

SEC Approves NYSE and Nasdaq Rules on Independence of Compensation Committee Members and Advisers

Hinshaw Alert | 2 min read

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Timothy M. Sullivan and Michael D. Morehead authored a memo entitled “SEC Approves NYSE and Nasdaq Rules on Independence of Compensation Committee Members and Advisers.”

Brief Overview

To implement Section 10C of the Securities Exchange Act of 1934 (the Act), as added by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), the SEC adopted Rule 10C-1 which became effective on June 21, 2012.

The national securities exchanges have been directed to adopt listing standards which require that each member of the compensation committee must be a member of the board of directors and must be independent. In establishing these independence standards, the exchanges must consider relevant factors, including, but not limited to, the following factors:

- The Fees Factor: the source of compensation of the director, including any consulting, advisory or other compensatory fee paid by the issuer to the director
- The Affiliation Factor: whether the director is affiliated with the issuer, a subsidiary of the issuer or an affiliate of a subsidiary of the issuer.

Furthermore, compensation committees must be given the authority to retain or obtain the advice of a compensation adviser, and have direct responsibility for the appointment, compensation and oversight of the work of any compensation adviser they retain. Moreover, each issuer must provide appropriate funding for the payment of reasonable compensation, as determined by the committee, to any compensation adviser retained by the committee. The committee may select a compensation consultant, legal counsel or other adviser to the compensation committee only after taking into consideration six independence factors specified in Rule 10C-1, as well as any other factors identified by the exchange in its listing standards. The committee can select such an adviser even though the adviser may not satisfy these independence factors.

The exchanges had to submit any proposed changes to the compensation committee listing standards to the SEC for approval. On January 11, 2013, the SEC approved the proposals submitted by the NYSE and Nasdaq. The SEC has also approved revised compensation committee listing standards for other exchanges (e.g., BATS Exchange, Chicago Stock Exchange, NASDAQ OMX).

Read the full memo [here](#).

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