

# stellar BANCORP, INC.

## CORPORATE GOVERNANCE GUIDELINES

Effective as of June 12, 2023

### A. Purpose

The Board of Directors (the “Board”) of Stellar Bancorp, Inc. (the “Company”) has adopted the following Corporate Governance Guidelines (the “Guidelines”) to assist the Board in the exercise of its duties and responsibilities and to serve the best interests of the Company and its shareholders. The Guidelines should be applied in a manner consistent with all applicable laws and stock exchange rules and the Company’s charter and bylaws, each as amended and in effect from time to time. The Guidelines are intended to serve as a flexible framework for the conduct of the Board’s business and not as a set of legally binding obligations. The Board may modify or make exceptions to the Guidelines from time to time in its discretion and consistent with its duties and responsibilities to the Company and its shareholders.

### B. Director Responsibilities

1. Oversee Management of the Company. The principal responsibility of the directors is to oversee the management of the Company and, in doing so, serve the best interests of the Company and its shareholders. This responsibility includes:
  - reviewing and approving fundamental operating, financial and other corporate plans, strategies and objectives;
  - evaluating the performance of the Company and its senior executives and taking appropriate action, including removal, when warranted;
  - evaluating the Company’s compensation programs on a regular basis and determining the compensation of its senior executives;
  - reviewing and approving senior executive succession plans;
  - evaluating whether corporate resources are used only for appropriate business purposes;
  - establishing a corporate environment that promotes timely and effective disclosure (including robust and appropriate controls, procedures and incentives), fiscal accountability, high ethical standards and compliance with all applicable laws and regulations;
  - reviewing the Company’s policies and practices with respect to risk assessment and risk management;
  - reviewing and approving material transactions and commitments not entered into in the ordinary course of business;

- developing a corporate governance structure that allows and encourages the Board to fulfill its responsibilities;
  - providing advice and assistance to the Company's senior executives; and evaluating the overall effectiveness of the Board and its committees.
2. Exercise Business Judgment. In discharging their fiduciary duties, directors are expected to exercise their business judgment to act in what they reasonably believe to be the best interests of the Company and its shareholders.
3. Understand the Company and its Business. Directors have an obligation to become and remain informed about the Company and its business, including the following:
- the principal operational and financial objectives, strategies and plans of the Company;
  - the results of operations and financial condition of the Company, its significant subsidiaries and business segments;
  - the relative standing of the business segments within the Company and as compared to competitors;
  - the factors that determine the Company's success; and
  - the risks and problems that affect the Company's business and prospects.
4. Establish Effective Systems. Directors are responsible for determining that effective systems are in place for the periodic and timely reporting to the Board on important matters concerning the Company, including the following:
- current business and financial performance, the degree of achievement of approved objectives and the need to address forward-planning issues;
  - future business prospects and forecasts, including actions, facilities, personnel and financial resources required to achieve forecasted results;
  - financial statements, with appropriate segment or divisional breakdowns;
  - compliance programs to assure the Company's compliance with law and corporate policies;
  - material litigation and governmental and regulatory matters; and
  - monitoring and, where appropriate, responding to communications from shareholders.

Directors should also periodically review the integrity of the Company's internal control and management information systems.

5. Board, Committee and Shareholder Meetings. Directors are responsible for attending Board meetings, meetings of committees on which they serve and the annual meeting, as well as any special meeting(s), of shareholders, and devoting the time needed, and meeting as frequently as necessary, to discharge their responsibilities properly.
6. Reliance on Management and Advisors; Indemnification. The directors are entitled to rely on the Company's senior executives and its outside advisors, auditors and legal counsel, except to the extent that such person's integrity, honesty or competence is in doubt. The directors are also entitled to Company-provided indemnification, statutory exculpation and directors' and officers' liability insurance in accordance with law, the Company's constituent documents and written agreements as may be entered by a director with the Company.

