

April 1, 2004

Updated Model Audit Committee Pre-Approval Policy
and Updated Model Audit Committee Charter

The Public Company Accounting Oversight Board has adopted a final standard governing audits of internal controls and requiring that an issuer's audit committee specifically pre-approve all internal control-related services provided by the issuer's auditor. As part of such audits, the final standard also requires the issuer's auditor to assess the effectiveness of the audit committee's oversight of the issuer's external financial reporting and internal controls. See our memorandum dated March 10, 2004, "PCAOB Finalizes Standard for Audits of Internal Controls." In light of these PCAOB requirements, companies should review their audit committee pre-approval policies, as well as their audit committee charters. As a reminder, annual meeting proxy statements must include a description (or copy) of a company's audit committee pre-approval policies and procedures.

Attached is an updated Model Audit Committee Pre-Approval Policy, as well as an updated annotated Model Audit Committee Charter for NYSE-listed companies. These models are just that—models that can be adapted by a company to fit its own circumstances.

Martin Lipton
Andrew R. Brownstein
Eric S. Robinson
David M. Silk
Lawrence S. Makow
Gregory N. Racz

*If your address changes or if you do not wish to continue receiving these memos,
please send an e-mail to Publications@wlrk.com or call 212-403-1775.*

Model Audit Committee Pre-Approval Policy

I. STATEMENT OF PRINCIPLES

The Audit Committee must pre-approve the audit and non-audit services performed by the independent auditor in order to assure that the provision of such services does not impair the auditor's independence. Before the Company or any of its subsidiaries engages the independent auditor to render a service, the engagement must be either:

- (1) specifically approved by the Audit Committee; or
- (2) entered into pursuant to this Pre-Approval Policy.

The appendices to this Pre-Approval Policy describe in detail the particular audit, audit-related, tax and other services that have the pre-approval of the Audit Committee pursuant to this Pre-Approval Policy.¹ The term of any pre-approval is 12 months from the date of pre-approval, unless the Audit Committee specifically provides for a different period. The Audit Committee shall periodically revise the list of pre-approved services.

II. DELEGATION

The Audit Committee may delegate pre-approval authority to one or more of its members. The member or members to whom such authority is delegated shall report any pre-approval decisions to the Audit Committee at its next scheduled meeting. The Audit Committee may not delegate to management the Audit Committee's responsibilities to pre-approve services performed by the independent auditor.

III. AUDIT SERVICES

The Audit Committee must specifically pre-approve the terms of the annual audit services engagement. The Audit Committee shall approve, if necessary, any changes in terms resulting from changes in audit scope, Company structure or other matters.

In addition to the annual audit services engagement approved by the Audit Committee, the Audit Committee may grant pre-approval for other audit services, which are those services that only the independent auditor reasonably can provide. The Audit Committee has pre-approved the audit services listed in Appendix A. All other audit services not listed in Appendix A must be specifically pre-approved by the Audit Committee.

¹ The services listed in the appendices are for illustrative purposes only.

IV. AUDIT-RELATED SERVICES

Audit-related services, including internal control-related services, are assurance and related services that are reasonably related to the performance of the audit or review of the Company's financial statements and/or the Company's internal control over financial reporting and that are traditionally performed by the independent auditor. The Audit Committee believes that the provision of audit-related services does not impair the independence of the auditor, and has pre-approved the audit-related services listed in Appendix B. All other audit-related services not listed in Appendix B, and all internal control-related services, must be specifically pre-approved by the Audit Committee.

V. TAX SERVICES

The Audit Committee believes that the independent auditor can provide tax services to the Company such as tax compliance, tax planning and tax advice without impairing the auditor's independence. However, the Audit Committee shall scrutinize carefully the retention of the independent auditor in connection with any tax-related transaction initially recommended by the independent auditor. The Audit Committee has pre-approved the tax services listed in Appendix C. All tax services not listed in Appendix C must be specifically pre-approved by the Audit Committee.

