

On June 25, 2010, the House-Senate Conference Committee released the text of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Act**”). The Act makes significant changes to executive compensation and corporate governance rules for all public companies and reconciles the financial reform bill passed by the House in December 2009 with the bill passed by the Senate in May 2010. The House has passed the Act, and the Senate is expected to do so soon, and it is expected to be signed into law by the President in the coming weeks.

The “say-on-pay” and proxy disclosures will be in effect next proxy season, but other provisions are effective immediately or will become effective after the Securities and Exchange Commission (the “**SEC**”) promulgates rules as directed by the new legislation.

The provisions of the Act with significance for public company executive compensation and corporate governance practices are summarized below:

DESCRIPTION OF THE PROVISIONS OF THE ACT	
Say-on-Pay	<p>At least once every three years, public company shareholders must have an advisory nonbinding vote on the executive compensation matters disclosed in the proxy statement.</p> <p>At least once every six years, shareholders must have an advisory vote to determine whether the say-on-pay vote should occur every one, two or three years.</p> <p>Institutional investment managers must report, at least annually, their actions on say-on-pay votes.</p> <p>The SEC may exempt certain small issuers from this requirement.</p> <p><i>Effective Date:</i> The say-on-pay provisions will be effective for annual shareholder meetings occurring six months following the enactment of the Act.</p>
Golden Parachute Say-on-Pay	<p>Public company shareholders must have an advisory nonbinding vote on the compensation paid to executives in connection with a change in control transition (i.e. “golden parachute” compensation) if such golden parachutes have not been previously subject to a say-on-pay vote. This may require disclosure of such executive golden parachute compensation in the proxy statements relating to a change in control if they have not been previously disclosed and approved. This rule will require additional clarification by the SEC and commentators.</p> <p>Institutional investment managers must report at least annually their actions on golden parachute say-on-pay votes.</p> <p>The SEC may exempt certain small issuers from this requirement.</p> <p><i>Effective Date:</i> The golden parachute say-on-pay provision will be effective six months following the enactment of the Act for shareholder meetings pursuant to which shareholders are asked to approve a change in control.</p>

DESCRIPTION OF THE PROVISIONS OF THE ACT

Broker Voting

National securities exchanges will be required to adopt rules such that brokers will no longer be able to vote shares of which they are not the beneficial owner with respect to election of directors, executive compensation (including say-on-pay votes) or any other “significant matter” unless instructed by the beneficial owner with respect to such vote.

Effective Date: The broker voting restrictions will be effective as soon as national securities exchanges (e.g., NYSE) revise their rules as directed by the Act.

Compensation Committee Independence

The SEC will require public companies to have a compensation committee composed solely of independent directors. The SEC will promulgate rules about how to determine independence, including consideration of the following factors:

- The source of compensation of the directors, including any consulting, advisory or other fees paid by the company to such director; and
- Whether the director is affiliated with the company, a subsidiary or an affiliate of a subsidiary.

The SEC may exempt certain small issuers from this requirement.

Effective Date: The Act requires the SEC to issue rules within 360 days of enactment.

Authority of Compensation Committee to Engage Advisers

Public companies must provide funding and authority for the compensation committee to obtain the advice of independent compensation consultants, independent counsel and other advisers, the retainment of which is at the discretion of the compensation committee. Compensation committees must consider factors affecting an advisor’s independence in selecting such an adviser. The independence factors will be created by the SEC are to be competitively neutral, and will include:

- The other services provided to the company by adviser’s employer;
- The amount of fees received by the adviser’s employer from the company for such services as a percentage of the total revenue of the advisor’s employer;
- The conflict of interest policies of the adviser’s employer;
- Any business or personal relationship between the adviser and a committee member; and
- Any company stock owned by the adviser.

The company’s proxy statement must disclosure whether the compensation committee engaged a compensation consultant, and any conflicts of interest that arose and how any such conflicts were addressed.

Effective Date: The Act requires the SEC to issue rules within 360 days of enactment.

DESCRIPTION OF THE PROVISIONS OF THE ACT	
Additional Proxy Disclosures	
<p>Public companies must disclose in their annual proxy statement the relationship between executive compensation actually paid and the financial performance of the company.</p> <p>The SEC will also require proxy disclosure regarding the ratio of the CEO's total compensation to the median compensation of all other employees.</p>	
<p><i>Effective Date:</i> The Act requires the SEC to issue rules but does not specify a deadline.</p>	
Recovery of Erroneously Awarded Compensation (Clawbacks)	
<p>Public companies must disclose incentive-based compensation policies based on reported financial information.</p> <p>Companies will be required to have a policy that requires repayment (or a "clawback") of incentive compensation (including stock options) paid to current or former executives in the three years period prior to a restatement due to the company's material noncompliance with financial reporting requirements.</p>	
<p><i>Effective Date:</i> The Act requires the SEC to issue rules but does not specify a deadline.</p>	
Employee and Director Hedging	
<p>Public companies must disclose whether any employee or director is permitted to purchase financial instruments that are designed to hedge or offset a decrease in market value of the company's securities.</p>	
<p><i>Effective Date:</i> The Act requires the SEC to issue rules but does not specify a deadline.</p>	
Additional Reporting Obligations for Financial Institutions	
<p>Certain financial institutions must disclose to federal regulators the details of incentive-based compensation arrangements and limit incentives that could encourage inappropriate risks.</p>	
Leadership Structure	
<p>Public companies must disclose in their annual proxy statement why the same individual serves as chairman of the board and chief executive officer, or why different individuals serve in those capacities.</p>	
<p><i>Effective Date:</i> The Act requires the SEC to issue rules within 180 days of enactment.</p>	

We fully expect that the executive compensation and corporate governance provisions described above to become part of the final Act. For more information on these or related matters, please contact Scott Spector, Blake Martell, and Horace Nash.

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