



What You Need to Know:

Compensation committees for NASDAQ-listed companies must have certain responsibilities and authority by July 1, 2013.

Amended Compensation Committee Rules:

The NASDAQ Stock Market® (NASDAQ®) previously circulated a [Rule Update](#) regarding amendments to the rules for compensation committees of listed companies. This is a reminder that companies must comply with some of those amendments by July 1, 2013. Specifically, companies must comply with NASDAQ Listing Rule 5605(d)(3), which requires a compensation committee to have:

- The sole discretion to retain or obtain the advice of a compensation consultant, legal counsel or other adviser, and
- the direct responsibility for the appointment, compensation and oversight of the work of any compensation consultant, legal counsel and other adviser it retains.

Further, the company must provide for appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to a compensation consultant, legal counsel or any other adviser retained by the compensation committee.

In addition, effective July 1, 2013, the compensation committee may select, or receive advice from, a compensation consultant, legal counsel or other adviser to the compensation committee, other than in-house legal counsel, only after taking into consideration the following six factors:

1. the provision of other services to the company by the person that employs the compensation consultant, legal counsel or other adviser;
2. the amount of fees received from the company by the person that employs the compensation consultant, legal counsel or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel or other adviser;
3. the policies and procedures of the person that employs the compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest;
4. any business or personal relationship of the compensation consultant, legal counsel or other adviser with a member of the compensation committee;
5. any stock of the company owned by the compensation consultant, legal counsel or other adviser; and

6. any business or personal relationship of the compensation consultant, legal counsel, other adviser or the person employing the adviser with an Executive Officer of the company.

Compensation committees may select, or receive advice from, any compensation adviser they prefer, including ones that are not independent, after considering the six independence factors outlined above.

To the extent a company does not have a compensation committee, these requirements apply to the Independent Directors who determine, or recommend to the board for determination, the compensation of the Chief Executive Officer and all other executive officers of the company. While eventually companies will be required to have a compensation committee and these requirements must be reflected in the compensation committee's charter, in the interim companies should consider under state corporate law whether to grant the specific responsibilities and authority referenced in Rule 5605(d)(3) through a charter, resolution or other board action.

Companies must comply with the remaining provisions of the amended rules, including the requirement to have a compensation committee with a charter reflecting these requirements, by the earlier of: (1) their first annual meeting after January 15, 2014; or (2) October 31, 2014. Certain companies are exempt and other companies are permitted to phase-in compliance with the rules. For additional information, please see NASDAQ's initial [Rule Update](#) on this topic.

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](#)
- [NASDAQ's initial Rule Update](#)

Questions:

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

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