August 2, 2010

New Executive Compensation Disclosures Under Dodd-Frank

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") was signed into law by President Obama on July 21. The Act represents one of the most significant pieces of financial reform legislation enacted in recent decades and contains numerous corporate governance and securities law provisions that require the attention of corporate executives. One such provision relates to new disclosures on executive compensation. **Disclosure of Pay versus Performance** Section 953 of the Act amends the Securities Exchange Act to include a new Section 14(i) called "Disclosure of Pay versus Performance." This section requires the SEC to adopt rules requiring public companies to disclose in their annual meeting proxy statements a clear description of any compensation required to be disclosed under Item 402 of Regulation S-K, including information showing the relationship between the amount of compensation paid and the company's financial performance, taking into account any change in the value of the company's stock and any dividends and distributions. The disclosure regarding the relationship between compensation and the company's financial performance may be presented in a graph. This graph could have a horizontal axis listing years (the number of years to be determined by the SEC through rulemaking) and a vertical axis with two scales, one for executive compensation and another for the financial performance of the company for each year. The Act does not define financial performance, so the SEC will need to determine its meaning for this purpose (i.e., whether financial performance should be based on stock price, the company's earnings, return on equity or some other measure). **Disclosure of CEO Pay versus Median Employee Pay** Section 953 of the Act also requires the SEC to amend Item 402 of Regulation S-K to require public companies to disclose in proxy statements and all other SEC filings that require Item 402 disclosures (e.g., registration statements and annual reports) the following information:

- The median of the annual total compensation of all employees of the company, except the CEO (or equivalent position)
- The annual total compensation of the CEO (or equivalent position) of the company
- The ratio of the two amounts set forth above

Annual total compensation is to be calculated in the same manner in which total compensation is currently calculated for named executive officers in the Summary Compensation Table. This means that for every employee, the company would have to calculate his or her salary, bonus, stock awards, option awards, nonequity incentive plan compensation, change in pension value and nonqualified deferred compensation earnings, and all other compensation (e.g., perquisites). This information would undoubtedly be extremely time-consuming to collect and analyze, making it virtually impossible for a company with thousands of employees to comply with this section of the Act. It is hoped that the SEC will adopt rules that will simplify the manner in which annual total compensation is calculated for all employees. **Implementation of Disclosure Rules** While Section 953 of the Act directs the SEC to adopt the above disclosure rules, it did not specify a specific time frame for their adoption.