



Securities Law ADVISORY ■

JANUARY 23, 2013

SEC Approves NYSE and Nasdaq Listing Standards Relating to Independence of Compensation Committees and Their Advisers

On January 11, 2013, the Securities and Exchange Commission (SEC) approved¹ the amended listing standard of the New York Stock Exchange (NYSE) and The NASDAQ Stock Market (Nasdaq) (collectively the “Exchanges”) pertaining to compensation committee independence and compensation advisers. The Exchanges proposed the listing standards in accordance with Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) and the requirements of Rule 10C-1 of the Securities Exchange Act of 1934 (“Exchange Act”).² Prior to the SEC’s final approval, the Exchanges filed amendments to their proposed listing standards. This advisory summarizes the respective amendments and the final listing standards approved by the SEC.

Key Points

The NYSE’s and Nasdaq’s final listing standards provide that compensation committees (1) may, in their sole discretion, retain or obtain the advice of compensation advisers, (2) are directly responsible for such advisers’ appointment, oversight and compensation and (3) must be provided with appropriate funding from the companies for reasonable compensation for such advisers. These requirements must be complied with by July 1, 2013.

The final listing standards, as amended, require compensation committees to consider six independence factors before selecting or receiving advice from a compensation adviser. However, the final listing standards emphasize that nothing in the rules requires a compensation adviser to be independent, only that the compensation committee consider the six factors before selecting or receiving advice from such adviser. These requirements must be complied with by July 1, 2013.

¹ The SEC’s order approving the final NYSE listing standards amendment can be found here: <http://www.sec.gov/rules/sro/nyse/2013/34-68639.pdf>. The SEC’s order approving the final NASDAQ listing standards amendment can be found here: <http://www.sec.gov/rules/sro/nasdaq/2013/34-68640.pdf>.

² For more information relating to the SEC’s implementing final Exchange Act Rule 10C-1 pursuant to Section 952 of the Dodd-Frank Act, please see our June 20, 2012, advisory: [*SEC Adopts Final Rules Implementing Dodd-Frank Provisions on Independence of Compensation Committees and Their Advisers*](#).

The final listing standards also generally require heightened standards of independence for members of the compensation committee, by the earlier of (1) the company's first annual meeting after January 15, 2014, or (2) October 31, 2014.

What to Do Now?

- Early in 2013, ensure you have taken the proper steps for the 2013 proxy statement to provide disclosure as to whether the work of a compensation consultant identified under Item 407(e)(3)(iii) of Regulation S-K has raised any conflict of interest and, if so, the nature of the conflict and how the conflict is being addressed. **NOTE:** This is a distinct requirement under Regulation S-K that is applicable to disclosure required in the upcoming 2013 proxy.
- By July 2013, have your compensation committee evaluate its current advisers under the six adviser-independence factors enumerated in Rule 10C-1 (and any other relevant factors if you are a NYSE-listed company), bearing in mind that there is no requirement that the committee's advisers actually be independent under such standards or otherwise.
- By July 2013, review and revise your compensation committee charter to be sure it covers the specific provisions required by the final listing standards.
- By July 2013, add to your compensation committee's annual work plan the annual assessment of compensation consultant conflicts of interest and adviser independence.
- By the earlier of the company's first annual meeting after January 15, 2014, or October 31, 2014, vet your compensation committee members against the two "heightened independence" standards. The heightened standards are similar to the audit committee independence standards for Nasdaq companies, but NYSE-listed companies will have to employ a more holistic review in reviewing compensation committee independence.

Did the NYSE and Nasdaq Submit Any Amendments to the Proposed Listing Standards?

Initial Amendments

Both the NYSE and Nasdaq submitted several amendments to the originally proposed listing standards.

The NYSE submitted an amendment in October 2012 to clarify that listed companies will have until the earlier of the date of their first annual meeting after January 15, 2014, or October 31, 2014, to comply with the new director independence standards with respect to compensation committees contained in Section 303A.02(a)(ii). The NYSE also clarified that the authority of compensation committees with respect to the oversight of compensation consultants, independent legal counsel and other compensation advisers and their responsibility to assess the independence of such compensation advisers will go into effect on July 1, 2013.

