

Text of the Proposed Rule Change¹

New language is underlined; deletions are in [brackets].

5605. Board of Directors and Committees

(a) – (c) No change.

(d) Compensation Committee Requirements

The provisions of this Rule 5605(d) and IM-5605-6 are operative only subject to the effective dates outlined in Rule 5605(d)(6). During the transition period until a Company is required to comply with a particular provision, the Company must continue to comply with the corresponding provision, if any, of Rule 5605A(d) and IM-5605A-6.

(1) No change.

(2) Compensation Committee Composition

(A) Each Company must have, and certify that it has and will continue to have, a compensation committee of at least two members[, each of whom must: (i)]. Each committee member must be an Independent Director as defined under Rule 5605(a)(2)[; and (ii) not accept directly or indirectly any consulting, advisory or other compensatory fee from the Company or any subsidiary thereof. Compensatory fees shall not include: (i) fees received as a member of the compensation committee, the board of directors or any other board committee; or (ii) the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the Company (provided that such compensation is not contingent in any way on continued service). In determining whether a director is eligible to serve on the compensation committee, a Company's board also must consider whether the director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company to determine whether such affiliation would impair the director's judgment as a member of the compensation committee]. In addition, in affirmatively determining the independence of any director who will serve on the compensation committee of a board of directors, the board of directors must consider all factors

¹ Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://nasdaq.cchwallstreet.com>.

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, including, but not limited to:

(i) the source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the Company to such director; and

(ii) whether such director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company.

(B) No change.

(3) – (6) No change.

IM-5605-6. Independent Director Oversight of Executive Compensation

Independent oversight of executive officer compensation helps assure that appropriate incentives are in place, consistent with the board's responsibility to act in the best interests of the corporation. Compensation committees are required to have a minimum of two members and be comprised only of Independent Directors as defined under Rule 5605(a)(2).

[In addition to satisfying the Independent Director requirements under Rule 5605(a)(2), compensation committee members must not accept any consulting, advisory or other compensatory fee from the Company, other than fees received for board or committee service or fixed amounts of compensation received under a retirement plan (including deferred compensation) for prior service with the Company (provided that such compensation is not contingent in any way on continued service). In addition, a Company's board must consider, in determining whether a director is eligible to serve on the compensation committee, whether the director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company to determine whether such affiliation would impair the director's judgment as a member of the compensation committee.] In addition, Rule 5605(d)(2)(A) includes an additional independence test for compensation committee members. When considering the sources of a director's compensation for this purpose, the board should consider whether the director receives compensation from any person or entity that would impair the director's ability to make independent judgments about the Company's executive compensation. Similarly, when considering any affiliate relationship a director has with the Company, a subsidiary of the Company, or an affiliate of a subsidiary of the Company, in determining independence for purposes of compensation committee service, the board should consider whether the affiliate relationship places the director under the direct or indirect control of the Company or its senior management, or creates a direct

relationship between the director and members of senior management, in each case of a nature that would impair the director's ability to make independent judgments about the Company's executive compensation. In that regard, while a board may conclude differently with respect to individual facts and circumstances, Nasdaq does not believe that ownership of Company stock by itself, or possession of a controlling interest through ownership of Company stock by itself, precludes a board finding that it is appropriate for a director to serve on the compensation committee. In fact, it may be appropriate for certain affiliates, such as representatives of significant stockholders, to serve on compensation committees since their interests are likely aligned with those of other stockholders in seeking an appropriate executive compensation program.

For purposes of the additional independence test for compensation committee members described in Rule 5605(d)(2)(A), any reference to the "Company" includes any parent or subsidiary of the Company. The term "parent or subsidiary" is intended to cover entities the Company controls and consolidates with the Company's financial statements as filed with the Commission (but not if the Company reflects such entity solely as an investment in its financial statements).

A Smaller Reporting Company must have a compensation committee with a minimum of two members[who are]. Each compensation committee member must be an Independent Director[s] as defined under Rule 5605(a)(2). In addition, each Smaller Reporting Company must have[and] a formal written compensation committee charter or board resolution that specifies the committee's responsibilities and authority set forth in Rule 5605(d)(1)(A)-(C). However, in recognition of the fact that Smaller Reporting Companies may have fewer resources than larger Companies, Smaller Reporting Companies are not required to adhere to the additional compensation committee eligibility requirements in Rule 5605(d)(2)(A), or to incorporate into their formal written compensation committee charter or board resolution the specific compensation committee responsibilities and authority set forth in Rule 5605(d)(3).

(e) No change.