

## **Corporate Governance Guidelines**

### **Board Mission and Objectives**

*Board Mission.* The primary mission of the Board of Directors of Calpine Corporation (the "Company") is to govern the Company with the vision to maximize value for its stakeholders, adhere to the laws of the jurisdictions where the Company operates, and maintain high ethical standards, thereby building long term value for its stakeholders. This vision is best served by a Board of Directors and governance guidelines that utilize best practices in corporate governance.

*Corporate Authority and Responsibility.* The business and affairs of the Company shall be managed under the direction of the Board of Directors. The Board of Directors may exercise that authority through delegation to committees of the Board of Directors and through the delegation of authority to the Company's management, all in accordance with applicable law and the Certificate of Incorporation and By laws of the Company. The Board of Directors shall provide advice and counsel to management of the Company in carrying out management's delegated responsibilities.

### **General Principles**

*Expectations for Directors.* Each member of the Board of Directors of the Company shall:

- Dedicate sufficient time, energy and attention to ensure the diligent performance of his or her duties;
- Comply with the duties and responsibilities set forth herein and in the By laws of the Company;
- Comply with all duties of care, loyalty and confidentiality applicable to directors of publicly traded Delaware corporations; and
- Adhere to the Company's Code of Conduct, including, but not limited to, the policies on conflicts of interest expressed therein.

### *Financial Literacy*

Members of the Board of Directors should know how to read and understand fundamental financial statements and understand the use of financial ratios and information in evaluating the financial performance of the Company.

### *Character of the Members of the Board of Directors.*

Members of the Board of Directors should be persons of good character and thus should possess all of the following personal characteristics:

- Integrity: Directors should demonstrate high ethical standards and integrity in their personal and professional dealings;
- Accountability: Directors should be willing to be accountable for their decisions as directors;
- Judgment: Directors should possess the ability to provide wise and thoughtful counsel on a broad range of issues;
- Responsibility: Directors should interact with each other in a manner which encourages responsible, open, challenging and inspired discussion;
- High Performance Standards: Directors should have a history of achievements which reflects high standards for themselves and others;
- Commitment and Enthusiasm: Directors should be committed to, and enthusiastic about, their performance for the Company as directors, both in absolute terms and relative to their peers; and
- Courage: Directors should possess the courage to express views openly, even in the face of opposition.

### **Board of Directors Composition and Selection; Independent Directors**

*Board of Directors Size.* The Board of Directors of the Company shall, in accordance with the By laws of the Company, determine the size of the Board of Directors which is optimal to allow the Board of Directors to operate in an effective fashion, to accomplish all of its goals and to fulfill all of its responsibilities. The Board of Directors of the Company believes that the size of the Board of Directors should generally be nine (9) members. The Board of Directors periodically reviews the size of the Board of Directors.

*Selection of Members of the Board of Directors.* The Board of Directors shall be elected in the manner provided in the By laws of the Company. The Nominating and Governance Committee shall identify, and recommend to the Board of Directors, candidates who are qualified to become members of the Board of Directors in accordance with the policies and principles set forth in its charter, the By laws of the Company, the Certificate of Incorporation of the Company and these guidelines.

*Annual Meeting of Stockholders.* The Board of Directors shall select, from among the candidates identified and recommended by the Nominating and Governance Committee, the slate of nominees for membership on the Board of Directors at each annual meeting of the Company's stockholders. In accordance with the provisions of its charter, the Nominating and Governance Committee shall consider candidates recommended by stockholders in accordance with applicable law, rule or regulation.

*Vacancies / New Positions.* The Board of Directors may fill vacancies on the Board of Directors and newly created positions on the Board of Directors resulting from any increase in the authorized number of Directors in the manner provided in the By laws of the Company. Should the Board of Directors choose to fill such vacancies or newly created positions, the Board of Directors shall select such Directors from among the candidates identified and recommended by the Nominating and Governance Committee.

*Shareholder Recommendations.* The policy of the Nominating and Governance Committee is to consider director candidates recommended to it, including candidates recommended by stockholders. Stockholders wishing to make recommendations with respect to director candidates should submit to the Chairman of the Nominating and Governance Committee, in care of the Corporate Secretary at Calpine Corporation, 717 Texas Avenue, Suite 1000, Houston, Texas 77002, the following information: (a) the candidate's name, age, business address, residence address and telephone number; (b) the candidate's principal occupation; (c) the class and number of shares of Calpine stock owned by the candidate; (d) a description of the candidate's qualifications to be a director; (e) whether the candidate would be an independent director; and (f) any other information the stockholder deems relevant with respect to the recommendation.