### **C. Director Qualification Standards**

1. Independence. Except as may otherwise be permitted by rules of the New York Stock Exchange ("NYSE"), a majority of the members of the Board shall be independent directors. No director will qualify as independent unless the Board affirmatively determined 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). In addition, a director is not independent if any of the relationships described in the independence tests set forth under Section 303A.02 of the NYSE Listed Company Manual, which is attached hereto as Attachment B, exists between the director and the Company.

The Board has established guidelines to assist it in determining whether a director has a material relationship with the Company. The Board has adopted the categorical standard that a director will not fail to be deemed independent solely as a result of lending relationships, deposit relationships, or other banking relationships between the Company (or one of its subsidiaries), on one hand, and the director or an entity with which the director is affiliated, on the other; provided, that:

- a. such relationships are in the ordinary course of business of the Company and are on substantially the same terms as those prevailing at the time for comparable transactions with non-affiliated persons; and
- b. with respect to extensions of credit by the Company or one of its subsidiaries to the director or such entity, such extensions of credit are made in compliance with applicable law, including Regulation O of the Board of Governors of the Federal Reserve and Section 13(k) of the Securities Exchange Act of 1934, no event of default has occurred with respect to such credit, and such credit is otherwise in good standing as determined from time to time by the Board in its sole discretion.

A director who is indebted to the Company or one of its subsidiaries shall terminate his directorship in the event that such indebtedness is not maintained in good standing as determined by the Board.

In general, directors are not to be vendors of goods or services to the Company or materially affiliated with any such vendor. The role of a director is distinct from that of a consultant, advisor, or other provider of goods or services to the Company, and the Board has determined that the two roles should not be commingled. Notwithstanding the foregoing, the purchase of goods or services from a director or his or her affiliated entity may be approved in accordance with the Related Person Transactions Policy.

For relationships not covered by the guidelines set forth above, the determination of whether a material relationship exists shall be made by the other members of the Board who are independent as defined above.

In the event that a director becomes aware of any change in circumstances that may result in such director no longer being considered an independent director, the director shall promptly inform the Chair of the Corporate Governance and Nominating Committee.

2. Size of the Board. The Board will periodically consider whether the size of the Board is appropriate given the Company's present circumstances and any changes in the Company's business.
3. Other Directorships. A director shall limit the number of other public company boards on which he or she serves so that he or she is able to devote adequate time to his or her duties to the Company, including preparing for and attending meetings. Directors should advise the Chairman of the Board and the Chair of the Corporate Governance and Nominating Committee in advance of accepting an invitation to serve on another public company board. In no case shall a director serve on the Board of more than three other publicly traded companies. Service on boards and/or committees of other organizations shall comply with the Company's policies including the Code of Business Conduct and Ethics.
4. Tenure. The Board does not believe it should establish term limits. Term limits could result in the loss of directors who have been able to develop, over a period of time, increasing insight into the Company and its operations and an institutional memory that benefit the entire membership of the Board as well as management. As an alternative to term limits, the Corporate Governance and Nominating Committee shall review each director's continuation on the Board at least once every three years. Directors hold office for staggered three-year terms or until their earlier resignation or removal. This will allow each director the opportunity to conveniently confirm his or her desire to continue as a member of the Board and allow the Company to conveniently replace directors who are no longer interested or effective.

5. Board Leadership Structure. The Corporate Governance and Nominating Committee shall periodically assess the Board’s leadership structure, including whether the offices of Chairman of the Board and Chief Executive Officer should be separate, whether the Company should have an independent “Lead Director” in the event that the Chairman of the Board is not an independent director, and why the Board’s leadership structure is appropriate given the specific characteristics or circumstances of the Company. In the event that the Chairman of the Board is not an independent director, the Corporate Governance and Nominating Committee may designate an independent director to serve as “Lead Director”, who shall be approved by a majority of the independent directors.

Each director is expected:

- a. to serve on, and participate diligently in the work of, at least one committee if independent and
- b. to attend the entirety of at least 75% of all Board and committee meetings each year.

