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LAW ALERT

CORPORATE & SECURITIES

April 2013

Smaller Reporting Companies Now Subject To Say-On-Pay Disclosures In Annual Meeting Proxy Statements

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On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted (the "Act"). The Act imposed several new requirements on publicly reporting companies subject to the SEC's proxy rules. Included in these new requirements are two non-binding stockholder advisory votes which are required to be held at annual meetings of the affected companies. While these requirements have been in effect for most reporting companies since January 21, 2011, Smaller Reporting Companies are now subject to these stockholder advisory voting requirements for their annual meetings held after January 21, 2013.


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Specifically, these non-binding voting requirements include: (1) "Say-On-Pay" votes, where stockholders will have an opportunity to voice their approval or disapproval of the compensation of the company's "Named Executive Officers"; and (2) a vote on the frequency in which stockholders are to conduct such "Say-On-Pay" voting.

Say-on-Pay Non-Binding Resolution

Smaller Reporting Companies must hold a non-binding stockholder vote on executive compensation at their first annual meeting of the stockholders held on or after January 21, 2013. This vote can be conducted in the form of a resolution whereby the stockholders vote to either approve the compensation paid to the company's Named

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Executive Officers as disclosed in the proxy statement, disapprove of such compensation, or abstain from voting.

The proxy statement must also include: (a) a statement that the non-binding "Say-On-Pay" vote is required by Section 14A of the Securities Exchange Act of 1934, as amended; (b) a resolution approving the compensation of those who are Named Executive Officers in the registrant's filings; and (c) a description of the non-binding effect of the resolution. In addition, pursuant to the Act, the "Say-On-Pay" vote must be conducted at least once every three years. Importantly, the "Say-On-Pay" resolution applies only to the compensation of the Named Executive Officers which are required to be included in the proxy statement.

Frequency of Say-On-Pay Voting Non-Binding Resolution

In addition to the Say-On-Pay non-binding resolution described above, Smaller Reporting Companies must also hold a separate, non-binding vote which requests that stockholders provide their preference for how frequently the Say-On-Pay vote should occur.

For this vote, the Proxy Statement must also include: (a) a statement that the vote concerning the frequency of the "Say-On-Pay" vote is required by Section 14A of the Securities Exchange Act of 1934, as amended, is non-binding; (b) a brief statement that the stockholders may elect to hold such a vote every year, every second year, every third year or abstain from voting; and (c) a description of the non-binding effect of the resolution.

Reporting Requirements

As is the case with all proxy voting results, Smaller Reporting Companies are required to disclose the results of the non-binding resolutions relating to the "Say-On-Pay" resolution, as well as the non-binding resolution relating to the frequency of the voting relating to the "Say-On-Pay" resolution, in a Current Report on Form 8-K under Item 5.07 within four business days of the Annual Meeting. In addition, a Smaller Reporting Company must disclose the company's decision regarding whether it will abide by the stockholder vote on the frequency of future "Say-On-Pay" voting. Such company disclosure must be included in the Form 8-K disclosing the results of the voting conducted at the Annual Meeting, or alternatively in an amended Form 8-K filing. That amendment must be filed within 150 days after the date of the stockholders' meeting or 60 days before the due date for any stockholder proposal to be included in the company's proxy statement for the next annual meeting, whichever is earlier.

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