Corporate and Securities Alert:
New Legislation Would Fundamentally Alter Public Company Executive Compensation and Corporate Governance

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On March 15, 2010, Senator Chris Dodd introduced the Restoring American Financial Stability Act of 2010, now commonly referred to as the "Dodd Bill." The legislation is primarily aimed at reform of the United States financial system to prevent future financial crises, but among its 1,300 pages are significant proposals to change executive compensation and corporate governance rules for all public companies. The Dodd Bill is under consideration by the Senate Committee on Banking, Housing and Urban Affairs, along with a House bill known as H.R. 4173, or the Wall Street Reform and Consumer Protection Act of 2009 (which we refer to as the "House Bill"). For summaries of earlier legislation, please refer to our December 18, 2009 Corporate Securities Update and our August 5, 2009 Executive Compensation Alert.

We believe that legislative changes to public company executive compensation and corporate governance are likely, as a result of both Congressional legislative action and Securities and Exchange Commission regulatory initiatives. It is important for public company directors, executives, counsel and advisers to familiarize themselves with the outlines of likely reform so that they can anticipate changes that may be required in response.

Here is a summary of similarities and differences between the House Bill and the Dodd Bill on the topics of executive compensation and corporate governance:

TERM	HOUSE BILL	DODD BILL
Say-on-Pay Shareholders have annual advisory (nonbinding) vote on the executive compensation matters disclosed in the proxy statement.	Yes	Yes
Golden Parachute Say-on-Pay Shareholders to have an advisory (nonbinding) vote on "golden parachute" compensation payable in connection with a change in control if such compensation has not been previously approved by shareholders.	Yes	No similar provision
Compensation Committee Independence All compensation committee members must be "independent" (no compensation from the Company, other than in their capacity as a member of the board of directors or a member of a board committee).	Independence definition prohibits other compensation of committee members.	Independence to be defined in stock exchange listing standards, including consideration of sources of compensation and whether member is affiliated with the issuer.
Authority to Engage Advisers The compensation committee must have the authority, funding and sole discretion to retain and obtain the advice of independent compensation consultants, independent counsel and other advisers. Company must provide funding. Note: tax rules generally require similar independence thresholds as a condition to tax deductibility.	Yes	Yes

TERM	HOUSE BILL	DODD BILL
Independence of Compensation Consultants, Advisers and Legal Counsel Advisers to the compensation committee will be required to meet independence standards to be established by the SEC. Note: SEC rules currently require disclosure of whether consultant provides additional services for the Company.	Yes. Does not specifically include legal counsel. Requires proxy statement disclosure of whether the committee engaged an independent consultant.	Yes. Specifically includes legal counsel. Sets forth specific factors that affect adviser or counsel independence, including (i) the services provided to the Company by adviser's employer, and fees received for them, (ii) conflict of interest policies of the adviser's employer, (iii) any business or personal relationship between the adviser and a committee member, and (iv) any Company stock held by the adviser. Requires proxy statement disclosure of whether the committee engaged an independent consultant, and any conflicts of interest that arose.
Pay-versus-Performance Disclosure The SEC shall require companies to disclose in their annual proxy statement the relationship between executive compensation paid and the financial performance of the Company.	No similar provision	Yes
Recovery of Erroneously Awarded Compensation Issuers must have policy that requires re-payment of incentive compensation (including stock options) paid to current or former executives in the three years prior to an accounting restatement that results from the Company's material noncompliance with <u>any</u> financial reporting requirement.	No similar provision	Yes. Stock exchanges to implement through listing standards.
Employee and Director Hedging The SEC shall require companies to 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.	No similar provision	Yes
Additional Reporting Obligations for Financial Institutions with Assets over $1 Billion Companies must disclose to a federal regulator the details of incentive-based compensation arrangements and limit incentives that could result in undue risks that could threaten the soundness of the financial institutions or that could have serious adverse effects on the Company's economic conditions or financial stability. Note: current SEC rules require risk analysis and disclosure, but with no outright prohibition.	Yes	Yes

TERM	HOUSE BILL	DODD BILL
Proxy Access Amends Exchange Act to clarify that the SEC has the authority to make rules governing process for including shareholder nominees for director in the Company's annual proxy statement. Note: Provides the SEC with statutory authority to move forward with its already proposed proxy access rules.	Yes	Yes
Majority Voting for Directors Requires majority vote for election of directors in uncontested director elections (plurality in contested elections). Directors receiving less than a majority of the votes cast would be required to tender their resignation; the board must accept the resignation unless it unanimously refuses to do so, in which case it must disclose the analysis used in reaching the decision, citing specific reasons why the decision was in the best interests of the Company and its shareholders.	No similar provision	Yes. To be implemented through the stock exchanges. Gives SEC the power to exempt issuers based on size, market capitalization, number of shareholders and other factors.
Leadership Structure The SEC must issue rules requiring public companies to disclose in the annual proxy statement why the same person serves as chairman of the board and chief executive officer, or different individuals serve in those capacities. Note: Likely already covered by SEC proxy disclosure enhancements that now require a description of the board's leadership structure.	No similar provision	Yes

Whether proposed legislation will gain the support necessary to become law is far from clear, and passage will hinge on how Congress proposes to change the regulation of the financial services industry. We do expect that the executive compensation and corporate governance provisions described above will, in substantial part, be part of any final legislation. For more information on these or related matters, please contact Scott Spector or Horace Nash.

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