The Lead Director, if one is appointed, shall:

- chair any meeting of the non-management or independent directors in executive session;
- meet with any director who is not adequately performing his or her duties as a member of the Board or any committee;
- facilitate communications between other members of the Board and the Chairman of the Board and/or the Chief Executive Officer; however, each director is free to communicate directly with the Chairman of the Board and with the Chief Executive Officer;
- monitor, with the assistance of the Company’s General Counsel or outside legal counsel, communications from shareholders and other interested parties and provide copies or summaries to the other directors as he or she considers appropriate;
- work with the Chairman of the Board in the preparation of the agenda for each Board meeting and in determining the need for special meetings of the Board; and
- otherwise consult with the Chairman of the Board, the Chief Executive Officer and/or the Chair of the Corporate Governance & Nominating Committee on matters relating to corporate governance and Board performance.

6. Selection of New Director Candidates. Except where the Company is legally

required by contract, by law or otherwise to provide third parties with the ability to nominate directors, the Corporate Governance and Nominating Committee shall be responsible for (i) identifying individuals qualified to become Board members, consistent with criteria approved by the Board, and (ii) recommending to the Board the persons to be nominated for election as directors at any meeting of shareholders and the persons to be elected by the Board to fill any vacancies on the Board. Director nominees shall be considered for recommendation by the Corporate Governance and Nominating Committee in accordance with these Guidelines, the policies and principles in its charter and the criteria set forth in Attachment A to these Guidelines. It is expected that the Corporate Governance and Nominating Committee will have direct input from the Chairman of the Board, the Chief Executive Officer and, if one is appointed, the Lead Director. The Corporate Governance and Nominating Committee shall consider candidates proposed by shareholders.

7. Extending the Invitation to a New Director Candidate to Join the Board. The invitation to join the Board should be extended either by the Chairman of the Board, on behalf of the Board, or the Chair of the Corporate Governance and Nominating Committee, on behalf of such Committee. Unauthorized approaches to prospective directors can be premature, embarrassing and harmful.
8. Change of Responsibility of Director. Any director who retires from his or her principal current employment, or who materially changes his or her current position, should discuss such change with the Chairman of the Board and the Chair of the Corporate Governance and Nominating Committee to determine whether he or she should offer to tender his or her resignation to the Board. The Corporate Governance and Nominating Committee shall then recommend to the Board whether the Board should accept the offer to resign in light of his or her new status.
9. Former Chief Executive Officer's Board Membership. The Board believes that the continuation of a former Chief Executive Officer of the Company on the Board is a matter to be decided in each individual instance by the Board, upon recommendation of the Corporate Governance and Nominating Committee. Accordingly, when the Chief Executive Officer ceases to serve in that position, he or she will be expected to resign from the Board if so requested by the Board, upon recommendation of the Corporate Governance and Nominating Committee.
10. Director Emeritus. The Board, in its sole discretion, may appoint a director to the status of Director Emeritus upon his or her voluntary departure from the Board. The status of Director Emeritus shall be solely honorary, and shall not confer or entail any of the legal rights or responsibilities of a director.

#### **D. Board Meetings**

1. Selection of Agenda Items. The Chairman of the Board shall approve the agenda

for each Board meeting. Each Board member is free to suggest the inclusion of agenda items and is free to raise at any Board meeting subjects that are not on the agenda for that meeting.

2. Frequency and Length of Meetings. The Chairman of the Board, in consultation with the members of the Board, shall determine the frequency and length of the Board meetings.

Special meetings may be called from time to time as determined by the needs of the business in accordance with the Bylaws of the Company.

3. Advance Distribution of Materials. Information and data that are important to the Board's understanding of the business to be conducted at a Board or committee meeting should generally be distributed in writing to the directors before the meeting, and directors should review these materials in advance of the meeting. The Board acknowledges that certain items to be discussed at a Board or committee meeting may be of an extremely confidential or time-sensitive nature and that the distribution of materials on these matters prior to meetings may not be appropriate or practicable.

