

Corporate Governance Under the Dodd-Frank Wall Street Reform & Consumer Protection Act

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The Law in Context

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- Corporate governance has been a main focus of Congress and the SEC since 2001.
- The Sarbanes-Oxley Act of 2002 increased corporate governance standards for all U.S. public company boards, management and accounting firms.
- Interest in corporate governance was further heightened as a result of the recent global financial crisis.
- The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Act") contains numerous provisions which affect the corporate governance of issuers.
 - Many of these provisions address topics which had been developing over the past several years.
 - Aspects of the debate implicate questions of Federal and State power.
 - The Act creates the potential for a significant shift in corporate power from boards to shareholders.

Corporate Governance Provisions of the Act

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- The corporate governance provisions in Dodd-Frank cover:
 - Shareholder votes on executive compensation (say on pay), disclosures/votes on golden parachutes and pay for performance disclosures
 - Broker discretionary voting
 - Proxy access
 - Compensation clawbacks
 - Board Leadership
 - Compensation committee and adviser independence
 - Employee and director hedging
- There is an implementation schedule for required rulemaking
- Since enactment there have been:
 - Proxy access developments
 - SEC rule proposals

Shareholder Vote on Executive Compensation: Say on Pay

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- **Context**
 - Prior to Dodd-Frank, only companies subject to mandatory say-on-pay were financial institutions that received TARP funds
 - Some companies also voluntarily adopted say-on-pay
- **Dodd-Frank Provisions**
 - Two votes at first meeting: how much and how often
 - Section 951 requires advisory votes of shareholders about executive compensation
 - This section also requires specific, detailed disclosure in merger proxies of executive compensation triggered by the merger (golden parachutes) and a shareholder vote to approve the agreements
 - Section 951 requires regulated institutional investment managers to report at least annually how they voted on these advisory shareholder votes

Additional Executive Compensation Disclosures: Pay for Performance

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- **Dodd-Frank Provisions**

- Section 953 requires the SEC to adopt a rule requiring additional disclosure about:
 - the ratio between the CEO's total compensation and the median total compensation for all other company employees; and
 - information that shows the relationship between executive compensation paid and the financial performance of the issuer.

Discretionary Voting by Brokers

- **Context**

- Prior to January 1, 2010, NYSE Rule 452 permitted brokers holding shares "in street name" to vote those shares in their discretion for routine matters, including director elections, if beneficial holder gave no instructions
- Effective January 1, 2010, NYSE rules changed to prohibit broker discretionary voting in uncontested director elections without explicit voting instructions

- **Dodd-Frank Provisions**

- Section 957 amended the '34 Act to prohibit brokers from voting uninstructed shares with respect to: (1) The election of a member of the board of directors; (2) executive compensation; and (3) any other significant matter, as determined by the Commission by rule

Discretionary Voting by Brokers, Cont. NYSE Rule 452 Amendments

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- Amended Rule 452 provides that a member organization may not give or authorize a proxy to vote without instructions from beneficial owners when, among other things, the matter to be voted on **relates to executive compensation**.
- A matter relating to executive compensation would include, among other things, items referred to in Section 14A of the '34 Act, including:
 - An advisory vote to approve the compensation of executives
 - A vote on whether to hold such an advisory vote every 1, 2 or 3 years
 - An advisory vote to approve any type of compensation (whether present, deferred or contingent) based on or relating to an acquisition, merger, consolidation, sale or other disposition of all or substantially all of the issuer's assets and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of an executive officer.

Discretionary Voting by Brokers, Cont. NYSE Rule 452 Amendments

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- In addition, a member organization may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item 12, Item 13 or any other Item under Rule 452.
- Any vote on these or similar executive compensation-related matters is subject to the requirements of Rule 452

Discretionary Voting by Brokers, Cont. Nasdaq Rule 2251 Amendments

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- Tracks language of the Dodd-Frank Act
- States that a Nasdaq Member that is not the beneficial owner of a security is prohibited from granting a proxy to vote the security on the election of a member of the board of directors of the issuer, executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with voting instructions of the beneficial owner.