There will be no differences in the manner in which the Nominating and Governance Committee evaluates director candidates recommended by stockholders from those recommended by others. Ultimately, the decision whether to recommend a director candidate is within the discretion of the Nominating and Governance Committee.

These guidelines provide information to stockholders who wish to recommend candidates for director for consideration by the Nominating and Governance Committee. Stockholders who wish to actually nominate persons for election to the Board must follow the procedures set forth in Section 2.09 of the Company's Bylaws. A copy of the Bylaws may be obtained by writing or calling the Corporate Secretary at Calpine Corporation, 717 Texas Avenue, Suite 1000, Houston, Texas 77002, Telephone Number: (713) 830-2001. <!--[or on the Internet at [www.calpine.com](http://www.calpine.com)]->

#### **Board of Directors Membership Criteria**

- The Nominating and Governance Committee shall assist the Board of Directors in determining the appropriate characteristics, skills and experience for the individual members of the Board of Directors and the Board of Directors as a whole.
- In evaluating the suitability of individual candidates and nominees, the Nominating and Governance Committee and the Board of Directors shall consider relevant factors, including, but not limited to:
  - A general understanding of marketing, finance, corporate strategy and other elements relevant to the operation of a large publicly traded company in today's business environment;
  - An understanding of the Company's business;
  - Educational and professional background; and
  - Character.
- The Nominating and Governance Committee and the Board of Directors shall evaluate each individual candidate and nominee in the context of the Board of Directors as a whole, with the objective of recommending a slate of nominees who can best oversee the management of the business and represent stockholder interests through the exercise of sound judgment using their diversity of experience in these various areas.

- In determining whether to recommend a member of the Board of Directors for re election, the Nominating and Governance Committee and the Board of Directors also shall consider such member's past attendance at meetings and participation in, and contributions, to the activities of the Board of Directors.

*Board of Directors Composition.* Three quarters (3/4) of the members of the Board of Directors must be "independent," as affirmatively determined by the Board of Directors, which shall include an affirmative determination that each "independent" member of the Board of Directors has no material relationship with the Company (either directly or as a partner, significant shareholder or officer of an organization that has a relationship with the Company). This will not, however, prevent the Board of Directors from taking valid actions if, in accordance with the By laws of the Company, there are fewer than the intended proportion of "independent" members of the Board of Directors. For purposes of these guidelines, a member of the Board of Directors may be considered independent if such member has not been employed by the Company within the last three (3) years (other than as interim Chairman of the Board of Directors or interim Chief Executive Officer) and:

- Does not have an immediate family member that has been employed by the Company as an executive officer within the last three (3) years;
- Has not received more than \$100,000 in direct compensation from the Company within the last three (3) years other than for services as a member of the Board of Directors, interim Chairman of the Board of Directors or interim Chief Executive Officer;
- Is not, and has not been within the last three (3) years, an executive officer or an employee of a significant customer or supplier of the Company;
- Is not, and has not been within the last three (3) years, affiliated with or employed by the Company's present or former internal or external auditor;
- Is not affiliated with any not for profit entity which, in the business judgment of the Board of Directors, receives significant contributions from the Company;
- Is not employed as an executive officer of a public company at which an executive officer of the Company serves as a member of such public company's board of directors;
- Has not had any of the relationships described above with any affiliate of the Company;
- Is not a member of the immediate family of any individual, or have an immediate family member, with any of the relationships described in the bulleted paragraphs above; and
- Has no other material relationship which, in the business judgment of the Board of Directors, would impair his or her ability to exercise independent judgment.

Notwithstanding the foregoing, each member of the Board of Directors must meet any mandatory qualifications for membership on the Board of Directors, and the Board of Directors, as a whole, must meet the minimum "independence" requirements, imposed by any exchange or market on which the Company's common stock is listed (the "Exchange") and any other laws and regulations applicable to the Company. Each member of the Board of Directors shall promptly advise the Chairman of the Board or Lead Director and the Nominating and Governance Committee of any matters which, at any time, may affect such member's qualifications for membership under the criteria imposed by the Exchange, any other laws and regulations or these guidelines, including, but not limited to, such member's "independence."