4. Executive Sessions. The "non-management" directors, as defined by NYSE rules, shall meet in executive session at least twice a year to discuss, among other matters, the performance of the Chief Executive Officer. The non-management directors will meet in executive session at other times at the request of any non-management director. Absent unusual circumstances, these sessions shall be held in conjunction with regular Board meetings. The director who presides at these meetings shall be the Lead Director if there is one, and if not, shall be chosen by the non-management directors, and his or her name shall be disclosed in accordance with any applicable NYSE rules.

Unless provided otherwise by the Related Persons Transaction Policy or as otherwise may be approved by the Board's Audit Committee, the Board or its independent directors in an executive session must review and approve all related-party transactions, as defined by laws or rules promulgated under the Securities Exchange Act of 1934 or by applicable stock exchanges.

5. Attendance of Non-Directors at Board Meetings. The Board encourages the senior executives of the Company to, from time to time, bring Company personnel into Board meetings who (i) can provide additional insight into items being discussed because of personal involvement in these areas or (ii) should be given exposure to the Board.
6. Conflicts. Directors must disclose to other directors any potential conflicts of interest they may have with respect to any matter under discussion and, if appropriate, refrain from deliberations and voting on a matter in which they may have a conflict.
7. Public Disclosures. Except in unusual circumstances or as required by

committee charters or as requested by senior management, directors are expected to follow the principle that senior management, as opposed to individual directors, provides the public voice of the Company. Directors receiving inquiries from institutional investors, the press, or others should refer them to the Chief Executive Officer or other appropriate officer of the Company.

## **E. Board Committees**

1. Key Committees. The Board shall have at all times an Audit Committee, a Compensation Committee, a Corporate Governance and Nominating Committee and a Risk Committee. Each such committee shall have a charter that has been approved by the Board. The Board may, from time to time, establish or maintain additional committees as necessary or appropriate.
2. Assignment and Rotation of Committee Members. The Corporate Governance and Nominating Committee shall be responsible for recommending to the Board the directors to be appointed to each committee of the Board. Except as otherwise permitted by applicable SEC and NYSE rules, each member of the Audit Committee, the Compensation Committee and the Corporate Governance and Nominating Committee shall be an “independent director” as defined by such rules. The Board does not believe in mandating fixed rotation of Board committee members and/or chairpersons, since at any time there may be reasons for maintaining continuity. The Board believes that in certain circumstances it may be appropriate for some rotation over time on a staggered basis to foster diverse views while at the same time ensuring continuity.
3. Committee Charters. The charters of the Audit Committee, the Compensation Committee, the Corporate Governance and Nominating Committee and the Risk Committee shall set forth the purposes, goals and responsibilities of the committees as well as qualifications for committee membership, procedures for committee member appointment and removal, committee structure and operations and committee reporting to the Board as may be required by any applicable NYSE rules. The Board shall, from time to time as it deems appropriate, review and reassess the adequacy of each charter and approve appropriate changes.
4. Selection of Agenda Items. The Chair of each committee, in consultation with the committee members, shall develop the committee’s agenda. At the beginning of the year each committee shall establish a schedule of subjects to be discussed during the year (to the extent practicable). The schedule for each committee’s meetings shall be furnished to all directors.
5. Frequency and Length of Committee Meetings. The Chair of each committee, in consultation with the committee members, shall determine the frequency and length of the committee meetings consistent with any requirements set forth in the committee’s charter. Special meetings may be called from time to time as determined by the needs of the business and responsibilities of the committees.

## **F. Director Access to Management and Independent Advisors**

1. Access to Officers and Employees. Directors have full and free access to officers and employees of the Company. Any meetings or contacts that a director wishes to initiate may be arranged through the Chief Executive Officer or the Secretary or directly by the director. The directors shall use their judgment to ensure that any such contact is not disruptive to the business operations of the Company and shall, to the extent appropriate, copy the Chief Executive Officer on any written communications between a director and an officer or employee of the Company.
2. Access to Independent Advisors. The Board and each committee have the power to hire and consult with independent legal, financial or other advisors for the benefit of the Board or such committee, as they may deem necessary, without consulting or obtaining the approval of any officer of the Company in advance. In the discretion of the Board or applicable committee, such independent advisors may (but need not) be the regular advisors of the Company. The Board or any such committee is empowered, without further action by the Company, to cause the Company to pay the compensation of such advisors as established by the Board or any such committee.

