CLEARY GOTTLIEB
Alert Memo
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# Not Just Financial Reform: Dodd-Frank's Executive Compensation and Governance Requirements for All Public Companies

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") was signed into law by President Obama on July 21, 2010. Although the Dodd-Frank Act has been presented to the public as comprehensive financial reform, its scope goes beyond regulating the financial industry. We summarize below the executive compensation and corporate governance provisions of the Dodd-Frank Act that are applicable generally to U.S. public companies.[1]

## 1. Say on Pay, Say When on Pay and Say on Golden Parachutes (Section 951[2])

### A. Say on Pay: What's Required

- In any proxy statement for a shareholder meeting occurring after January 21, 2011 for which the SEC's proxy rules require compensation disclosure, companies must submit the compensation of the named executive officers ("NEOs"), as disclosed, to a shareholder vote.
- The vote must be held no less frequently than triennially, as determined by shareholders (see Part 1.D below).
- The vote is non-binding and not intended to overrule any board or company decision, create or imply any change or addition to the fiduciary duty of the board

[1] Foreign private issuers are almost entirely exempt from the Dodd-Frank Act's executive compensation and corporate governance requirements. *But see* Part 3.A below. Although beyond the scope of this memorandum, we also note that there are other corporate governance and executive compensation requirements in the Dodd-Frank Act applicable solely to financial institutions, including those that are foreign private issuers.

In addition to the requirements we summarize in this memorandum, the Dodd-Frank Act also authorizes SEC rulemaking to implement proxy access, and we expect that the SEC will promulgate final rules in this area before the 2011 proxy season.

[2] Unless otherwise stated, section references in this memorandum are to the Dodd-Frank Act.

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or the company or restrict shareholder proposals about executive compensation matters.

- The Dodd-Frank Act prohibits uninstructed broker voting in connection with Say on Pay votes, as described in Part 2 below.

B. Say on Pay: What Isn't Clear

- Will the Say on Pay vote requirement mean that all companies must file preliminary proxy statements?
  - Under current proxy rules, the inclusion of a Say on Pay vote requires a preliminary proxy statement to be filed ten calendar days prior to the filing of the definitive proxy statement. The SEC amended its rules to eliminate this requirement for companies that received financial assistance under TARP that were required to hold Say on Pay votes. We expect that the SEC will do the same in this context.

C. Say on Pay: What to Consider Now

- Review the voting guidelines of significant shareholders regarding executive compensation and consider more vigorous shareholder outreach to assure that potential issues are surfaced in advance. Even though the Say on Pay vote is non-binding, the consequences of losing such a vote can extend beyond simply receiving negative publicity.
  - For example, RiskMetrics notes that, if concerns raised by a company's shareholders through a Say on Pay vote are not adequately addressed in the subsequent year, it may recommend withhold/against votes on the re-election of compensation committee members.
- Section 951 also requires that every institutional investment manager subject to Section 13(f)[3] of the Securities Exchange Act of 1934, as amended (the "Exchange Act") report at least annually how it voted on any Say on Pay, Say When on Pay or Say on Golden Parachutes vote. Query whether and how this disclosure requirement may affect voting decisions.

D. Say When on Pay: What's Required

- In the proxy statement for the first shareholder meeting occurring after January 21, 2011 for which the proxy solicitation rules require compensation disclosure (*i.e.*,

[3] Section 13(f) applies to institutional investment managers with more than $100 million of registered equity securities under management.

the first proxy statement to include a Say on Pay vote required under Section 951), companies must permit shareholders to vote on whether the Say on Pay vote will occur every one, two or three years.

- Companies must thereafter hold Say When on Pay votes no less frequently than once every six years.

