

Dear Co-Chairs,

Two items for your consideration:

First: For purposes of clarity we wanted to bring to your attention the following and we leave it to your decision whether this is worth sharing more broadly with the CCWG:

On page 13 of the Board comment letter, the Board proposes that an additional bullet point be added to Paragraph 175 of the CCWG Proposal as follows: The Respective Supporting Organization, Advisory Committee and NomCom shall consider independence as part of its identification of replacement Board members. The Board also suggests inserting at the end of Paragraph 183 (and including in the Bylaws) language along the following lines: In line with best practices, at least half of the Interim Board members should meet the regulatory requirements of independence.

We note that “independence “ is not defined by the Board, nor has the Board identified the specific “regulatory requirements” that the Board believes apply. Should the CCWG consider adopting the Board’s suggestion, there would need to be clarification regarding the reference to regulatory requirements for the following reason:

We are not aware of any regulations that currently apply to the ICANN Board that require the Board to have “independent directors” and so you may want to have the Board explain further. They may be conflating independence with the concept of director “disinterestedness” as required by Section 5227 of the CA Corporations Code which provides that a majority of directors of a California nonprofit public benefit corporation such as ICANN must be “disinterested,” which means that no more than 49% of the directors at any time may be compensated by ICANN or related (as defined in that section) to someone who is compensated by ICANN (excluding any reasonable compensation paid to directors for service as directors).

Alternatively or in addition they may be referring to the IRS Form 990 disclosure requirements under which ICANN must report annually on the number of “independent directors” serving on the Board; however, this is only a reporting requirement and not a regulatory mandate regarding Board composition.

Note that the IRS Form 990 concept of director independence bears some similarities to the California law concept of a “disinterested director,” but they are separate and distinct tests. Form 990 instructions (<http://www.irs.gov/pub/irs-pdf/i990.pdf>) provide that a director is considered independent only if the director satisfies all three of the following at all times during ICANN’s relevant tax year:

- The director was not compensated as an officer or other employee of ICANN or of a related organization.
- The director did not receive total compensation or other payments exceeding \$10,000 during ICANN’s tax year from ICANN or from related organizations as an independent contractor, other than reimbursement of expenses under an accountable plan or reasonable compensation for services provided in the capacity as a director.

· Neither the director, nor any family member of the director, was involved in a transaction with ICANN (whether directly or indirectly through affiliation with another organization) that is required to be reported on Schedule L (Form 990 or 990-EZ) for ICANN's tax year, or in a transaction with a related organization of a type and amount that would be reportable on Schedule L if required to be filed by the related organization. (Schedule L to the Form 990 requires an organization to report information on certain financial transactions and arrangements between the organization and an "Interested Person.")

Should the CCWG determine to address this point, we can assist with appropriate clarifying language.

Second: Please let us know if you would like our reactions to any of the other issues raised in the Board comment letter.

Kind regards,

Holly and Rosemary

HOLLY J. GREGORY
Partner and Co-Chair
Global Corporate Governance & Executive Compensation Practice

Sidley Austin LLP
787 Seventh Avenue
New York, NY 10019
+1 212 839 5853
holly.gregory@sidley.com
www.sidley.com
<http://www.sidley.com/files/upload/signatures/SA-autosig.png> SIDLEY AUSTIN LLP

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