

Is a company required to submit its audit committee charter to Nasdaq?

Identification
Number 89

No. Nasdaq requires that a company make a one-time certification that it has an audit committee charter that satisfies Nasdaq's requirements as set forth in [Listing Rule 5605\(c\)\(1\)](#), but the company need not submit a copy of the charter to Nasdaq. Under Item 407(d) (1) of Regulation S-K, a company must disclose whether a current copy of its audit committee charter is available on the company's website and if so, provide the website address. If not so available, the company should include the charter as an appendix to its proxy statement at least once every three years or in any year in which the charter has been materially amended. If the charter is not available on the company's website and is not included as an appendix to the proxy statement filed by the company for that fiscal year, the company should disclose the year in which the charter was most recently included as an appendix to the company's proxy statement.

Publication Date*: 7/31/2012

Identification Number: 89

Does a person who satisfies the SEC's requirement of an audit committee "financial expert" satisfy Nasdaq's "financial sophistication" requirement?

Identification
Number 90

Yes. An individual who meets the requirements of the SEC's "financial expert" definition satisfies this requirement. Nasdaq rules require that a company have at least one member on the audit committee that has past employment experience in finance or accounting, requisite professional certification in accounting or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

Publication Date*: 7/31/2012

Identification Number: 90

Must a company obtain approval from Nasdaq in order to utilize the exceptional and limited circumstances provision for its audit committee pursuant to Listing Rule 5605(c)(2)(B)?

Identification
Number 91

No. A company may choose to rely on the exception without obtaining Nasdaq's approval. A company, other than a Foreign Private Issuer, that relies on this exception must comply with the disclosure requirements set forth in Item 407(d)(2) of Regulation S-K. A Foreign Private Issuer that relies on this exception must disclose in its next annual report (e.g., Form 20-F or 40-F) the nature of the relationship that makes the individual not independent and the reasons for the board's determination. A member appointed under this exception may not serve longer than two years and may not chair the audit committee.

Publication Date*: 7/31/2012

Identification Number: 91

May a company rely on the exceptional and limited circumstances provision as set forth in Listing Rule 5605(c)(2)(B) if it has three or more independent directors on its audit committee?

Identification
Number 92

A company may use this provision to include a non-independent director on the audit committee even if there are already three or more independent directors on the audit committee, provided the individual meets the criteria for audit committee service under Section 10A(m) (3) under the Act and the rules thereunder and is not currently an Executive Officer or employee or a Family Member of an Executive Officer, and the company's board determines that membership on the audit committee by the individual is required by the best interests of the company and its shareholders. A company, other than a Foreign Private Issuer, that relies on this exception must comply with the

disclosure requirements set forth in Item 407(d)(2) of Regulation S-K. A Foreign Private Issuer that relies on this exception must disclose in its next annual report (e.g., Form 20-F or 40-F) the nature of the relationship that makes the individual not independent and the reasons for the board's determination. A member appointed under this exception may not serve longer than two years and may not chair the audit committee.

Publication Date*: 7/31/2012

Identification Number: 92

What happens if a company no longer complies with the audit committee composition requirement because an audit committee member resigns?

Identification
Number 93

Pursuant to [Listing Rule 5605\(c\)\(4\)](#), if an audit committee member resigns and the company is not otherwise relying on a cure period for its audit committee membership, the company has until the earlier of the next annual shareholders meeting or one year from the date of resignation to replace the audit committee member; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the resignation, the company shall instead have 180 days from such resignation to regain compliance. A company relying on this cure period must provide notice to Nasdaq immediately upon learning of the resignation.

Publication Date*: 7/31/2012

Identification Number: 93

What happens if a company no longer complies with the audit committee composition requirement because an audit committee member can no longer be considered independent?

Identification
Number 94

Pursuant to [Listing Rule 5605\(c\)\(4\)](#), if an audit committee member ceases to be independent for reasons outside the member's reasonable control, the audit committee member may remain on the audit committee until the earlier of the company's next annual meeting of shareholders or one year from the occurrence of the event that caused the failure to comply with this requirement. A company relying on this provision must provide notice to Nasdaq immediately upon learning of the event that caused the director to be considered non-independent.