Proxy Access

- **Context**

- Proxy access refers to the ability of shareholders of public companies to have their nominees for director included in the issuer's proxy statement rather than in a separate proxy statement
- Prior to Dodd-Frank Act, several states permitted proxy access and only one state (North Dakota) required proxy access
- SEC proposed proxy access rules most recently in 2009
 - Highly controversial; Delaware amended DGCL to provide a means for companies to do this by private ordering
 - Challenge to SEC authority expected; SEC delayed action

- **Dodd-Frank Provisions**

- Section 971 amended the '34 Act to give the SEC the authority to adopt rules to permit proxy access

New SEC Proxy Access Rules

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- Final Rule 14a-11 was adopted by the Commission on August 25, 2010 and included in the Federal Register on September 16, 2010 (effective date: November 15, 2010).
- On September 29, 2010, the U.S. Chamber of Commerce and Business Roundtable brought a legal challenge to the rules in federal appeals court, and simultaneously filed an administrative motion to stay with the SEC pending resolution of the challenge.
 - Petitioners allege rules are arbitrary and capricious, violate the Administrative Procedure Act, and that the SEC failed to assess the effects of the rule on efficiency, competition and capital formation.
- On October 4, 2010, the Commission granted the motion to stay the effect of the newly adopted Rule 14a-11, as well as the amendments to Rule 14a-8, until resolution of the legal challenge.

Application of Rule 14a-11

- Rule 14a-11 will not apply if there are any relevant state laws or governing documents of a company that would prohibit shareholder nominations.
 - Currently, no state prohibits proxy access.
- If a state law or governing document sets forth **more restrictive** terms than Rule 14a-11 for shareholder nominations, shareholders may use the less restrictive Rule 14a-11.
- If a state law or governing document sets for **less restrictive** terms than Rule 14a-11, then no part of Rule 14a-11 is available to the shareholder.

Who Can Use Rule 14a-11?

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- The nominating shareholder individually, or the nominating shareholder group in the aggregate, holds **at least 3%** of the total voting power of the securities that are entitled to be voted on the election of directors at the annual (or special) meeting of shareholders or a written consent in lieu of such meeting, on the date the nominating shareholder or group files the notice on Schedule 14N with the Commission.
- The nominating shareholder or each member of the nominating shareholder group has **held securities continuously for at least 3 years** and must continue to hold the securities through the date of the subject election of directors.

Requirements for Use of Rule 14a-11

- The nominating shareholder or each member of the nominating group is not:
 - holding any of the registrant's securities with the purpose, or with the effect, of **changing control of the registrant**; or
 - to gain a number of seats on the board of directors that **exceeds the maximum number of nominees** that the registrant could be required to include under the rule
- The nominee's candidacy or, if elected, board membership would **not violate controlling federal, state or foreign law**, or rules of a national securities exchange/association (subject to a right to cure approximately 106 days prior to the last proxy mailing date)
- The nominee must meet the **objective criteria for "independence"** of the national securities exchange/association rules applicable to the registrant

How to Nominate Under Rule 14a-11

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- The nominating shareholder or nominating shareholder group provides notice to the registrant on Schedule 14N of its intent to require that the registrant include the specified nominee in the registrant's proxy statement and form of proxy.
- Schedule 14N must be filed with the Commission and transmitted to the registrant **no earlier than 150 calendar days** and **no later than 120 calendar days** before the anniversary of the date that the registrant mailed its proxy materials for the prior year's annual meeting.

How Many Nominees Must Be Included in the Proxy Statement?

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- A registrant will be required to include in its proxy statement and form of proxy one shareholder nominee or the number of nominees that represents **25% of the total number of the registrant's board of directors**, whichever is greater.
 - If calculating 25% of the board does not result in a whole number, registrants are to round down to the closest whole number below 25% to determine the maximum number of shareholder nominees that the registrant would be required to include.
- **Order of Priority**
 - The person(s) with the highest qualifying voting power percentage are to be included.

Other Covered Matters

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- This summary points out only the highlights of a very detailed rule.
- The rule covers virtually every possible contingency and attempts to answer most questions about the rule's operation.

Amendment to SEC Rule 14a-8

- Prior to the effective date of the amendment, shareholder proposals could be excluded if related to a nomination or election for membership on the company's board of directors or a procedure for such nomination or election.
- Under the amended rule, a proposal may be excluded only if it:
 - Would disqualify a nominee who is standing for election;
 - Would remove a director from office before his/her term expired;
 - Questions the competence, business judgment or character of one or more nominees or directors;
 - Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or
 - Otherwise could affect the outcome of an upcoming election of directors.