## **G. Director Compensation**

1. Role of Board and Compensation Committee. The form and amount of director compensation shall be determined by the Board in accordance with the policies and principles set forth below. The Compensation Committee shall conduct an annual review of the compensation of the Company's directors. The Compensation Committee shall consider that questions as to directors' independence may be raised if director compensation and perquisites exceed customary levels, if the Company makes substantial charitable contributions to organizations with which a director is affiliated or if the Company enters into consulting contracts or business arrangements with (or provides other indirect forms of compensation to) a director or an organization with which the director is affiliated.
2. Form of Compensation. The Board believes that directors should be incentivized to focus on long-term shareholder value. Including equity as part of director compensation helps align the interest of directors with those of the Company's shareholders.
3. Amount of Compensation. The Company seeks to attract exceptional talent to its Board. Therefore, the Company's policy is to compensate outside directors competitively relative to comparable companies. The Company's management shall, from time to time, present a comparison report to the Board, comparing the Company's director compensation with that of comparable companies. The Board believes that it is appropriate for the Chairman of the Board and the chair and members of the committees to receive additional compensation for their services in those positions; provided, however, that directors who are also

employees of the Company or one of its subsidiaries shall receive no additional compensation for Board or committee service.

4. Director Stock Ownership. The Board believes that directors should acquire and hold shares of Company stock to further align the interests of directors with the long-term interests of the Company's shareholders. Therefore, the Board may establish a target for stock ownership for directors and a time period during which this target is to be met. However, the Board may waive this requirement as it deems is appropriate.

## **H. Director Orientation and Continuing Education**

1. Director Orientation. The Board and the Company's management shall conduct a mandatory orientation program for new directors. The orientation program shall include presentations by management to familiarize new directors with the Company's strategic plans, its significant financial, accounting and risk management issues, its compliance programs, its code of business conduct and ethics, its principal officers, its internal and independent auditors and its General Counsel and/or outside legal advisors. In addition, the orientation program shall include a review of the Company's expectations of its directors in terms of time and effort, a review of the director's fiduciary duties and visits to Company headquarters and, to the extent practical, certain of the Company's significant facilities. All other directors are also invited to attend the orientation program.
2. Continuing Education. Each director is expected to be involved in continuing director education on an ongoing basis to enable him or her to better perform his or her duties and to recognize and deal appropriately with issues that arise. The Company shall pay all reasonable expenses related to continuing director education.

## **I. Management Evaluation and Succession**

1. Selection of Chief Executive Officer. The Board selects the Company's Chief Executive Officer in the manner that it determines to be in the best interests of the Company's shareholders.
2. Evaluation of Senior Executives. The Compensation Committee shall be responsible for overseeing the evaluation of the Company's senior executives. The Compensation Committee shall determine the nature and frequency of the evaluation and the persons subject to the evaluation, supervise the conduct of the evaluation and prepare assessments of the performance of the Company's senior executives, to be discussed with the Board periodically. The Board shall review the assessments to ensure that the senior executives are providing the best leadership for the Company over both the long- and short-term.
3. Succession of Senior Executives. The Compensation Committee shall be responsible for overseeing an annual evaluation of succession planning for senior executives. The Chief Executive Officer is to provide an annual report on

succession planning and related development recommendations to the Compensation Committee, including short-term succession plan delineating temporary delegation of authority in the event that the Chief Executive Officer or any other executive officer is unexpectedly unable to perform his or her duties.

At the resignation, retirement or removal of the Chief Executive Officer, the Board shall appoint an interim Chief Executive Officer. The interim Chief Executive Officer may be an existing director or company executive. In conjunction with this appointment, the Board shall commence a search for and/or appoint a permanent Chief Executive Officer.

