



## NASDAQ Announces Online Availability of Final Compensation Committee Certification Form

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The NASDAQ Stock Market (“NASDAQ”) recently announced the online publication of its final [Compensation Committee Certification form](#), which NASDAQ companies must complete in order to certify their compliance with, or exemption from, the newly amended compensation committee rules codified in NASDAQ Listing Rule 5605(d) (the “Rule”) and IM-5605-6.

Section 1 of the form requires certification of compliance with, or exemption from, the Rule’s requirement that each company adopt “a formal written compensation committee charter and that the compensation committee will review and reassess the adequacy of the formal written charter on an annual basis.”<sup>1</sup> Section 2 of the form, which pertains to compensation committee composition, requires each company to certify compliance with, or exemption from, the requirements that: (1) “it has and will continue to have . . . a compensation committee of at least two members”; (2) each committee member is an Independent Director, as defined in Rule 5605(a)(2); and (3) “the board of directors has considered, and will continue to 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.”<sup>2</sup>

Section 2 requires Smaller Reporting Companies to certify only that their compensation committees have at least two members and that each member is an Independent Director.<sup>3</sup> Section 2 further allows companies, including Smaller Reporting Companies, to rely on an exception provided in the Rule and certify that their compensation committee is comprised of at least three members, one of whom is not an Independent Director, where the board, “under exceptional and limited circumstances,” has determined that such individual’s membership on the committee is in the best interests of the company and its shareholders.<sup>4</sup> Finally, Section 2 permits companies that in the last year completed an initial public offering or spin-off, emerged from bankruptcy, transferred from another market, or ceased to be a Smaller Reporting Company or a Controlled Company to certify that they are “utilizing the phase-in provisions of Rule 5615(b) for the compensation committee composition requirement.”

Notably, Controlled Companies, limited partnerships, management investment companies, asset backed and other passive issuers, and cooperatives are exempt from all of the new

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<sup>1</sup> See Rule 5605(d)(1).

<sup>2</sup> See Rule 5605(d)(2).

<sup>3</sup> See Rule 5605(d)(5).

<sup>4</sup> See Rule 5605(d)(2)(B).

compensation committee requirements. Additionally, foreign private issuers can certify that they are following their home country practices in lieu of the requirements in Rule 5605(d) and that they have provided NASDAQ with a written statement from independent counsel in their home country, certifying that the company's practices are not prohibited by that country's laws.

Each NASDAQ company is required to complete and submit the Compensation Committee Certification form no later than 30 days after the company's first annual meeting occurring after January 15, 2014, or October 31, 2014 (whichever is earlier). Accordingly, the Compensation Committee Certification will be applicable to the upcoming proxy season.

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If you have any questions or would like additional information, please do not hesitate to contact [Yafit Cohn](mailto:Yafit.Cohn) at (212) 455-3815 or [yafit.cohn@stblaw.com](mailto:yafit.cohn@stblaw.com), or any other member of the Firm's Public Company Advisory Practice.

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