September 28, 2010

Summary of Dodd-Frank Provisions

Proxy Access/Director Nomination *Overview*. Shareholder-nominated director candidates must be included in the company's proxy materials provided that certain conditions are met by the nominating shareholder or shareholder group.?

- Companies may not "opt out" of compliance with the proxy access rules or adopt more restrictive proxy access standards than those described below.
- *Effective Dates and Nomination Deadlines?- 2011 Proxy Season.*
    - Shareholder-nominated director candidates must be submitted at least 120 days (but not more than 150 days) prior to the anniversary of the mailing of the company's previous year's proxy statement.
    - The proxy access rules become effective November 15, 2010. As a result, taking into account the deadline for a shareholder's submission of a director candidate:
        - If a company's 2010 proxy materials were mailed before March 15, 2010, shareholders will not be permitted to nominate any director candidates.
        - If a company's 2010 proxy materials were mailed on or after March 15, 2010, shareholders will be permitted to nominate director candidates.
        - NOTE: Notwithstanding the above, if a company determines to move the date of its 2011 annual meeting by more than 30 days from the date of the 2010 meeting, the deadline for shareholders to nominate directors will be a "reasonable time" before the company mails its 2011 proxy materials.
- *Eligibility.*
    - In order to be eligible to nominate a director to the company's board, a shareholder (or shareholder group) must:
        - have investment and voting power over at least 3% of the outstanding shares of the company as of the date that the shareholder provides notice to the company;
        - have held continuously for three years the amount of securities that are used for purposes of satisfying the 3% ownership requirement; and
        - continue to hold that amount of securities through the date of the annual meeting.
    - Shares may be aggregated by a group of shareholders to meet the ownership requirement (each shareholder in the group must have held the shares used to meet the 3% threshold continuously for at least three years).
- *Limitations on Shareholder Nominations.*
    - The company will not be required to include in its proxy statement more than one shareholder nominee, or a number of nominees that represents up to 25% of the size of the entire Board, whichever is greater.

        - If the company has a classified (staggered) Board, the 25% calculation is still based on the total number of Board seats.
    - The nominating shareholder (or group) with the highest percentage of the company's voting power will have its nominees included in the company's proxy materials in the event that there are multiple eligible nominating shareholders.
    - If the maximum number of shareholder-nominated director candidates is already serving on the Board, the company is not required to include additional shareholder-nominated director candidates in the company's proxy materials.

- *Required Shareholder Disclosures?- "Schedule 14N."*
    - The Schedule 14N prepared by the nominating shareholder (or group) must be provided to the company and filed with the SEC at the same time.
    - The Schedule 14N must include disclosure concerning:
    - The voting power of the company's securities entitled to be voted by the nominating shareholder (or group) and the length of ownership of those securities.
    - NOTE: The shareholder (or group) must also include a statement of intent to hold the securities through the meeting date and indicate whether the shareholder intends to continue to hold the shares after the meeting.
        - Biographical and other information about the nominating shareholder or group and the shareholder nominee or nominees, similar to the disclosure currently required in a contested election.?
            - NOTE: The shareholder (or group) may elect to have a statement in support of the shareholder nominee (up to 500 words) included in the company's proxy materials.
        - Whether the nominee meets the "objective" independence requirements of the applicable national securities exchange.
            - NOTE: A shareholder-nominee is not required to satisfy "subjective" independence standards that may be required by the national securities exchange on which the company is listed.
        - Whether the nominee satisfies the company's director qualifications, if any (as provided in the company's governing documents).
            - NOTE: A shareholder-nominee is not required to satisfy the company's director qualifications.
    - The Schedule 14N must include the following certifications:
        - The nominating shareholder (or group) is not holding any of the company's securities with the purpose, or with the effect, of:
            - changing control of the company; or
            - gaining a number of seats on the Board that exceeds the maximum number of nominees that the company could be required to include in its proxy statement under the proxy access rules.
        - The nominating shareholder (or group) and the shareholder-nominated director candidates satisfy the requirements of the proxy access rules.
        - The information set forth in the Schedule 14N is true, complete and correct.

- SEC "No Action" Process. The company may seek a no-action letter from the SEC with regard to the company's determination to exclude a nominee, provided that the company asserts that a requirement of the proxy access rules has not been met and has given the nominating shareholder (or group) notice of, and opportunity to cure, the deficiency.

- *Shareholders May Now Seek More Permissive Proxy Access Standards*. Pursuant to the new rules, shareholders may file proposals seeking that the company establish more permissive proxy access standards than those described above, provided such shareholders comply with the traditional SEC shareholder proposal rules.

Say on Pay

- Under Section 951(a) of the Dodd-Frank Act, at least once every three years, public companies are required to conduct a nonbinding shareholder advisory vote on their executive compensation programs as disclosed in their annual meeting proxy statements.
- At least once every six years, public companies must also conduct a separate nonbinding shareholder vote on the frequency of the "say on pay" vote to determine whether the vote will occur annually, biennially or triennially.
- Both the "say on pay" and "frequency" votes are required to be included in a company's proxy statement for its first annual or other meeting of shareholders occurring on or after January 21, 2011.
- According to its recently announced tentative rulemaking schedule, the SEC currently anticipates issuing proposed rules regarding "say on pay" in October-December 2010 and final rules in January-March 2011.

Golden Parachute Compensation

- Under Section 951(b) of the Dodd-Frank Act, any proxy or consent solicitation material for a shareholder meeting at which shareholders are asked to approve a merger or other business combination transaction must include clear and simple disclosure of:
    - any compensation arrangements with named executive officers that are based on or otherwise relate to the transaction (including any conditions to payment); and
    - the aggregate total of all such compensation that may be paid under these arrangements.
- The proxy materials must also include a nonbinding advisory shareholder vote on these compensation arrangements (unless these arrangements have already been the subject of a shareholder "say on pay" vote at a prior shareholder meeting).
- These rules apply for any shareholder meeting that occurs on or after January 21, 2011, at which shareholders will be asked to approve a merger or other business combination transaction.
- According to its recently announced tentative rulemaking schedule, the SEC currently anticipates issuing proposed rules regarding "golden parachute say on pay" in October-December 2010 and final rules in January-March 2011.

Clawback Policy

- Under Section 954 of the Dodd-Frank Act, a company listed on a national securities exchange will be required to adopt and disclose a "clawback" policy.
- The policy must require that, in the event the company is required to restate its financial statements due to material noncompliance with financial reporting requirements, the company will recover incentive compensation (including stock options) received by any current or former executive officer during the last three years that was in excess of what that executive officer would have received had the awards been based on the restated financials.?
- According to its recently announced tentative rulemaking schedule, the SEC currently anticipates issuing proposed rules regarding clawback policies in April-July 2011, so these rules will not be in effect for the 2011 proxy season.

CEO Compensation Ratio Calculation

- Section 953(b) of the Dodd-Frank Act requires disclosure of:

- the annual total compensation of the company's CEO;
- the median of the annual total compensation of all employees of the company, excluding the CEO; and
- the ratio of the median annual total compensation to the CEO's annual total compensation.

- The Act provides that "annual total compensation" should be calculated using the same rules that apply for determining total compensation in the Summary Compensation Table (Regulation S-K Item 402(c)(2)(x)).
- According to its recently announced tentative rulemaking schedule, the SEC currently anticipates issuing proposed rules regarding CEO/employee pay ratio disclosure in April-July 2011, so this disclosure requirement will not be in effect for the 2011 proxy season.