Pinnacle

November 5, 2012
Via Website Submission

Subject: File # SR-NASDAQ-2012-109

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Ms. Murphy,

Thank you for the opportunity to comment on Nasdaq's recent proposed rule change (the "Proposed Rule") regarding the independence of compensation committee members. Pinnacle Financial Partners, Inc. (Nasdaq/NGS: PNFP) is a $5 billion one-bank holding company headquartered in Nashville, Tennessee. Our business mix, culture and strategies are such that we consider ourselves a community bank.

Our directorate is composed of various business and other civic leaders from our local markets. Most of our directorate also serves on various civic boards, with only a few that serves on other public company boards. Like most small cap public companies, we have three committees that require independent director status; audit, compensation and nominating. We believe we meet all the current Nasdaq requirements for board and committee independence.

As a community bank, we have ongoing business relationships with thousands of local businesses and their owner/managers, including several board members. Attorneys and law firms represent a significant component of our business as both customers and vendors, particularly with respect to facilitating the closing of commercial loans or securing title work for commercial loans.

We believe the Proposed Rule's independence standard prohibiting a compensation committee member from directly or indirectly accepting any "consulting, advisory or other compensatory fee" is unnecessarily prescriptive and effectively precludes certain professionals, particularly attorneys, from compensation committee service. Such professionals are already precluded from audit committee membership by virtue of Exchange Act Rule 10A-3, which follows the specific statutory mandate of the Sarbanes-Oxley Act. Despite the fact the Congress specifically did not impose a corresponding mandate in the Dodd-Frank Act, and the Commission specifically determined not to impose such a requirement in Rule 10C-1, but rather to require that the exchange consider such inclusion, Nasdaq determined to adopt a flat prohibition on compensatory fees. Nasdaq describes its "consideration" as follows:

> *After reviewing its current listing rules, Nasdaq concluded that there is no compelling justification to have different independence standards for audit and compensation committee members with respect to the acceptance of compensatory fees from a Company. Accordingly, Nasdaq proposed to adopt the same standard for compensation*

150 3rd Avenue South
Suite 900
Nashville, TN 37201
www.pnfp.com

committee members that applies to audit committee members under Rule 10A-3 under the Exchange Act.

We question whether this "consideration," consisting of a totally conclusory statement without any discussion of the potential benefits or harms from adopting the total prohibition of any compensatory fees, satisfies either the intent of Rule 10C-1 or the Dodd-Frank Act. The proposed rule ignores the Commission's own recognition in adopting Rule 10C-1 that Congress in the Dodd-Frank Act rejected the prohibitory approach of Sarbanes-Oxley on this issue. There is no discussion of the harm caused by allowing a compensation committee member to receive a level of compensatory fees from a company below the threshold set forth for the general definition of Independent Director, or why being paid a de minimis fee for consultation or advice should disqualify an otherwise qualified director from service on the compensation committee.

For instance, a knowledgeable employment attorney whose firm only provides a limited amount of real estate closing or non-employment litigation services to a Company is disqualified because he would be deemed to have indirectly received a compensatory fee, even though his professional expertise might be relevant in connection with the compensation committee's work and neither he nor his firm provided employment or compensation advice to the Company.

Particularly problematic is the use of the word "any" before "consulting, advisory or other compensatory fee." Should a director be disqualified from service because of the receipt by his firm of a compensatory fees of a few hundred or few thousand dollars? There is no consideration of the possibility of limiting the prohibition to a de minimus amount between the $200,000-5% of consolidated gross revenues (in the case of an individual) or $120,000 (in the case of an individual) and $1.00. There is no consideration of the fact most Nasdaq companies have three committees (audit, compensation and nominating/governance) of independent directors, and that by imposing the "no compensatory fee" requirement on two of the three committees, the requirement is imposed on a very high percentage of the independent directors, notwithstanding the general independence standards allow some compensatory payments. We note finally that the New York Stock Exchange did not impose a flat prohibition on receipt of any consulting, advisory or other compensatory fee in their corresponding proposed rule, and instead generally required that the board consider all factors relevant to a director's ability to be independent from management in connection with the duties of a compensation committee member, including the two factors explicitly enumerated in Rule 10C-1(b)(ii).

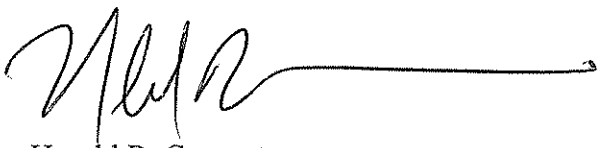
We also note that Nasdaq did not solicit public comments on its proposed rule change. We suggest that the Commission reject the Nasdaq rule and require that Nasdaq submit its rule for public comment and input from issuers. We believe that if after consideration of comments Nasdaq determines that a specific prohibition on consulting, advisory or other compensatory fee is required, that the prohibition not be absolute, but that some level below a de minimus amount be permitted, and that fees for services that have no relationship to the work of the compensation committee be excluded from that determination.

We share a common goal of recruiting and maintaining the best directorate to represent our shareholders. We believe independence is a critical element to the formation of a sound and effective board for a public company. We also understand that when trying to improve

regulation it is difficult to consider all exceptions or issues without diluting the intent of the regulation. However, there are approximately 400-500 small cap bank public companies, substantially all of whom are Nasdaq listed companies that, we believe, need the flexibility to recruit qualified attorneys to their directorate and allow them participate fully in the board process.

Thank you for allowing me the opportunity to comment on the Proposed Rule.

Very truly yours,



Harold R. Carpenter
Chief Financial Officer
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