

Additional Amendments to Proposed Listing Standards on Compensation Committees and Advisers

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Both the [NYSE](#) and [NASDAQ](#) have filed further amendments to their proposed listing standards on compensation committees and their advisers. The amendments copy directly from the exception in Item 407(e)(3)(iii) of Regulation S-K with respect to the proxy disclosure rules for compensation consultants.

The amendments clarify that a compensation committee is not required to conduct the independence assessment of an adviser whose role is limited to (a) consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors, and that is available generally to all salaried employees or (b) providing information that either is not customized or that is customized based on parameters that are not developed by the adviser, and about which the adviser does not provide advice.

The SEC enhanced proxy disclosure rules in December 2009 permitted these exceptions in response to commentators who suggested that broad-based, non-discriminatory plans and the provision of information, such as surveys, that are not customized, should not be treated as compensation consulting services that would raise conflict of interest concerns.

The NYSE amendment also added language indicating that nothing in the section requiring a compensation committee to consider the specific adviser independence factors is intended to limit compensation committees from selecting or receiving advice from any adviser that they prefer, including ones that are not independent. NASDAQ already had a similar statement.

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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