Nasdaq filed an amendment on December 12, 2012 to:

- add language to set forth in detail the requirements of Rule 10C-1(b)(2)-(4) (rather than incorporating these details by reference as in the original proposal) regarding:
 - the authority of a compensation committee to retain compensation advisers, and
 - the requirement that a listed company fund such advisers and the requirement that an independence assessment be made before selecting or receiving advice from such advisers;
- revise the dates by which companies currently listed on Nasdaq will be required to comply with the new rules as discussed above;

- revise the phase-in schedule for companies that cease to be Smaller Reporting Companies to comply with the full range of the new requirements;
- add a preamble to the new rules clarifying that, during the transition periods until the new rules apply, a company must continue to comply with the corresponding provisions, if any, in the current rules;
- make conforming changes to the purpose section of the proposal; and
- provide a form for companies to certify their compliance with the rules.

Final Amendments

Finally, with just days remaining before the January 13, 2013 deadline for the SEC to approve the proposed rule changes, both Exchanges filed additional amendments.³ The respective amendments copy directly from the current exception in Item 407(e)(3)(iii) of Regulation S-K for certain disclosures related to compensation consultants, stating that the independence assessment of compensation advisers does not need to be conducted for advisers whose roles are limited to:

- consulting on any broad-based plan that does not discriminate in scope, terms or operation in favor of executive officers or directors, and that is available generally to all salaried employees, or
- providing information that either is not customized or that is customized based on parameters that are not developed by the adviser, and about which the adviser does not provide advice.

The NYSE amendment also contained a revised compliance transition period for companies that cease to be Smaller Reporting Companies and added language clarifying that the independence assessment of compensation advisers does not require the adviser to be independent, only that the compensation committee consider the enumerated factors before selecting or receiving advice from the adviser.⁴

The amendments discussed above are fully incorporated into the following summary of the final listing standards.

³ The NYSE submitted an Amendment No. 2, which was later withdrawn on January 7, 2013.

⁴ The Nasdaq proposed rule already had a similar statement.

Compensation Committee Director Independence

NYSE	Nasdaq
<p>NYSE rules already require each listed company to have a separate compensation committee consisting solely of directors who satisfy the NYSE's general independence requirements.</p> <p>Under the final listing standards, in affirmatively determining the independence of any director who will serve on the compensation committee, the board must consider <i>all factors specifically relevant</i> to determining whether a director has a relationship to the issuer that is material to that director's ability to be independent from management in connection with the duties of a compensation committee member, including, but not limited to:</p> <p>(A) the source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the listed company to such director; and</p> <ul style="list-style-type: none"> • The board should consider whether the director receives compensation from any person or entity that would impair his or her ability to make independent judgments about the issuer's executive compensation. <p>(B) whether such director is affiliated with the issuer, a subsidiary or an affiliate of a subsidiary.</p> <ul style="list-style-type: none"> • The board should consider whether the affiliate relationship places the director under the direct or indirect control of the issuer or its senior management or creates a direct relationship between the director and members of senior management, in each case of a nature that would impair the director's ability to make independent judgments about the issuer's executive compensation. 	<p>Nasdaq rules require Nasdaq-listed companies to have a compensation committee consisting of at least two independent directors.</p> <p>Under the final listing standards, companies will no longer be permitted to have a majority of independent directors determine executive compensation (but the approved rules will maintain the existing exception allowing a listed company to have a non-independent director serve on the compensation committee under exceptional and limited circumstances).⁵</p> <p>In addition to the existing Nasdaq standards of director independence, the approved heightened independence standards for compensation committee members will:</p> <p>(A) prohibit compensation committee members from accepting directly or indirectly <i>any</i> consulting, advisory or other compensatory fee⁶ from an issuer or any subsidiary, beginning with the member's term of service on the committee; and</p> <p>(B) require boards to consider the director's affiliations (with respect to relationships that occur during his or her term of service on the committee) in determining eligibility to serve on the compensation committee.</p> <ul style="list-style-type: none"> • For this purpose, the board must consider whether the director is affiliated with the issuer, a subsidiary of the issuer or an affiliate of a subsidiary of the issuer to determine whether such affiliation would impair the director's judgment as a member of the compensation committee.
<p>Noncompliance with the compensation committee independence requirements due to reasons outside the director's reasonable control will need to be cured by the earlier of the next annual meeting or one year after the disqualifying event, provided that the committee continues to have a majority of independent directors. The rule also requires a company relying on this provision to provide notice to NYSE promptly. Note that this limitation on the opportunity to cure is unique to the NYSE's approved rules and is not contemplated by Rule 10C-1.</p>	<p>Noncompliance due to one vacancy or one director ceasing to be independent due to circumstances beyond his or her reasonable control will need to be cured by the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the noncompliance. However, if the annual shareholders meeting occurs no later than 180 days following the event that caused the noncompliance, the listed company will instead have 180 days from such event to regain compliance. The rule also requires a company relying on this provision to provide notice to Nasdaq immediately upon learning of the event or circumstance that caused the noncompliance.</p>

