

CORPORATE GOVERNANCE AND EXECUTIVE COMPENSATION PROVISIONS OF THE DODD-FRANK REFORM ACT

August 27, 2010

The mammoth Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Reform Act) that President Obama signed into law on July 21, 2010, makes wide-ranging changes in the regulation of the financial industry.

While the Reform Act is over 2,000 pages, and is primarily focused on financial institutions, slightly over 20 pages address corporate governance and executive compensation matters that will affect all companies that are publicly traded in the United States. As outlined below, these changes are significant. Additional guidance will need to be issued so that publicly traded companies will be able to comply with these new requirements.

This alert highlights, in succinct chart form, the major areas of reform in the areas of corporate governance and executive compensation. Where a specific effective date was provided in the Reform Act, it is noted. Several provisions do not contain a specified effective date and these requirements would appear to be effective as of the date of adoption of the Reform Act (July 21, 2010). Additional guidance on transition to compliance with these provisions will need to be issued.

Stay tuned for additional updates when further guidance becomes available.

**PROVISION AND EFFECTIVE DATE DESCRIPTION OF REQUIREMENT
COMMENTS AND OBSERVATIONS** [Proxy Access](#)

No specific identified effective date in Reform Act. Reform Act does not mandate any specific rules on proxy access.

Reform Act gives SEC authority to adopt proxy access rules. SEC enacted rules at their meeting on August 25, 2010. Generally, shareholders who own at 3% or more of the company's shares continuously for not less than the prior three years will be eligible to have their nominees included in the proxy materials and also to include shareholder proposals seeking to establish a procedure in the company's governing documents for the inclusion of shareholder director nominees. Rules become effective 60 days after publication in the Federal Register. Application of the new access rules to "smaller reporting companies" will be deferred for three years. Shareholders would have to submit nominees or proposals no later than 120 days prior to the anniversary date of mailing of the company's proxy statement for the

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prior year. Shareholder Say-on-Pay

Applicable to first shareholder meeting held after January 21, 2011 Requires shareholders to be provided with a non-binding vote on the overall compensation practices of a company. Frequency of “say-on-pay” votes may be every one, two, or three years as determined in a separate shareholder vote held at least once every six years. To date, say-on pay proposals (TARP recipients have been subject to these requirements) have overwhelmingly resulted in votes approving compensation practices. Shareholder Approval of Golden Parachute Payments

Applicable to first shareholder meeting held after January 21, 2011. Requires shareholders to be provided with a non-binding vote on agreements with named executive officers relating to mergers, acquisitions, or similar transactions (including total amounts payable). Exception provided for agreements approved in a prior say-on-pay vote. SEC directed to issue rules on scope of

disclosure. Disclosure on Pay Versus Performance

No specific identified effective date in Reform Act. Companies will be required to disclose the relationship between compensation “actually paid” and the financial performance of the company, taking into account change in share value, dividends, and distributions. SEC will need to promulgate rules clarifying the requirement. Could be presented in graph form Disclosure on Pay Equity

No specific identified effective date in Reform Act. Companies will be required to disclose total annual compensation of chief executive officer and the median of the compensation of all other employees; companies must also provide the ratio of the median to the CEO compensation. In Reform Act, compensation for all employees would have to be calculated in the same manner as for proxy disclosure presentation. Calculation of compensation in this manner would impose significant burdens. However, SEC’s ability to provide relief may be limited by the Reform Act language. Adoption of Clawback Policy

No specific identified effective date in Reform Act. SEC directed to issue rules requiring stock exchanges to require listed companies to adopt a policy that if the company is required to prepare an accounting restatement due to material non-compliance with financial reporting requirements, the company will recover from current and former executive officers any excess of incentive compensation received over what would have been received if company had actually complied with financial reporting rules. Expands clawback provisions in Sarbanes-Oxley Act.

Misconduct by the executive is not a condition to recovery of excess incentive compensation.

A three-year lookback is required and recovery applies to both current and former executive officers.

Companies with existing clawback policies may have to revise policy to be compliant with requirements of Reform Act. Compensation Committee Member Independence

SEC to require exchanges to prohibit listing of non-compliant companies effective by July 21, 2011. In order to be listed on a stock exchange, all members of compensation committee must satisfy independence requirements similar to the Sarbanes-Oxley requirements for audit committee members. SEC to issue rules on independence that consider all sources of

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compensation for compensation committee members and other affiliate ties. Compensation Committee Advisor Independence

SEC rulemaking required by July 21, 2011. Compensation committee must be authorized to retain its own compensation consultant, legal counsel, and other advisors. Company must provide Compensation Committee with appropriate funding to retain these advisors.

Proxy disclosure required of whether compensation committee has engaged a compensation consultant, whether there were any conflicts of interest with consultant, and, if so, the nature and resolution of the conflict. Stock exchanges may exempt certain companies, including smaller reporting companies, from these requirements. Disclosure of Hedging Policies

No specific identified effective date in Reform Act. Requires companies to disclose if they have adopted policies prohibiting hedging of company equity by all employees. Applicable to all equity held by employees, not just those resulting from equity compensation awards. Does not require adoption of a policy, just disclosure if a policy has or has not been adopted. May be addressed by insider trading policies. Discretionary Voting by Brokers

No specific identified effective date in Reform Act. Requires stock exchanges to adopt rules to prohibit broker discretionary voting on executive compensation matters and any other significant matters as determined by SEC. NYSE has previously adopted rules prohibiting broker discretionary voting on certain matters including election of directors and adoption of equity compensation plans. On August 4, 2010, NYSE announced its intention to amend NYSE Rule 452 to prohibit voting of uninstructed shares on matters relating to executive compensation, including "say-on-pay" proposals after July 21, 2010. NYSE Amex and NYSE Arca will adopt identical amendments.