VI. OTHER SERVICES

The Audit Committee may grant pre-approval to those permissible non-audit services classified as other services that it believes would not impair the independence of the auditor, including those that are routine and recurring services. The Audit Committee has pre-approved the other services listed in Appendix D. Permissible other services not listed in Appendix D must be specifically pre-approved by the Audit Committee.

A list of the SEC's prohibited non-audit services is attached to this Pre-Approval Policy as Exhibit 1. The rules of the SEC and the PCAOB and relevant guidance should be consulted to determine the precise definitions of these services and the applicability of exceptions to certain of the prohibitions.

VII. PRE-APPROVAL FEE LEVELS

The Audit Committee may consider the amount or range of estimated fees as a factor in determining whether a proposed service would impair the auditor's independence. Where the Audit Committee has approved an estimated fee for a service, the pre-approval applies to all services described in the approval. However, in the event the invoice in respect of any such service is materially in excess of the estimated amount or range, the Audit Committee must approve such excess amount prior to payment of the invoice. The Audit Committee expects that any requests to pay invoices in excess of the estimated amounts will include an expla-

nation as to the reason for the overage.² The Company's independent auditor will be informed of this policy.

VIII. SUPPORTING DOCUMENTATION

With respect to each proposed pre-approved service, the independent auditor must provide the Audit Committee with detailed back-up documentation regarding the specific services to be provided.

IX. PROCEDURES

The Company's management shall inform the Audit Committee of each service performed by the independent auditor pursuant to this Pre-Approval Policy.

Requests or applications to provide services that require separate approval by the Audit Committee shall be submitted to the Audit Committee by both the independent auditor and the [Chief Financial Officer, Treasurer or Controller³], and must include a joint statement as to whether, in their view, the request or application is consistent with the SEC's and the PCAOB's rules on auditor independence.

² It is understood that estimated amounts that are denominated in dollars but are ordinarily paid in another currency are subject to foreign exchange rate fluctuations. Thus, variances from estimated amounts arising as a result of changes in foreign currency exchange rates from the time of preparation of the relevant approval request will not be considered to be variances from the budgeted amount and payment of the related invoices will not require a subsequent approval.

³ Or other designated officer.

Appendix A

Pre-Approved Audit Services for Fiscal Year 2004⁴

Dated: _____, 2004

<u>Service</u>	<u>Estimated Range of Fees</u>
Statutory audits or financial audits for subsidiaries or affiliates of the Company	
Services associated with SEC registration statements, periodic reports and other documents filed with the SEC or other documents issued in connection with securities offerings (e.g., comfort letters, consents), and assistance in responding to SEC comment letters	
Consultations by the Company’s management as to the accounting or disclosure treatment of transactions or events and/or the actual or potential impact of final or proposed rules, standards or interpretations by the SEC, PCAOB, FASB, or other regulatory or standard-setting bodies (Note: Under SEC rules, some consultations may be “audit-related” services rather than “audit” services)	

⁴ The services listed in the appendices are for illustrative purposes only and may not be applicable to a particular company.

Appendix B

Pre-Approved Audit-Related Services for Fiscal Year 2004

Dated: _____, 2004

<u>Service</u>	<u>Estimated Range of Fees</u>
Due diligence services pertaining to potential business acquisitions/dispositions	
Financial statement audits of employee benefit plans	
Agreed-upon or expanded audit procedures related to accounting and/or billing records required to respond to or comply with financial, accounting or regulatory reporting matters	
Consultations by the Company's management as to the accounting or disclosure treatment of transactions or events and/or the actual or potential impact of final or proposed rules, standards or interpretations by the SEC, PCAOB, FASB, or other regulatory or standard-setting bodies (Note: Under SEC rules, some consultations may be "audit" services rather than "audit-related" services)	
Attest services not required by statute or regulation	

Pre-Approved Tax Services for Fiscal Year 2004

Dated: _____, 2004

<u>Service</u>	<u>Estimated Range of Fees</u>
U.S. federal, state and local tax planning and advice	
U.S. federal, state and local tax compliance	
International tax planning and advice	
International tax compliance	
Review of federal, state, local and international income, franchise and other tax returns	
Licensing [or purchase] of income tax preparation software ⁵ from the independent auditor, provided the functionality is limited to preparation of tax returns	

⁵ Licensing or purchasing income tax preparation software is permitted, so long as the functionality is limited to preparation of tax returns. If the software performs additional functions, each function must be evaluated *separately* for its potential effect on the auditor's independence.

