

SEC PROPOSES RULES UNDER DODD-FRANK ON STOCKHOLDER APPROVAL OF EXECUTIVE COMPENSATION AND GOLDEN PARACHUTES

On October 18, 2010, implementing Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the SEC proposed rules that have important implications for all companies that are required to disclose compensation in their proxy statements or annual reports. These proposed rules would require such companies to hold advisory votes on executive compensation and, in certain circumstances, on “golden parachute” agreements.¹

Under the proposed rules, companies will be required to conduct stockholder votes at least once every three years to approve the compensation of their named executive officers (a “say-on-pay” vote). Companies will also be required to allow stockholders to vote, at least once every six years, on how often to conduct the say-on-pay vote, annually, every two years, or every three years (a “say-on-when” vote). These say-on-pay votes and say-on-when votes will be non-binding. Additionally, subsequent to the first say-on-pay vote, companies must disclose in their Compensation Discussion and Analysis (“CD&A”) whether the company considered the outcome of the say on pay votes and, if so, how they incorporated the results.

In addition, companies soliciting votes to approve merger or acquisition transactions, including going-private transactions and third-party tender offers, would be required to provide additional disclosure regarding their golden parachute arrangements with the named executive officers of the acquiring and target companies. Such disclosure must include the aggregate amount of all compensation that may be paid to such officer and the conditions upon which it may be paid. Furthermore, if these arrangements have not already been included in a say-on-pay vote, the company would be required to conduct a stockholder advisory vote on these arrangements (a “say-on-golden-parachute” vote).



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The say-on-pay and say-on-when votes must be included in proxy statements beginning with the first annual meetings on or after January 21, 2011, whether or not the SEC has adopted final rules. Information on golden parachute arrangements and any say-on-golden-parachute votes do not need to be included in proxy statements until final rules are adopted and become effective. Also, no preliminary proxy statement filing will be required for inclusion of say-on-pay and say-on-when votes. Although the SEC had express authority to exempt smaller reporting companies from the new rules, the SEC chose not to exempt such companies under its proposed rules.

Because of the potential impact that dissenting votes could have on a company's compensation strategy, companies should consider more closely reviewing the presentation of their compensation arrangements to stockholders in a way that will gather support.

The SEC is accepting comments to these proposed rules through November 18, 2010.

¹ For more information see Proposed Rule Release No. 34-63123 dated October 18, 2010 and Proposed Rule Release No. 33-9153 dated October 18, 2010.

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