Publication Date*: 7/31/2012

Identification Number: 94

A Nasdaq-listed company is a bank holding company. Can the company's audit committee include persons who are directors of the subsidiary operating bank, but who are not directors of the listed holding company?

Identification
Number 95

No. The members of the audit committee must be members of the board of the listed company, in this case, the holding company.

Publication Date*: 7/31/2012

Identification Number: 95

For purposes of [Listing Rule 5605\(c\)\(2\)\(A\)](#), what does it mean to have "participated in the preparation of the financial statements" of the company?

Identification
Number 96

An individual will be considered to have participated in the preparation of the company's financial statements if the individual has played any role in compiling or reviewing those financial statements, including a supervisory role. An interim officer who signed or certified the company's financial statements will be deemed to have participated in the preparation of the company's financial statements and, therefore, could not serve on the audit committee for three years.

Publication Date*: 7/31/2012

Identification Number: 96

What notification is required to be given to Nasdaq if a company no longer complies with the audit committee composition requirement of [Listing Rule 5605\(c\)\(2\)\(A\)](#)?

Identification
Number 97

[Listing Rule 5625](#) states that a company must provide Nasdaq with prompt notification after an executive officer of the company becomes aware of any noncompliance by the company with the requirements of [Listing Rule 5600 Series](#). Further, companies are required to notify Nasdaq if they are relying on the "Cure Periods" set forth in [Listing Rule 5605\(c\)\(4\)](#) to regain compliance with the audit committee composition requirement.

In addition, the Listing Agreement requires that a company notify Nasdaq upon discovery of any event of noncompliance.

What types of companies are not required to comply with the compensation committee requirements?

Identification
Number 1108

The following companies are not required to comply with the compensation committee requirements under Listing Rule 5605(d):

- A controlled company is exempt from this rule, provided that the company discloses in its proxy statement that it is a controlled company and the basis for that determination;
- A company listing in connection with its initial public offering is permitted to phase in compliance with the compensation committee composition requirements within one year of listing;
- A foreign private issuer may elect to follow its home country practice in lieu of this requirement as long as it meets the disclosure requirements set forth in [Listing Rule 5615\(a\)\(3\)\(B\)](#);
- Management investment companies registered under the Investment Company Act of 1940, asset-backed issuers, unit investment trusts, and cooperative entities, such as agricultural cooperatives, are not subject to this rule; and
- A limited partnership is exempt from this rule.

In addition, a smaller reporting company is exempt from some, but not all, of the requirements. See [Listing Rule 5605\(d\)\(5\)](#).

Must a business development company comply with the compensation committee requirements?

Identification
Number 1107

Yes. Business development companies are required to comply with all of the provisions of the Rule 5600 Series, including the compensation committee requirements in [Rule 5605\(d\)](#) and [IM 5605-6](#).

Must a company establish a charter for its compensation committee?

Identification
Number 107

Each company must adopt a formal written compensation committee charter specifying the content set forth in [Listing Rule 5605\(d\)\(1\)](#). The compensation committee must review and reassess the adequacy of the charter on an annual basis.

How many directors are required to serve on a compensation committee?

Identification
Number 104

Each company must have a compensation committee consisting of at least two members. However, for a company to be eligible to appoint a non-independent director under the exceptional and limited circumstances provision of [Listing Rule 5605\(d\)\(2\)\(B\)](#), the compensation committee must consist of at least three directors.

A company's board of directors consists of a majority of independent directors. May the whole board serve as a compensation committee?

Identification
Number 103

No. Listing Rule 5605(d)(2) and IM-5605-6 require the company to have a compensation committee consisting of at least two members. Each committee member must be an independent director as defined under [Rule 5605\(a\)\(2\)](#). In addition, in affirmatively determining the independence of any director who will serve on the compensation committee of a board of directors, the board of directors must consider all factors specifically relevant to determining whether a director has a relationship to the Company which is material to that director's ability to be independent from management in connection with the duties of a compensation committee member, including, but not limited to:

- (i) the source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the Company to such director; and
- (ii) whether such director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company.

