

One Minute Memo[®]



NYSE and NASDAQ Adopt Independence Standards for Compensation Committees and Consultants

On June 20, 2012, the U.S. Securities and Exchange Commission (the "Commission") adopted final rules to implement requirements under Section 10C of the Securities and Exchange Act of 1934 (the "Exchange Act"), established by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act").

The new rules require (1) the national securities exchanges to adopt listing standards regarding the composition and independence of listed issuers' compensation committees, as well as the appointment, independence, compensation and oversight of listed issuers' compensation advisers, and (2) all issuers subject to the Commission's proxy rules to disclose conflicts of interest relating to their use of compensation consultants.

In accordance with the Commission's final rules, each of the New York Stock Exchange (the "NYSE") and the NASDAQ Stock Market ("NASDAQ," and together with the NYSE, the "Exchanges") proposed amendments to their listing standards to address these Dodd-Frank Act mandated requirements.

We have previously reported on these proposed rules in a January 7, 2013 Management Alert, and on January 11, 2013, the Commission approved the proposals. The rules approved by the Commission generally mirror the rules as previously described in our Management Alert, which may be accessed at the following link: <http://www.seyfarth.com/publications/MA010713b>. We note, however, that both the NYSE and NASDAQ amended their respective proposals in January 2013 to grant additional exemptions from the compensation advisers rules. Specifically, advisers that provide advice for broad based employee benefit plans (e.g., 401(k) plans) or to advisers that provide non-customized advice in each case will be exempt from the rules.

Next Steps

Generally, the new rules are effective July 1, 2013. Specifically, as of July 1, 2013, NYSE and NASDAQ listed companies must satisfy the rules relating to the selection of compensation advisers (outlined in detail in our January 7, 2013 Management Alert). Further, NYSE listed companies must amend their existing compensation committee charters as of July 1, 2013 to address these additional rules related to the selection of compensation advisers. In contrast, NASDAQ listed companies have until the earlier of their first annual meeting after January 15, 2014, or October 31, 2014 to amend their existing charters.

Both NYSE and NASDAQ listed companies will have until the earlier of their first annual meeting after January 15, 2014, or October 31, 2014, however, to comply with the new standards for compensation committee director independence.

By: *Jake R. Downing*

Jake R. Downing is an associate in the Chicago office of Seyfarth Shaw LLP. For more information, please contact your Seyfarth attorney or Jake Downing at jdowning@seyfarth.com.