

NASDAQ Amends Rule Filing on Disclosure of Third-Party Compensation for Directors and SEC Extends Review Period

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The SEC has extended to July 4, 2016, as the deadline for taking action on NASDAQ's proposal requiring its listed companies to disclose any third-party compensation payments related to candidacy or service as directors on the companies' boards.

We previously discussed the rule proposal [here](#). Last week NASDAQ amended the rule filing so that the disclosure must be made in the proxy statement for any shareholder meeting that elects directors, not just at annual meetings. Alternatively, the disclosure could be posted on a company's website.

The amendment also explicitly identifies indemnification arrangements under the rule proposal's already broad definition of compensation. As we noted in our prior post, the rules would capture any additional compensation paid to an employee of a private equity, venture capital or another firm for serving on a board, but only as to the amount of the increased payments related to that service.

Once the rule becomes effective, which was previously set to occur at the end of June, a NASDAQ-listed company must disclose all applicable agreements and arrangements no later than the date when it files a proxy statement for a meeting to elect directors. The initial disclosure mandate is met if the information was disclosed previously in another proxy solicitation or an 8-K. Thereafter, the disclosure requirement continues annually until either the director resigns or one year after the agreement terminates.

A company that discovers it has failed to make the disclosure must remedy the defect by an 8-K or 6-K if SEC rules require it, or through a press release.

The Exchange Act provides that the Commission must by July 4th either approve, disapprove or institute proceedings to determine whether the proposed rule changes should be disapproved.

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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