Observations:

Nasdaq's final listing standards, related to compensatory fees, apply the more rigid independence standards that apply to audit committee members under Exchange Act Rule 10A-3(b)(1). The NYSE's final listing standards, in comparison, do not apply these rigid standards and boards of NYSE-listed companies are permitted to make a more holistic assessment

⁵ See Nasdaq Listing Rule 5605(d)(3).

⁶ Compensatory fees will not include (i) fees received as a member of the compensation committee, the board of directors or any other board committee; or (ii) the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed company (provided that such compensation is not contingent in any way on continued service).

of the independence of compensation committee members. To guide the board in making such assessment, the final NYSE rules contain the following commentary:

“It is not possible to anticipate or explicitly to provide for, all circumstances that might signal potential conflicts of interest, or that might bear on the materiality of a director’s relationship to a listed company (references to “listed company” would include any parent or subsidiary in a consolidated group with the listed company). Accordingly, it is best that boards making “independence” determinations broadly consider all relevant facts and circumstances. In particular, when assessing the materiality of a director’s relationship with the listed company, the board should consider the issue not merely from the standpoint of the director, but also from that of persons or organizations with which the director has an affiliation. Material relationships can include commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships, among others. However, as the concern is independence from management, the Exchange does not view ownership of even a significant amount of stock, by itself, as a bar to an independence finding.”

By not imposing bright-line or numerical standards for assessing compensation committee independence, the NYSE decidedly is *not* concluding that sources and amounts of compensation received by committee members or other such affiliations are not important. To the contrary, the responsibility for identifying and assessing pertinent factors that could impair a director’s ability to make *independent* judgments about the issuer’s executive compensation has effectively been shifted to the board and its nominating committee. There are no “safety nets” for this purpose.

Moreover, for both NYSE and Nasdaq companies, there are still numerical standards embedded in the standards for “non-employee director” status for purposes of Section 16 of the Exchange Act and for “outside director” status under Section 162(m) of the Internal Revenue Code. One would presume that a director’s failure to meet one or both of these tests (particularly on a recurring basis) would be a factor in the board’s assessment of independence of a compensation committee member for NYSE purposes.

In response to comments on the proposed rule changes, both the NYSE and Nasdaq confirmed that general board independence standards that are applicable to compensation committee members provide that a single relationship could be sufficiently material to render a director *not* independent. As such, while there is a holistic approach in the case of the NYSE heightened independence standards, one relationship may, alone, jeopardize a director’s independence.

Notwithstanding the established bright-line rules, both the NYSE and Nasdaq confirmed that it is inappropriate to have an outright bar from service on a company’s compensation committee of any director with an affiliation with the company, its subsidiaries and their affiliates. Both Exchanges maintain that it may be appropriate for certain affiliates, such as representatives of significant stockholders, to serve on compensation committees, since their interests most likely are aligned with those of other shareholders seeking an appropriate executive compensation program.