E. Say When on Pay: What Isn't Clear

- What voting standard applies to the Say When on Pay vote?
  - Although a plurality standard would seem the simplest choice, the Dodd-Frank Act does not specify a voting standard or call for SEC rulemaking on this provision.
  - Query whether management could set the default Say When on Pay vote frequency, and only adopt a different timeframe if a majority of shareholders choose otherwise.
  - Exchange Act Rule 14a-4 (which mandates the form of a proxy) will likely need to be amended to address the Say When on Pay vote. Conceivably, the SEC could take the opportunity to set a voting standard as well.
- Is the Say When on Pay vote binding or non-binding?
  - The Dodd-Frank Act states that the shareholder votes referred to in Section 951 (which would include the Say When on Pay vote) "shall not be binding on the issuer or the board of directors of an issuer." However, the subsection that requires the Say When on Pay vote states that the vote is "to determine whether [the Say on Pay vote] will occur every 1, 2, or 3 years." (Emphasis added.) This ambiguity may be a vestige of the legislative process, as the Say When on Pay vote was inserted into the Dodd-Frank Act at the eleventh hour. Moreover, Senator Dodd included a statement in the Congressional Record providing that the Act adds "a shareholder vote on how frequently the [company] should give shareholders a 'say on pay' vote. The shareholders will vote to have it every 1, 2, or 3 years."[4] We believe that it would be imprudent to ignore the stated preference of shareholders.

[4] 156 Cong. Rec. S5927-30 (daily ed. Jul. 15, 2010) (statement of Sen. Dodd).

F. Say When on Pay: What to Consider Now

- Determine what voting frequency makes sense for your company. While the majority of voluntary Say on Pay adopters to date have decided to hold votes annually, others have chosen biennial and triennial votes.[5]

- Reach out to significant shareholders to discuss their preferences.

  - The United Brotherhood of Carpenters has, for example, consistently championed the idea of a triennial vote.

- While the SEC may take action to clarify the manner in which the vote should be presented and the standard, we expect that the governing documents of most companies will also not be well-adapted to the Say When on Pay vote. Companies should review relevant charter and bylaw provisions, as well as other governance documents, to assess changes that may be needed (and related approval requirements), including in the absence of SEC action. If an amendment is called for, consider specifically addressing abstentions, which can affect voting outcomes if they are given effect as votes cast under state law.

G. Say on Golden Parachutes: What's Required

- In any proxy statement or consent solicitation for a shareholder meeting to approve an acquisition, merger, consolidation or sale of substantially all of a company's assets occurring after January 21, 2011, the company must submit all "golden parachute" arrangements (generally, arrangements for compensation that are affected by a change in control transaction) covering any of its NEOs to a separate shareholder vote, unless the arrangements have already been "subject to" a Say on Pay vote. The vote relates to the arrangements collectively, not individually.

- Regardless of whether or not the Say on Golden Parachutes vote must be included in a merger proxy statement, the golden parachutes must be described "in a clear and simple form" and the aggregate total for each NEO must be disclosed in that proxy statement in accordance with SEC rulemaking. We expect that the rules will resemble current SEC disclosure requirements relating to change in control compensation. The Dodd-Frank Act imposes no deadline for the SEC's rulemaking.

- As with the Say on Pay vote, the Say on Golden Parachutes vote is non-binding and not intended to overrule any board or company decision, create or imply any

[5] *See* Janet Fisher, Arthur Kohn & Katie Sykes, *Say-on-Pay: Less May be More*, N.Y. Law Journal, Nov. 30, 2009.

change or addition to the fiduciary duty of the board or the company or restrict shareholder proposals about executive compensation matters.

- The Dodd-Frank Act prohibits uninstructed broker voting in connection with Say on Golden Parachutes votes, as described in Part 2 below.

H. Say on Golden Parachutes: What Isn't Clear

- Which arrangements are covered by the vote?
  - For votes by the acquiring company's shareholders, the disclosure covers agreements between that company and its own NEOs. However, Section 951 states generally that only agreements concerning compensation "that is based on or otherwise relates to" the proposed acquisition transaction must be disclosed. It is unlikely that many agreements between the acquiring company and its NEOs would be covered by this requirement.
  - For votes by the target company's shareholders, the disclosure covers agreements between the target company and its NEOs and also seems intended to cover agreements between the acquiring company and the target company's NEOs. However, read literally, the Dodd-Frank Act requires disclosure of agreements between the target company and the acquiring company's NEOs.
- When can a company conclude that a golden parachute arrangement was "subject to" a Say on Pay vote?
  - Does it matter whether the Say on Pay vote was favorable?
  - Would new, material grants of equity awards need to be approved if they contain change in control vesting terms that had already been "subject to" a prior Say on Pay vote? What if the company has a change in control severance plan, and NEOs have been added as participants to that plan since the last Say on Pay vote?
- How should agreements entered into between the date of the proxy statement and the closing of the acquisition transaction be addressed?

