



What You Need to Know:

- Earlier this year, The NASDAQ Stock Market® (NASDAQ®) amended its rules for compensation committees of listed companies.
- On November 26, 2013, NASDAQ further amended these rules to remove the outright prohibition on compensatory fees for compensation committee members. As revised, a board of directors instead must consider the receipt of such fees when determining eligibility for compensation committee membership.

Changes to Compensation Committee Rules:

NASDAQ previously circulated a **Rule Update** (2013-001) regarding amendments to the rules for compensation committees of listed companies. In response to feedback from listed companies and others, NASDAQ has further amended these rules. A summary of the amendments is below.

- NASDAQ has removed the prohibition on the receipt of compensatory fees by compensation committee members. Instead, the revised rule will require that in affirmatively determining the independence of any director who will serve on the compensation committee, a company's board must consider the source of compensation of the director, including any consulting, advisory or other compensatory fee paid by the company to the director.
- NASDAQ has also modified the rule to state that in determining the independence of any director who will serve on the compensation committee, the board should also consider fees

received by the director as: (i) a member of the compensation committee, the board of directors or any other board committee; and (ii) fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the company. These fees should be considered in aggregate with all other sources of compensation of the director, to determine whether such compensation would impair the director's judgment as a member of the compensation committee. These amounts were previously excluded from the ban on the receipt of compensatory fees by a compensation committee member.

- As under the prior rules, in affirmatively determining the independence of compensation committee members, boards of directors also must consider whether the director is affiliated with the company, a subsidiary of a company or an affiliate of a subsidiary of a company. NASDAQ has added to the interpretive material certain factors that the board should consider in evaluating an affiliate relationship.
- NASDAQ has clarified that in affirmatively determining the independence of any director who will serve on the compensation committee, 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.

The implementation deadline for the new compensation committee rules has not changed, nor have the other requirements of the amended rules, as outlined in **Rule Update 2013-001**. Companies must comply with the amended rules by the earlier of: (1) their first annual meeting after January 15, 2014; or (2) October 31, 2014. 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.

Finally, NASDAQ reminds companies that some provisions of the amended rules were effective July 1, 2013. These provisions, which were summarized in Rule Update 2013-004, required companies to

have specific responsibilities and authority relating to compensation consultants, legal counsel and other advisers. These provisions are also unchanged.

Additional Resources:

For more detailed information, please visit the following links:

- **NASDAQ's Amendment Filed November 26, 2013**
- **NASDAQ Listing Rule 5605(d) and IM-5605-6**
- **Rule Update 2013-001**
- **Rule Update 2013-004**

Questions:

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

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