

NYSE and NASDAQ Submit Compensation Committee Reform Proposals to SEC

On September 25, 2012, the New York Stock Exchange (“NYSE”) and Nasdaq filed proposals with the U.S. Securities and Exchange Commission (“SEC”) to modify listing standards to mandate the independence of compensation committee members and recommend independence of compensation advisers or consultants. These proposals were submitted in connection with SEC Rule 10C-1, which was finalized on June 20, 2012.

Rule 10C-1 exempts controlled companies, limited partnerships, open-ended management investment companies registered under the Investment Company Act of 1940, as amended, and certain other entities from these compensation independence requirements. In response thereto, the NYSE proposed amendments to Section 303A of the NYSE’s Listed Company Manual that substantively mimic Rule 10C-1, and Nasdaq proposed amendments to its Listing Rule 5605 advocating more structure regarding compensation committee requirements.

Proposed changes to the NYSE’s Listed Company Manual will become effective on July 1, 2013, but the compliance date shall be the earlier of either the NYSE’s first annual meeting after January 14, 2014, or October 31, 2014. In general, Nasdaq would require compliance with amended Listing Rule 5605 by the earlier of the second annual meeting held after the rule’s approval or December 31, 2012.

NYSE Rule:

SR-NYSE-2012-49; Filed: September 25, 2012. Proposal to amend Sections 303A.00, 303A.02(a) and 303A.05 of the Exchange’s Listed Company Manual (the “Manual”) to comply with the requirements of Securities and Exchange Commission (“Commission” or “SEC”) Rule 10C-1: [http://www.nyse.com/nyse/nyse/rule-filings/pdf;jsessionid=6A85396E4696FDB1BC73FE8148150D46?file_no=SR-NYSE-2012-49&seqnum=1](http://www.nyse.com/nyse/nyse/nyse/rule-filings/pdf;jsessionid=6A85396E4696FDB1BC73FE8148150D46?file_no=SR-NYSE-2012-49&seqnum=1)

NASDAQ Rule:

SR-NASDAQ-2012-109; A proposal to modify the listing rules for compensation committees: <http://nasdaq.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2012/SR-NASDAQ-2012-109.pdf>

SEC Commissioner Gallagher Questions FINRA’s SRO Aspirations

On October 4, 2012, Commissioner Daniel Gallagher of the U.S. Securities and Exchange Commission (“SEC”) addressed the Securities Industry and Financial Markets Association’s (“SIFMA”) 15th Annual Market Structure Conference. Commissioner Gallagher’s speech, entitled “Market 2012: Time for a Fresh Look at Equity Market Structure and Self-Regulation,” reflected on the changing regulatory environment impacting financial markets dating back to the Great Depression. Given the considerable market evolution since the SEC’s “Market 2000 Report” in 1994, Commissioner Gallagher called for fresh regulatory approaches given the complexities existing within today’s markets. “The Commission must resist the urge to regulate on the basis of incomplete data and analysis, including a less than up-to-date understanding of the efficacy of the Commission’s prior regulatory actions,” challenged the SEC’s newest commissioner. “Smart regulation involves taking the time to understand how things became the way they are, and, critically, better defining and articulating the goals of regulations. It entails reviewing the results, intended and otherwise, of recently promulgated regulations before rushing into a new round of regulations.”

Commissioner Gallagher further discussed the Financial Industry Regulatory Authority’s (“FINRA”) desire to assume the regulatory oversight responsibilities for investment advisers. “I believe it is time to undertake a comprehensive market and regulatory structure review, including a review of the self-regulation paradigm as a whole,” advised Commissioner Gallagher. “Is FINRA becoming a ‘deputy SEC’? With all of the issues facing the broker-dealer industry it was created to oversee, should FINRA be

HIGHLIGHTS

Exchanges seek to mandate independence of compensation committee members

Commissioner Gallagher reopens SRO debate at SIFMA conference

SEC Chairman, Commissioner support floating \$1 share price of money-market funds

SEC issues a report on brokers’ use of confidential information

Trade associations press for definition of FX forwards and swaps

seeking to branch out into entirely new fields of responsibility, such as regulating investment advisors?” Commissioner Gallagher’s comments, which he admits raise more difficult questions than easy answers, bring the self-regulatory organization issue back to the forefront and provide insight into the future of the debate moving forward.