I. Say on Golden Parachutes: What to Consider Now

- Review your company's certificate of incorporation and by-laws and, if necessary, consider amending them to make clear that any supermajority voting requirement otherwise applicable to shareholder approval of a transaction that would trigger the Say on Golden Parachutes vote does not inadvertently apply to the Say on Golden Parachutes vote. The vote is advisory only, but the failure to achieve a favorable

outcome – made more difficult by the higher voting standard – could attract adverse press.

- We expect that many companies will conclude that the Say on Golden Parachutes vote is unlikely to have practical impact and, therefore, changes to parachute arrangements or practices should not be needed in light of the new voting requirement. Management should nonetheless review this issue with the compensation committee.[6]

**2. Broker Discretionary Voting on Executive Compensation Matters (Section 957)**

A. Broker Discretionary Voting: What's Required

- Section 957 amends the Exchange Act to prohibit brokers from voting on "executive compensation" matters on behalf of shareholders for whose account they hold shares unless they have received voting instructions from those shareholders.
  - Under NYSE Rule 452, votes on equity plans are now "non-routine" (*i.e.*, uninstructed broker voting is prohibited). Section 957 would extend this treatment to Say on Pay, Say When on Pay and Say on Golden Parachutes votes and could extend it to cash plans and any equity plans not currently captured by NYSE rules.

B. Broker Discretionary Voting: What Isn't Clear

- The Dodd-Frank Act does not specify an effective date for this provision. Even if effective upon enactment, this provision implicates NYSE Rule 452 and we anticipate that the SEC or the NYSE will publish transition guidance and that the NYSE may reflect the change in rulemaking subject to SEC approval.

C. Broker Discretionary Voting: What to Consider Now

- Consider the need for more vigorous shareholder outreach. This change has the potential to increase the relative impact of the institutional vote and the recommendations of proxy advisory firms, since retail beneficial owners typically

[6] Most companies have recently reviewed their golden parachute arrangements in light of the scrutiny given to these arrangements by institutional investors. For those companies, the new voting requirement may not be enough to motivate further change. However, a review of the voting guidelines of significant shareholders may nevertheless be worthwhile. For example, in its February 2010 proxy voting guidelines summary, RiskMetrics stated that an acceptable golden parachute has, at a minimum: (x) a triggering mechanism beyond the control of management; (y) a payment of no more than three times the executive's average annual W-2 compensation during the five years prior to the year in which the change of control occurs; and (z) a double-trigger payment structure.

vote at low rates and, historically, broker discretionary voting has been perceived as being principally pro-management.

### 3. Compensation Committee Independence Requirements (Section 952)

A. Compensation Committee Independence: What's Required

- The SEC must direct national securities exchanges and national securities associations, no later than July 16, 2011, to prohibit the listing of any security of a company that does not have a fully "independent" compensation committee. The requirement is similar to that for audit committee members in Exchange Act Section 10A(m), although it could be somewhat more relaxed (*see* Part 3.B below).
- Independence must be determined based on relevant facts, including:
  - The director's source of compensation (including consulting, advisory or other compensatory fees paid by the company to the director); and
  - Whether the director is "affiliated" with the company or any affiliate or subsidiary of the company.
- The independence requirements do not apply to:
  - Foreign private issuers that disclose annually to shareholders why they do not have an independent compensation committee.
  - Listed companies of which more than 50% of the voting power for the election of directors is held by an individual, group or other company ("Controlled Companies").
- Section 952 contains conflicting language regarding whether or not the compensation committee independence rules are intended to apply only to companies with an equity listing or to any company with any listed securities.
- As with audit committees under Section 10A(m), Section 952 also gives the compensation committee authority to hire compensation consultants, independent legal counsel and/or other advisers and requires companies to provide for appropriate funding for such consultants and/or advisers.[7]

[7] NYSE (but not NASDAQ) already has a listing requirement (in the commentary to Rule 303A.05 of its Listed Company Manual) requiring compensation committees to have the authority to retain a compensation consultant.

