

DIRECTOR INDEPENDENCE AND

II. NewSEIR

UNIVERSITY

မိမိ

In making the required determination, the Board is entitled to exercise its business judgment applying all relevant facts and circumstances known to it. However, the Commentary to the NYSE rules provides some guidance:

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

The Commentary reiterates the theme of “independence from management”.

In addition to the broad standard described above that is applied by a board in its business judgment, the NYSE rules specify certain circumstances that will preclude a director from qualifying as independent, regardless of the views of the Board. Among these prohibited relationships are (i) serving as an employee of the Company, (ii) receiving more than \$120,000 per year in direct compensation from the Company, (iii) being affiliated with an internal or external auditor of the Company, (iv) being employed by another company where an executive of the Company serves on the other company’s compensation committee, and (v) serving as an employee of another company with which the Company does business in excess of certain thresholds. Many of these prohibited relationships extend to similar relationships with family members of the director and also have a three year look-back provision.

III. Determination Process and Disclosure

Each year the Board must make determinations regarding which of the Company’s Directors is “independent” for purposes of the NYSE rules and must affirmatively determine 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). Typically, these determinations are made on the basis of information gathered by company management by circulating questionnaires to each of the directors. In making these determinations, the Board should consider any relationships disclosed in the questionnaires that were not within the prohibited relationships outlined above. If the Board concludes that those relationships do not impair the independence of those individuals from management, it may make a finding of independence.

IV. Audit Committee Eligibility

The rules of the New York Stock Exchange require that each member of the Audit Committee (i) is “independent” as described above, (ii) satisfies the requirements of Section 10A-3 of the Securities Exchange Act of 1934 (the “34 Act”), and (iii) is financially literate.

Rule 10A-3 under the 34 Act requires that no member of the Audit Committee may:

- a. Accept any consulting, advisory, or other compensatory fee from the Company; or
- b. Be an affiliate of the Company.

The rules of the New York Stock Exchange require that each member of the Audit Committee be “financially literate” and go on to provide that financial literacy is determined by the Company’s Board as it interprets such qualification in its business judgment.

Finally, the charter of the Audit Committee requires that each member of the Audit Committee must be “free of any relationship that would interfere with exercise of his or her independent judgment” and must “have a basic understanding of finance and accounting be able to read and understand fundamental financial statements”. These qualifications should also be determined by the Board in its business judgment.

V. Audit Committee Financial Expert

Item 401(h) of Regulation S-K of the rules of the Securities and Exchange Commission requires the Company to disclose whether or not the Board has determined that there is at least one Audit Committee Financial Expert serving on the Audit Committee and provides that an Audit Committee Financial Expert is a person who has the following attributes:

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

An individual that is deemed to be an Audit Committee Financial Expert must have obtained these attributes through one or more of the following:

- a. Education and experience as a principal fi

- b. Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;
- c. Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or
- d. Other relevant experience.

VI. Compensation Committee Eligibility

The charter of the Compensation Committee of DaVita requires that each member of the Committee be an “Independent Director” which means a member of the Board who (i) is an independent (as defined in the New York Stock Exchange listing standards described above), non-executive director, free from any relationship that would interfere with the exercise of his or her independent judgment, (ii) meets the requirements for a “Non-Employee Director” contained in Rule 16b-3 under the ’34 Act, as amended, and (iii) meets the requirements for an “outside director” for purposes of Section 162(m) of the Internal Revenue Code of 1986, as amended.

Rule 16b-3 of the ’34 Act defines a “non-employee director” as a director who:

- a. Is not currently an officer of the issuer or a parent subsidiary of the issuer, or otherwise currently employed by the issuer or a parent or subsidiary of the issuer;
- b.

affiliated company and not an officer of a currently affiliated company, the director would qualify as an outside director under section 162(m). A director is not deemed to have received compensation from the company for reasons other than being a director when the additional compensation is viewed as de minimis. Additional compensation will qualify as de minimis when the amounts paid to an entity in which the director has a beneficial interest of 5 percent, but not more than 50 percent, do not exceed the lesser of \$60,000 or 5 percent of the entity's gross revenue for the applicable tax year.