Appendix D

Pre-Approved Other Services for Fiscal Year 2004

Dated: _____, 2004

<u>Service</u>	<u>Estimated Range of Fees</u>

Exhibit 1

Prohibited Non-Audit Services

- Bookkeeping or other services related to the accounting records or financial statements of the audit client⁶
- Financial information systems design and implementation⁶
- Appraisal or valuation services, fairness opinions or contribution-in-kind reports⁶
- Actuarial services⁶
- Internal audit outsourcing services⁶
- Management functions
- Human resources
- Broker-dealer, investment adviser or investment banking services
- Legal services
- Expert services unrelated to the audit

⁶ Provision of these non-audit services is permitted if it is reasonable to conclude that the results of these services will not be subject to audit procedures. Materiality is not an appropriate basis upon which to overcome the rebuttable presumption that prohibited services will be subject to audit procedures because determining materiality is itself a matter of audit judgment.

AUDIT COMMITTEE CHARTER¹ (NYSE-Listed Company)

Purpose

The Audit Committee is appointed by the Board to assist the Board in monitoring (1) the integrity of the financial statements of the Company, (2) the independent auditor's qualifications and independence, (3) the performance of the Company's internal audit function and independent auditors, and (4) the compliance by the Company with legal and regulatory requirements.²

The Audit Committee shall prepare the report required by the rules of the Securities and Exchange Commission (the "Commission") to be included in the Company's annual proxy statement.³

Committee Membership

The Audit Committee shall consist of no fewer than three members.⁴ The members of the Audit Committee shall meet the independence and experience requirements of the New York Stock Exchange, Section 10A(m)(3) of the Securities Exchange Act of 1934 (the "Exchange Act") and the rules and regulations of the Commission.⁵ At least one member of the Audit Committee shall

¹ Charter must be adopted by the Board pursuant to NYSE Listed Company Manual Sections 303.01(B)(1) and 303A(7)(c). See also Item 7(d)(3)(iii) of Schedule 14A, which requires that a copy of the charter be included as an appendix to the Company's proxy statement at least every three years.

² NYSE Listed Company Manual Section 303A(7)(c)(i)(A).

³ NYSE Listed Company Manual Section 303A(7)(c)(i)(B). See Item 306 of Regulation S-K and Item 7(d)(3)(i) of Schedule 14A.

⁴ NYSE Listed Company Manual Sections 303.01(B)(2)(a) and 303A(7)(a).

⁵ NYSE Listed Company Manual Sections 303.01(B)(2), 303A(7)(a) and 303A(7)(b) require that each member of the Audit Committee be (a) "independent," as defined by the NYSE Listed Company Manual, and (b) "financially literate," as such qualification is interpreted by the Board in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment. In addition, at least one member must have accounting or financial management expertise, as the Board interprets such qualification in its business judgment. NYSE Listed Company Manual Section 303A(6) provides that all listed companies must have audit committees that satisfy the requirements of Rule 10A-3 under the Exchange Act. Rule 10A-3 (added by Section 301 of Sarbanes-Oxley) requires the NYSE and NASDAQ to prohibit the listing of any company unless each member of the audit committee is "independent," which is defined to mean that such person may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee: (A) accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary thereof, provided that, unless the rules of the national securities exchange or national securities association provide otherwise, compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or (B) be an affiliated person of the issuer or any subsidiary thereof.

be an “audit committee financial expert” as defined by the Commission.⁶ Audit Committee members shall not simultaneously serve on the audit committees of more than two other public companies.⁷

The members of the Audit Committee shall be appointed by the Board on the recommendation of the Nominating & Governance Committee.⁸ Audit Committee members may be replaced by the Board.