B. Compensation Committee Independence: What Isn't Clear

- Will the SEC's rulemaking under Section 952 parallel the provisions included in Exchange Act Rule 10A-3, which implements Section 10A(m), notwithstanding the different roles played by compensation consultants and independent external audit firms in the context of public company reporting and governance?

- The statutory language of Section 952 seems to indicate that, unlike the audit committee independence rules, the new compensation committee independence rules are not intended to set a bright-line standard for determining independence. Will the SEC nevertheless make these rules proscriptive like the audit committee independence requirements, or will the SEC follow the statutory language and use a facts-and-circumstances approach?

C. Compensation Committee Independence: What to Consider Now

- Although this provision requires rulemaking, it would be prudent to consider whether the current committee membership could present issues under the standards set out in the Dodd-Frank Act. Once rulemaking is complete, director questionnaires, the company's governance guidelines and the compensation committee charter should be reviewed to ensure that they capture the new standards.

- The new standards will mark the fifth set of rules on this subject to which most U.S. domestic public companies with listed equity securities are subject – the others are applicable listing standards under either NYSE or NASDAQ, state law, Exchange Act Rule 16b-3 and Section 162(m) of the Internal Revenue Code. Companies should not, however, assume that a director who meets the other standards will qualify under the eventual Dodd-Frank Act implementing regulations. Given the complexity of these rules and their interplay, we recommend that companies undertake a more comprehensive review of their processes for determining director independence and, in particular, membership on the compensation committee.

- Private equity funds should determine whether the Controlled Company exception applies to each of their portfolio companies.

D. Compensation Consultants and Other Advisers: What's Required[8]

- The SEC must direct national securities exchanges and national securities associations, no later than July 16, 2011, to prohibit the listing of any security of an issuer unless the compensation committee's compensation consultant and other advisers (including legal counsel) are selected only after the committee considers factors affecting their independence. The SEC must specify the factors,[9] and they must include:
    - The provision of other services to the company by the consultant's or adviser's employer;
    - The amount of fees received from the company by the consultant's or adviser's employer, as a percentage of the employer's total revenue;
    - The conflict of interest policies of the consultant's or adviser's employer;
    - Business or personal relationships of the consultant or adviser with any compensation committee member; and
    - Any company stock owned by the consultant or adviser.
- The SEC must issue rules requiring disclosure in any proxy statement for a shareholder meeting occurring on or after July 21, 2011 about whether the company's compensation committee retained or obtained advice from a compensation consultant, whether the consultant's work raised any conflict of interest and, if so, the nature of the conflict and how it is being addressed.
- This provision does not apply to Controlled Companies.

E. Compensation Consultants and Other Advisers: What's Not Clear

- Will the factors for independence to be identified by the SEC be proscriptive? For example, will the SEC set an objective test that will render a consultant not independent, similar to that for external audit firms?

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[8] Section 952 also requires the SEC to conduct a study of the use of compensation consultants and the effects of their use and report to Congress on the results no later than July 21, 2012. The use of legal and other advisers does not appear to be within the scope of the study.

[9] The statute requires that these factors be "competitively neutral among categories of consultants, legal counsel, or other advisers," but is silent on how that neutrality should be achieved.

F. Compensation Consultants and Other Advisers: What to Consider Now

- Review not just consultants but all other advisers to the compensation committee in light of the Dodd-Frank Act's independence requirements. While compensation consultant independence has long been a subject of interest, the same attention has not been paid to other advisers.

- Consider the types of controls and procedures that may eventually be appropriate to track information relating to consultant and adviser independence. Companies may also wish to discuss these procedures with the consultants and advisers themselves, as they too may need similar mechanisms.

## 4. Additional Executive Compensation Disclosures[10]

A. Pay Versus Performance: What's Required

- Section 953(a) directs the SEC to issue rules requiring issuers to include in their annual meeting proxy statements information that "shows the relationship between executive compensation actually paid and the financial performance of the issuer, [which] may include a graphic representation of the information required to be disclosed." No effective date is specified.

B. Pay Versus Performance: What Isn't Clear

- The "actually paid" standard is different than the standard applicable under Item 402 of Regulation S-K, which refers to all compensation "awarded to, earned by, or paid to" the individual. Perhaps the amount actually paid would consist of the sum of certain amounts from the Summary Compensation Table and amounts from other mandated tabular disclosures, such as the Option Exercises and Stock Vested Table.

