

Securities E-News



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SEC Proposes Rules Requiring Listing Standards For Compensation Committees And Compensation Consultants

On March 30, 2011, the United States Securities and Exchange Commission (SEC) voted unanimously to propose rules ([available here](#)) directing U.S. national securities exchanges to adopt certain listing standards related to the compensation committee of a company's board of directors as well as its compensation advisors. The SEC's proposal also would require new disclosures from companies concerning their use of compensation consultants. In particular, the proposed rules will require the "listing standards" to address the independence of the members on a compensation committee, the committee's authority to retain compensation advisors, and the committee's responsibility for the appointment, payment and work of any compensation advisor and that it must be appropriately funded by the listed company.

In developing a definition of independence, the exchanges would be required to consider such factors as the sources of compensation of a director, including any consulting, advisory or compensatory fee paid by the company to such member of the board of directors and whether a member of the board of directors of a company is affiliated with the company, a subsidiary of the company, or an affiliate of a subsidiary of the company.

The proposed rules would also require the exchanges' listing standards to provide that a compensation committee may select a compensation consultant, legal counsel or other advisor only after considering the following independence factors:

- whether the compensation consulting company employing the compensation advisor is providing any other services to the company;
- how much the compensation consulting company who employs the compensation advisor has received in fees from the company, as a percentage of that person's total revenue;
- what policies and procedures have been adopted by the compensation consulting company employing the compensation advisor to prevent conflicts of interest;
- whether the compensation advisor has any business or personal relationship with a member of the compensation committee; and
- whether the compensation advisor owns any stock of the company.

We understand that under the SEC proposals, Canadian issuers that are foreign private issuer would be exempted from the compensation committee independence requirements if they disclose in their annual report the reasons why that they do not have an independent compensation committee. The SEC's deadline for comments is April 29.

CANADIAN RULEMAKING

On November 19, 2010, the Canadian Securities Administrators (CSA) published for comment proposed amendments to [Form 51-102F6 *Statement of Executive Compensation*](#) designed to improve the disclosure investors receive regarding executive compensation (see our [December 2010 Securities Bulletin](#) on the proposals). The proposed changes clarify existing requirements and introduce new substantive requirements to enhance the quality of information disclosed by public companies about key risks, governance and compensation matters. Particularly, in matters of compensation governance, the proposed amendments make it clear that director independence should be assessed in light of the criteria used to determine director independence at the audit committee level.

Comments on the proposed amendments by the CSA were due February 17, 2011. Perhaps some of the rules proposed by the SEC will find their way in the anticipated Canadian amendments.

NEED ASSISTANCE?

Heenan Blaikie has significant experience in helping companies ensure that their executive compensation programs satisfy operational and disclosure requirements. If you have any questions on the subjects addressed in this Securities E-News or would like assistance in assessing their likely impact on your executive compensation plans and arrangements, please feel free to contact us.

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