

November 14, 2012

Via E-mail to rule-comments@sec.gov

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

**Re: File No. SR-NASDAQ-2012-109
Release No. 34-68013
Notice of Filing of Proposed Rule Change to Modify the Listing Rules for
Compensation Committees To Comply with Rule 10C-1 under the Exchange
Act and Make Other Related Changes**

Ladies and Gentlemen:

Wilson Sonsini Goodrich & Rosati, P.C. (“WSGR”) appreciates the opportunity to submit this letter in response to the solicitation of comments by the Securities and Exchange Commission (“SEC”) with respect to the above-referenced release.

We are legal counsel to numerous technology, life sciences, and other growth enterprises worldwide, including companies at every stage of development, from entrepreneurial start-ups to multibillion-dollar global corporations. Among our clients are over 300 public companies, to whom we provide advice on a wide range of areas, including antitrust, corporate governance, intellectual property, securities litigation, as well as executive compensation benefits. In particular, our attorneys routinely advise corporate boards and board committees on a variety of legal matters regarding executive compensation. This letter, however, is submitted on our own behalf and not on behalf of any particular client.

Compensation Adviser Independence

The NASDAQ Stock Market (“NASDAQ”) has proposed to amend Rule 5605(d) of the NASDAQ Stock Market Rules to provide, among other things, that a compensation committee must have the specific compensation responsibilities and authority necessary to comply with Rule 10C-1(b)(2), (3) and (4)(i)-(vi) under the Securities Exchange Act of 1934, as amended, relating to the responsibility to consider certain independence factors before selecting

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independent legal counsel, other than in-house legal counsel (the "Proposed Rule"). This letter provides WSGR's comments on the Proposed Rule.

Proposed rule 5605(d)(3) states (emphasis added):

The compensation committee must have the specific compensation committee responsibilities and authority necessary to comply with Rule 10C-1(b)(2), (3) and (4)(i)-(vi) under the Act relating to the: (i) authority to retain compensation consultants, independent legal counsel and other compensation advisers; (ii) authority to fund such advisers; and (iii) responsibility to consider certain independence factors before selecting such advisers, other than in-house legal counsel.

As it relates to outside legal counsel, proposed Rule 5605(d)(3) could be read to require a compensation committee of a NASDAQ-listed company to consider the independence factors set forth in Rule 10C-1(b)(4)(i)-(vi) only when selecting independent counsel, rather than any outside legal counsel that might provide legal advice to a compensation committee. We believe that the Proposed Rule, read this way, strikes an appropriate balance between maintaining the independence of advisers, including independent counsel that a compensation committee engages, while avoiding the unnecessary bureaucracy and waste of resources that would result from requiring such an independent analysis of all outside legal counsel who provide services to the compensation committee.

In this regard, we believe that proposed Rule 5605(d)(3) would benefit from an explicit statement, either in the Rule itself or in IM 5605-6, that a compensation committee is not required to consider the independence factors set forth in Rule 10C-1(b)(4)(i)-(vi) in connection with legal advice provided by any legal counsel other than in circumstances where the compensation committee has determined it is advisable to retain independent legal counsel, such as in the case of an investigation or litigation. Otherwise, the Proposed Rule may cause an unnecessary expenditure of resources by companies that feel compelled to conduct an independent analysis of all counsel providing advice to the Committee.

For your information, we are including as Appendix A to this letter a copy of our letter to the SEC regarding the related rule proposed by the New York Stock Exchange.

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Thank you for considering our view on this subject. We would be pleased to discuss our comments and our experience with you, and answer any questions you may have. Please do not hesitate to contact Steven E. Bochner, Richard Cameron Blake or John E. Aguirre at (650) 493-9300.

Sincerely,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

Wilson Sonsini Goodrich & Rosati, P.C.

APPENDIX A

November 14, 2012

Via E-mail to rule-comments@sec.gov

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

**Re: File No. SR-NYSE-2012-49
Release No. 34-68011
Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1,
Amending Sections 303A.00, 303A.02(a) and 303A.05 of the Exchange's
Listed Company Manual to Comply with the Requirements of Securities and
Exchange Commission Rule 10C-1**

Ladies and Gentlemen:

Wilson Sonsini Goodrich & Rosati, P.C. ("WSGR") appreciates the opportunity to submit this letter in response to the solicitation of comments by the Securities and Exchange Commission ("SEC") with respect to the above-referenced release.

