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The NYSE proposes that the board must consider all factors specifically relevant to compensation committee member independence, including the source of the director's compensation and whether the director is an affiliate. No "bright line" independence test was proposed.

CONTRIBUTORS

Elizabeth W. Powers

212.692.1011

ewpowers@duanemorris.com

K. Oliver Rust

212.692.1007

korust@duanemorris.com

Richard A. Silfen

215.979.1225

rasilfen@duanemorris.com

Darrick M. Mix

215.979.1206

dmix@duanemorris.com

NYSE Proposes Listing Standards Relating to Compensation Committee Member Independence and Compensation Committee Advisers

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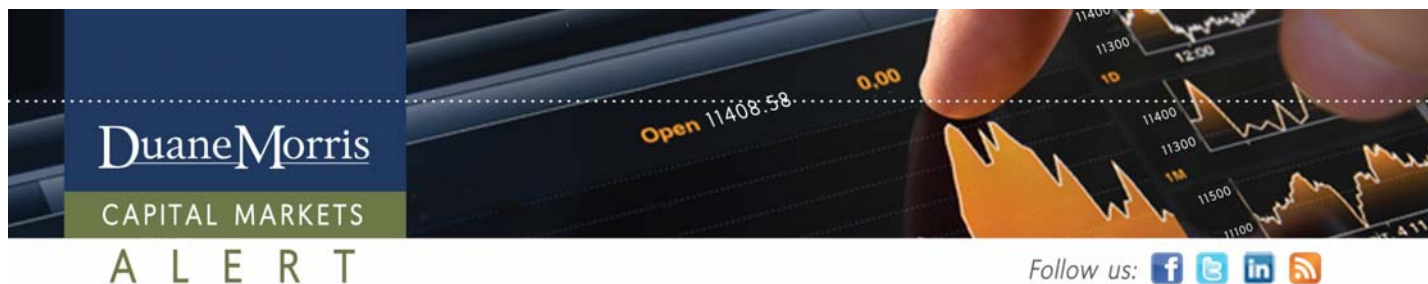
On September 25, 2012, the New York Stock Exchange (NYSE) [proposed amendments](#), as revised on October 1, 2012, to its corporate governance listing standards to implement the requirements of Rule 10C-1 under the Securities Exchange Act of 1934. The listing standards relate to compensation committee member independence and compensation committee advisers and are subject to U.S. Securities and Exchange Commission (SEC) approval.

Effectiveness. If approved by the SEC as proposed, the amendments will become operative on July 1, 2013, although listed companies will not be required to comply with the new compensation committee member independence requirements until the earlier of (i) their first annual meeting after January 15, 2014, or (ii) October 31, 2014.

Compensation Committee Member Independence. NYSE rules will continue to require that, in determining independence, the board must affirmatively determine that the director has no material relationship with the listed company. In addition, as proposed, the new rules will require the board to consider "all factors specifically relevant" to determining whether there is any relationship material to a compensation committee member's ability to be independent from management in connection with his duties, including:

- the source of the director's compensation, including any consulting, advisory or other compensatory fee paid by the listed company to the director; and
- whether the director is affiliated with the listed company, a subsidiary or an affiliate of a subsidiary.

In contrast to the SEC's audit committee member independence rules, the NYSE did not propose automatic disqualification for a compensation committee member who received a compensatory fee from, or was affiliated with, the company or a subsidiary, or any other "bright line" independence tests.



The rules provide for a cure period, allowing a director who ceases to be independent for reasons outside his reasonable control to remain on the compensation committee until the earlier of:

- the next annual shareholders' meeting or
 - one year from the occurrence of the event that impaired the director's independence,
- provided that prompt notice is given to the NYSE and a majority of the members of the compensation committee continues to be independent.

Compensation Committee Advisers. The proposed NYSE rule amendments would implement *verbatim* the requirements of Rule 10C-1(b)(2) and (3) under the Exchange Act as to the authority of the compensation committee to obtain advice from compensation consultants and other advisers. Under the proposed amendments, the compensation committee:

- has authority, in its sole discretion, to retain or obtain the advice of a compensation consultant, independent legal counsel or other adviser;
- must be directly responsible for the appointment, compensation and oversight of the work of any compensation consultant or other adviser it retains; and
- determines the appropriate funding the listed company must provide in order to pay reasonable compensation to consultants and other advisers retained by the committee.

Before selecting a compensation consultant or other adviser, compensation committees must assess the adviser's independence. The compensation committee must consider "all factors relevant to the adviser's independence from management," *including* the six factors identified in [Rule 10C-1\(b\)\(4\)](#). It is important to note that the NYSE did not identify any additional factors and instead shifted the burden to do so to the compensation committee.

Exemptions. Companies currently exempt from the compensation committee standards, such as controlled companies, limited partnerships and foreign private issuers, will continue to be exempt. In addition, smaller reporting companies—generally those with a public float of less than \$75 million—will be exempt from the new compensation committee member independence requirements and the requirement to assess the independence of compensation committee advisers. They will, however, be subject to the other requirements relating to compensation committee advisers.

What Listed Companies Should Consider Doing Now. As proposed, listed companies will not be required to comply with the new compensation committee adviser standards until July 1, 2013, and the new compensation committee member independence standards until 2014.



While the NYSE proposals regarding compensation committee member independence should not change significantly the practices many public companies follow, companies may want to use the transition period to:

- review their compensation committee charters, corporate governance guidelines and director and officer questionnaires to determine what amendments need to be made to these documents;
- determine what other factors are “specifically relevant” to the company in determining the independence of its compensation committee members;
- review the independence of those directors who are expected to be serving on the compensation committee in 2014 to ensure the absence of material relationships that could impair the directors’ independence under the new independence standards;
- determine if there are other relevant factors specific to the company that the compensation committee should consider in assessing the independence of its advisers;
- consider implementing procedures to facilitate the compensation committee’s independence assessment of current and prospective compensation consultants and other advisers, such as the development of a compensation committee adviser independence questionnaire; and
- determine how to document the compensation committee’s compliance with the compensation committee adviser independence assessment requirements.

Companies should keep in mind that they will be required to disclose in their 2013 proxy statements any compensation consultant conflict of interest and how the conflict is being addressed, as a result of new Item 407(e)(3)(iv) of Regulation S-K, adopted by the SEC this summer.

For Further Information

If you would like more information about the topics discussed in this *Alert*, please contact [Elizabeth W. Powers](#), [K. Oliver Rust](#), [Richard A. Silfen](#), [Darrick M. Mix](#), any of the [members](#) in our [Capital Markets Group](#) or the attorney in the firm with whom you are regularly in contact.

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