

SEC Issues Final Rules Regarding Compensation Committee and Adviser Independence

26 June 2012

Authors: John D. Martini, Robert K. Morris, Jenny C. Baker, Jeffrey G. Aromatorio, David N. Pardys, Craig P. Tanner, Kerry Halpern

On June 20, 2012, the Securities and Exchange Commission (“SEC”) issued final rules establishing minimum standards that an exchange-listed company will have to meet with regard to the independence of its compensation committee and other advisers assisting with executive compensation matters (the “Final Rules”).

The Final Rules, issued under Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”):

- adopt a new Rule 10C-1, which directs the national securities exchanges to establish listing standards requiring that compensation committee members also be members of the company’s board of directors, and regarding the independence of the compensation committee members and the retention of compensation advisers; and
- amend the proxy disclosure rules under Item 407 of Regulation S-K to enhance disclosure regarding compensation consultants and related conflicts of interest.

The new Rule 10C-1 will be effective 30 days after the new rules are published in the Federal Register, but will not have an immediate practical effect as the securities exchanges must then adopt the actual listing standards as directed by the new rule. The security exchanges have 90 days from the publication of the Final Rules in the Federal Register to propose new or amended listing standards that comply with Rule 10C-1, and one year from the publication of the Final Rules in the Federal Register to publish compliant final listing standards. Exchange-listed companies must comply with the change to Item 407 in their proxy statements for annual meetings (or special meetings held in lieu of an annual meeting) held on or after January 1, 2013 at which directors are elected.



These Final Rules differ from the rules previously proposed by the SEC in several ways, most notably in that the compensation committee must consider any business or personal relationships that a compensation adviser has with any executive officer of the company when evaluating that adviser's independence (in addition to other listed factors, and any other factors that are specified by the applicable securities exchange). Also, while the proposed rules only addressed compensation committee members, the Final Rules make it clear that the same independence standards apply with regard to other board members acting in a similar capacity as compensation committee members, regardless of whether a compensation committee has been established by the company's board of directors.

With regard to advisers, the Final Rules also make it clear that compensation committees are permitted to obtain advice from non-independent counsel, such as in-house counsel or outside counsel retained by management, or from a non-independent compensation consultant or other adviser, including those engaged by management. The amended proxy disclosure rules also do not require disclosure regarding compensation consultants who provide only non-customized benchmark data or are engaged solely in connection with broad-based plans.

A full discussion of the final rules and their implications will follow shortly in a Reed Smith Client Alert. In the meantime, if you have any questions regarding the Final Rules, or any other executive compensation-related questions, please contact one of the members of Reed Smith's Employee Benefits team listed below, or the Reed Smith attorney with whom you usually work.

About Reed Smith

Reed Smith is a global relationship law firm with more than 1,600 lawyers in 23 offices throughout the United States, Europe, Asia and the Middle East.

The information contained herein is intended to be a general guide only and not to be comprehensive, nor to provide legal advice. You should not rely on the information contained herein as if it were legal or other professional advice.

The business carried on from offices in the United States and Germany is carried on by Reed Smith LLP of Delaware, USA; from the other offices is carried on by Reed Smith LLP of England; but in Hong Kong, the business is carried on by Reed Smith Richards Butler. A list of all Partners and employed attorneys as well as their court admissions can be inspected at the website <http://www.reedsmith.com/>.

© Reed Smith LLP 2012. All rights reserved.