Meetings

The Audit Committee shall meet as often as it determines, but not less frequently than quarterly. The Audit Committee shall meet periodically in separate executive sessions with management (including the chief financial officer and chief accounting officer), the internal auditors and the independent auditor, and have such other direct and independent interaction with such persons from time to time as the members of the Audit Committee deem appropriate.⁹ The Audit Committee may request any officer or employee of the Company or the Company’s outside counsel or independent auditor to attend a meeting of the Committee or to meet with any members of, or consultants to, the Committee.

Committee Authority and Responsibilities

The Audit Committee shall have the sole authority to appoint or replace the independent auditor (subject, if applicable, to shareholder ratification).¹⁰ The Audit Committee shall be directly responsible for the compensation and oversight of the work of the independent auditor (including resolution of disagreements between management and the independent auditor regarding finan-

⁶ See subparagraph (h) of Item 401 of Regulation S-K.

⁷ Commentary to NYSE Listed Company Manual Section 303A(7)(a) states that if an Audit Committee member simultaneously serves on the Audit Committee of more than three public companies, and the NYSE-listed company does not limit the number of Audit Committees on which its Audit Committee members serve, then in each case the Board must determine that such simultaneous service would not impair the ability of such member to effectively serve on the listed company’s Audit Committee and disclose such determination in the proxy statement.

⁸ NYSE Listed Company Manual Section 303A(4) places responsibility for board committee nominations in the independent Nominating & Corporate Governance Committee.

⁹ NYSE Listed Company Manual Section 303A(7)(c)(iii)(E). The new PCAOB rules require that the independent auditor assess the effectiveness of the Audit Committee’s oversight, which may include an analysis of factors such as the involvement and interaction of the Audit Committee with the independent auditor and internal audit, as well as interaction with key members of financial management, including the chief financial officer and chief accounting officer. See Paragraphs 24 and 57 of Appendix A to, and Paragraph E68 of Appendix E to, PCAOB Release No. 2004-001.

¹⁰ NYSE Listed Company Manual Section 303A(6) and Rule 10A-3 under the Exchange Act.

cial reporting) for the purpose of preparing or issuing an audit report or related work.¹¹ The independent auditor shall report directly to the Audit Committee.¹²

The Audit Committee shall pre-approve all auditing services, internal control-related services and permitted non-audit services (including the terms thereof) to be performed for the Company by its independent auditor, subject to the de minimus exceptions for non-audit services described in Section 10A(i)(1)(B) of the Exchange Act which are approved by the Audit Committee prior to the completion of the audit.¹³ The Audit Committee may form and delegate authority to subcommittees consisting of one or more members when appropriate, including the authority to grant pre-approvals of audit and permitted non-audit services, provided that decisions of such subcommittee to grant pre-approvals shall be presented to the full Audit Committee at its next scheduled meeting.¹⁴

The Audit Committee shall have the authority, to the extent it deems necessary or appropriate, to retain independent legal, accounting or other advisors.¹⁵ The Company shall provide for appropriate funding, as determined by the Audit Committee, for payment of compensation to the independent auditor for the purpose of rendering or issuing an audit report and to any advisors employed by the Audit Committee.¹⁶

The Audit Committee shall make regular reports to the Board.¹⁷ The Audit Committee shall review and reassess the adequacy of this Charter annually and recommend any proposed changes

¹¹ Rule 10A-3(b)(2) under the Exchange Act (added by Section 301 of Sarbanes-Oxley) requires the audit committee of each listed issuer, in its capacity as a committee of the board of directors, to be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer.

¹² Rule 10A-3(b)(2) under the Exchange Act (added by Section 301 of Sarbanes-Oxley) requires each registered public accounting firm to report directly to the audit committee.

¹³ Sections 10A(h) and 10A(i) of the Exchange Act (added by Sections 201 and 202 of Sarbanes-Oxley) require such pre-approval with respect to services provided by the registered public accounting firms to its audit clients. See also Section H of, and Paragraph 33 of Appendix A to, PCAOB Release No. 2004-001, which require specific pre-approval with respect to internal control-related services provided by the registered public accounting firms to its audit clients.