**J. Annual Performance Evaluation of the Board**

The Corporate Governance and Nominating Committee shall oversee an annual self-evaluation of the Board to determine whether it and its committees are functioning effectively. The Corporate Governance and Nominating Committee shall determine the nature of the evaluation, supervise the conduct of the evaluation and prepare an assessment of the Board's performance, to be discussed with the Board. The purpose of this process is to improve the effectiveness of the Board and its committees and not to target individual Board members.

**K. Policy Regarding Shareholder Ratification of Registered Public Accounting Firm**

The Company will submit the Audit Committee's selection of a registered public accounting firm for shareholder ratification at each year's annual meeting.

**L. Periodic Review of the Corporate Governance Committee**

The Corporate Governance and Nominating Committee shall, from time to time as it deems appropriate, review and reassess the adequacy of these Guidelines and recommend any proposed changes to the Board for approval.

**M. Amendment, Modification and Waiver**

The Guidelines may be amended, modified, or waived by the Board of Directors and waivers of these Guidelines may also be granted by the Corporate Governance and Nominating Committee, subject to the disclosure and other provisions of the Securities and Exchange Act of 1934 and the rules promulgated thereunder.

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## **Attachment A**

### **CRITERIA FOR THE SELECTION OF DIRECTORS**

1. The nominee shall have the highest personal and professional ethics, strength of character, integrity and values.
2. The nominee shall be, about to be or have been a senior manager, chief operating officer, chief financial officer or chief executive officer of a relatively complex organization such as a corporation, university, foundation or unit of government with a proven record of success or, if in a professional or scientific capacity, be accustomed to dealing with complex problems, or otherwise shall have obtained and excelled in a position of leadership.
3. The nominee shall have the education, experience, intelligence, independence, fairness, reasoning ability, practical wisdom and vision to exercise sound, mature judgments on a macro and entrepreneurial basis on matters which relate to the current and long-term objectives of the Company.
4. The nominee shall have the competence and willingness to learn the Company's business and confidence to express his/her personal views.
5. The nominee shall be free and willing to attend regularly scheduled meetings of the board of directors and its committees over a sustained period and otherwise able to contribute a reasonable amount of time to the affairs of the Company and its affiliates. Participation on other boards is desirable in providing a breadth of experience to the board.
6. The nominee shall have the breadth of viewpoint and experience necessary for an understanding of the diverse and sometimes conflicting interests of shareholders and other constituencies, while still recognizing the particular responsibilities of the board of directors.
7. The nominee should be of such an age at the time of election to assure a minimum of three years of service as a director.
8. The nominee shall have the personality, tact, sensitivity and perspective to work well with others.
9. The nominee shall have the stature and capability to represent the corporation before the public, shareholders and other various individuals and groups that affect the Company. The nominee should have the capability to "network" with others for the benefit of the corporation.
10. The nominee shall be willing to appraise objectively the performance of management in

the interest of the shareholders. The nominee shall possess an inquiring and independent mind willing to question management's assumptions when inquiry is appropriate.

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## Attachment B

### Section 303A.02 of the NYSE Listed Company Manual

#### INDEPENDENCE TESTS

In order to tighten the definition of “independent director” for purposes of these standards:

**(a)(i)** No director qualifies as “independent” unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company).

**(ii)** In addition, in affirmatively determining the independence of any director who will serve on the compensation committee of the listed company’s board of directors, the board of directors must consider all factors specifically relevant to determining whether a director has a relationship to the listed company which is material to that director’s ability to be independent from management in connection with the duties of a compensation committee member, including, but not limited to:

(A) the source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the listed company to such director; and

(B) whether such director is affiliated with the listed company, a subsidiary of the listed company or an affiliate of a subsidiary of the listed company.

*Commentary:* It is not possible to anticipate, or explicitly to provide for, all circumstances that might signal potential conflicts of interest, or that might bear on the materiality of a director’s relationship to a listed company (references to “listed company” would include any parent or subsidiary in a consolidated group with the listed company). Accordingly, 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 listed 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.