  - There are many possible approaches to defining the term "actually paid." For example, is compensation paid when it vests? When it is distributed? When an option is exercised? How long after an employee receives/is awarded/vests in a share must the "value of the stock" continue to be taken into account?

- Similarly, the Dodd-Frank Act does not mandate a definition of "financial performance of the issuer," although it states that financial performance should "tak[e] into account any change in the value of the shares of stock and dividends of the issuer and any distributions."

[10] Section 972 also requires annual proxy statement disclosure about whether and why a company splits (or does not split) the positions of chairman of the board of directors and CEO. However, as of February 2010, SEC rules already mandated this disclosure in a substantially similar form.

- Will the disclosure require a comparison of the issuer's financial performance to the aggregate compensation for all NEOs, or will the comparison be done on an individual basis?

- The Dodd-Frank Act gives the SEC substantial discretion to fashion disclosure. The new requirement could resemble the five-year stock performance graph that was originally required to be included in the proxy statement and is now required to be included in the accompanying annual report. That approach would not be very illuminating, however, given stock price volatility, the complex relationship between pay and performance arising from the fact that compensation is often not paid in the same period for which performance is measured, and the wide availability of stock price data that shareholders could use to make the pay/performance comparison on their own. The SEC rules would more constructively require a methodology that allocates pay over time in a rational manner and compares pay and performance in absolute and relative terms.

C: <u>CEO Pay Ratio: What's Required</u>

- Section 953(b) directs the SEC to require disclosure in any proxy statement, annual report, registration statement, going-private transaction statement or tender offer statement of the ratio of the median (not the average) annual total compensation of all company employees (other than the CEO) to the annual total compensation of the CEO.[11] No effective date is specified, though SEC Chairman Mary Schapiro noted in an appearance before the House Subcommittee on Capital Markets, Insurance and Government-Sponsored Enterprises on July 20, 2010 that it was unlikely that these rules would be in place for the 2011 proxy season.

    - "Total compensation" must be calculated in accordance with the rules for the proxy statement's Summary Compensation Table, as in effect on July 20, 2010.

        - This provision effectively requires Summary Compensation Table calculations to be performed for *every* employee, rather than only executive officers.

        - The calculation method is frozen in time and will not change if and when the SEC makes any further changes to the rules governing the Summary Compensation Table. Companies may thus be required to

[11] Since this ratio is not material to an understanding of any company from an investment perspective, it is obvious that the disclosure is oriented to social and public policy and publicity. Accordingly, it is notable that the statutory language arguably got the ratio backwards: critics would presumably wish to note that the CEO's pay is, for example, 558 times the median employee pay, not that the median pay is .001792 times the CEO's pay.

perform two sets of calculations for NEOs – one for the actual Summary Compensation Table and one for the CEO pay ratio disclosure.

D: CEO Pay Ratio: What Isn't Clear

- As in the case of the pay versus performance analysis, the definition of critical terms is left for SEC rulemaking. For large companies, practical aspects of performing the calculation could be challenging if the data must be very current.
  - For example, on what date is the total employee population – which typically will vary daily – permitted to be fixed? The last day of the immediately preceding fiscal year could be too late for the calculations to be easily performed. Any other date during a fiscal year could make the determination of compensation, which is typically recorded on an annual basis for tax and other purposes, difficult. A requirement to update the data for each filing in which the information is required to be disclosed would be absurd, and we would not expect this to be required.
  - Similarly, would independent contractors, and non-U.S. employees, be required to be included in the calculations? Employees of the company's subsidiaries and affiliates? Part-time employees (and if so would their compensation be annualized)? So-called "leased" employees?

E. CEO Pay Ratio: What to Consider Now

- Plan to include supplementary disclosure that will place the ratio into perspective, particularly compared to competitors. This can be done with information about employee demographics and with other ratios that more intelligently illustrate the company's policy on internal pay equity (*e.g.*, the ratio of CEO pay to median executive compensation).
- Begin to design the disclosure controls and procedures to enable collection and verification of the relevant compensation data.