¹⁴ Section 10A(i)(3) of the Exchange Act (added by Section 202 of Sarbanes-Oxley).

¹⁵ Rule 10A-3(b)(4) under the Exchange Act (adopted by the Commission pursuant to Section 301 of Sarbanes-Oxley).

¹⁶ Section 10A(m)(6) of the Exchange Act (added by Section 301 of Sarbanes-Oxley).

¹⁷ NYSE Listed Company Manual Section 303A(7)(c)(iii)(H).

to the Board for approval.¹⁸ The Audit Committee shall annually review the Audit Committee's own performance.¹⁹

The Audit Committee, to the extent it deems necessary or appropriate, shall:

Financial Statement and Disclosure Matters

1. Review and discuss with management and the independent auditor the annual audited financial statements, including disclosures made in management's discussion and analysis, and recommend to the Board whether the audited financial statements should be included in the Company's Form 10-K.²⁰
2. Review and discuss with management and the independent auditor the Company's quarterly financial statements prior to the filing of its Form 10-Q, including the results of the independent auditor's review of the quarterly financial statements.²¹
3. Discuss with management and the independent auditor significant financial reporting issues and judgments made in connection with the preparation of the Company's financial statements, including any significant changes in the Company's selection or application of accounting principles.²²
4. Review and discuss with management and the independent auditor any major issues as to the adequacy of the Company's internal controls, any special steps adopted in light of material control deficiencies and the adequacy of disclosures about changes in internal control over financial reporting.²³
5. Review and discuss with management (including the senior internal audit executive) and the independent auditor the Company's internal controls report and the independent auditor's attestation of the report prior to the filing of the Company's Form 10-K.²⁴

¹⁸ NYSE Listed Company Manual Section 303.01(B)(1).

¹⁹ NYSE Listed Company Manual Section 303A(7)(c)(ii).

²⁰ NYSE Listed Company Manual Section 303A(7)(c)(iii)(B); Item 306(a) of Regulation S-K.

²¹ NYSE Listed Company Manual Section 303A(7)(c)(iii)(B).

²² General commentary to NYSE Listed Company Manual Section 303A(7)(c); Paragraph 58 of Appendix A to, and Paragraph E68 of Appendix E to, PCAOB Release No. 2004-001.

²³ General commentary to NYSE Listed Company Manual Section 303A(7)(c); Paragraph 206 of Appendix A to PCAOB Release No. 2004-001.

²⁴ Implicit in the Audit Committee's responsibility to oversee the company's internal auditing functions is its review with management and the independent accountant of management's internal control report and the independent

6. Review and discuss quarterly reports from the independent auditors on:
 - (a) all critical accounting policies and practices to be used;
 - (b) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the independent auditor;²⁵ and
 - (c) other material written communications between the independent auditor and management, such as any management letter or schedule of unadjusted differences.²⁶
7. Discuss with management the Company's earnings press releases, including the use of "pro forma" or "adjusted" non-GAAP information, as well as financial information and earnings guidance provided to analysts and rating agencies. Such discussion may be done generally (consisting of discussing the types of information to be disclosed and the types of presentations to be made).²⁷
8. Discuss with management and the independent auditor the effect of regulatory and accounting initiatives as well as off-balance sheet structures on the Company's financial statements.²⁸
9. Discuss with management the Company's major financial risk exposures and the steps management has taken to monitor and control such exposures, including the Company's risk assessment and risk management policies.²⁹

(footnote continued)

auditor's attestation of that report pursuant to Item 308 of Regulation S-K. See SEC Release No. 33-8238; see also Paragraph 59 of Appendix A to, and Paragraph E61 of Appendix E to, PCAOB Release No. 2004-001.

²⁵ General commentary to NYSE Listed Company Manual Section 303A(7)(c).

²⁶ Section 10A(k) of the Exchange Act (added by Section 204 of Sarbanes-Oxley) requires registered public accounting firms to provide such reports on a timely basis; commentary to NYSE Listed Company Manual Section 303A(7)(c)(iii)(F).

