

Corporate & Financial Weekly Digest

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SEC Adopts Final Say-on-Pay Rules

On January 25, the Securities and Exchange Commission adopted, by a 3-2 vote, final rules under Section 14A of the Securities Exchange Act of 1934, which was enacted by Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 14A requires public companies to conduct separate non-binding shareholder advisory votes to approve the named executive officer (NEO) compensation (say-on-pay) and the frequency of the say-on-pay vote (say-on-when). Section 14A also requires expanded, tabular format disclosure of NEO compensation arrangements in connection with mergers or similar transactions (golden parachutes) and a related separate advisory vote on golden parachutes in merger proxy statements. Although the final rules are not effective until 60 days after publication in the Federal Register, the say-on-pay and say-on-when requirements are effective for annual or special shareholder meetings occurring on or after January 21, 2011, under the Dodd-Frank Act provisions. The final rules provide transition guidance pending the effectiveness of the rules. The rules on golden parachute disclosure and the separate advisory vote are effective April 25.

Shareholders must be given a separate say-on-when vote to determine the frequency of the say-on-pay vote, i.e., whether it shall be as often as every year, every other year or once every three years. The separate say-on-when vote must occur at least once every six years. Because companies that have received Troubled Asset Relief Program (TARP) funds are required to have an annual say-on-pay vote which is effectively the same as the say-on-pay vote under these rules, TARP recipients are exempt from the requirement to include an additional say-on-pay vote and a say-on-when proposal until the first meeting after the company is no longer subject to the TARP restrictions. Smaller reporting companies (companies with public equity float of \$75 million or less) have a temporary exemption from the requirement to include the say-on-pay and say-on-when vote until their meetings on or after January 21, 2013, and can continue to follow the scaled compensation disclosure requirements that do not include Compensation Discussion and Analysis (CD&A). Smaller reporting companies do not have a temporary exemption from the golden parachute rules.

Under the final rules, inclusion of the say-on-pay or say-on-when proposal does not require the filing of a preliminary proxy statement. Disclosure in CD&A is required as to whether, and if so, how companies have considered the results of the most recent say-on-pay votes. The Form 8-K under Item 5.07 filed to report meeting votes results within four business days following the annual meeting is required to be amended within 150 calendar days of the meeting (but not later than 60 days prior to the shareholder proposal submission deadline of the next annual meeting)

to report the company's decision as to the frequency of the say-on-pay votes at future annual meetings.

The final rules and compliance considerations will be discussed in greater detail in an upcoming Katten *Client Advisory*.

Click [here](#) to read the SEC's press release announcing these rules.

Click [here](#) to read the text of the final rules.

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