*Impairment of Independence.* Each "independent" member of the Board of Directors shall promptly notify the Chairman of the Board of Directors or Lead Director if any actual or potential conflict of interest arises between such member and the Company which may impair such member's independence. If a conflict exists and cannot be resolved, such member should submit to the Board of Directors written notification of such conflict of interest and an offer of resignation from the Board of Directors and each of the committees on which such member serves. The Board of Directors need not accept such offer of resignation; however, the submission of such offer of resignation provides the opportunity for the Board of Directors to review the appropriateness of the continuation of such individual's membership on the Board of Directors. In some cases, it may be appropriate for such member to be replaced as a member of one or more of the committees on which he or she serves but be retained as a member of the Board of Directors.

*Related Party Transactions.* The Board of Directors shall consider, in consultation with the Nominating and Governance Committee, whether a transaction between a member of the Board of Directors and the Company presents any inappropriate conflicts of interest and/or impair the "independence" of any member of the Board of Directors.

*New Directors and Continuing Education.*

- Within the first ninety (90) days after election or appointment to the Board of Directors, each new member of the Board of Directors shall commence participation in a mandatory orientation program in which such new member will visit facilities representing all of the Company's business lines and will have the opportunity to meet with corporate department heads, which orientation program shall be completed within the first one hundred eighty (180) days after election or appointment. In addition, the management of the Company shall provide new members of the Board of Directors with materials, briefings and educational opportunities to permit them to become familiar with the Company and to enable them to better perform their duties. In addition, from time to time on a continuing basis, all members of the Board of Directors shall receive additional materials, briefings and educational opportunities to enable them to remain current with matters within their purview.
- The Nominating and Governance Committee is responsible for director orientation and continuing education and training for directors. The Board encourages all of its members to participate in director education programs.

*Limitations on Service.*

- (a) The Board of Directors acknowledges that significant time is required to be a fully participating and effective member of the Board of Directors; therefore, the Board of Directors believes that:

Members of the Company's management (other than the Chief Executive Officer) should not hold more than one (1) directorship of a public company other than the Company;

The Chief Executive Officer should not hold more than two (2) directorships of public companies other than the Company;

No member of the Board of Directors who is employed by a public company other than the Company on a full time basis should hold more than three (3) directorships of public companies other than the Company;

No member of the Board of Directors should hold more than four (4) directorships of public companies other than the Company; and

No member of the Audit Committee should serve on the audit committee of more than three (3) public companies.

- The Board of Directors does not believe that its members should be prohibited from serving on boards of directors and/or committees of not for profit entities or organizations, and the Board of Directors has not adopted any guidelines limiting such activities; provided, however, that each member of the Board of Directors is responsible for ensuring that the time required by such activities is not detrimental to such member's ability to fulfill the duties and responsibilities of membership on the Board of Directors. The Nominating and Governance Committee and the Board of Directors, however, will take into account the nature of, and time involved in, the service of a member of the Board of Directors to other entities and organizations in evaluating the suitability of individual members for service on the Board of Directors. Notwithstanding the foregoing, any service to other entities and organizations shall be consistent with the Company's conflict of interest policies, as expressed in the Code of Conduct, and all laws, rules and regulations applicable to the Company, including those of the Exchange and the Securities and Exchange Commission.
- Members of the Company's management should obtain the approval of the Board of Directors, in consultation with the Nominating and Governance Committee, prior to accepting a new directorship of a public company. In considering whether to grant such approval, the Board of Directors and the Nominating and Governance Committee shall examine the proposed relationship for potential conflicts of interest.
- Members of the Board of Directors should notify the Nominating and Governance Committee prior to accepting a new directorship of a public company in order that the Nominating and Governance Committee, together with the Board of Directors, may examine the proposed relationship for potential conflicts of interest.