²⁷ NYSE Listed Company Manual Section 303A(7)(c)(iii)(C), and the general commentary to NYSE Listed Company Manual Section 303A(7)(c).

²⁸ General commentary to NYSE Listed Company Manual Section 303A(7)(c).

²⁹ NYSE Listed Company Manual Section 303A(7)(c)(iii)(D) and the commentary thereto.

10. Discuss with the independent auditor the matters required to be discussed by Statement on Auditing Standards No. 61 relating to the conduct of the audit, including any difficulties encountered in the course of the audit work, any restrictions on the scope of activities or access to requested information, and any significant disagreements with management.³⁰
11. Review disclosures made to the Audit Committee by the Company's CEO and CFO during their certification process for the Form 10-K and Form 10-Q about any significant deficiencies in the design or operation of internal controls or material weaknesses therein and any fraud involving management or other employees who have a significant role in the Company's internal controls.³¹

Oversight of the Company's Relationship with the Independent Auditor

12. Review and evaluate the lead partner of the independent auditor team.³²
13. Obtain and review a report from the independent auditor at least annually regarding (a) the independent auditor's internal quality-control procedures, (b) any material issues raised by the most recent internal quality-control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities within the preceding five years respecting one or more independent audits carried out by the firm, (c) any steps taken to deal with any such issues, and (d) all relationships between the independent auditor and the Company. Evaluate the qualifications, performance and independence of the independent auditor, including considering whether the auditor's quality controls are adequate and the provision of permitted non-audit services is compatible with maintaining the auditor's independence, taking into account the opinions of management and internal auditors. The Audit Committee shall present its conclusions with respect to the independent auditor to the Board.³³
14. Ensure the rotation of the audit partners as required by law. Consider whether, in order to assure continuing auditor independence, it is appropriate to adopt a policy of rotating the independent auditing firm on a regular basis.³⁴

³⁰ Item 306(a)(2) of Regulation S-K and NYSE Listed Company Manual Section 303A(7)(c)(iii)(F).

³¹ Exchange Act Rule 13a-14 (adopted by the Commission pursuant to Section 302 of Sarbanes-Oxley) requires that the CEO and CFO certify in each 10-K and 10-Q that they have disclosed such information to the Company's independent auditors and the Audit Committee.

³² Commentary to NYSE Listed Company Manual Section 303A(7)(c)(iii)(A).

³³ NYSE Listed Company Manual Section 303A(7)(c)(iii)(A) and the commentary thereto.

³⁴ Commentary to NYSE Listed Company Manual Section 303A(7)(c)(iii)(A). Section 10A(j) of the Exchange Act (added by Section 203 of Sarbanes-Oxley) makes it unlawful for a registered public accounting firm to provide audit services to an issuer if the lead (or coordinating) audit partner having primary responsibility for the audit, or the au-

15. Recommend to the Board policies for the Company's hiring of employees or former employees of the independent auditor.³⁵
16. Discuss with the independent auditor material issues on which the national office of the independent auditor was consulted by the Company's audit team.³⁶
17. Meet with the independent auditor prior to the audit to discuss the planning and staffing of the audit.³⁷

Oversight of the Company's Internal Audit Function

18. Review the appointment and replacement of the senior internal auditing executive.³⁸
19. Review the significant reports to management prepared by the internal auditing department and management's responses.³⁹
20. Discuss with the independent auditor and management the internal audit department responsibilities, budget and staffing and any recommended changes in the planned scope of the internal audit.⁴⁰

(footnote continued)

dit partner responsible for reviewing the audit, has performed audit services for that issuer in each of the five previous fiscal years of that issuer. Section 207 of Sarbanes-Oxley requires the Comptroller General of the United States to conduct a study of the potential effects of requiring the mandatory rotation of registered public accounting firms.

