

SEC Instructs Exchanges to Adopt Listing Standards for Compensation Committees

On June 20, 2012, the SEC adopted final rules requiring the national securities exchanges to adopt Dodd-Frank mandated listing standards relating to listed companies' compensation committees.

These rules will require that:

- compensation committees be made up entirely of independent directors,
- compensation committees have the authority to retain compensation advisers,
- compensation committees be directly responsible for the appointment, compensation and oversight of the work of any compensation adviser,
- issuers provide funding for the payment of reasonable fees (as determined by the compensation committee) to compensation advisers and
- in addition to the existing disclosure requirements relating to compensation consultants, issuers' annual meeting proxy statements must include disclosure of whether the work of any compensation consultant raised any conflicts of interest, the nature of such conflicts and how the conflicts are being addressed.

In determining the independence of directors on the compensation committee, the exchanges are directed to develop independence standards for compensation committee members, taking into account directors' sources of compensation (including any consulting, advisory or compensatory fees paid by the issuer) and whether a director is affiliated with the issuer or any of its affiliates. In its adoption of the rules, the SEC notes the similarity in approach between this requirement of independence for compensation committee members and existing independence requirements for audit committee members; however, the SEC notes that it is not requiring that the same independence standards that apply to audit committee members now be applied to members of the compensation committee.

In engaging a compensation adviser, compensation committees must evaluate the independence of such adviser, in particular taking into consideration any other services provided by such adviser to the issuer, the relative amount of fees paid for any other such services, the conflicts policies of the adviser, any personal relationships between the adviser and members of the compensation committee or executive officers of the issuer and any stock of the issuer owned by the adviser. The SEC notes that it is not required that a compensation adviser be independent, only that the committee be cognizant of any inherent biases that the adviser may have in order to better evaluate the adviser's recommendations.

In addressing the proxy disclosure required by Dodd-Frank, the SEC has modified the approach taken in its proposed rules and concluded that existing disclosure regarding compensation advisers will achieve the goals of Dodd-Frank subject only to the addition of disclosure relating to conflicts of interest.

In practice, the impact of these new rules should be minimal. For issuers with existing, independent compensation committees, the composition of the compensation committee should already be in compliance with these rules based on existing listing requirements. It is also important to note that these rules will not result in issuers listed on exchanges that did not previously require a standing compensation committee (such as NASDAQ) being required to form such a committee. From a corporate governance perspective, compensation committee charters should be reviewed to ensure



that they reflect the authorities included in the rules and the procedures for engagement of compensation advisers will need to be integrated into current committee processes.

If you have any questions regarding listing standards for compensation committees, please contact your principal Squire Sanders lawyer or one of the lawyers listed below.

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