
| --- |
| **Director Self-Identification** |
| **Part 1: Gender Self-Identification*****Check one*** |
| Female | ☐ |
| Male | ☐ |
| Prefer not to disclose  | ☐ |
| **Part 2: Demographic Self-Identification*****Check each that applies*** |
| American Indian or Alaska Native | ☐ |
| Asian | ☐ |
| Black or African American | ☐ |
| Hispanic | ☐ |
| Native Hawaiian or Other Pacific Islander | ☐ |
| White | ☐ |
| Two or more races | ☐ |
| Prefer not to disclose | ☐ |

**[End of Version 2]**

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1. SEC rules permit the Board of Directors of a listed company to adopt additional definitions and categorical standards to assist it in making independence determinations, and to make a general disclosure if a director meets such definitions and standards. If the Board of Directors adopts such additional standards, it must disclose such standards, and if a director does not meet the standards, but is still determined to be independent, the Board must disclose the basis for its determination. If the Board has adopted any such additional definitions and categorical standards, this questionnaire should be revised to reflect those standards. [↑](#footnote-ref-1)
2. Note that NYSE rules require the Board of Directors to consider all payments received from the Company when making independence determinations for Compensation Committee members, including the Company-paid amounts not included in question 9. [↑](#footnote-ref-2)