F. Employee and Director Hedging: What's Required

- Section 955 calls for SEC rulemaking to require disclosure in the annual proxy statement that addresses whether employees and directors may purchase financial instruments designed to hedge or offset decreases in the market value of compensatory awards of equity securities or otherwise held, directly or indirectly, by those persons. Prepaid variable forward contracts, equity swaps, collars and

exchange funds are identified as types of hedging instruments.[12] No effective date is specified.

- While this is a disclosure rule, and not a new substantive requirement, the obligation to disclose may affect practice.
- Exchange Act Rule 16c-4 addresses hedging by statutory insiders (generally, directors and executive officers) and provides a broad exemption from the prohibition in Exchange Act Section 16(c) to permit hedging activity for shares actually owned (and not held through long derivative positions).

G. Employee and Director Hedging: What to Consider Now

- Management, together with the compensation and other relevant board committees, should review the company's trading policy in light of the new requirement. Many companies prohibit certain types of hedging activities, but the prohibition may not be co-extensive with the new requirement, particularly in respect of exchange funds.

**5. Recoupment of Erroneously Awarded Compensation (Section 954)**

A. Recoupment: What's Required

- Section 954 requires (without specifying an effective date) the SEC to direct the national securities exchanges and national securities associations to condition listing of any security upon the company's implementation of a policy:
  - Providing for disclosure of the company's policy on incentive compensation that is awarded based on financial information reported under the federal securities laws; and
  - Mandating a clawback in the event of an accounting restatement due to material noncompliance by the company with any financial reporting requirement under the federal securities laws.
- If this type of restatement occurs, companies must recover from any current or former executive officer who received incentive compensation based on the erroneous data (including compensatory stock options) during the three-year period preceding the restatement. The amount recovered must be the excess of the compensation paid over what would have been paid based on the restated financial information.

[12] Call option writing programs, in which executives sell out-of-the-money call options on employer stock owned by them, and thereby give up the potential to realize appreciation in the stock, appear not to be covered.

- Section 954 is similar to the clawback requirement imposed under Section 304 of the Sarbanes-Oxley Act ("SOX") with respect to a company's CEO and CFO. It differs from the SOX requirement in the following ways:
    - The clawback under the Dodd-Frank Act covers any current or former executive officer, as opposed to only the CEO and CFO. Section 954 does not define "executive officer," but the required SEC and stock exchange rulemaking will likely define the term by reference to Exchange Act Rule 3b-7.
    - The SOX clawback covers compensation (as well as profits realized from the sale of the company's securities) during the 12-month period *following* the first public issuance or SEC filing containing the information required to be restated; the new requirement applies to the three-year period *preceding* the actual restatement.[13]
    - The SOX clawback only applies to restatements due to the material noncompliance by the company "as a result of misconduct." The new requirement does not limit the clawback to situations involving "misconduct."
- As written, it appears that this provision will apply to companies with any listed securities, including those with only a debt listing.

B. Recoupment: What Isn't Clear

- The new requirement applies to incentive compensation "received" by executive officers. What does "received" mean? Is a stock option "received" on grant, vesting or exercise? Or on the sale of the shares received upon exercise?
- How should the "excess of what would have been paid to the executive officer under the accounting restatement" be calculated?
    - Is the clawback based on the award or payment of compensation?
    - If the strike price of a stock option is higher than it would have been had there not been a restatement, is that an offset against the clawback?
    - If a bonus was discretionary, must the compensation committee consider how it would have exercised its discretion taking into account the restatement? Or

[13] For example, if a restatement occurred on January 10, 2011 with respect to information that was first included in an SEC filing on June 1, 2005, the SOX clawback would cover compensation (and profits realized from the sale of the company's securities) from June 1, 2005 through May 31, 2006, whereas the Dodd-Frank Act clawback would cover compensation received from January 10, 2008 through January 9, 2011.

does the clawback only cover objectively determined incentive-based compensation based on quantifiable financial information?

- Section 954 does not clearly exclude foreign private issuers and does not reference proxy provisions to which foreign private issuers are not otherwise subject; therefore, it is unclear whether or not foreign private issuers could be required to comply with Section 954.

