
Corporate Governance Update Legislative and Regulatory Developments

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SEC Update

- “Proxy Plumbing”
 - On July 14, the SEC published a “concept release” soliciting comments on various aspects of the U.S. proxy system.
 - Topics addressed include “empty voting,” securities lending, the role of proxy advisory firms, the ability of issuers to communicate with shareholders and a range of other topics.
 - The release does not propose rule changes. Instead, it simply identifies a number of issues as to which it is soliciting input.
 - Comments are expected to be due in mid/late October.
- SEC Actions Pursuant to Dodd-Frank Bill

Legislative Update – Dodd-Frank Wall Street Reform and Consumer Protection Act

Provisions Applicable to US Listed Companies	Legislation Approved by House on June 30, 2010 and the Senate on July 15, 2010
Proxy Access	Authorizes the SEC to adopt proxy access rules to permit shareholders to nominate director candidates for inclusion in company proxy materials. The SEC is authorized to establish appropriate standards and procedures.
Majority Voting	Deleted
CEO and Chair	Requires the SEC (within 180 days of enactment) to issue rules requiring companies to include proxy disclosure as to why they have separated, or combined, the positions of Chairman and CEO. Unclear whether this goes beyond current SEC rules.
Broker Discretionary Voting	Brokers are prohibited from voting without customer instruction with respect to the election of directors, executive compensation or any other significant matter, as determined by the SEC. This provision would prohibit broker discretionary voting with respect to the say-on-pay and golden parachute advisory votes required by the bill.
Say-on-Pay	At least once every 3 years, at any annual or other meeting of shareholders for which the SEC requires compensation disclosure, companies must seek a non-binding shareholder vote to approve the compensation of the Company's named executive officers. At least once every 6 years, companies must also seek a non-binding shareholder vote to determine whether the say-on-pay vote should be held every 1, 2 or 3 years. The new requirements would apply to shareholder meetings occurring 6 months after enactment (i.e., likely to affect 2011 proxy season), and both votes would have to be held at the first shareholder meeting after effectiveness.
Shareholder Vote on Golden Parachutes	In connection with any shareholder vote to approve an M&A transaction, companies must seek a non-binding shareholder vote to approve payments made to any named executive officer in connection with the transaction.

Legislative Update – Dodd-Frank Wall Street Reform and Consumer Protection Act *(cont.)*

Provisions Applicable to US Listed Companies	Legislation Approved by House on June 30, 2010 and the Senate on July 15, 2010
Disclosure of Votes	Institutional investors must report annually on how they voted in say-on-pay and golden parachute advisory votes.
Compensation Committee Independence	Within 1 year following the bill's enactment, the SEC must issue rules directing stock exchanges to require all members of a listed company's compensation committee to be independent, taking into account advisory or other fees, affiliate status and any other factors that are identified by the SEC.
Compensation Committee Advisors	<p>Within 1 year following the bill's enactment, the SEC must issue rules directing stock exchanges to require the compensation committee of a listed company to consider the independence of an advisor when selecting a consultant, legal counsel or other advisor. The SEC is required to identify factors affecting independence. Such factors must be competitively neutral among categories of advisors and include certain factors identified in the bill, such as other work the advisor performs for the company.</p> <p>Compensation committees, in their sole discretion, are authorized to engage consultants, legal counsel and other advisors. Compensation committees must be directly responsible for the appointment, compensation and oversight of the work of such advisors and are required to disclose whether a compensation consultant was retained and whether the work of the compensation consultant raised any conflict of interest. Unclear whether this goes beyond existing NASDAQ and SEC rules.</p> <p>These rules do not require compensation committees to hire independent advisors.</p>
Pay and Performance Disclosure	The SEC must issue rules requiring companies to disclose the relationship between executive compensation and its financial performance.

Legislative Update – Dodd-Frank Wall Street Reform and Consumer Protection Act *(cont.)*

Provisions Applicable to US Public Companies	Legislation Approved by House on June 30, 2010 and the Senate on July 15, 2010
Employee Hedging Disclosure	The SEC must issue rules requiring disclosure of whether employees are allowed to hedge the value of equity securities.
Internal Pay Equity Disclosure	The SEC must issue rules requiring companies to disclose: (1) the median annual total compensation of all employees, except the CEO; (2) the annual total compensation of the CEO; and (3) the ratio of the median employee annual total compensation to that of the CEO.
Clawback Policies	The SEC must issue rules requiring companies to adopt policies with respect to (1) disclosure of incentive-based compensation that is based on publicly reported financial information and (2) clawback of incentive-based compensation from current or former executive officers following a restatement. The trigger would be material noncompliance with any financial reporting requirements that led to the restatement during the 3-year period preceding the date on which a company is required to prepare the restatement. The amount to be clawed back is the amount in excess of what would have been paid under the restated results.