Publication Date*: 12/4/2014

Identification Number: 103

What is a Controlled Company?

Identification
Number 109

According to [Listing Rule 5615\(c\)](#) and [IM-5615-5](#), a Controlled Company is a company of which more than 50% of the voting power for the election of directors is held by an individual, a group or another company. The calculation of voting power held by a group can include shares covered under voting agreements between or among shareholders relating to the election of directors. For a group to exist, the shareholders must have filed a notice that they are acting as a group (e.g., a Schedule 13D).

Publication Date*: 7/31/2012

Identification Number: 109

Are the independent directors at a Controlled Company required to hold executive sessions?

Identification
Number 131

Yes. Controlled Companies, while exempt from certain corporate governance rules requiring independent directors, are not exempt from the requirements pertaining to executive sessions of independent directors.

Publication Date*: 7/31/2012

Identification Number: 131

What exemptions to Nasdaq's corporate governance policies are provided to a Controlled Company?

Identification
Number 110

A Controlled Company is exempt from the majority independent board requirement, as set forth in [Listing Rule 5605\(b\)](#), except for the requirements of subsection (b)(2), which pertain to executive sessions of independent directors, and from the requirement for independent director oversight of executive officer compensation and director nominations, as set forth in [Listing Rules 5605\(d\) and 5605\(e\)](#).

A Controlled Company, other than a Foreign Private Issuer, relying upon such exemptions must comply with the disclosure requirements set forth in Instruction 1 to Item 407(a) of Regulation S-K. A Foreign Private Issuer is required to disclose in its annual report on Form 20-F or Form 40-F that it is a Controlled Company and the basis for that determination. Please see [IM-5615-5](#), Controlled Company Exemption.

Publication Date*: 7/31/2012

Identification Number: 110

Does a company that is eligible to rely on the Controlled Company exemption have to disclose if it chooses not to rely on the exemption?

Identification
Number 111

No. A company only must disclose when it is relying on the Controlled Company exemption. A company eligible to rely on the exemption that does not choose to do so has no special disclosure obligations.

Publication Date*: 7/31/2012

Identification Number: 111

If a company ceases to be a Controlled Company, when must it comply with the corporate governance requirements?

Identification
Number 112

If a company ceases to be a Controlled Company, it is permitted to phase in its compliance with the independent committee requirements set forth in [Listing Rule 5605\(d\) and \(e\)](#) as follows: (1) one independent member at the time it ceases to be a controlled company; (2) a majority of independent members within 90 days; and (3) all independent members within one year of the time it ceases to be a controlled company. Furthermore, the company must comply with the majority independent board requirement in [Listing Rule 5605\(b\)](#) within twelve months of the date it ceases to be a controlled company. If a company previously indicated on its corporate governance certification that it was not subject to a requirement because it was a controlled company, that company must submit a new corporate governance certification form, which is accessible through the Company Event Notification Form in the [Listing Center](#), if it ceases to be a controlled company.

A company that has ceased to be a Controlled Company must comply with the audit committee requirements of Listing Rule 5605(c) as of the date it ceased to be a Controlled Company. Furthermore, the executive sessions requirement of Listing Rule 5605(b)(2) applies to Controlled Companies as of the date of listing and continues to apply after it ceases to be controlled.

Also, see [Listing Rule 5615\(c\)\(3\)](#).

Publication Date*: 7/31/2012

Identification Number: 112

Does Nasdaq require notification when a company no longer complies with the corporate governance requirements as set forth in the Listing Rule 5600 Series?

Identification
Number 113

Yes. As set forth in [Listing Rule 5625](#), a company must provide Nasdaq with prompt notification after an executive officer of the company becomes aware of any noncompliance by the company with the requirements of the [Listing Rule 5600 Series](#), which relates to corporate governance. As such, companies are required to notify Nasdaq if they are relying on the "Cure Periods" set forth in the Listing Rule 5600 Series to regain compliance. The company should provide this notification to its Listing Qualifications Analyst via email to continuedlisting@nasdaq.com.

Publication Date*: 7/31/2012

Identification Number: 113

Under what circumstances is a cure period provided for corporate governance deficiencies?

