

Nasdaq Compensation Committee Certification Form Now Available

The form for companies that are listed on The NASDAQ Stock Market (“Nasdaq”) to use to certify compliance with, or exemption from, the amended listing rules regarding compensation committees provided for in Nasdaq Listing Rule 5605(d) and IM-5605-6 (the “New Rules”) is now available on Nasdaq’s Listing Center website.¹ Listed companies are required to comply with all the New Rules by the earlier of their first annual meeting after January 15, 2014, or October 31, 2014 (the “Final Implementation Deadline”), and listed companies must certify compliance with the New Rules no later than 30 days after the applicable Final Implementation Deadline.²

Certain categories of issuers are exempt from compliance with the New Rules. These include asset-backed issuers and other passive issuers, cooperatives, limited partnerships, management investment companies and controlled companies. Foreign private issuers may elect to follow their home country practice in lieu of the New Rules, so long as certain disclosure requirements are met.³ Smaller reporting companies are exempt from some (but not all) of the New Rules,⁴ and companies listing in connection with their initial public offering are permitted to phase in compliance with the New Rules within one year of listing. Smaller reporting companies, controlled companies and foreign private issuers must, however, submit a new compliance certification form if their status changes.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; John Schuster at 212.701.3323 or jschuster@cahill.com; Glenn Waldrip at 212.701.3110 or gwaldrip@cahill.com; or Abigail Darwin at 212.701.3240 or adarwin@cahill.com.

¹ See <https://listingcenter.nasdaqomx.com/ViewPDF.aspx?CCCertForm.aspx?Preview=CCCERT&Print=N>.

² For further discussion about the content of the New Rules, see our firm memorandum, SEC Approves Changes to NYSE’s and Nasdaq’s Listing Standards Regarding Compensation Committees and Compensation Advisers, available at http://www.cahill.com/publications/firm-memoranda/1012977/_res/id=Attachments/index=0/CGR%20Memo%20-%20SEC%20Approves%20Changes%20to%20NYSE%27s%20and%20Nasdaq%27s%20Listing%20Standards%20Regarding%20Compensation%20Committees%20and%20Compensation%20Advisers.pdf, and our firm memorandum, Nasdaq Proposes to Amend its Listing Rules Regarding Independence of Compensation Committee Members, available at http://www.cahill.com/publications/firm-memoranda/1013016/_res/id=Attachments/index=0/CGR%20Memo%20-%20Nasdaq%20Proposes%20to%20Amend%20its%20Listing%20Rules%20Regarding%20Independence%20of%20Compensation%20Committee%20Members.pdf.

³ The disclosure requirements are provided in Listing Rule 5615(a)(3)(B).

⁴ See Listing Rule 5605(d)(5) for the New Rules to which smaller reporting companies are subject.