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CLIENT MEMORANDUM

NYSE and NASDAQ Listing Standards on Compensation Committees and Advisors Set to Go Into Effect on July 1, 2013

May 15, 2013

Certain key elements of the New York Stock Exchange (the “**NYSE**”) and the Nasdaq Stock Market (“**Nasdaq**”) listing standards relating to the independence of compensation committees and their advisors¹ are scheduled to become effective on July 1, 2013 (subject to certain limited exceptions and phase-in rules for foreign private issuers, smaller reporting companies, newly public entities, and certain entities that are currently exempt from NYSE and Nasdaq compensation-related listing standards).² This memorandum highlights the key aspects of these listing standards, and certain other listing standards that will become effective on a listed company’s first annual meeting after January 15, 2014, or, if earlier, October 31, 2014 (the earlier date being referred to as the “**Next Annual Meeting Date**”).

COMPENSATION COMMITTEE ADVISOR REQUIREMENTS

From and after July 1, 2013, the NYSE and Nasdaq listing standards will require that compensation committees have the authority to retain or obtain the advice of compensation consultants, legal counsel, or other advisors (each, a “**Compensation Advisor**”) and that they be responsible for the appointment, compensation, and oversight of the work of the Compensation Advisors so retained. In addition, listed companies will be required to provide appropriate funding for reasonable compensation to each Compensation Advisor retained by the compensation committee.

¹ The NYSE and Nasdaq were required to adopt the new listing standards under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which required the Securities & Exchange Commission to adopt rules directing national securities exchanges and national securities associations to prohibit the listing of any equity security of an issuer that is not in compliance with certain compensation committee and compensation advisor requirements.

² Nasdaq-listed companies will also be required to certify compliance with the listing standards related to compensation committees (as described in more detail in this memo) within 30 days after the applicable implementation deadline.

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From and after July 1, 2013, the NYSE and Nasdaq listing standards will also require compensation committees to assess the independence of Compensation Advisors (other than in-house legal counsel and certain advisors for broad-based plans) by considering the following six factors (the “**Independence Factors**”):

1. the provision of other services to the listed company by the Compensation Advisor’s employer;
2. the amount of fees received from the listed company by the Compensation Advisor’s employer, as a percentage of the total revenue of the employer;
3. the policies and procedures of the Compensation Advisor’s employer that are designed to prevent conflicts of interest;
4. any business or personal relationship of the Compensation Advisor with a member of the compensation committee;
5. any stock of the listed company owned by the Compensation Advisor; and
6. any business or personal relationship of the Compensation Advisor or the Compensation Advisor’s employer with an executive officer of the listed company.

NYSE’s listing standards also require that compensation committees consider all other factors relevant to the Compensation Advisor’s independence from management.

Although compensation committees are required to consider these factors in selecting a Compensation Advisor, there is no requirement that the Compensation Advisor be independent. However, since compensation committees are required to consider these factors before receiving any advice from Compensation Advisors after July 1, 2013, compensation committees will need to solicit and gather all relevant information from their current and potential Compensation Advisors in order to satisfy this requirement.

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COMPENSATION COMMITTEE INDEPENDENCE REQUIREMENTS

NYSE

From and after the Next Annual Meeting Date, each NYSE-listed company will be required to consider all factors "specifically relevant" to determining whether a director of the NYSE-listed company has a relationship to the NYSE-listed company that is material to that director's ability to be independent from management in connection with his or her duties as a compensation committee member, including the following two specified factors:

1. the source of compensation of such director, including any consulting, advisory, or other compensatory fee paid by the NYSE-listed company to such director; and
2. whether such director is affiliated with the NYSE-listed company, its subsidiaries, or an affiliate of any of its subsidiaries.

Nasdaq

From and after the Next Annual Meeting Date, each Nasdaq-listed company will be required to consider whether a director is affiliated with the Nasdaq-listed company, its subsidiaries, or an affiliate of any of its subsidiaries, in assessing the director's independence for service on its compensation committee. Additionally, from and after the Next Annual Meeting Date, the Nasdaq listing standards will prohibit a compensation committee member from accepting, directly or indirectly, any consulting, advisory, or other compensatory fee from the Nasdaq-listed company or any subsidiary of the company (with the exception of board and committee fees and amounts received under a retirement plan for prior service with the Nasdaq-listed company where such amounts are not contingent upon continued service).

COMPENSATION COMMITTEE STRUCTURE AND CHARTER REQUIREMENTS

NYSE

From and after July 1, 2013, the compensation committee charter for all NYSE-listed companies will need to specify the rights and responsibilities of the compensation committee regarding its authority to retain Compensation Advisors and the requirement that the compensation committee consider the Independence Factors before selecting a Compensation Advisor.

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Nasdaq

From and after the Next Annual Meeting Date, Nasdaq-listed companies will be required to establish a compensation committee consisting of at least two independent directors satisfying the independence requirements discussed above. Additionally, each Nasdaq-listed company will be required to have a written formal compensation committee charter, which must specify:

1. the scope of the compensation committee's responsibilities and how it carries out those responsibilities;
2. that the compensation committee is responsible for determining, or recommending to the board of directors, the compensation of the listed company's chief executive officer and all other executive officers;
3. that the listed company's chief executive officer may not be present during voting or deliberations regarding his or her compensation; and
4. the rights and responsibilities of the compensation committee regarding the authority to retain Compensation Advisors and to provide funding for such Compensation Advisors and the requirement that the compensation committee consider the Independence Factors before selecting a Compensation Advisor.

If you have any questions concerning the foregoing or would like additional information, please contact Jordan A. Messinger (212-728-8799, jmessinger@willkie.com), Ian L. Levin (212-728-8212, ilevin@willkie.com), Michael A. Katz (212-728-8204, mkatz@willkie.com), Andrew E. Shapiro (212-728-8913, ashapiro@willkie.com), or the Willkie attorney with whom you regularly work.

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