

- (1) to a compensation consultant; and
- (2) to independent legal counsel or any other adviser to the compensation committee.

(f) Commission rules

(1) In general

Not later than 360 days after July 21, 2010, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of this section.

(2) Opportunity to cure defects

The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have a reasonable opportunity to cure any defects that would be the basis for the prohibition under paragraph (1), before the imposition of such prohibition.

(3) Exemption authority

(A) In general

The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securities association to exempt a category of issuers from the requirements under this section, as the national securities exchange or the national securities association determines is appropriate.

(B) Considerations

In determining appropriate exemptions under subparagraph (A), the national securities exchange or the national securities association shall take into account the potential impact of the requirements of this section on smaller reporting issuers.

(g) Controlled company exemption

(1) In general

This section shall not apply to any controlled company.

(2) Definition

For purposes of this section, the term “controlled company” means an issuer—

- (A) that is listed on a national securities exchange or by a national securities association; and
- (B) that holds an election for the board of directors of the issuer in which more than 50 percent of the voting power is held by an individual, a group, or another issuer.

(June 6, 1934, ch. 404, title I, §10C, as added Pub. L. 111-203, title IX, §952(a), July 21, 2010, 124 Stat. 1900.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(1), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as a note under section 5301 of Title 12, Banks and Banking.

§ 78j-4. Recovery of erroneously awarded compensation policy

(a) Listing standards

The Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that does not comply with the requirements of this section.

(b) Recovery of funds

The rules of the Commission under subsection (a) shall require each issuer to develop and implement a policy providing—

- (1) for disclosure of the policy of the issuer on incentive-based compensation that is based on financial information required to be reported under the securities laws; and
- (2) that, in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws, the issuer will recover from any current or former executive officer of the issuer who received incentive-based compensation (including stock options awarded as compensation) during the 3-year period preceding the date on which the issuer is required to prepare an accounting restatement, based on the erroneous data, in¹ excess of what would have been paid to the executive officer under the accounting restatement.

(June 6, 1934, ch. 404, title I, §10D, as added Pub. L. 111-203, title IX, §954, July 21, 2010, 124 Stat. 1904.)

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as a note under section 5301 of Title 12, Banks and Banking.

§ 78k. Trading by members of exchanges, brokers, and dealers

(a) Trading for own account or account of associated person; exceptions

(1) It shall be unlawful for any member of a national securities exchange to effect any transaction on such exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion: *Provided, however*, That this paragraph shall not make unlawful—

- (A) any transaction by a dealer acting in the capacity of market maker;
- (B) any transaction for the account of an odd-lot dealer in a security in which he is so registered;

(C) any stabilizing transaction effected in compliance with rules under section 78j(b) of this title to facilitate a distribution of a security in which the member effecting such transaction is participating;

(D) any bona fide arbitrage transaction, any bona fide hedge transaction involving a long or short position in an equity security and a long or short position in a security entitling the holder to acquire or sell such equity secu-

¹ So in original. Probably should be “compensation in”.