Considerations for Practitioners: Say on Pay

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- Keep directors aware of changes to corporate governance requirements
- Decide when to have say-on-pay votes: every 1, 2 or 3 years?
- Get ready for say-on-pay vote in 2011
 - Final rules not required for this vote
 - Use the Executive Summary of the CD&A to tell a persuasive "pay for performance" story
 - This will require original thought and new drafting
- Plan for obtaining re-approval of the IRC §162(m) performance criteria in the new "broker non-vote" era
 - The same goes for any matter "related to executive compensation"

Considerations for Practitioners, Cont.: Proxy Access

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- Monitor legal proceeding (*Business Roundtable et al. v. U.S. Securities and Exchange Commission*, case number 10-cv-1305, U.S. Ct of Appeals, District of Columbia Circuit) to determine if/when final rules will be applicable
 - SEC has acknowledged that proxy access rules would not be available for 2011 proxy season
- Carefully monitor shareholder base
 - Expand group of shareholders (major shareholders and potential shareholder groups) with which the company regularly communicates
 - Maintain an open dialogue with shareholders *before problems arise*
- Ensure that advance bylaw provisions and governing documents are up-to-date and in accordance with best practices

Considerations for Practitioners, Cont.: Proxy Access

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- Think strategically about optimal size of the board of directors
 - Up to 7 directors = 1 shareholder nominee
 - 8 - 11 directors = 2 shareholder nominees
 - 12 - 15 directors = 3 shareholder nominees
- Amend advance notice bylaw provisions to except Rule 14a-11 nominees
- Prepare for Rule 14a-8 shareholder proposals to lower the required thresholds for shareholder access, such as holding 1% for 1 year.
- Nominating committee should remain aware of the criteria that proxy advisory services use for a "withhold" recommendation

Recovery of Erroneously Awarded Compensation: Clawbacks

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- **Context**

- Section 304 of the Sarbanes-Oxley Act requires a CEO/CFO to return incentive-based compensation to an issuer when a financial restatement occurs as a result of "misconduct".

- **Dodd-Frank Provisions**

- Section 954 expands clawback requirement to all current and former executive officers who received compensation during the 3 years prior to the required financial restatement.
- Section 954 requires the Commission to direct the exchanges to prohibit the listing of securities of issuers that have not developed and implemented compensation claw-back policies.

Disclosure on Board Leadership

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- **Context**
 - In December 2009, SEC adopted requirement to disclose reasons why a Chairman of the Board and CEO positions are filled by the same person in the issuer's proxy.
- **Chairman/CEO Structure Disclosure**
 - Section 972 amended the '34 Act to require the Commission to issue a rule requiring issuers to disclose in its annual proxy why the issuer has chosen the same person or different individuals, as applicable, to serve as chairman of the Board and CEO of the issuer.

Compensation Committee and Adviser Independence

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- **Dodd-Frank Provisions**

- Section 952 also requires the Commission to direct that the exchanges adopt listing standards that include certain enhanced independence requirements for members of issuers' compensation committees.
- Section 952 requires disclosure about the role of, and potential conflicts involving, compensation consultants.
- This section also directs the Commission to establish competitively neutral independence factors which must be considered when retaining a compensation committee adviser, which must include:
 - provision of other services to the company by the consultant;
 - the amount of fees paid by the company to the consultant as a percentage of the consultant's total revenues;

Compensation Committee and Adviser Independence, Cont'd

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- the consultant's policies and procedures designed to prevent conflicts of interest;
- any business or personal relationship of the consultant with a member of the committee; and
- any stock of the company owned by the consultant.

Disclosure of Employee and Director Hedging

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- **Disclosure of Employee and Director Hedging**
 - Section 955 requires the SEC to amend the proxy rules to require additional disclosure about whether directors and employees are permitted to purchase financial instruments that are designed to hedge or offset any decrease in market value of the company's equity securities granted by the company as compensation or otherwise held directly or indirectly by the director or employee.
 - Types of instruments include prepaid variable forward contracts, equity swaps, collars and exchange funds.
 - Hedging by directors and employees may adversely affect (i) the alignment of their interest with the interests of shareholders and (ii) the effect of incentive compensation arrangements.