³⁵ NYSE Listed Company Manual Section 303A(7)(c)(iii)(G). Section 10A(l) of the Exchange Act (added by Section 206 of Sarbanes-Oxley) makes it unlawful for a registered public accounting firm to perform for an issuer any audit service if a CEO, comptroller, CFO, chief accounting officer or any person serving in an equivalent position for the issuer was employed by that registered public accounting firm and participated in any capacity in the audit of that issuer during the one-year period preceding the date of initiation of the audit.

³⁶ Commentary to NYSE Listed Company Manual Section 303A(7)(c)(iii)(F). The new PCAOB rules require that the independent auditor assess the effectiveness of the Audit Committee's oversight, which may include an analysis of factors such as the responsiveness of the Audit Committee to issues raised by the independent auditor. See Paragraph 58 of Appendix A to, and Paragraph E68 of Appendix E to, PCAOB Release No. 2004-001.

³⁷ This is part of the Audit Committee's responsibility for sole authority to retain the independent auditor and approve all audit engagement fees and terms (see Rule 10A-3(b)(2) under the Exchange Act).

³⁸ NYSE Listed Company Manual Section 303A(7)(d) requires each listed company to have an internal audit function, although it does not require companies to establish a separate internal audit department. A company may choose to outsource this function to a third-party service provider other than its independent auditor.

³⁹ This relates to one of the Audit Committee's principal purposes to assist Board oversight of the performance of the Company's internal audit function (see NYSE Listed Company Manual Section 303A(7)(d)).

⁴⁰ Commentary to NYSE Listed Company Manual Section 303A(7)(c)(iii)(H).

Compliance Oversight Responsibilities

21. Obtain from the independent auditor assurance that Section 10A(b) of the Exchange Act has not been implicated.⁴¹
22. Obtain reports from management, the Company's senior internal auditing executive and the independent auditor that the Company and its subsidiary/foreign affiliated entities are in conformity with applicable legal requirements and the Company's Code of Business Conduct and Ethics. Review reports and disclosures of insider and affiliated party transactions. Advise the Board with respect to the Company's policies and procedures regarding compliance with applicable laws and regulations and with the Company's Code of Business Conduct and Ethics.⁴²
23. Establish procedures for the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls or auditing matters, and the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters.⁴³
24. Discuss with management and the independent auditor any correspondence with regulators or governmental agencies and any published reports which raise material issues regarding the Company's financial statements or accounting policies.⁴⁴
25. Discuss with the Company's General Counsel legal matters that may have a material impact on the financial statements or the Company's compliance policies and internal controls.⁴⁵

⁴¹ Section 10A(b) of the Exchange Act requires the independent auditor, if it detects or becomes aware of any illegal act, to assure that the Audit Committee is adequately informed and to provide a report if the independent auditor has reached specified conclusions with respect to such illegal acts.

⁴² This relates to one of the Audit Committee's principal purposes to assist Board oversight of the Company's compliance with legal and regulatory requirements (see commentary to NYSE Listed Company Manual Sections 303A(7)(c)(iii)(D) and 303A(7)(c)(iii)(H)).

⁴³ Rule 10A-3(b)(3) under the Exchange Act requires listed company audit committees to establish such procedures.

⁴⁴ This relates to one of the Audit Committee's principal purposes to assist Board oversight of the integrity of the Company's financial statements (see general commentary to NYSE Listed Company Manual Section 303A(7)(c)).

⁴⁵ This relates to one of the Audit Committee's principal purposes to assist Board oversight of the Company's compliance with legal and regulatory requirements (see general commentary to NYSE Listed Company Manual Section 303A(7)(c) and commentary to NYSE Listed Company Manual Section 303A(7)(c)(iii)(H); see also Paragraph 9 of Section I of PCAOB Release No. 2004-001).

Limitation of Audit Committee's Role

While the Audit Committee has the responsibilities and powers set forth in this Charter, it is not the duty of the Audit Committee to plan or conduct audits or to determine that the Company's financial statements and disclosures are complete and accurate and are in accordance with generally accepted accounting principles and applicable rules and regulations. These are the responsibilities of management and the independent auditor.⁴⁶

⁴⁶ General commentary to NYSE Listed Company Manual Section 303A(7)(c).