

SEC Approves NYSE and Nasdaq Listing Standards for Compensation Committees

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The SEC has approved new listing standards governing compensation committees as proposed by [NYSE](#) and [Nasdaq](#) in accordance with the Dodd-Frank Act. The standards are essentially adopted as proposed, which we previously discussed [here](#). A detailed memo will follow on the final listing requirements. Below are a few highlights:

- ***Different Standards for Compensation Committee Independence.*** The SEC has accepted the different approaches taken by NYSE and Nasdaq with respect to additional independence factors governing compensation committee members. For NYSE-listed companies, boards must consider (a) the source of compensation of the director, including any consulting, advisory or other compensatory fee paid by the company and (b) whether the director is affiliated with the company. However, Nasdaq has adopted a provision stating that each member of a compensation committee must not accept directly or indirectly any consulting, advisory or other compensatory fee from the listed company, to align the standard with the requirements for audit committees. Like the NYSE, for Nasdaq companies affiliate status is to be evaluated by the board as a factor in assessing independence, rather than acting as a strict prohibition.
- ***SEC Statements on Compensation Committee Advisers.*** A compensation committee may select, or receive advice from, a compensation consultant, legal counsel or other adviser, other than in-house legal counsel, only after taking into consideration the six adviser independence factors set forth in Rule 10C-1. The SEC and the exchanges have taken pains to clarify that the committees may select, or receive advice from, any compensation adviser they prefer, including ones that are not independent, so long as the independence assessment is conducted. While the SEC has declined to give any particular guidance on which advisers would be subject to these rules, the Commission notes that “compliance with the rule requires an independence assessment of any compensation consultant, legal counsel, or other adviser that provides advice to the compensation committee, and is not limited to advice concerning executive compensation.” In response to comment letters, the SEC indicates that it anticipates that compensation committees will conduct such an independence assessment at least annually.
- ***Additional Nasdaq Requirements.*** Like the NYSE currently requires, Nasdaq-listed companies must now adopt compensation committee charters with specified responsibilities and authority. In addition, companies must certify that they have adopted such a charter and that their compensation committee will review and reassess the adequacy of that charter on an annual basis. A separate certification is required 30 days after the final implementation deadline.
- ***Timing of Effectiveness.*** Most standards other than director independence, including the requirement to assess the independence of compensation committee advisers, become effective on July 1, 2013. Companies will have until their first annual meeting after January 15, 2014, or, if earlier, October 31, 2014, to comply with the compensation committee member independence 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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