

**IN THIS ISSUE...**

*Pending proposal of rules by the exchanges, compensation committees may want to review preliminarily the independence of their membership, compensation consultants and other advisers and should also consider the additional disclosures that will be required by amended Item 407 of Regulation S-K for the 2013 proxy season.*

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**SEC Adopts Rules on Independence of Compensation Committees and Compensation Advisers; New Listing Standards to Be Proposed by September 25, 2012****JUNE 27, 2012**

On June 20, 2012, the U.S. Securities and Exchange Commission adopted Rule 10C-1, directing national securities exchanges to adopt listing standards relating to compensation committees of listed companies and their compensation advisers. The SEC also amended Item 407 of Regulation S-K to require additional information in proxy statements about compensation consultants and conflicts of interest.

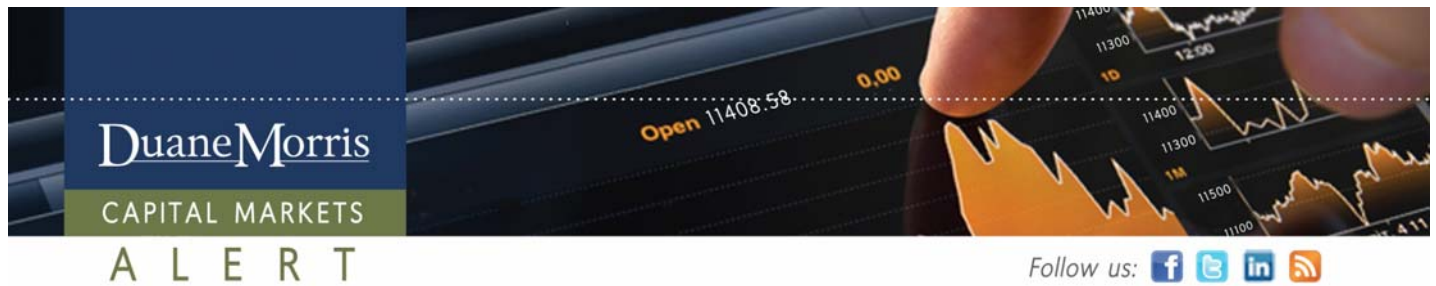
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**Effectiveness**

The national securities exchanges are required to propose listing standards by September 25, 2012, and to have final listing standards in place no later than June 27, 2013. The proxy disclosure rules will be in effect for annual meetings commencing in 2013.

**Listed company compensation committees**

The new listing standards will apply to “compensation committees,” which include formally designated compensation committees as well as directors who oversee executive compensation in the absence of a formally designated committee. The SEC applied the new listing standards only to companies that list equity securities.



### *Independence of compensation committee members*

- Each member of the compensation committee must be a member of the board of directors and must be independent.
- In developing independence standards, the exchanges are required to consider relevant factors, including:
  - the source of a director’s compensation, including any fees paid to the director by the company; and
  - whether a director is affiliated with the company, a subsidiary or any affiliate of a subsidiary.
- The SEC noted that, under Dodd-Frank, the exchanges have discretion to consider relevant factors in determining an independence standard, whereas Sarbanes-Oxley expressly provided that certain relationships would impair audit committee member independence.
- Certain issuers will be exempt, including foreign private issuers that disclose in their annual reports why they do not have an independent compensation committee.

In addition, an exchange may exempt any “particular relationships with respect to members of the compensation committee” that it determines are appropriate.

### *Authority to retain compensation consultants, independent legal counsel and other advisers*

- A compensation committee may in its sole discretion retain or obtain advice from a compensation consultant, independent legal counsel or other adviser.
- The compensation committee is directly responsible for appointing, determining compensation and overseeing the work of any such adviser, with companies to provide appropriate funds.
- The compensation committee is not required to follow advice given by any adviser.

### *Independence of compensation consultants and other advisers*

- The compensation committee may select any compensation consultant, legal counsel or other adviser, whether or not such adviser is independent, but it may do so only after considering:
  - other services provided to the company by the adviser’s employer;
  - fees the adviser’s employer received from the company as a percentage of total revenue of the employer;
  - policies and procedures of the adviser’s employer to prevent conflicts of interest;
  - any business or personal relationship of the individual adviser with a member of the compensation committee;



- company stock owned by the individual adviser or a member of his immediate family;
- any business or personal relationship of the individual adviser or the adviser’s employer with an executive officer of the company; and
- any other factors the national securities exchanges provide.

### *Exemptions*

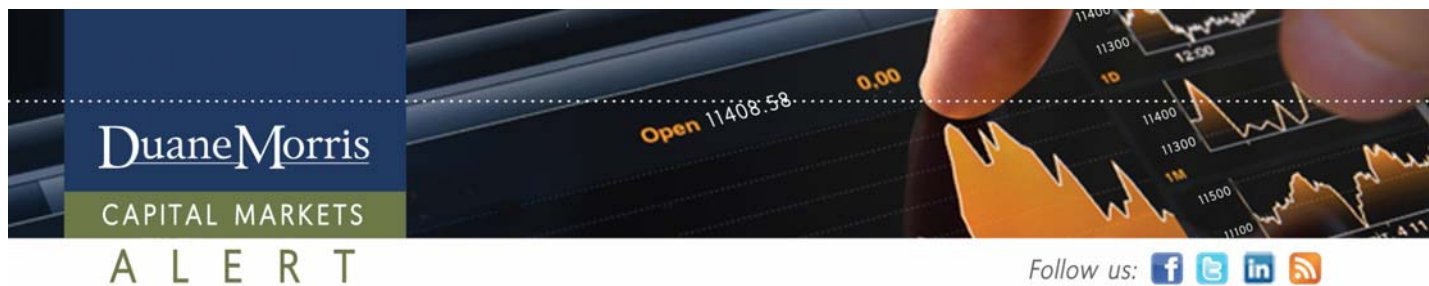
The new listing standards will not apply to controlled companies or smaller reporting companies. In addition, the exchanges may exempt certain categories of issuers from the new standards, taking into account the impact on smaller companies and other factors.

### *Curing defects*

- The national securities exchanges must provide companies with a reasonable opportunity to cure noncompliance with the new listing standards.
- These cure provisions may include allowing a compensation committee member to continue serving until the earlier of the next annual shareholders meeting and one year from the date of noncompliance.

### **Proxy disclosure of compensation consultant conflicts of interest**

- Companies will have to disclose in their proxy statements any compensation consultant conflict of interest and how the conflict is being addressed, as a result of new Item 407(e)(iv) of Regulation S-K.
- The disclosure is required for compensation consultants, otherwise identified in response to existing Item 407(e)(3)(iii), whose work has raised a conflict of interest.
- In determining whether a conflict exists, a new instruction provides that the six factors described above relating to compensation adviser independence are among those that should be considered.
- Conflict of interest information relating to compensation consultants whose role is limited to consulting on broad-based plans and providing non-customized benchmark data, which the SEC had proposed to eliminate, will continue to be exempt from disclosure under Item 407.
- All companies subject to the proxy rules are required to provide the new disclosure, including non-listed companies, smaller reporting companies and controlled companies.



### For Further Information

If you would like more information about the topics discussed in this *Alert*, please contact [Elizabeth W. Powers](#), [K. Oliver Rust](#), [Mitchel C. Pahl](#), [Richard A. Silfen](#), [Darrick M. Mix](#), [Laurence S. Lese](#), [Beverly Reyes](#), any of the [members](#) in our [Securities Law Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

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