Identification
Number 114

If a company fails to comply with the independent audit committee or majority independent board requirement due to one vacancy, or because one director ceases to be independent due to circumstances beyond the director's reasonable control, the company is provided a cure period until the earlier of its next annual meeting or one year from the occurrence of the event that caused the failure to comply. However, a company is provided a 180 day cure period if the next annual meeting occurs less than 180 days after the event that caused the failure to comply.

Publication Date*: 7/31/2012

Identification Number: 114

Under what circumstances is a cure period not provided to remedy corporate governance deficiencies?

Identification
Number 115

As set forth in [Listing Rule 5810\(c\)\(2\)](#), a company is not provided a cure period and must provide a plan of compliance for violations of, among other things:

- Majority independent board or audit committee composition requirements due to more than one vacancy on the board, or because more than one director ceases to be independent;
- Code of Conduct;
- Quorum;
- Review of Related Party Transactions;
- Shareholder Approval; and
- Voting Rights.

The plan of compliance is due 45 days from the date that the company is notified. After reviewing the company's plan of compliance, Nasdaq may grant the company an extension of time, up to 180 calendar days from the date of the notification, to regain compliance. Note that, unlike the cure period under [Listing Rule 5605](#), this 180 day extension is not automatic. Extensions of time may vary and are not granted in all cases.

Publication Date*: 7/31/2012

Identification Number: 115

What is the applicable cure period when a Company becomes non-compliant with the audit committee composition requirement because a director does not stand for re-election at the annual shareholders meeting?

Identification
Number 1042

When a company becomes non-compliant with the audit committee composition requirement because of a vacancy created when a director does not stand for re-election, the company generally is afforded a cure period until the earlier of the company's next annual meeting or one year from the anniversary of the meeting causing non-compliance. A company that finds itself in this situation must

contact Listing Qualifications as soon as it is aware of the issue.

Publication Date*: 7/31/2012

Identification Number: 1042

How does Nasdaq define an "Independent Director"?

Identification
Number 132

See [Listing Rule 5605\(a\)\(2\)](#) and [IM-5605](#).

Publication Date*: 7/31/2012

Identification Number: 132

How does Nasdaq define a "Family Member"?

Identification
Number 133

[Listing Rule 5605\(a\)\(2\)](#) defines "Family Member" as a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home. When applying the three-year look-back provisions in [Listing Rule 5605\(a\)\(2\)](#), a company does not have to consider a person who is no longer a Family Member as a result of legal separation, divorce, death, or incapacitation.

Publication Date*: 7/31/2012

Identification Number: 133

How does Nasdaq define "Executive Officer"?

Identification
Number 134

[Listing Rule 5605\(a\)\(1\)](#) states that an "Executive Officer" means those officers covered in the Rule 16a-1(f) under the Securities and Exchange Act of 1934. Nasdaq applies this definition regardless of whether the entity in question is a public company. The term, "non-executive employee", means any employee that is not a Section 16 officer.

Publication Date*: 7/31/2012

Identification Number: 134

How does Nasdaq define a "Parent or Subsidiary"?

Identification
Number 135

[IM-5605](#) states that the reference to a "Parent or Subsidiary" is intended to cover entities the company controls and consolidates with the company's financial statements as filed with the SEC (but not if the company reflects such entity solely as an investment in its financial statements).

Publication Date*: 7/31/2012

Identification Number: 135

If an entity is acquired by, or merges with, a Nasdaq-listed company, may a former officer of the acquired entity be eligible to qualify as an independent director of the combined entity?

Identification
Number 137

Yes. A former officer of an entity acquired by a Nasdaq-listed company may qualify to be an independent director, provided that the former officer was not employed by the company following the completion of the acquisition.

Publication Date*: 7/31/2012

Identification Number: 137

How does Nasdaq apply the look back set forth in [Listing Rule 5605\(a\)\(2\)\(D\)](#)?

