

## Should Outside Advisors Attend Executive Sessions of the Compensation Committee?

**B**OTH NASDAQ AND NYSE RULES REQUIRE BOARDS TO REGULARLY SCHEDULE EXECUTIVE SESSIONS. Nasdaq requires that the executive sessions consist of “independent directors” only, while the NYSE rules require separate meetings of all outside directors, whether or not they are independent.

Many companies extend this practice to Board committees, including the Compensation Committee. Giving the company’s outside directors an opportunity to candidly review and discuss potentially sensitive matters such as CEO pay and performance and other elements of executive pay without management in attendance can lead to effective and thoughtful deliberation and oversight.

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It is not uncommon for Compensation Committees to include an executive session at the end of every Compensation Committee meeting to review matters presented and discussed at the meeting. As a general rule, Compensation Committees should include its outside advisors in these executive sessions.

With outside advisors in attendance, Compensation Committees can pursue more thoughtful and informed deliberations on executive pay matters. Moreover, the absence of management attendees will likely result in the advisor offering a more candid and open assessment of the company’s executive pay program and management’s executive pay recommendations. Finally, by engaging the expertise and experience of its outside advisors, the Compensation Committee strengthens the defensibility of its executive pay decisions, a lesson learned from the Disney and Cendant complaints.

While there may be situations where the outside advisor’s attendance is not appropriate, such as a sensitive discussion about succession planning or a review of the advisor’s performance, this should be the exception rather than the rule given the sensitivity, complexity and potential risk associated with executive pay matters. ♦

*Compensia is an executive compensation consulting firm with more than 50 years of collective experience advising knowledge-based enterprises. We offer unparalleled expertise in total rewards strategy, executive pay, equity compensation and regulatory compliance.*

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# THOUGHTFUL TIPS

Outside Advisors Attending Executive Sessions

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