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SEC Proposes Rules for Say-on-Pay and Investment Manager Proxy Vote Reporting

On October 18, the Securities and Exchange Commission proposed new 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 executive compensation in connection with mergers or similar transactions (golden parachutes) and a related separate advisory vote on golden parachutes in merger proxy statements. These requirements are effective for annual or special shareholder meetings occurring on or after January 21, 2011.

Inclusion of the say-on-pay or say-on-when proposal does not require the filing of a preliminary proxy statement. The proposed rules also require disclosure in Compensation Discussion and Analysis (CD&A) whether, and if so, how companies have considered the results of previous say-on-pay votes. The proposed rules require that shareholders shall 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 annual say-on-pay votes, these companies are exempt from the requirement to include a say-on-when proposal until the company is no longer subject to the TARP restrictions. While the proposed rules require smaller reporting companies to include a say-on-pay vote, smaller reporting companies can continue to follow the scaled compensation disclosure requirements and are not required to include CD&A.

The proposed rules also require institutional investment managers who are required to file Form 13F (generally those who manage publicly traded equity securities having an aggregate fair market value of at least $100 million) to file Form N-PX, Annual Report of Proxy Voting Record, by August 31 of each year to report the manager’s votes relating to the say-on-pay, say-on-when and golden parachute matters described above. Form N-PX, which is currently required to be filed by registered management investment companies, is being amended for use by institutional investment managers as well.

The comment period for the proposed rules closes on November 18.

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