LINDA A. WILKINS

Attorney and Counselor

8080 North Central Expressway
Suite 1400
Dallas, Texas 75206

Phone: 214.292.4282
Email: linda@lindawilkinslaw.com
Web: www.lindawilkinslaw.com

June 30, 2010

CLIENT ALERT – EXECUTIVE COMPENSATION PROVISIONS OF THE FINANCIAL REFORM BILL

On June 25, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act) was approved by the House and Senate Conference Committee. The Act applies to all public companies – it is not limited to financial institutions receiving TARP funds. Companies and their boards of directors will want to begin considering how the Act will impact their executive compensation practices and their required executive compensation disclosures.

- Mandatory "Say on Pay"

As expected, the Act requires that shareholders be given a non-binding vote to approve the compensation of executives as disclosed in the proxy. "Say on pay" must occur at least every 3 years. At the first annual meeting following six months after the date of enactment of the Act, shareholders must be given a non-binding vote on whether the "say on pay" should occur every 1, 2 or 3 years. (Thereafter, every 6 years, the shareholders must again be allowed a non-binding vote on the frequency of when the "say on pay" vote should occur.) Broker discretionary voting will not be permitted on "say on pay."

Comment: It is expected that the President will sign the Act in July, so most public companies will be required to include the "say on pay" in their 2011 proxy statements.

- Independence of Attorneys, Consultants and Advisors Retained by the Compensation Committee

The Securities and Exchange Commission is to identify factors that influence the independence of attorneys, consultants and advisors retained by compensation committees. These should include any "business or personal relationship" between the advisor and members of the committee, fees paid to the advisor for other services, and what percentage of total revenues of the advisor these represent. The compensation committee must consider these factors when engaging an advisor.

- Disclosure of "Pay versus Performance"

The proxy statement must discuss the relationship between pay actually received by executive officers and the financial performance of the issuer, "taking into account" changes in the stock price, dividends and other distributions. The disclosure may include a graphic depiction of the relationship.

© Law Offices of Linda A. Wilkins

- Mandatory Disclosure of CEO Pay vs. All Other Employee Pay

The proxy statement must disclose the ratio of "median" employee pay to the total pay of the chief executive officer.

Comment: Recent research found that in 2007, the ratio of CEO pay to employee pay was 344:1 based on a survey of "several hundred of the largest companies." See http://sociology.ucsc.edu/whorulesamerica/power/wealth.html, "Who Rules America?" by Professor G. William Domhoff of the University of California at Santa Clara (April 2010).

- Mandated "Clawback" Provisions

Incentive pay that is tied to reported financial performance must provide for a "clawback" of any incentive pay received (including awards of stock options) during the 3-year period prior to a required restatement of earnings of the issuer. The clawback must apply to any current or former executive officer.

- Mandated Disclosure of Hedging of Shares

The proxy statement must disclose whether executive officers or directors are permitted to engage in hedging strategies to protect them from losses in value of the issuer's stock, with regard to any shares they hold.

© Law Offices of Linda A. Wilkins