The independence of compensation committee members can be particularly significant in other contexts (i.e., beyond compliance with exchange listing standards and maximizing tax deductions under Code Section 162(m)). Since the advent of say-on-pay in the United States, we have seen a proliferation of shareholder derivative suits filed against individual directors (for breach of fiduciary duty in making compensation decisions), executive officers (for unjust enrichment) and compensation consultants (for aiding and abetting). So far, most of these derivative suits have been dismissed on procedural grounds (which depend on the directors being found to be disinterested and independent with respect to the compensation decisions under attack). The plaintiffs’ bar is tireless in trying to break past this procedural barrier and will be looking for ways to discredit claims of director independence. Accordingly, boards should be very mindful of anything (including the acceptance of consulting or advisory fees in any amount) that, when viewed in hindsight, could be interpreted as impairing a director’s ability to make independent judgments about the issuer’s executive compensation.

Compensation Committee Advisers

NYSE	Nasdaq
<p>As required by Exchange Act Rule 10C-1, the NYSE's final listing standards provide that the compensation committee of a listed company:</p> <ul style="list-style-type: none"> • may, in its sole discretion, retain or obtain the advice of compensation advisers; • shall be directly responsible for the appointment, compensation and oversight of the work of the compensation advisers so retained; and • must be provided appropriate funding, as determined by the compensation committee, from the company for the payment of reasonable compensation to any such advisers to the committee. <p>Such responsibilities and authority are, for the most part, already required elements of the compensation committee charter under NYSE's listing rules.⁷ Nonetheless, to avoid confusion, NYSE proposes to adopt the Rule 10C-1 requirements verbatim and require that compensation committee charters⁸ provide that the committee has all such powers.</p>	<p>As required by Exchange Act Rule 10C-1, Nasdaq's final listing standards provide that the compensation committee of a listed company:</p> <ul style="list-style-type: none"> • may, in its sole discretion, retain or obtain the advice of compensation advisers; • be directly responsible for the appointment, compensation and oversight of the work of any such adviser; and • must be provided with appropriate funding, as determined by the compensation committee, from the company for payment of reasonable compensation to such advisers. <p>Listed companies will be required to adopt a formal, written compensation committee charter that specifies, among other things, such compensation committee responsibilities and authority.</p>

⁷ See Section 303A.05(b) of the NYSE Listing Manual.

⁸ The NYSE rules will continue to require that the compensation committee charter address an annual performance evaluation of the compensation committee. The Nasdaq final listing standards require listed companies to certify the adoption of a compensation committee charter and that the compensation committee will review and reassess the adequacy of that charter on an annual basis.

Compensation Adviser Independence

NYSE	Nasdaq
<p>The NYSE's final listing standards provide that before engaging a compensation adviser (other than in-house legal counsel⁹ or any compensation consultant whose role is limited as defined under Item 407(e)(3)(iii) of Regulation S-K¹⁰), the compensation committee must consider <i>all factors relevant to that person's independence from management</i>, including without limitation the following six factors enumerated in Rule 10C-1:</p> <ul style="list-style-type: none"> • whether the person (firm) employing the compensation adviser is providing any other services to the company; • how much the person employing the compensation adviser has received in fees from the company, as a percentage of that person's total revenue; • what policies and procedures have been adopted by the person employing the compensation adviser to prevent conflicts of interest; • whether the compensation adviser has any business or personal relationship with a member of the compensation committee; • whether the compensation adviser owns any stock of the company; and • whether there are any business or personal relationships between the executive officers and the compensation adviser or person employing the adviser. 	<p>Nasdaq's final listing standards require the compensation committee to consider the six factors enumerated in Rule 10C-1 before selecting or receiving advice from a compensation adviser (other than in-house legal counsel or any compensation consultant whose role is limited as defined under Item 407(e)(3)(iii) of Regulation S-K). The six factors enumerated in Rule 10C-1 are:</p> <ul style="list-style-type: none"> • whether the person (firm) employing the compensation adviser is providing any other services to the company; • how much the person employing the compensation adviser has received in fees from the company, as a percentage of that person's total revenue; • what policies and procedures have been adopted by the person employing the compensation adviser to prevent conflicts of interest; • whether the compensation adviser has any business or personal relationship with a member of the compensation committee; • whether the compensation adviser owns any stock of the company; and • whether there are any business or personal relationships between the executive officers and the compensation adviser or person employing the adviser.