Identification
Number 138

[Listing Rule 5605\(a\)\(2\)\(D\)](#) precludes a director from being independent if the director is, or has a Family Member who is, a partner in, or a controlling shareholder or an executive officer of, any organization to which the company made, or from which the company received certain payments in the current or any of the past three fiscal years. If the director is currently a partner in, controlling shareholder of, or executive officer of an entity which has made or received such payments, then the individual is not eligible to be an independent director. However, if the director ceases to be associated with the entity, then the director is not precluded from being an independent director under this paragraph of the Rule because the 3 year look back period is no longer applicable.

Does an option awarded for consulting service contribute to the \$120,000 limit in Listing Rule 5605(a)(2)?

Identification
Number 139

Yes. The option would have to be valued using a commonly accepted option pricing formula, such as the Black-Scholes or binomial model at the time of grant. This valuation is considered a payment upon grant even if the option does not immediately vest or if there are conditions to vesting or exercise. A subsequent cancellation or forfeiture of an unvested part of the option, if any, would reduce the valuation proportionately.

Publication Date*: 7/23/2021

Identification Number: 139

Do lawyers, whose firms provide services to the Nasdaq-listed company, fall under the \$120,000 compensation test of Listing Rule 5605(a)(2)(B) or the 5%/\$200,000 indirect payment test of Listing Rule 5605(a)(2)(D)?

Identification
Number 140

Payments from the Nasdaq-listed company to a law firm would generally be considered under [Listing Rule 5605\(a\)\(2\)\(D\)](#), which looks to whether the payment exceeds the greater of 5% of the recipient's gross revenues or \$200,000. If the firm is a sole proprietorship, however, [Listing Rule 5605\(a\)\(2\)\(B\)](#), which looks to whether compensation exceeds \$120,000, applies. For purposes of determining whether a lawyer is eligible to serve on an audit committee, SEC Rule 10A-3 generally provides that any partner in a law firm that receives payments from the issuer is ineligible to serve on that issuer's audit committee.

Publication Date*: 7/31/2012

Identification Number: 140

Does Nasdaq have requirements for listed companies regarding the composition of the board of directors?

Identification
Number 143

[Listing Rule 5605\(b\)\(1\)](#) requires most Nasdaq-listed companies to have a majority of independent directors on the board of directors. A listed company, other than a Foreign Private Issuer, is required to comply with the disclosure requirements set forth in Item 407(a) of Regulation S-K. A Foreign Private Issuer is required to disclose in its annual report on Form 20-F or Form 40-F those directors that the company's board of directors has determined to be independent under Listing Rule 5605(a)(2). Please see [IM-5605 Definition of Independence - Listing Rule 5605\(a\)\(2\) and IM-5605-1 Majority Independent Board](#).

Publication Date*: 7/31/2012

Identification Number: 143

Does Nasdaq have requirements for listed companies regarding the size of the board of directors?

Identification
Number 144

Yes. Nasdaq-listed companies must have at least three directors on their board to comply with the audit committee requirements of [Listing Rule 5605\(c\)\(2\)](#).

Publication Date*: 7/31/2012

Identification Number: 144

What types of companies are not required to have a majority independent board of directors?

Identification
Number 145

The following companies are not required to have a majority independent board of directors:

- A Controlled Company is exempt from this Rule, provided that the company discloses in its proxy statement that it is a controlled company and the basis for that determination;
- A company listing in connection with its initial public offering is permitted to phase in compliance with majority independent board requirement within one year of listing;
- A Foreign Private Issuer may elect to follow its home country practice in lieu of this requirement. For additional information, see [FAQs for Non-U.S. Companies](#); and
- Management investment companies registered under the Investment Company Act of 1940, asset-backed issuers, unit investment trusts, and cooperative entities, such as agricultural cooperatives, are not subject to this Rule.

Publication Date*: 7/31/2012

Identification Number: 145

Does Nasdaq have any restrictions on the number of boards on which a director may serve?

Identification
Number 146

No. Nasdaq does not have any restrictions on the number of boards on which a director may serve.

Publication Date*: 7/31/2012

Identification Number: 146

May a company have a classified board of directors?

Identification
Number 147

Nasdaq rules do not prohibit a company from having a classified board of directors. However, if the board is divided into more than three classes, the structure may raise concerns under Nasdaq's voting rights and public interest rules.