We are legal counsel to numerous technology, life sciences, and other growth enterprises worldwide, including companies at every stage of development, from entrepreneurial start-ups to multibillion-dollar global corporations. Among our clients are over 300 public companies, to whom we provide advice on a wide range of areas, including antitrust, corporate governance, intellectual property, securities litigation, as well as executive compensation benefits. In particular, our attorneys routinely advise corporate boards and board committees on a variety of legal matters regarding executive compensation. This letter, however, is submitted on our own behalf and not on behalf of any particular client.

Compensation Adviser Independence

The New York Stock Exchange ("NYSE") has proposed to amend Section 303A.05 of the NYSE Listed Company Manual to, among other things, add a new subsection (c), which provides that a compensation committee may, in its sole discretion, retain or obtain the advice of a compensation consultant, independent legal counsel or other adviser. Subsection (c)(iv) also provides that the compensation committee may select a compensation consultant, legal counsel

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or other adviser to the compensation committee only after taking into consideration, all factors relevant to that person's independence from management, including certain enumerated factors (the "Proposed Rule"). The commentary to the Proposed Rule further indicates:

The Compensation Committee is required to conduct the independence assessment outlined in Section 303A.05(c)(iv) with respect to any compensation consultant, legal counsel or other adviser that provides advice to the Compensation Committee, other than in house legal counsel.

We believe the Proposed Rule is overly broad and should be narrowed to avoid unintended consequences.

We do not believe that it is necessary or a good use of resources for compensation committees to review independence factors for each outside attorney providing advice to the company or the compensation committee. Most of the advice that outside counsel, such as WSGR, provide to compensation committees in their role as regular outside counsel relates to regulatory compliance, such as SEC filing requirements or rules regarding the permissibility and efficacy under the Internal Revenue Code of various compensation plan designs. This is a different type of advice than that provided by a compensation consultant who advises compensation committees on how much a company should pay an executive, as such issues do not involve purely an application of rules to fact-based situations. Moreover, attorneys, even those who may not be considered "independent" under the Proposed Rule, are subject to ethical codes of conduct and have a fiduciary duty to the client. Our concern is that by requiring an independence assessment "with respect to any . . . legal counsel . . . that provides advice to the Compensation Committee," the Proposed Rule may inadvertently lead companies to incur unnecessary expense and spend unnecessary resources in hiring and reviewing for independence another set of outside counsel when its regular outside counsel, which provides other services to the company and generally has historical knowledge and relationships with the company and its board of directors, can provide the same advice.

We note that there is no other SEC or self regulatory organization rule that requires a board of directors or board committee to assess the independence of its regular legal counsel. The Proposed Rule would create a situation where the compensation committee would be required to assess the independence of any legal counsel giving it advice while the full board of directors and audit, nominating and governance committees would not be burdened with a similar requirement. We do not believe this unequal treatment was intended by Rule 10C-1 or is advisable to require of corporate boards and board committees.

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There may be times, however, when a compensation committee will want to engage independent counsel, such as in connection with government investigations or litigation. In these circumstances, we believe it would be appropriate for the compensation committee to assess the independence of such counsel. This would be appropriate in any instance where any committee of the board of directors, or even the full board of directors, desires to engage independent counsel. But we believe this should be something for the board of directors or the relevant committee to consider, rather than a listing standard requirement that singles out the compensation committee over any other equally important committee or the full board.

In contrast to the Proposed Rule, the NASDAQ Stock Market ("NASDAQ") has, we believe, proposed a more balanced rule than the Proposed Rule in that the NASDAQ rule can be read to require compensation committees to consider certain independence factors before selecting independent legal counsel. However, the NASDAQ rule can be read to require this assessment to be conducted only with respect to independent legal counsel, not every attorney who provides advice to the compensation committee. We believe that the NASDAQ rule strikes a better balance – if a compensation committee has determined to engage independent counsel, it should review and consider the independence factors with respect to such counsel, but it should not be required to perform the same assessment with all outside attorneys who provide advice to the committee. Furthermore, we believe that a consistent requirement among the two largest exchanges would result in better corporate governance across listed companies.

For these reasons, we believe that the Proposed Rule should be revised to require an independence assessment for outside legal counsel only when a compensation committee has affirmatively determined to engage independent legal counsel, and not for any outside attorneys who provide advice to the committee.

Thank you for considering our view on this subject. We would be pleased to discuss our comments and our experience with you, and answer any questions you may have. Please do not hesitate to contact Larry W. Sonsini, Richard Cameron Blake or John E. Aguirre at (650) 493-9300.

Sincerely,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

Wilson Sonsini Goodrich & Rosati, P.C.