Observations:

Neither the NYSE nor Nasdaq elaborated on the six independence factors listed in Exchange Act Rule 10C-1(b)(4), effectively leaving companies to construe and interpret these factors as best they can. The factors should be considered in their totality and no one factor should be viewed as a determinative factor of independence. Notably, the NYSE rules (but not Nasdaq rules) widen the field of inquiry by requiring the committee to consider "all factors" relevant to the adviser's independence from management, without giving direction as to what those might be.

The Dodd-Frank Act and the final NYSE and Nasdaq listing standards emphasize that nothing in the rules requires a compensation adviser to be independent, only that the compensation committee consider the enumerated independence factors before selecting or receiving advice from a compensation adviser. The final listing standards further clarify that compensation committees may select or receive advice from any compensation adviser they prefer, including ones that are not independent, after considering the six independence factors set forth above.

⁹ An instruction in Rule 10C-1 confirms that a compensation committee need not even consider the six independence factors before consulting with or obtaining advice from *in-house counsel*, but still must do so before obtaining advice from outside counsel, whether engaged by the compensation committee, management or the issuer.

¹⁰ Item 407(e)(3)(iii) of Regulation S-K states that the independence assessment of compensation advisers required of compensation committees does not need to be conducted for advisers whose roles are limited to (a) consulting on any broad-based plan that does not discriminate in scope, terms or operation in favor of executive officers or directors, and that is available generally to all salaried employees or (b) providing information that either is not customized or that is customized based on parameters that are not developed by the adviser, and about which the adviser does not provide advice.

General Exemptions

NYSE	Nasdaq
<p>The following categories of issuers will be exempt from the entirety of the new requirements:</p> <ul style="list-style-type: none"> • controlled companies, • limited partnerships and companies in bankruptcy, • closed-end and open-end funds registered under the 1940 Act, • passive business organizations in the form of trusts (such as royalty trusts), • derivatives and special purpose securities, • issuers whose only listed equity security is a preferred stock, and • foreign private issuers that follow home country practice and disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under NYSE listing standards. <i>In a departure from Rule 10C-1, the NYSE rules do not require foreign private issuers to disclose the reasons that it does not have an independent compensation committee.</i> <p>The approved rules do not create a blanket exception for smaller reporting companies, but such companies will be exempt from the heightened independence requirements for compensation committee members.</p>	<p>The following categories of issuers will be exempt from the entirety of the new requirements:</p> <ul style="list-style-type: none"> • asset-backed issuers and other passive issuers, • cooperatives, • limited partnerships, • management investment companies, • controlled companies, and • foreign private issuers, provided such issuer discloses in its annual reports filed with the SEC (or on its website, if it does not file annual reports) (i) each requirement that it does not follow, (ii) the home country practice followed by the issuer in lieu of such requirements and (iii) the reasons why it does not have such a committee. <p>While smaller reporting companies will be required to have a compensation committee comprised of at least two independent directors and a formal written compensation committee charter or board resolution that specifies the committee's responsibilities and authorities, smaller reporting companies will not be required to comply with the compensation committee eligibility requirements relating to compensatory fees and affiliation, or the requirements relating to advisers.</p>