Publication Date*: 7/31/2012

Identification Number: 147

Does Nasdaq require executive sessions of the Independent Directors?

Identification
Number 129

Yes. [Listing Rule 5605\(b\)\(2\)](#) requires that independent directors have regularly scheduled meetings at which only independent directors are present (executive sessions).

Publication Date*: 7/31/2012

Identification Number: 129

How often must the independent directors hold executive sessions?

Identification
Number 130

[IM-5605-2](#) states that it is contemplated that executive sessions will occur at least twice a year and perhaps more frequently, in connection with regularly scheduled board meetings. Companies may want to consider holding executive sessions at each regularly scheduled board meeting.

Publication Date*: 7/31/2012

Identification Number: 130

Must a company certify that it has established a charter for its nominating committee?

Identification
Number 152

Yes. A company must make a one-time certification that it has a nominating committee charter that satisfies Nasdaq's requirements as set forth in [Listing Rule 5605\(e\)\(2\)](#), but the company need not submit a copy of the charter to Nasdaq. This certification is made when the company applies for listing.

Publication Date*: 7/31/2012

Identification Number: 152

Is a company required to submit its nominating committee charter to Nasdaq?

Identification
Number 153

No. Nasdaq rules require a company to make a one-time certification that it has established such a charter, but it is not required to submit a copy to Nasdaq.

Publication Date*: 7/31/2012

Identification Number: 153

What are Nasdaq's requirements for the composition of a company's nominating committee?

Identification
Number 148

See [Listing Rule 5605\(e\)](#).

Publication Date*: 7/31/2012

Identification Number: 148

A company's board of directors consists of a majority of independent directors. Can the whole board serve as a nominating committee?

Identification
Number 149

No. [Listing Rule 5605\(e\)](#) requires director nomination decisions to be made by independent directors. Under the Rule, this can be done either by a majority of the independent directors in a vote in which only independent directors participate, or by a committee comprised solely of independent directors. If the company chooses to rely on a vote of a majority of the independent directors, the independent directors must meet alone to make these decisions, such as during the executive sessions of independent directors.

Publication Date*: 7/31/2012

Identification Number: 149

How many directors are required to serve on a nominating committee?

Identification
Number 150

Nasdaq rules do not specify how many directors must serve on a nominating committee. However, for a company to be eligible to appoint a non-independent director under the exceptional and limited circumstances provision, the nominating committee must consist of at least three directors.

Publication Date*: 7/31/2012

Identification Number: 150

Is the nominating committee required to approve director nominations that legally belong to a third party?

Identification
Number 154

No. However, the company must still comply with the committee and board composition requirements. See [Listing Rule 5605\(e\)\(4\)](#).

Publication Date*: 7/31/2012

Identification Number: 154

Can a non-independent director be a member of the committee as a non-voting or as an ex officio member?

Identification
Number 1041

No. Under the requirements, each member of the committee must be an independent director unless the company appropriately utilizes the exceptional and limited circumstances exception. Accordingly, absent relying on the exception, a non-independent director cannot be a committee member regardless of voting status.

Publication Date*: 7/31/2012

Identification Number: 1041

Must a company obtain approval from Nasdaq in order to utilize the exceptional and limited circumstances provision according to [Listing Rule 5605\(d\)\(2\)\(B\)](#) or [5605\(e\)\(3\)](#)?

Identification
Number 106

No. A company may choose to rely on the exception without obtaining Nasdaq's approval. A company that relies on this exception must disclose either on or through the company's website or in the proxy statement for the next annual meeting subsequent to such determination (or, if the company does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. In addition, the company must provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S-K regarding its reliance on this exception. A member appointed under this exception may not serve longer than two years.

Publication Date*: 7/31/2012

Identification Number: 106

If a company is subject to a binding obligation requiring directors to be selected in a manner contrary to [Listing Rule 5605\(e\)](#), does it need a nominating committee?

Identification
Number 155

If the binding obligation pre-dates November 3, 2003, when Nasdaq first adopted the requirement for independent directors to make nominations, the Rule is not applicable to the company and the company need not have a nominating committee.

Publication Date*: 7/31/2012

Identification Number: 155