

May 20, 2013

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Via E-mail to rule-comments@sec.gov

Re: File No. SR-NASDAW-2013-032
Proposed Rule Change to Require Listed Companies to have an Internal Audit Function

Dear Ms. Murphy,

On March 4, 2013, the SEC published a request for comment regarding the NASDAQ Stock Market LLC's ("NASDAQ") proposed adoption of Rule 5465 that would require all listed companies to establish and maintain an internal audit function (the "proposed rule").

As a former internal auditor with more than six years experience in this capacity with several companies, I consider myself well-versed on internal controls and the internal audit function. As such, these comments are based on my experience in small, medium, and large sized companies.

Our primary objection to the proposed rule is that it does not include a market capitalization limit similar to the one contemplated by the SOX 404(c) exemption. The purpose of this exemption was to ease the financial burden of complying with the Sarbanes Oxley Act for smaller public companies. However, the proposed rule effectively eliminates any benefit from the 404(c) exemption and instead imposes additional fixed costs of compliance with a new requirement which is not proportional to any perceived benefit. More important, the proposed rule fails to take into account the limited role the internal audit function has in most smaller companies. The following points support this:

1. The design, implementation and testing of internal controls are all key functions of any internal audit department. For larger companies, this function is of particular importance given the many layers of management that larger companies often have compared to smaller ones. Similarly, larger companies' accounting systems are typically more complex than those in smaller companies. Typical internal controls, such as separation of duties, are also easier to implement at larger companies given their larger number of personnel. With internal controls being less complex at smaller companies, the need for an internal audit department is likewise diminished. There is therefore a direct link between an exemption for an internal audit function, and the SOX 404(c) exemption already in place.
2. Internal audit departments also help facilitate a more streamlined audit by the external auditor. However, to do this requires either the hiring of personnel who are only needed on a seasonal basis, which cannot be cost justified for most smaller companies, or the delegation of such work to an external party, thus necessitating the need for reliance on two separate outside parties, which is no more efficient than having the outside auditor simply conduct the entire audit on its own.
3. While internal audit departments also help facilitate compliance with a company's operational procedures, they typically don't have a material impact on the effectiveness of disclosure controls and procedures in smaller companies.

For the above reasons, we oppose the proposed rule as written and believe it should be amended to include an exemption, similar to SOX 404(c), for any company that is not a “large accelerated filer” or an “accelerated filer” as those terms are defined in Rule 12b-2 of the Commission.

Respectfully submitted,

/s/ Neil Lerner

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