



What You Need to Know:

- The NASDAQ Stock Market® (NASDAQ®) has amended its rules for compensation committees of listed companies.
- Compensation committees must have certain responsibilities and authority by July 1, 2013.
- Companies must comply with the remaining provisions of the amended rules by the earlier of: (1) their first annual meeting after January 15, 2014; or (2) October 31, 2014.
- Companies will be required to certify compliance with the new rules.
- During the transition period until a company is required to comply with a particular provision of the amended rules, the company must continue to comply with NASDAQ's existing rules on independent director oversight of executive compensation.

Amended Compensation Committee Rules

The U.S. Securities and Exchange Commission (SEC) recently approved NASDAQ's proposals to modify the listing requirements for compensation committees. These amendments adopt changes required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and SEC rules and make other related changes. A summary of the amendments is below.

- Effective July 1, 2013, companies must comply with NASDAQ Listing Rule 5605(d)(3), which requires a compensation committee to have specific responsibilities and authority relating to the retention, compensation, oversight and funding of compensation consultants, legal counsel and other compensation advisers, as well as the requirement to consider six independence factors before selecting, or receiving advice from, such advisers.
- Companies must comply with the remaining provisions of the amended rules by the earlier of: (1) their first annual meeting after January 15, 2014; or (2) October 31, 2014. These requirements include the following:
 - All companies must have a compensation committee consisting of at least two members, each of whom must be an independent director as defined under NASDAQ Listing Rule 5605(a)(2).
 - Compensation committee members may not accept directly or indirectly any consulting, advisory or other compensatory fee, other than for board service, from a company or any subsidiary thereof.
 - In determining whether a director is eligible to serve on a compensation committee, a company's board must consider whether the director is affiliated with the company, a subsidiary of the company or an affiliate of a subsidiary of the company to determine whether such affiliation would impair the director's judgment as a member of the compensation committee.

- If a company fails to comply with these compensation committee composition requirements, it may be eligible for a cure period. In addition, a company may rely on an exception to these composition requirements to permit an otherwise ineligible director to serve on a compensation committee under exceptional and limited circumstances.
 - Companies must adopt a formal, written compensation committee charter that specifies certain compensation committee responsibilities and authority. The compensation committee must review and reassess the adequacy of the charter on an annual basis.
- Each company must submit a one-time certification to NASDAQ, no later than 30 days after the final implementation deadline applicable to it in 2014, that it has complied with the amended rules. The certification form will be available on the [NASDAQ OMX Listing Center](#) no later than January 15, 2014.
 - Until a company is required to comply with a particular provision of the amended rules, it must continue to comply with the existing rules relating to independent director oversight of executive compensation, which have been redesignated as [NASDAQ Listing Rule 5605A\(d\)](#) and [IM-5605A-6](#).
 - The new rules provide exemptions for: asset-backed issuers and other passive issuers; cooperatives; limited partnerships; management investment companies; controlled companies; and foreign private issuers that follow their home country practice and make certain disclosures. In addition, smaller reporting companies, as defined in SEC Rule 12b-2, are not subject to certain of the new requirements. Certain companies will be permitted to phase-in compliance with the rules.

Additional Resources

For more detailed information, please visit the following links:

- [NASDAQ Listing Rule 5605\(d\)](#) and [IM-5605-6](#)
- [SEC Approval Order](#)
- [NASDAQ's Initial Proposal](#) and Amendment Nos. [1](#) and [2](#) thereto
- [NASDAQ Listing Rules](#)

Upcoming Web Seminar

NASDAQ will host a web seminar on this topic soon. Please look for an invitation in the coming weeks.

Questions

If you have any questions, please contact your NASDAQ Listing Qualifications Analyst or your NASDAQ Relationship Manager.

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