NYSE and NASDAQ Amend Bright-Line Director Independence Tests

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The New York Stock Exchange ("NYSE") has modified its listed company rules to narrow the circumstances under which a director will be deemed affiliated with a company's auditor and therefore not independent. Previously, a director with an immediate family member who was a current employee (not a partner) of the company's internal or external auditor was not independent under the NYSE rules if the family member participated in the audit firm's audit, assurance or tax compliance (but not tax planning) practice. Now, more in line with the comparable Nasdaq test, the director is not independent under the NYSE rules only if the family member personally works on the company's audit.

In addition, both the NYSE and Nasdaq have increased the dollar threshold for receipt of compensation above which a director is precluded from being independent under the bright-line tests in their respective listed company rules. The dollar threshold has changed from $100,000 to $120,000, to bring it in line with the Securities and Exchange Commission's threshold for disclosure of related person transactions.

The NYSE rule changes apply beginning September 11, 2008. The Nasdaq rule change is in effect as of August 8, 2008.

Authors

Meredith B. Cross

PARTNER

meredith.cross@wilmerhale.com

+1 212 295 6644

Hal J. Leibowitz

PARTNER

Co-Chair, Mergers and Acquisitions Practice

hal.leibowitz@wilmerhale.com

+1 617 526 6461

Knute J. Salhus

RETIRED PARTNER

knute.salhus@wilmerhale.com

+1 212 230 8800

Jonathan Wolfman

PARTNER

Co-Chair, Corporate Governance and Disclosure Group

jonathan.wolfman@wilmerhale.com

+1 617 526 6833