Effective Date and Transition Periods

NYSE	Nasdaq
<ul style="list-style-type: none"> • Requirements related to adviser independence and compensation committee responsibilities (e.g., authority to retain compensation advisers, authority to fund such advisers and responsibility to consider certain independence factors before selecting such advisers) will go into effect July 1, 2013. • The compensation committee heightened independence requirements will need to be satisfied by the earlier of (i) the issuer's first annual meeting after January 15, 2014, or (ii) October 31, 2014. • The NYSE's existing transition periods available to (i) companies listing in connection with IPOs or that did not have a class of common stock registered under the Exchange Act prior to the listing date; (ii) companies listing in connection with a spin-off or carve-out; (iii) companies listing upon emergence from bankruptcy; (iv) companies previously registered under Section 12(g) of the Exchange Act and companies previously registered under Section 12(b) of the Exchange Act to the extent the national securities exchange on which they were listed did not have the same requirement; and (v) companies that cease to qualify as a controlled company or a foreign private issuer will apply to the approved compensation committee requirements. • For Smaller Reporting Companies, the approved rule establishes a compliance schedule based on certain dates relating to the company's change in status as a Smaller Reporting Company. 	<ul style="list-style-type: none"> • Requirements related to adviser independence and compensation committee responsibilities (e.g., authority to retain compensation advisers, authority to fund such advisers and responsibility to consider certain independence factors before selecting such advisers) will go into effect July 1, 2013. • Regarding the remaining new provisions for compensation committees (including establishing a compensation committee and the compensation committee's heightened independence requirements), the approved rules will need to be satisfied by the earlier of (i) the issuer's first annual meeting after January 15, 2014, or (ii) October 31, 2014. • A listed company must certify to Nasdaq, no later than 30 days after the final implementation deadlines applicable to it, that it is in compliance with the new rules. • Existing transition periods for (i) companies listing in connection with an IPO, (ii) companies emerging from bankruptcy and (iii) companies ceasing to be controlled companies will apply to the approved new compensation committee composition requirements. • For Smaller Reporting Companies, the approved rule established a phase-in schedule based on certain dates relating to the company's change in status as a Smaller Reporting Company.¹¹

¹¹ See proposed Rule 5605(d)(4), as amended.

Observations:

The final NYSE and Nasdaq listing standards pertaining to compensation committee authority and responsibility of compensation advisers and such advisers' independence will go into effect on July 1, 2013. For NYSE-listed companies, the committee charter must reflect the additional responsibilities by the July 1 deadline; however, for Nasdaq-listed companies, the committee must possess the expanded authority by July 1, 2013, though technically the requirement to include the authority in the compensation committee charter will not apply until the earlier of the 2014 annual meeting or October 31, 2014.

As a practical matter, however, proxy disclosure rules for the 2013 proxy statement require the assessment of independence of compensation consultants (as opposed to other types of advisers) because the proxy rules require disclosure of whether the work of the compensation consultant has raised any conflict of interest and, if so, the nature of the conflict and how the conflict is being addressed. The term "conflict of interest" is not defined. However, the proxy rules identify the six adviser independence factors from Rule 10C-1(b)(4) (discussed above) as among the factors that should be considered in determining whether a conflict of interest exists.

ALSTON & BIRD LLP

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2013

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719
CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
DALLAS: 2828 North Harwood Street ■ 18th Floor ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213-576-1100
NEW YORK: 90 Park Avenue ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
RESEARCH TRIANGLE: 4721 Emperor Blvd. ■ Suite 400 ■ Durham, North Carolina, USA, 27703-85802 ■ 919.862.2200 ■ Fax: 919.862.2260
SILICON VALLEY: 275 Middlefield Road ■ Suite 150 ■ Menlo Park, California, USA, 94025-4004 ■ 650-838-2000 ■ Fax: 650.838.2001
WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.756.3300 ■ Fax: 202.756.3333
VENTURA COUNTY: 2801 Townsgate Road ■ Suite 215 ■ Westlake Village, California, USA, 91361 ■ 805.497.9474 ■ Fax: 805.497.8804

***For more information, contact your Alston & Bird LLP attorney or one of the attorneys in the firm's
Securities Group or Employee Benefits & Executive Compensation Group.***

For other related securities advisories, [click here](#). If you or a colleague would like to receive future *Securities Law Advisories* and *Special Alerts* electronically, please forward your contact information, including your e-mail address, to securities.advisory@alston.com. Be sure to put "subscribe" in the subject line.