akerman

Practice Update

# New NYSE and NASDAQ Compensation Committee Rules to be Implemented on July 1, 2013

June 20, 2013

The deadline for companies listed on the New York Stock Exchange or The NASDAQ Stock Market to implement key components of the new listing rules adopted earlier this year related to the independence of compensation committees and their advisors is July 1, 2013. The new rules require listed companies to have amended their compensation committee charters by that date to provide that their compensation committees (1) have sole discretion to retain compensation consultants, legal counsel, and other advisors to the compensation committee; (2) are directly responsible for the oversight of the work of such advisors; and (3) may determine the reasonable compensation to be paid to such advisors by the company.[1]

## Consideration of Specific Independence Factors

Under the new listing rules, beginning July 1, 2013, compensation committees must consider specific factors related to the independence of compensation consultants, legal counsel, and other advisors prior to the engagement by the compensation committee of such advisors or the receipt of advice from such advisors, even if not formally engaged to represent the compensation committee. The factors that must be considered are:

Related People

Kenneth G. Alberstadt

Related Work

Capital Markets
Corporate

- the provision of other services to the company by the person that employs the advisor
- the amount of fees received from the company by the person that employs the advisor, as a percentage of the total revenue of the person that employs the advisor
- the policies and procedures of the person that employs the advisor that are designed to prevent conflicts of interest
- any business or personal relationship of the advisor with a member of the compensation committee
- any stock of the company owned by the advisor
- any business or personal relationship of the advisor with an executive officer of the company

The new listing requirements do not require a finding of independence by the compensation committee and do not limit the discretion of a compensation committee in selecting advisors as long as these factors have been considered.

**Heightened Standards of Independence**

In addition to the requirements summarized above regarding the retention of compensation committee advisors, the new rules require that compensation committee members satisfy heightened standards of independence. Listed companies must satisfy these compensation committee independence requirements by the earlier of their first annual meeting after January 15, 2014 or October 31, 2014. Listed companies should assess the independence of their current compensation committee members under the applicable independence standards well in advance of the deadline. “Smaller reporting companies” are generally exempt from the heightened independence standards for compensation committee members and the requirement to assess the independence of compensation committee advisors.

If you have any questions or concerns regarding implementation of the new rules (including their impact on your engagement of legal advisors), please contact your lead attorney at Akerman Senterfitt or any of the members of our securities practice.

---

[1] Nasdaq issuers that currently have independent directors, rather than a separate compensation committee, performing executive compensation oversight functions have until the time specified under "Heightened Standards of Independence" below to form a separate compensation committee and adopt a compensation committee charter but nevertheless must provide for such independent directors to have the requisite authority and responsibilities and to consider the independence of advisors as described herein by July 1, 2013.

---