



OUTSIDE DIRECTOR/PROXY HOLDER NOMINATING OFFICIAL PACKAGE

OMB CONTROL NUMBER:

OMB EXPIRATION DATE:

AGENCY DISCLOSURE NOTICE

The public reporting burden for this collection of information, _____, is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or burden reduction suggestions to the Department of Defense, Washington Headquarters Services, at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.



NOMINATING OFFICIAL PACKAGE

Dear Sir or Madam,

You have been identified as the nominating official of the below named Outside Director/Proxy Holder (OD/PH) candidate as part of a Foreign Ownership, Control, or Influence (FOCI) Mitigation Agreement (Agreement) between _____, hereinafter “the Company,” and its ultimate foreign parent company/foreign shareholder, a _____ company.

The OD/PH is responsible for fulfilling his/her fiduciary responsibilities at the Company and ensuring that the provisions of the Agreement are appropriately implemented. He/she is expected to maintain a proactive posture to ensure that Company complies with the terms of the Agreement. The purpose of the Agreement is to effectively exclude the ultimate foreign parent company/foreign shareholder (and any entities and affiliates that the ultimate foreign parent company/foreign shareholder company controls) from unauthorized access to classified and export controlled information; and influence over the Company’s business or management in a manner that could result in the compromise of classified information or could adversely affect the performance of classified contracts.

An individual appointed to fulfill an OD/PH position must meet certain criteria pursuant to the National Industrial Security Operating Manual (NISPOM) §2-305:

- Be a U.S. citizen residing in the United States;
- Be capable of exercising management prerogatives relating to the OD/PH position in a way that ensures the foreign owner can be effectively insulated from the Company;
- Be eligible for, agree to be processed for, and maintain a personnel security clearance equivalent to the level of the Company’s facility security clearance; and
- Be a completely “disinterested” individual capable of exercising judgment independent of any influence(s) that might prejudice his or her decision-making capability. (Note: “Disinterested” is defined as having no prior contractual, financial, or employment relationship with either the Company, its ultimate parent/foreign shareholder, or any of its affiliates. The application of the term “disinterested” extends to members of the nominee’s immediate family as well.)

The Defense Security Service (DSS) is responsible for reviewing and approving a nominee’s qualifications prior to his or her appointment and DSS requests that you provide detailed responses to the attached questionnaire and execute the attached certificate.

Responses should be of sufficient detail to enable DSS to determine the OD/PH nominee’s eligibility to function in the appointed position as an independent and totally disinterested individual.

Please return the questionnaire with your responses and certificate to the FOCI Action Officer identified below.

If you have any questions please contact _____, FOCI Action Officer, by
phone at _____ or by email at _____.

Sincerely,

Assistant Director
Business Analysis and Mitigation Strategy
Defense Security Service

Attachments:
Questionnaire
Certificate

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NOMINATING OFFICIAL QUESTIONNAIRE

Name of the OD/PH candidate:

1. How was this candidate identified?

2. Please identify the candidate's experience or qualifications, if any, in the following fields:

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3. How will the OD/PH experience and expertise contribute, complement, and enhance the current Board of Directors?

4. Does the candidate have any associations, past, present or anticipated, with the Company, its affiliates, or the foreign shareholder and any of its affiliates?

5. How will the candidate be compensated?

6. Based on your knowledge of the candidate, will he/she be capable of exercising management prerogatives related to the OD/PH position in a way that ensures that the foreign owner(s) can be effectively insulated from the Company and ensure no unauthorized access to classified or export controlled information?

7. Based on your knowledge of the candidate, will he/she be capable of exercising management prerogatives related to the OD/PH position in a way that ensures that his/her fiduciary duties will be fulfilled?

CERTIFICATE

I certify that the entries made herein by me, and on any attachments, are true, complete, and correct to the best of my knowledge and belief and are made in good faith.

DATE: _____

PRINT NAME: _____

SIGNATURE: _____

COMPANY AFFILIATION: _____

POSITION TITLE: _____

MAILING ADDRESS: _____

PHONE NUMBER: _____

E-MAIL ADDRESS: _____

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