

Focusing on Compensation Committee Charters Part I ? for NYSE Companies Only

May 6, 2013 | Client Update | 2-minute read

Recently, we reminded companies of the upcoming deadlines related to the new listing exchanges' rules on compensation committees in this [client alert](#). In two separate posts, we talk about the required changes to committee charters. Kyoko Lin addresses questions in Part I of this post, which focuses specifically on NYSE listed companies. We will turn our attention to Nasdaq companies in Part II.

Can you summarize the amendments to the committee charters that are required by July 1?

NYSE listed companies must provide in their compensation committee charters the authorization for the committees to engage their own advisers and be directly responsible for the appointment, compensation and oversight of their work. The committees must have appropriate funding to pay the advisers. Before engaging these advisers directly, or even receiving advice from any other advisers, the committees must take into account specific independence factors.

How do the authorizations available for compensation committees differ from the authorizations available for audit committees?

Rule 10A-3 gives audit committees the authority to engage advisers and requires companies to provide for appropriate funding for the advisers and compensation to the outside auditors, as well as administrative expenses of the committee. The audit committee is directly responsible only for the appointment, compensation and oversight of the outside auditors, and must assess only the independence of such auditors.

Do you think it is necessary to replicate the NYSE requirements exactly in the charters?

No, the charters just need to be clear as to the committees' additional responsibilities and authorizations. Some companies already provide all of their board committees with the ability to engage and pay for advisers, so in those situations companies may only need to make a few adjustments to that language in the charters, and also add the requirement to conduct independence assessments.

Are there additional changes to the committee charters effective in the future?

No, although if a committee charter addresses committee member independence, companies may want to update that section at the time the requirement to evaluate members under the new independence standards become effective, which is the earlier of October 31, 2014 or their first annual meeting after January 15, 2014.

Where can we find these rules?

The NYSE has updated its listed company manual. Please read carefully as currently both the existing and new provisions (that will be effective later) are in the manual.

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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