

“Housekeeping” Updates for Public Companies

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NASDAQ is requiring that listed companies submit a Compensation Committee Certification to certify compliance with the amended compensation committee requirements in NASDAQ Listing Rule 5605(d) and IM-5605-6. The certification must be submitted to NASDAQ no later than 30 days after a listed company's first annual shareholder meeting occurring after January 15, 2014, or October 31, 2014, whichever is earlier. Listed companies must login to NASDAQ's Listing Center to complete the certification online. A preview version of the form can be viewed at: <https://listingcenter.nasdaqomx.com/ViewPDF.aspx?CCCertForm.aspx?Preview=CCCERT&Print=N>.

The New York Stock Exchange has updated its Annual Written Affirmation form to reflect its new compensation committee independence requirements. Section 303A of the NYSE Listed Company manual requires domestic companies to submit the affirmation annually within 30 days of its annual shareholder meeting. The form is available at: https://usequities.nyx.com/sites/usequities.nyx.com/files/final_domestic_company_annual_written_affirmation_1_16_14_0.pdf

Form SD and Conflict Minerals Reports: Deadline for First Reports Fast Approaching

It's been almost two years since the Securities and Exchange Commission adopted the Conflict Minerals Rule, Rule 13p-1 of the Securities Exchange Act of 1934, as amended, to require companies to publicly disclose their use of conflict minerals (including tantalum, tin, gold, or tungsten) that originated in the Democratic Republic of the Congo or an adjoining country (Covered Countries). Now the deadline to file the first reports is fast approaching: **June 2, 2014.**

As companies focus on filing their first reports for 2013, it is important to remember that the Conflict Minerals Rule requires reporting on a calendar year basis, meaning the 2014 compliance year has started. Accordingly, we encourage public companies not to lose focus on 2014 and instead continue look for ways to improve the efficiency of their process and the effectiveness of their compliance programs. Though many companies should be able to make use of the temporary status “DRC conflict undeterminable” for the reports they file in 2014 and 2015 (and smaller reporting companies will have two more years to benefit from this status) and therefore not need to obtain an independent private sector audit (IPSA) for those reports, now is the time to start preparing for expiration of this status and potential future IPSAs. The American Institute of Certified Public Accountants (AICPA) has published guidance for certified public accountants performing IPSAs (available on its

website:<http://www.aicpa.org/interestareas/frc/pages/aicpaconflictmineralsresources.aspx>) and the Auditing Roundtable has also provided guidance, which it indicates was developed particularly for those conducting IPSA audits in the environmental, health, safety, sustainability and social responsibility auditing areas and is meant to be consistent with the AICPA guidance (available on its website: <http://www.auditing-roundtable.org/conflict-mineral-guidance>).

For more information about the specific requirements of the Conflict Minerals Rule and the disclosure requirements for Form SD and, if applicable, the Conflict Minerals Report exhibit to Form SD, please review our previous alerts on this topic. We previously discussed the adoption of the Conflict Minerals Rule in a September 2012 Client Alert (available

at:

<http://www.drinkerbiddle.com/resources/publications/2012/SEC-Adopts-Final-Conflict-Mineral-Rules>) and FAQs released by the Staff of the Commission's Division of Corporation Finance in a June 2013 Securities Update (available

at: <http://www.drinkerbiddle.com/resources/publications/2013/Securities-Update-June-2013>).

New COSO Framework

In May 2013, the Sponsoring Organizations of the Treadway Commission (COSO) released an updated version of the Internal Control-Integrated Framework and announced that it will consider the older framework from 1992 superseded as of December 15, 2014. The new framework is intended to assist companies in the design and implementation of controls, broaden the application of internal control, and aid assessment of effectiveness of controls. Members of the Staff of the Securities and Exchange Commission's Division of Corporation Finance have publicly stated that they will monitor the transition to use of the new model and also indicated that companies using the 1992 framework after December 15, 2014 may receive Staff comments inquiring whether continued use of the 1992 framework satisfies the requirements to use a suitable, recognized framework to assess the effectiveness of the company's internal control over financial reporting (ICFR).

More generally, the Commission and the Public Company Accounting Oversight Board have identified management's assessments of ICFR and audits of ICFR as priorities in 2014. Accordingly, public companies, and their boards of directors and audit committees, should be focused on the review of the design of the internal controls systems and transitioning to the new COSO framework during 2014. Further, companies are reminded that they are required to disclose any material changes in ICFR in each quarterly and annual report.

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