

NYSE Proposed Listing Standards Affecting Compensation Committees

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The NYSE has posted its proposed [filing](#) with the SEC to implement the SEC rules for compensation committees and advisers. We are preparing a client memorandum to describe the standards in more detail shortly, but headline items include:

Compensation Committee Independence

The NYSE has not added any additional bright-line prohibitions to its independence standards. Rather, it has followed the SEC final rules in giving a board discretion to determine how consulting, advisory and other compensatory fees and affiliate status may affect a compensation committee member's independence. The standards make clear that these factors should be considered, as part of its affirmative determination of all factors, specifically relevant to determining whether a director has a relationship to the company which is material to that director's ability to be independent from management in connection with the duties of a compensation committee member.

In making the independence assessments for compensation committee members, the board will need to consider whether (a) the director receives compensation from any person or entity or (b) an affiliate relationship places the director under control of the company or management, or creates a relationship between the director and management, in each case in a way that would impair independent judgment about the company's executive compensation.

Compensation Committee Advisers

The NYSE retained, and did not add to, the six independence factors that compensation committees must consider, with respect to the person's independence from management, when selecting a compensation consultant, legal counsel or other adviser to the committee. The committee is required to conduct this assessment with respect to those advisers that provide advice to the committee, other than in-house legal counsel.

Effective Dates

In terms of timing, the proposed changes will take effect on July 1, 2013. However, additional time is being granted to comply with the two key provisions described above. NYSE-listed companies have until their first annual meeting after January 15, 2014, or October 31, 2014, to comply with the new standards with respect to compensation committee independence factors and compensation adviser independence.

As we [discussed](#), however, that separate and apart from the listing standards, the SEC rules require all companies subject to proxy disclosure rules to describe if the work of a compensation consultant gives rise to a conflict of interest, the nature of any conflict of interest and how the conflict is being addressed, in the proxy statement for the meeting at which directors will be elected on or after January 1, 2013. The six adviser independence factors are among the factors to be considered in determining whether disclosure is necessary.

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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