Implementation: The SEC's Schedule

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- Some of the new provisions apply to proxy materials and proxy voting records that are prepared in connection with annual shareholder meetings that will take place after January 20, 2011 (6 months after enactment).
 - In these areas, the SEC intends to propose and adopt rules prior to this January 20 date.
 - This has already started.
- Some Dodd-Frank provisions are not effective until the SEC adopts regulations; of these, some include dates by which the SEC must act, and others are silent.
 - The SEC will adopt the provisions with specified dates first, as they consider such as indicative of Congressional priorities.
 - The SEC expects to adopt all rules with specified dates by July 21, 2011 (one year from enactment).

Implementation: SEC's Current Timeline

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- October - December 2010
 - Propose rules re: shareholder votes on executive compensation, golden parachutes [§951]
 - Propose rules regarding disclosure by institutional investment managers of votes on executive compensation [§951]
 - Propose exchange listing standards regarding compensation committee independence and factors affecting compensation advisor independence; propose disclosure rules re: compensation consultant conflicts [§952]
- January - March 2011
 - Adopt rules regarding shareholder votes on executive compensation, golden parachutes [§951]
 - Adopt rules regarding disclosure by investment advisors of votes on executive compensation [§951]

Implementation: SEC's Current Timeline, Cont.

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- April - July 2011
 - Adopt exchange listing standards re: compensation committee independence and factors affecting compensation adviser independence; adopt disclosure rules re: compensation consultant conflicts [§952]
 - Propose rules regarding disclosure of pay-for-performance, pay ratios and hedging by employees and directors [§953 & §955]
 - Propose rules regarding recovery of executive compensation [§954]
 - Propose rules defining "other significant matters" for purposes of exchange standards regarding broker voting of uninstructed shares [§957]

Important Links

Dodd-Frank Act: <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>

SEC's Dodd-Frank Implementation Schedule:

<http://www.sec.gov/spotlight/dodd-frank.shtml>

NYSE Rule 452 - SEC Notice of Filing & Accelerated Approval :

<http://www.sec.gov/rules/sro/nyse/2010/34-62874.pdf>

Nasdaq Rule 2251 - SEC Notice of Filing & Accelerated Approval:

<http://www.sec.gov/rules/sro/nasdaq/2010/34-62992.pdf>

Proxy Access - SEC Final Rule: <http://www.sec.gov/rules/final/2010/33-9136.pdf>

Business Roundtable et al. v. U.S. SEC - Petition for Review; Motion to Stay
Final Proxy Access Rule:

http://www.uschamber.com/sites/default/files/files/1009uscc_sec.pdf

Proxy Access - SEC Order Granting Stay:

<http://www.sec.gov/rules/other/2010/33-9149.pdf>

Say on Pay / Say on Golden Parachute - SEC Proposed Rules:

<http://www.sec.gov/rules/proposed/2010/33-9153.pdf>

<http://www.sec.gov/rules/proposed/2010/34-63123.pdf>

APPENDIX – SEC Proposed Rule: Required Say-on-Pay Votes & Additional Disclosure Requirements



Comments on Proposed Rules due November 18, 2010.

- **Shareholder Approval of Executive Compensation**

- Proposed Rule 14a-21(a)

- Issuers would be required, at least once every 3 years, to provide a separate shareholder advisory vote to approve compensation of executives in its annual meeting proxy statement.
- Effective at the first annual shareholders meeting occurring on or after January 21, 2011.
- Vote would approve compensation of the issuer's named executive officers as defined in Item 402(a)(3) of Reg S-K.
 - Smaller reporting companies would vote to approve compensation of named officers disclosed under Items 402(m) through (q) of Reg S-K.
- Compensation of directors would not be subject to the advisory vote.
- Vote must relate to all executive compensation disclosure set forth pursuant to Item 402 of Reg S-K.

- Proposed Item 24 to Schedule 14A

- Issuers would be required to disclose in its annual meeting proxy statement that they are providing a separate shareholder vote on executive compensation and to briefly explain the effect of the vote, such as whether it is non-binding.

- Proposed Amendments to Item 402(b) of Reg S-K

- Proposal would require company to disclose in the CD&A whether, and if so, how it has considered the results of previous say-on-pay votes.
 - This was not a requirement of the Dodd-Frank Act
 - No similar requirement for smaller reporting companies

SEC Proposed Rule: Required Say-on-Pay Votes & Additional Disclosure Requirements, Cont.