- The Board of Directors believes it is in the best interest of the Company to create an annual review process for the Board of Directors and its committees. Such annual review process will provide individual members with an assessment of the current performance of the Board of Directors and areas for potential improvement. Individual members of the Board of Directors are expected to use these reviews to assess their continuing roles on the Board of Directors.
- A member of the Company's management serving on the Board of Directors who ceases to serve as a member of the Company's management shall offer his or her resignation from the Board of Directors effective with the last date of employment. The Board of Directors need not accept such offer of resignation; however, generally, a member of the Company's management shall not continue to serve as a member of the Board of Directors following such cessation.
- A member of the Board of Directors may not stand for election after age seventy five (75) but need not resign until the end of his or her current term; however, the Board of Directors may, in its discretion, ask such a member of the Board of Directors to stand for election if the Board of Directors believes that such member of the Board of Directors will make significant contributions to the work of the Board of Directors.
- A member of the Board of Directors may not stand for election after serving on the Board of Directors for twelve (12) years; however, the Board of Directors may, in its discretion, ask such member of the Board of Directors to stand for election if the Board of Directors believes that such member of the Board of Directors will make significant contributions to the work of the Board of Directors.

*Directors with Significant Job Changes.* The Board of Directors should consider whether a significant change in the professional responsibilities of a member of the Board of Directors directly or indirectly impacts the ability of such member to fulfill his or her responsibilities as a member of the Board of Directors. Should any member of the Board of Directors experience a significant change in his or her professional responsibilities, such as ceasing to hold the business position that he or she held upon initial election to the Board of Directors, such member should submit to the Board of Directors written notification of such change and an offer of resignation from the Board of Directors and each of the committees on which such member serves. The Board of Directors need not accept such offer of resignation; however, the submission of such offer of resignation provides the opportunity for the Board of Directors to review the appropriateness of the continuation of such individual's membership on the Board of Directors. In some cases, it may be appropriate for such member to be replaced as a member of one or more of the committees on which he or she serves but be retained as a member of the Board of Directors.

*Removal of Directors.* The Board of Directors should consider whether certain events concerning violations of laws or regulations directly or indirectly impact the ability of a member of the Board of Directors to fulfill his or her responsibilities as a member of the Board of Directors. Such events include a member of the Board of Directors includes, but are not limited to:

- Being indicted for, pleading guilty to or being found guilty of violating any state or federal securities law;
- Admitting liability, or being found to have liability, for the violation of any state or federal securities law; and
- Being identified as a "target" of any agency or instrumentality of any state or of the United States of America charged with the enforcement of state or federal securities laws.

Members of the Board of Directors should submit to the Board of Directors written notification of such event and an offer of resignation from the Board of Directors and each of the committees on which such member serves. The Board of Directors need not accept such offer of resignation; however, the submission of such offer of resignation provides the opportunity for the Board of Directors to review the appropriateness of the continuation of such individual's membership on the Board of Directors. In some cases, it may be appropriate for such member to be replaced as a member of one or more of the committees on which he or she serves but be retained as a member of the Board of Directors.

*Conflicts of Interest.* Members of the Board of Directors must recuse themselves from any discussion or decision that affects their personal, business or professional interest. The non interested members of the Board of Directors shall consider and resolve any issues involving conflicts of interest of members of the Board of Directors.

*Equity Ownership by Directors.* Each director and executive officer of the Company is expected to own shares of the Company's stock based on his or her annual compensation during the time that he/she is a member of the Board of Directors of the Company or an executive officer of the Company, as the case may be. Such guidelines are designed to further align the interests of directors and executive officers with those of the Company's stockholders.

### **Chairman of the Board of Directors/Lead Director**

*Chairman/Lead Director.* The Board of Directors shall, on at least an annual basis, select the Chairman of the Board of Directors from among the members of the Board of Directors who are determined by the Board of Directors to be "independent." Such selection shall occur at the annual planning meeting of the Board of Directors. The Chairman of the Board of Directors shall be responsible for:

- setting the agenda for, and presiding over, meetings of the Board of Directors at which the Chairman of the Board is present;
- coordinating the work of the committees of the Board of Directors;
- coordinating communications among the members of the Board of Directors;
- overseeing the distribution of materials to the members of the Board of Directors; and
- performing such other duties as the Board of Directors may from time to time delegate to assist the Board of Directors in the fulfillment of its duties.

If the Board of Directors determines that it is appropriate to have, and selects, a Chairman of the Board of Directors that is not independent, the Board of Directors shall select a Lead Director from among the members of the Board of Directors who are determined by the Board of Directors to be "independent." The Lead Director shall be responsible for:

- setting the agenda for, and presiding over, meetings of the "independent" members of the Board of Directors at which the Lead Director is present;
- coordinating communications among the "independent" members of the Board of Directors; and
- performing such other duties as the Board of Directors may from time to time delegate to assist the Board of Directors in the fulfillment of its duties.

