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"Say on Pay" for TARP Recipients

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On January 12, 2010, the Securities and Exchange Commission (the "SEC") formally adopted amendments to the federal proxy rules to implement certain provisions of the Emergency Economic Stabilization Act of 2008 ("EESA"). Under Section 111(e) of EESA, companies that have received financial assistance pursuant to the federal government's Troubled Asset Relief Program ("TARP") are required to have a separate shareholder advisory vote on executive compensation during the period in which any obligation under TARP remains outstanding (a "TARP Recipient").

Pursuant to the amended proxy rules, TARP Recipients must provide a separate advisory shareholder vote on executive compensation in connection with an annual meeting of shareholders (or special meeting in lieu of an annual meeting) where directors are being elected and briefly explain in the proxy statement the general effect of the vote, such as whether the vote is nonbinding. The advisory vote represents a simple "thumbs-up or thumbs-down" statement by shareholders on whether or not they approve the executive compensation as disclosed in the proxy statement. Because the vote is only advisory, companies are not required to take any further action following such a vote, but compensation committees of TARP Recipients, in particular, should pay close attention to the voting results in order to determine shareholder sentiment on executive compensation.

Former TARP Recipients (including former participants in TARP for whom the federal government only holds warrants to purchase common stock) are not required to comply with the rules regarding a mandatory advisory vote on compensation, but should consider whether a shareholder advisory vote may still provide meaningful input on executive compensation. In addition, TARP Recipients that are not subject to the federal proxy rules are not required to have a shareholder advisory vote on compensation, but should also consider whether such a vote is prudent. Finally, in a positive development for TARP Recipients, the amended proxy rules clarify that the advisory vote on compensation required by EESA does not necessitate the filing of a preliminary version of the proxy statement with the SEC.

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Our Practice

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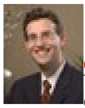Craig D. Miller Mr. Miller's practice focuses on representing public and private corporations and financial institutions in a wide range of sophisticated corporate matters, including mergers and acquisitions, public and private securities offerings and corporate governance issues, including compliance with the Sarbanes-Oxley Act and continued listing requirements promulgated by self-regulatory organizations.