

Nasdaq Files Amendment to Proposal Governing Compensation Committees

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Nasdaq has filed an [amendment](#) to its proposed listing standards with respect to compensation committees, as referred to in our recent [post](#). The key provisions include:

- *Effective Dates.* Changing the date of effectiveness to July 1, 2013, rather than immediate effectiveness upon SEC approval, for when compensation committees must have the specific responsibilities for considering the independence of advisers and the authority necessary relating to the retention and oversight of those advisers. The effective dates of the provisions as to the compensation committee independence standards continue to be companies' first annual meetings after January 15, 2014 or October 31, 2014. These dates are now aligned with the effectiveness of the NYSE proposal.
- *Certification Form.* A form of certification that companies must provide to Nasdaq within 30 days after the final implementation deadline is attached to the amendment.
- *Adviser Independence Factors.* A clear statement in the amendment filing that companies need only consider the six specified independence factors when evaluating adviser independence. This is different from the NYSE proposal that also contains a catchall provision requiring the committee to consider all factors relevant to an adviser's independence from management, including the six enumerated factors. The text of the proposed listing standards has been modified so that the committee needs to consider these factors when selecting, *or receiving advice from* (emphasis added), a compensation consultant, legal counsel or other adviser to the committee, other than in-house legal counsel.
- *Outside Legal Counsel.* A clarification that those independence considerations must apply to any legal counsel other than in-house counsel, in response to a comment letter speculating that the proposal could be read to apply only to independent legal counsel.

As we previously noted, the SEC has designated January 13, 2013, to take action on the NYSE and Nasdaq proposed listing standards.

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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