Chairman Schapiro, Commissioner Gallagher Support Floating \$1 NAV for Money-Market Funds

Following public pressure from U.S. Department of Treasury Secretary Timothy Geithner, Chairman Mary Schapiro and Commissioner Gallagher, each of the U.S. Securities and Exchange Commission (“SEC”), announced their support for a proposal to float money-market funds’ \$1 share prices. Responding to these developments, the Investment Company Institute (the “ICI”) said that a floating net asset value for money-market funds is “an untenable option.” Echoing the ICI’s sentiments, David Hirschmann, President and Chief Executive of the Center for Capital Market Competitiveness at the U.S Chamber of Commerce, believes changing the share price would “destroy a product that is essential to the way companies manage their short-term liquidity.”

A spokesman for Chairman Schapiro stated she would back a proposal requiring money-market funds to float their share price as a stand-alone measure, but made no comment as to whether Chairman Schapiro would bring the matter to vote. Chairman Schapiro would need five votes for the money-market share price regulation. Commissioner Daniel Gallagher, backing a more “mixing and matching” solution, suggested including Schapiro’s floating-NAV proposal along with the ability to “gate” or block shareholder redemptions during times of industry stress.

Source:

<http://online.wsj.com/article/SB10000872396390444752504578024794183625674.html>

SEC Staff Issues Report on Safeguarding Confidential Information

On September 27, 2012, the Office of Compliance Inspections and Examinations (the “OCIE”), a division of the U.S. Securities and Exchange Commission (“SEC”), collectively with the Financial Industry Regulatory Authority and the Division of Market Regulation of the New York Stock Exchange, issued a staff report to address how broker-dealers safeguard material, non-public information from misuse and abuse, such as insider trading. From its study, OCIE identified various industry “best-practices” utilized by broker-dealers to identify and effectively manage potential conflicts. These practices, which often create information barriers to limit the flow of sensitive information, include:

- Categorizing the types of material, non-public information;
- Expanding the scope of review to cover trading of credit default swaps, equity or total return swaps, loans, unit investment trusts, exchange-traded funds, warrants and bond options;

- Increasing the electronic surveillance of employees with access to such confidential information; and
- Provisioning authorization to sensitive information through the use of an electronic key card and computer network access.

In light of the report, the SEC recommends that broker-dealers review their conflict of interest risk management programs and make necessary upgrades to their current controls and procedures.

Sources:

<http://www.sec.gov/news/press/2012/2012-200.htm>

Trade Associations Press Treasury and CFTC for Definition of FX Forwards and Swaps

On September 28, 2012, the Investment Company Institute (“ICI”), along with the Asset Management Group of the Securities Industry and Financial Markets Association, the Managed Funds Association, and the Investment Advisor Association (collectively, the “trade associations”), submitted a letter to the U.S. Department of Treasury requesting a final determination to exempt foreign exchange forwards and foreign exchange swaps (collectively, the “FX Products”) from the definition of “swap” under the Commodity Exchange Act (the “CEA”) prior to October 12, 2012.

In congruence, the trade associations also submitted a letter to the Commodity Futures Trading Commission (the “CFTC”) requesting that, if Treasury Secretary Geithner does not issue a determination on the proposal to exempt the FX products from the definition of “swap” under the CEA by October 5, 2012, the CFTC promptly issue an order or other determination, effective October 12, 2012, providing that it will not treat FX Products as “swaps” under the CEA until the effective date of the Treasury’s final determination with regard to FX products.

Sources:

http://www.ici.org/my_ici/memorandum/memo26540

<http://www.ici.org/pdf/26540.pdf>

For more information, please speak to your relationship manager or visit jpmorgan.com/wss.

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