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NASDAQ Rule Changes Regarding Corporate Compensation Committees

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On November 26, 2013, NASDAQ amended its rules regarding compensation committee members' independence, specifically Listing Rule 5605(d) and IM-5605-6. This article summarizes the rule changes.

One of the primary purposes for this change is to place less restrictive requirements in regards to the receipt of compensatory fees from a listed company by its compensation committee members. Prior to this amendment, NASDAQ *prohibited* the receipt of any compensatory fees from a listed company by its compensation committee members. Now, however, compensation is merely a factor to be considered. In addition, NASDAQ has eliminated some exceptions to the definition of "compensatory fees." From this point forward, all fees received as a committee member are considered compensatory fees. These changes make the NASDAQ rule more in line with the NYSE rule of the same ilk. The exact language of the amended rule is below:

- In determining the independence of any director who will serve on the compensation committee of a board of directors, the board of directors must consider factors including, but not limited to:
 - The source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the Company to such director, and
 - Whether such director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company.

The rule will come into effect the earlier of a listed company's first annual meeting in 2014 or October 31, 2014.

In addition, NASDAQ has implemented a new rule that requires listed companies to certify, within 30 days of their Annual Meeting, that they have adopted a formal, written compensation committee charter that specifies certain compensation committee responsibilities and authority in accordance with NASDAQ rules. The necessary form to file a Compensation Committee Certification can be found at NASDAQ's listing website: www.listingcenter.nasdaqomx.com. Please contact us for more information on NASDAQ Listing Rules or to consult with one of our expert attorneys.

For more information or to discuss specific scenarios, please contact:

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