In the event the Chairman of the Board of Directors or Lead Director ceases to be "independent," the Board of Directors shall select another Chairman of the Board of Directors or Lead Director from among the members of the Board of Directors that are determined at that time by the Board of Directors to be "independent." The Chairman of the Board of Directors or Lead Director may be removed from such office at any time by a majority of the members of the Board of Directors.

*Resources of the Chairman of the Board/Lead Director.* The Chairman of the Board of Directors or Lead Director will be provided adequate staff and resources, as determined by the Board of Directors, to discharge his or her duties.

*Compensation of the Chairman of the Board/Lead Director.* The Nominating and Governance Committee shall recommend, and the Board of Directors shall approve, the compensation for the Chairman of the Board of Directors or Lead Director, which compensation should reflect the commitment of time and energies necessary to properly discharge the duties of the Chairman of the Board of Directors or Lead Director while not compromising his or her independence.

*Chairman Emeritus.* The Board of Directors may designate one of its members or former members as Chairman Emeritus in recognition of such member's, or former member's, contribution to the Company. If the Chairman Emeritus is a member of the Board of Directors, he or she shall have all of the rights and responsibilities of other members of the Board of Directors. If the Chairman Emeritus is not a member of the Board of Directors, he or she shall not be entitled to vote on any matters before the Board of Directors, but may, unless otherwise determined by the Board of Directors, attend the meetings of the Board of Directors and provide his or her advice and counsel to the Board of Directors. The Board of Directors may provide the Chairman Emeritus with compensation which it deems appropriate.

### **Board of Directors Meetings; Involvement of Senior Management**

*Board of Directors Meetings - Agenda.* The Chairman of the Board of Directors will set the agenda for each meeting of the Board of Directors and, to the extent practicable, will distribute an agenda for each meeting of the Board of Directors to each member of the Board of Directors in advance of such meeting. In the event the Chairman of the Board of Directors is not present at a meeting, the "independent" members of the Board of Directors may select a member of the Board of Directors to preside at such meeting. In such event, such presiding member of the Board of Directors shall set the agenda for such meeting.

For regularly scheduled meetings of the Board of Directors, an agenda and supporting documentation should ordinarily be distributed seven (7) days prior to the date of the meeting. Each member of the Board of Directors is encouraged to suggest for inclusion on the agenda any items which such members feels bears consideration by the Board of Directors.

*Number of Meetings.* It is the objective of the Board of Directors to have at least eight (8) regularly scheduled meetings each year. Additional unscheduled meetings of the Board of Directors may be called by the Chairman of the Board or Lead Director, or a majority of the other members of the Board of Directors, upon the giving of the notice required under the By laws of the Company to address specific requirements or needs of the Company. The Board of Directors is encouraged to plan meetings such that the members of the Board of Directors may conveniently visit facilities of the Company in conjunction with such meetings.

*Annual Planning Session.* The Board of Directors will review the Company's long term strategic plan and the principal issues facing the Company at a minimum of at least one (1) meeting per year.

*Advance Distribution of Materials.* All materials, information and data that is relevant to the understanding by the members of the Board of Directors of matters to be discussed at its meetings, where feasible, should be distributed, either electronically or in writing, to all members of the Board of Directors in advance of the meeting. Such materials, information and data shall be distributed in a manner that, considering the complexity of the materials, information and data, will provide each member of the Board of Directors with a reasonable opportunity to review the materials, information and data. It is acknowledged that, in some situations, exigent circumstances or the need to protect confidential and proprietary information may make it impracticable to provide information in advance of a meeting, in which case adequate time shall be provided at such meeting for review and discussion of information not provided in advance.

*Access to Management and Independent Advisors.*

- The Board of Directors, its committees and its members shall have access to any member of the management of the Company to discuss any subject that the Board of Directors, its committees or its members desires. Any meetings or contacts which the Board of Directors, its committees or its members desires to initiate with any member of the Company's management may be arranged through the Chief Executive Officer or the Secretary or directly by the Board of Directors, its committees or its members. Any such contact should not be disruptive to the operations of the Company. The Secretary will advise the Board of Directors on appropriate procedures for the conduct of meetings and on corporate governance matters, and all members of the Board of Directors shall have access to his or her advice and services. The members of the Board of Directors are encouraged to visit facilities of the Company in connection with meetings of the Board of Directors and otherwise.
- The Board of Directors and its committees may rely upon the advice of outside advisors and shall be protected in so relying to the extent provided by applicable law. The Board of Directors and each of its committees shall have the power and authority to engage outside advisers (including counsel) as they deem necessary or appropriate, without consulting, or obtaining the approval of, any members of the Company's management.
- The Board of Directors must assess the qualifications of, and the processes employed by, those upon whom it relies and should hold such advisors accountable for their decisions and recommendations.