- **Shareholder Approval of the Frequency of Shareholder Votes on Executive Compensation**
 - Proposed Rule 14a-21(b)
 - Issuers would be required, at least once every 6 years, to provide a separate shareholder advisory vote in annual meeting proxy statements to determine whether say-on-pay votes will occur every 1, 2 or 3 years.
 - Effective at the first annual shareholders meeting occurring on or after January 21, 2011.
 - Proposed Item 24 of Schedule 14A
 - Proposed Item 24 would also require issuers to briefly explain the general effect of this vote, such as whether it is non-binding.
 - Proposed Amendment to Rule 14a-4
 - Reflects statutory requirement to vote on frequency of say on pay votes as every 1, 2, or 3 years, or to abstain from voting on the matter (providing all four choices to shareholders).
 - Proposed Amendment to Rule 14a-8
 - Would add a new note to Rule 14a-8(i)(10) to permit the exclusion of a shareholder proposal that would provide a say-on-pay or seeks future say-on-pay votes, or that relates to frequency of say-on-pay votes that is consistent with the plurality of votes cast in the most recent vote in accordance with Rule 14a-21(b) and provides a vote on frequency at least as often as required by Section 14A(a)(2).

SEC Proposed Rule: Required Say-on-Pay Votes & Additional Disclosure Requirements, Cont.



- **Shareholder Approval of the Frequency of Shareholder Votes on Executive Compensation, Cont.**
 - Proposed Amendment to Forms 10-K and 10-Q
 - Amendments would require issuers to disclose to shareholders, on a timely basis, whether the issuer's determination regarding how frequently it will conduct shareholder advisory votes on executive compensation in light of the results of the shareholder vote on frequency.

- **Other Matters Relating to Say-on-Pay and Frequency of Say-on-Pay Votes**
 - Broker Discretionary Voting
 - Under the amended exchange rules, broker discretionary voting of uninstructed shares would not be permitted for a shareholder vote on executive compensation or frequency of say-on-pay vote.
 - Relationship to Say-on-Pay for TARP Companies
 - Rule 14a-21(b), as proposed, would exempt issuers with outstanding indebtedness under TARP from the requirements of Rule 14a-21(b) and 14A(a)(2) until all outstanding indebtedness under TARP has been repaid.

SEC Proposed Rule: Required Say-on-Pay Votes & Additional Disclosure Requirements, Cont.

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- **Disclosure of Golden Parachute Arrangements and Shareholder Approval of Golden Parachute Arrangements**
 - Overview
 - Rule proposes to amend Schedule 14A to require disclosure with respect to golden parachute compensation arrangements in proxy or consent solicitations in connection with an acquisition, merger, consolidation or proposed sale/disposition of all or substantially all assets, in accordance with new proposed Item 402(t) of Reg S-K.
 - Golden parachute disclosure would also be required in connection with going-private transactions and third-party tender offers.
 - Proposed rule would require disclosure of all golden parachute compensation relating to the merger among the target and acquiring companies and the named executive officers of each in order to cover the full scope of golden parachute compensation applicable to the transaction.
 - Proposed rules would also require issuers to provide a shareholder advisory vote to approve certain "golden parachute" compensation arrangements in merger proxy statements.
 - Proposed Item 402(t) of Reg S-K
 - Item 402(t) would require disclosure of all named executive officers' golden parachute arrangements in both tabular and narrative formats

SEC Proposed Rule: Required Say-on-Pay Votes & Additional Disclosure Requirements, Cont.



- Proposed Item 402(t) of Reg S-K, Cont.
 - Table would present quantitative disclosure of individual elements of compensation, including:
 - Cash severance payments
 - Dollar value of accelerated stock awards, in-the-money option awards for which vesting is accelerated and payments in cancellation of stock and option awards
 - Pension and non-qualified deferred compensation benefits enhancements
 - Perquisites and other personal benefits, and health and welfare benefits
 - Tax reimbursements
 - "Other" column (with footnotes identifying separate forms of compensation reported)
 - Item 402(t) would only relate to compensation based on or otherwise relating to the transactions. Post-transaction employment agreements would not be included.
 - Pursuant to proposed narrative disclosure requirements, Item 402(t) would require issuers to describe:
 - Any material conditions or obligations applicable to receipt of payment
 - Specific circumstances that would trigger payment
 - Whether payments could be lump sum, or annual, by whom payments would be provided and any material factors regarding each agreement

SEC Proposed Rule: Required Say-on-Pay Votes & Additional Disclosure Requirements, Cont.