When considering the sources of a director’s compensation in determining his independence for purposes of compensation committee service, the board should consider whether the director receives compensation from any person or entity that would impair his ability to make independent judgments about the listed company’s executive compensation. Similarly, when considering any affiliate relationship a director has with the company, a subsidiary of the company, or an affiliate of a subsidiary of the company, in determining his independence for purposes of compensation committee service, the board should consider whether the affiliate relationship places the director under the direct or indirect control of the listed 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 his ability to make independent judgments about the listed company's executive compensation.

*Disclosure Requirement:* The listed company must comply with the disclosure requirements set forth in Item 407(a) of Regulation S-K.

**(b)** In addition, a director is not independent if:

**(i)** The director is, or has been within the last three years, an employee of the listed company, or an immediate family member is, or has been within the last three years, an executive officer,<sup>1</sup> of the listed company.

*Commentary:* Employment as an interim Chairman or CEO or other executive officer shall not disqualify a director from being considered independent following that employment.

**(ii)** The director has received, or has an immediate family member who has received, during any twelve-month period within the last three years, more than \$120,000 in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service).

*Commentary:* Compensation received by a director for former service as an interim Chairman or CEO or other executive officer need not be considered in determining independence under this test. Compensation received by an immediate family member for service as an employee of the listed company (other than an executive officer) need not be considered in determining independence under this test.

**(iii)** **(A)** The director is a current partner or employee of a firm that is the listed company's internal or external auditor; **(B)** the director has an immediate family member who is a current partner of such a firm; **(C)** the director has an immediate family member who is a current employee of such a firm and personally works on the listed company's audit; or **(D)** the director or an immediate family member was within the last three years a partner or employee of such a firm and personally worked on the listed company's audit within that time.

**(iv)** The director or an immediate family member is, or has been with the last three years, employed as an executive officer of another company where any of the listed company's present executive officers at the same time serves or served on that company's compensation committee.

**(v)** The director is a current employee, or an immediate family member is a current executive officer, of a company that has made payments to, or received payments from, the listed company 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 such other company's consolidated gross revenues.

*Commentary:* In applying the test in Section 303A.02(b)(v), both the payments and the consolidated gross revenues to be measured shall be those reported in the last completed fiscal

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<sup>1</sup> For purposes of Section 303A, the term "executive officer" has the same meaning specified for the term "officer" in Rule 16a-1(f) under the Securities Exchange Act of 1934.

year of such other company. The look-back provision for this test applies solely to the financial relationship between the listed company and the director or immediate family member's current employer; a listed company need not consider former employment of the director or immediate family member.

*Disclosure Requirement:* Contributions to tax exempt organizations shall not be considered payments for purposes of Section 303A.02(b)(v), provided however that a listed company shall disclose either on or through its website or in its annual proxy statement, or if the listed company does not file an annual proxy statement, in the listed company's annual report on Form 10-K filed with the SEC, any such contributions made by the listed company to any tax exempt organization in which any independent director serves as an executive officer if, within the preceding three years, contributions in any single fiscal year from the listed company to the organization exceeded the greater of \$1 million, or 2% of such tax exempt organization's consolidated gross revenues. If this disclosure is made on or through the listed company's website, the listed company must disclose that fact in its annual proxy statement or annual report, as applicable, and provide the website address. Listed company boards are reminded of their obligations to consider the materiality of any such relationship in accordance with Section 303A.02(a) above.

*General Commentary to Section 303A.02(b):* An "immediate family member" includes a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home. When applying the look-back provisions in Section 303A.02(b), listed companies need not consider individuals who are no longer immediate family members as a result of legal separation or divorce, or those who have died or become incapacitated.

In addition, references to the "listed company" or "company" include any parent or subsidiary in a consolidated group with the listed company or such other company as is relevant to any determination under the independent standards set forth in this Section 303A.02(b).

**Amended:** November 25, 2009 (NYSE-2009-89); January 11, 2013 (NYSE-2012-49).