### **Responsibilities of Board of Directors**

- Directors are expected to attend all regularly scheduled meetings and other meetings for which reasonable advance notice is given, unless prevented by exigent circumstances, and to have, prior to the meetings, reviewed all materials, information and data distributed to them in advance. Where it is impracticable to give reasonable advance notice of meetings, Directors are expected to use reasonable efforts to attend and participate in such meetings
- Directors are expected to understand, and comply with, all the duties of care, loyalty and confidentiality applicable to directors.

### **Executive Sessions of Non Management Directors**

*Meetings of Non Management and Independent Directors.* At each regularly scheduled meeting of the Board of Directors, the members of the Board of Directors that are not also members of the Company's management (the "Non Management

Directors") shall meet in scheduled executive sessions without the participation of the members of the Board of Directors who are also members of the Company's management (the "Management Directors"). The Non Management Directors also may hold such executive sessions which are not scheduled in conjunction with regularly scheduled meetings of the full Board of Directors. At such meetings, the Non Management Directors shall review matters concerning the relationship of the Board of Directors with the Company's management, including the Management Directors, and such other matters as Non Management Directors may deem appropriate. The Board of Directors shall not take formal action at such settings, but the participating directors may make recommendations for consideration by the full Board of Directors. At least once each year, the "independent" members of the Board of Directors shall meet in executive session.

### **Communicating with the Board of Directors**

The Board of Directors has established policies and procedures for stockholders wishing to communicate with the Board of Directors. Any stockholder may send communications to the Board of Directors as a whole, the non-management or independent directors as a group, the Chairman (or Lead Director) or any other individual member of the Board or any Board committee by submitting those communications to the appropriate person or group at the following address:

[Name of Appropriate Person or Group]  
c/o Corporate Secretary  
Calpine Corporation  
717 Texas Avenue  
Houston, Texas 77002

Stockholders may also electronically submit their communications to the following e-mail address:

[Board\\_of\\_Directors@calpine.com](mailto:Board_of_Directors@calpine.com)

Each such communication should state the full name of the stockholder and, if stockholder is not a record holder of Calpine Corporation stock, should be accompanied by appropriate evidence of stock ownership (such as an accounting statement showing ownership of Calpine Corporation stock).

Interested parties who wish to submit a communication to the Chairman (or Lead Director) or to the non-management directors as a group may also submit communications to addresses set forth above. If the person submitting the communication is not a security holder and is submitting the communication as an interested party, the communication must state the nature of the person's interest in the Company.

The Corporate Secretary of the Company reviews all such correspondence and regularly forwards to the Board a summary of all such correspondence and copies of all correspondence that, in the opinion of the Corporate Secretary, deals with the functions of the Board or committees thereof or that the Corporate Secretary otherwise determines requires their attention. Directors may at any time review a log of all correspondence received by the Company that is addressed to members of the Board and request copies of any such correspondence. Typically, the Corporate Secretary would not forward to the Board communications of a personal nature or not related to the duties and responsibilities of the Board, including junk mail, mass mailings, advertisements, magazines, solicitations, job inquiries, opinion surveys or polls.

Concerns relating to accounting, internal controls or auditing matters are immediately brought to the attention of the Company's internal audit department and handled in accordance with procedures established by the Audit Committee with respect to such matters.

### **Performance Evaluation; Succession Planning**

*Annual Evaluation of the Chief Executive Officer.* The Compensation Committee of the Board of Directors shall review and approve corporate goals and objectives relevant to compensation of the Chief Executive Officer, conduct an annual review and evaluation of the performance of the Chief Executive Officer in light of those goals and objectives, with input from the other members of the Board of Directors, and propose to the Board of Directors the compensation level of the Chief Executive Officer based on such evaluation. The Compensation Committee shall take into account any recommendations of the Board of Directors regarding such review and evaluation process and the specific criteria on which the performance of the Chief Executive Officer is evaluated.

