

CII and Other Activists Target Compensation Committees Independence in SEC Proposed Rule

June 1, 2011 | Client Update

The deadline for comments about the SEC proposed rules regarding compensation committees has passed, with 54 submissions sent. While many commenters support the approach of directing the listing exchanges to adopt independence standards for compensation committees, taking into account issuer affiliation and source of compensation, several activists advocated for additional standards. The Council of Institutional Investors (CII), AFSCME, AFL-CIO, among others, argued that independence is also impaired through other relationships, including: (a) family linkages (employment of a director's family member by the company); (b) business, financial and personal relationships between directors and executive officers (a director is employed by a firm that advises management or affiliated with a non-profit that receives grants from executive officers); (c) any related person transactions involving directors and (d) relationships amongst directors (one director is instrumental to the nomination of another director).

Since none of the cited relationships have any particular relevance to the specific duties of compensation committees, it is clear that these rules are being viewed by activists as an opportunity to weigh in generally on director independence, which hasn't been up for consideration in some time. More to come about other comments.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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