- Amendments to Schedules 14A, 14C, 14D-9, 13E-3 and Item 1011 of Reg M-A
 - Proposed amendment would require Item 402(t) disclosure in whatever form the transaction takes, whether a merger, acquisition, Rule 13e-3 going private transaction, etc.
- Proposed Rule 14a-21(c)
 - Under the proposed rule, issuers would be required to provide a separate shareholder advisory vote in proxy statements for meetings at which shareholders are asked to approve an acquisition, merger, consolidation or proposed sale or disposition of all or substantially all assets
 - Shareholder advisory vote on golden parachute arrangement would only be required if Section 14A(b)(1) requires disclosure and Section 14A(b)(2) requires a shareholder vote.
 - Advisory vote would not be binding on the issuer or the board of directors.
 - Issuers would not be required to include a separate shareholder vote on golden parachute disclosure under Item 402(t) if that disclosure had been included in the executive compensation disclosure subject to a prior vote by shareholders under Section 14A(a)(1) of the Exchange Act and Rule 14a-21(c).
 - New golden parachute arrangements, and modified terms of arrangements, would require separate shareholder vote under Section 14A(b)(2) and Rule 14a-21(c).
 - Issuers providing for new golden parachute arrangement or modified terms would provide 2 separate tables under Item 402(t) of Reg S-K – one table disclosing all golden parachute compensation and the second table disclosing only new arrangement and revised terms subject to the shareholder vote.

SEC Proposed Rule: Institutional Investment Manager Reporting

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Comments on Proposed Rules due November 18, 2010.

- Proposed rule would require an institutional investment manager that is subject to Section 13(f) of the Exchange Act to report annually how it voted proxies relating to executive compensation matters as required by Section 14A of the Exchange Act

Class of Reporting Persons

- Every institutional investment manager (as defined in Section 13(f)(6)(A) of the Exchange Act) that is required to file reports under Section 13(f) of the Act
 - Would be required to file its record of say-on-pay votes, frequency of say-on-pay votes and votes on "golden parachute" arrangements ("**Section 14A Votes**") on amended Form N-PX.

• **Scope of Reporting Obligation**

- Investment managers would include in the report the manager's proxy voting record for each shareholder vote pursuant to Sections 14A(a) and (b) of the Exchange Act with respect to which the manager, whether directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, had or shared the power to vote, or to direct the voting of, any security.
- A manager would be required to report a Section 14A Vote only if the manager had or shared voting power over the particular Section 14A Vote, without regard to whether the manager had voting powers on other matters.

SEC Proposed Rule: Institutional Investment Manager Reporting

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- **Form N-PX Disclosure**

- Institutional investment managers would be required to identify securities voted, describe the executive compensation matters voted on, disclose the number of shares over which the manager held voting power and the number of shares voted, and indicate how the manager voted.
 - Information is to be disclosed in a standardized order
 - Standardized descriptions would be used to provide the required brief identification of the matter voted on

- **Timing**

- Institutional investment managers would be required to report votes annually, not later than August 31 of each year, for the twelve months ended June 30.

- **Compliance Dates**

- If adopted, the first Form N-PX covering Section 14A Votes would be for annual shareholder meetings held on or after January 21, 2011 and ending June 30, 2011. Such reports would be due August 31, 2011.

SEC Proposed Rule: Institutional Investment Manager Reporting

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- **Other Notes on Manager Reporting**

- The proposed rule relates to reporting Section 14A Votes of any security, without regard to whether the manager had previously reported or been required to report the security as a holding on Form 13F, or whether the securities were held at the close of any quarter or the size of the holding.
- Proposed rule notes that reporting on Form 13F is based on "investment discretion" rather than "voting power", so there will be discrepancies between what is reported on Form 13F and what is reported on amended Form N-PX.
- Form N-PX will permit a single institutional investment manager to report Section 14A Votes in cases where multiple institutional investment managers share voting power to minimize duplication of filings. The other related investment managers satisfy their reporting requirements by referencing the Form N-PX of the fund that includes its Section 14A Votes.