*Succession Planning.* As part of the annual Chief Executive Officer evaluation process, the Board of Directors, or a committee of the Board of Directors, shall work with the Chairman of the Board or Lead Director and the Chief Executive



Officer to plan for Chief Executive Officer succession, as well as to develop plans for interim succession for the Chief Executive Officer in the event of an unexpected occurrence.

*Evaluation of the Board of Directors.* The Board of Directors, in consultation with the Nominating and Governance Committee, shall conduct an annual evaluation of the Board of Directors to determine whether it and its committees are composed appropriately and functioning effectively. This evaluation shall include an assessment of such factors as experience, integrity, competence, diversity, skills, dedication and equity ownership in the context of the Board of Directors as a whole.

## **Compensation**

### *Compensation Review.*

- The Compensation Committee will annually review, and, when it deems appropriate, recommend to the Board of Directors changes in, compensation and benefits of the members of the Board of Directors. In making its recommendations, the Compensation Committee may seek the advice of outside counsel and advisors to assure that its director compensation is fair and equitable and enables the Company to attract qualified members to its Board of Directors.
- Compensation paid to Non Management Directors for service to the Board of Directors shall be fixed annually by the Board of Directors and shall be competitive and recognize the significant commitment required for service as a member of the Board of Directors.
- The Board of Directors may establish additional compensation for Non Management Directors who serve on specific committees of the Board of Directors, where the Board of Directors determines that such additional compensation is appropriate to reflect the additional responsibilities associated with service on such committees.
- As compensation for their services on the Board of Directors, members of the Board of Directors shall be paid an annual base retainer in a combination of cash and equity based compensation, as determined by the Board of Directors, in consultation with the Compensation Committee. The balance of the compensation paid to members of the Board of Directors may be paid in cash or equity based compensation, at the direction of the individual members of the Board of Directors.
- No Non Management Director shall be entitled to any pension or similar benefit solely as a result of his or her service as a member of the Board of Directors.

*Board Committees.* The Board of Directors currently has three (3) standing committees, each of which is to be chaired by a member of the Board of Directors that is "independent." The standing committees are as follows:

- The Audit Committee, which is, among other things, responsible for reviewing all reports made by auditors and monitoring internal controls;
- The Compensation Committee, which is, among other things, responsible for reviewing compensation programs and administering stock option plans; and
- The Nominating and Governance Committee, which is, among other things, responsible for proposing and recommending to the Board of Directors potential candidates for membership on the Board of Directors.

The Board of Directors may establish new committees or, except as otherwise required by law, regulation or listing standards of the Exchange, eliminate or combine existing committees or modify their duties and responsibilities as it deems advisable for purposes of fulfilling its duties and responsibilities. To the extent required by law or the Exchange listing standards, such committees will be chaired by and entirely composed of members of the Board of Directors who are "independent," and unless otherwise determined by the Board of Directors, all such committees will include a majority of members of the Board of Directors who are "independent."

*Charters.* Each of the standing committees of the Board of Directors shall have its own charter setting forth the purposes, goals and responsibilities of the committee as well as qualifications for committee membership, procedures for committee member appointment and removal and committee structure and operation. Such charters shall be approved by the Board of Directors and shall comply with all applicable laws, rules and regulations.

*Composition of Committees; Committee Chairpersons.* The Board of Directors shall select the members of each committee and a chairperson for each committee, upon the recommendation of the Nominating and Governance Committee, taking into account specific committee duties and responsibilities and the experience and qualifications of the proposed members and giving due consideration to recommendations by the Chairman of the Board or Lead Director with respect to such selections. The members of each of the committees must meet the qualifications for membership on such committees as set forth in the charter for such committees and as may be required under any laws, rules or regulations applicable to the Company. The committee chairperson, in consultation with the members of the committee, will determine the frequency and length of the committee meetings, consistent with any requirements set forth in the committee's charter. The chairperson, in consultation with the members of the committee, will develop the agenda for the committee meetings.

### **Code of Conduct**

*Code of Conduct.* The Board of Directors has established and is responsible for maintaining the Company's Code of Conduct, which cover, among other things, the Company's policies concerning:

- Conflicts of interest;
- Corporate opportunities;
- Confidentiality;
- Fair dealing;
- Protection and proper use of Company assets;
- Compliance with laws, rules and regulations (including insider trading laws); and
- Encouraging the reporting of any illegal or unethical behavior.

