SEC ADOPTS "SAY ON PAY" AND GOLDEN PARACHUTE APPROVAL RULES

Smaller Reporting Companies Entitled to 2 Year Exemption

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As required by the Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted in July 2010, the Securities and Exchange Commission adopted rules governing shareholder approval of executive compensation ("say-on-pay") and "golden parachute" arrangements. These rules give shareholders of domestic companies with shares registered for trading with the SEC advisory votes on executive compensation, the frequency of say-on-pay votes, and golden parachute compensation arrangements and require additional disclosure regarding the foregoing.

The say-on-pay and "say-when-on-pay" rules apply to all shareholder meetings at which directors will be elected, except that a "smaller reporting company" (generally a company with less than $75 million of market value of shares held by non-affiliates) is not required to comply until January 21, 2013. Rules requiring enhanced disclosure and advisory votes on golden parachute arrangements apply to all merger and takeover filings after April 25, 2011, and affect all related SEC filed forms, including proxy statements, Rule 13e-3 Transaction Statements, and Schedule TO filings. The say-on-pay and say-when-on-pay votes do not require a preliminary proxy filing or apply to foreign private issuers.

"Say on Pay" and "Say When on Pay"

An issuer required to comply with the say-on-pay rules must hold an advisory vote of its shareholders not less frequently than once every three

years and, every six years, must hold an advisory vote regarding the frequency of its say-on-pay votes. The rules do not include any specific language or form for the resolutions to be adopted, although the say-on-pay resolution must reference the compensation disclosed in accordance with SEC rules (including the Compensation Disclosure and Analysis). Correspondingly, the CD&A must discuss whether and to what extent the issuer has taken into account the results of the most recent say-on-pay vote in determining compensation policies and decisions. Additional disclosure in the proxy materials of the reasons for and effect and frequency of the various votes under the new rules also is required.

Regarding say-when-on-pay votes, the rules require the form of proxy to give shareholders a choice among one, two, or three years or to abstain. The SEC has expanded the Form 8-K requirement to report shareholder voting results to include the say-on-pay and say-when-on-pay votes and also requires the issuer within 150 days after a meeting at which a say-when-on-pay vote was held to amend the Form 8-K reporting the outcome of that vote to disclose the issuer's decision in light of that vote regarding how frequently it will conduct say-on-pay votes.

Golden Parachute Arrangements

Under the new rules, companies must provide additional disclosure regarding executive compensation arrangements in connection with change-in-control transactions – for both the acquiror and the target – in narrative and tabular formats. Intended to ensure that such information is available to shareholders no matter how the transaction is structured, the rules are expansive in defining the transactions to which they apply, including mergers, acquisitions, consolidations, and proposed sales or other

dispositions of all or substantially all of an issuer's assets.

In addition to expanded disclosure, companies must now also provide a separate shareholder advisory vote on these golden parachute arrangements.

Loeb & Loeb's Financial Reform Task Force monitors key issues surrounding approval of the Dodd-Frank Wall Street Reform and Consumer Protection Act that are relevant to a broad spectrum of firm clients in the financial services industry. The multidisciplinary Task Force is comprised of attorneys across core practice areas - including general corporate, private equity, securities, mergers and acquisitions, consumer protection and banking and finance - who are focused on analyzing the historic legislation and interpreting the significant business implications for financial institutions and commercial companies nationwide. For more information about the content of this alert, please feel free to contact any member of our Financial Reform Task Force.

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