The Board of Directors, with advice and recommendations from the Nominating and Governance Committee, will periodically review and evaluate the Code of Conduct and make such changes therein as it finds to be necessary or appropriate.

### *Review of Related Persons Transactions*

Transactions that (a) involve directors, director nominees, executive officers, significant shareholders or other "related persons" in which the Company is or will be a participant; and (b) are of the type required to be reported under Item 404(a) of Regulation S-K of the Securities and Exchange Commission, shall be reviewed by the Company's Audit Committee for the purpose of determining whether such transactions are in the best interests of the Company.

"Transactions" for this purpose are any transactions, regardless of the dollar amount thereof, since the beginning of the Company's last fiscal year, or any currently proposed transaction, in which the Company was or is to be a participant, directly or indirectly, and in which any related person had or will have a direct or indirect material interest, with exceptions as set forth in the Instructions to Item 404(a) of Regulation S-K. "Transactions" include but are not limited to any financial transaction, arrangement or relationship (including any indebtedness or guarantee of indebtedness) or any series of similar transactions, arrangements or relationships.

"Executive officer" means any of those persons identified as executive officers in the Company's most recent proxy statement or annual report and those persons succeeding into those positions subsequent to the filing of the proxy statement or annual report. If you have a question as to whether you are considered to be an executive officer, you are advised to contact the Chief Legal Officer who will be able to inform you of your status.

"Related person" means any director, director nominee or executive officer, or any holder of five percent or more of the Company's Common Stock and any immediate family member of any of the foregoing persons, which shall include any 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, and any person (other than a tenant or employee) sharing the household of such director, director nominee, executive officer or security holder.

It shall be the responsibility of the individual directors, director nominees, executive officers and holders of five percent or more of the Company's Common Stock to promptly report to the Chief Legal Officer (or, if such executive officer is the Chief Legal Officer, to the Chief Executive Officer) of the Company all proposed or existing Transactions in which the Company

and they, or any related person of theirs, are parties or participants, and to provide such information with respect to such Transactions as may be requested.

The Chief Legal Officer (or the Chief Executive Officer, in the event the Transaction involves the Chief Legal Officer or a related person of the Chief Legal Officer) shall furnish to the Chairman of the Audit Committee a report relating to any Transaction that, in such Officer's judgment, may require reporting pursuant to Item 404 of Regulation S-K or that such Officer otherwise determines should be brought to the attention of the Audit Committee, together with a memorandum from such Officer (or his or her designee) setting forth the material facts and circumstances of the Transaction.

After review of the report and memorandum, and after consideration of the material facts and circumstances, and such consultation with legal counsel and other advisors as it deems advisable, the Audit Committee shall make such determination or recommendation to the Board of Directors and appropriate officers of the Company with respect to such Transaction as the Audit Committee deems appropriate.

Upon receipt of the Audit Committee's recommendation, the Board of Directors or officers, as the case may be, shall take such action as deemed appropriate in light of their respective responsibilities under applicable laws and regulations.

The provisions of this section of the guidelines do not add to, and are not otherwise intended to affect, application of the provisions of Section 144 of the Delaware General Corporation Law with respect to contracts or transactions entered into by the Company that involve one or more of the Company's directors or officers.

*Waivers of Code of Conduct.* Any waivers of any provisions of the Code of Conduct for members of the Board of Directors or executive officers may be made only by the Board of Directors or a committee to which the Board of Directors has delegated such authority, and any such waivers shall be timely reported or disclosed in such manner as may be required by the Securities and Exchange Commission or the Exchange.

#### **Communications with the Media**

The Board of Directors believes that the Company's management and the Chairman of the Board or Lead Director speak for the Company. In order to ensure compliance with applicable securities laws and to avoid the potential detriment to the interests of the Company and its stockholders and other constituencies that could result from inconsistent communications, the members of the Board of Directors will not respond to media inquiries or make statements to the media regarding the Company and its business without consultation with, and approval by, the Chairman of the Board or Lead Director or the Board of Directors.

#### **Date of Adoption**

These amended guidelines were adopted by the Board of Directors effective January 31, 2008, and further amended on February 26, 2009.

#### **Acceptance**

Each member of the Board of Directors elected or appointed to the Board of Directors following the adoption of these amended guidelines must acknowledge receipt of, and agree to be bound by the terms of, these guidelines by written instrument.