C. Recoupment: What to Consider Now

- Review existing clawback provisions or policies for alignment with the terms of the clawback under the Dodd-Frank Act. However, it may be prudent to await SEC rulemaking before implementing new or changing existing provisions or policies, given the significance of the unresolved issues relating to this provision. If a company does not yet have a policy on incentive compensation awarded under these circumstances, it will of course need to adopt one eventually.

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Please feel free to call any of your regular contacts at the firm or any of the partners and counsel listed under Employee Benefits or Corporate Governance in the Practices section of our website (www.cgsh.com) if you have any questions.

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# Further Action and Effective Dates

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| Provision | Further Action Required | Effective Date |
|---|---|---|
| Broker Non-Vote on Executive Compensation (Section 957) | Presumably, SEC to issue transition guidance. | Subject to SEC transition guidance, upon Dodd-Frank Act's enactment. |
| Say on Pay, Say When on Pay and Say on Golden Parachutes (Section 951) | SEC to issue rules regarding disclosure required for Say on Golden Parachutes vote. Other provisions effective without any further rules. | Proxy statements for shareholder meetings occurring after January 21, 2011. |
| Disclosure regarding Chairman/CEO Structure (Section 972) | SEC required to issue rules by January 17, 2011. | Effective date presumably to be specified in SEC rules (likely 2011 proxy season). |
| Proxy Access (Section 971) | SEC permitted to issue proxy access rules. | Presumably to be addressed in the SEC's final rules (likely 2011 proxy season). |
| Compensation Committee and Compensation Committee Consultant/Adviser Independence (Section 952) | National securities exchanges and associations to issue listing requirements. | Listing requirements to be effective by July 16, 2011. |
| Disclosure regarding Compensation Consultant Conflicts of Interest (Section 952) | SEC required to issue rules implementing disclosure requirements. | Proxy statements for shareholder meetings occurring on or after July 21, 2011. |
| Disclosure regarding Pay Versus Performance (Section 953) | SEC required to issue rules implementing disclosure requirements. | Presumably, the SEC's rules will address the effective date. |
| Disclosure regarding CEO Pay Ratio (Section 953) | SEC required to issue rules implementing disclosure requirements. | Presumably, the SEC's rules will address the effective date. |
| Disclosure regarding Hedging (Section 955) | SEC required to issue rules implementing disclosure requirements. | Presumably, the SEC's rules will address the effective date. |
| Recoupment of Erroneously Awarded Compensation (Section 954) | National securities exchanges and national securities associations to issue listing requirements. | Presumably, listing requirements will address the effective date. |

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# Subtitle E—Accountability and Executive Compensation

**SEC. 951. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES.**

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 14 (15 U.S.C. 78n) the following:

**"SEC. 14A. SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.**

"(a) SEPARATE RESOLUTION REQUIRED.—

"(1) IN GENERAL.—Not less frequently than once every 3 years, a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to shareholder vote to approve the compensation of executives, as disclosed pursuant to section 229.402 of title 17, Code of Federal Regulations, or any successor thereto.

"(2) FREQUENCY OF VOTE.—Not less frequently than once every 6 years, a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to shareholder vote to determine whether votes on the resolutions required under paragraph (1) will occur every 1, 2, or 3 years.

"(3) EFFECTIVE DATE.—The proxy or consent or authorization for the first annual or other meeting of the shareholders occurring after the end of the 6-month period beginning on the date of enactment of this section shall include—

"(A) the resolution described in paragraph (1); and

"(B) a separate resolution subject to shareholder vote to determine whether votes on the resolutions required under paragraph (1) will occur every 1, 2, or 3 years.

"(b) SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.—

"(1) DISCLOSURE.—In any proxy or consent solicitation material (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for a meeting of the shareholders occurring after the end of the 6-month period beginning on the date of enactment of this section, at which shareholders are asked to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with any named executive officers of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer 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 such executive officer.

"(2) SHAREHOLDER APPROVAL.—Any proxy or consent or authorization relating to the proxy or consent solicitation material containing the disclosure required by paragraph (1) shall include a separate resolution subject to shareholder vote to approve such agreements or understandings and compensation as disclosed, unless such agreements or understandings have been subject to a shareholder vote under subsection (a).

"(c) RULE OF CONSTRUCTION.—The shareholder vote referred to in subsections (a) and (b) shall not be binding on the issuer or the board of directors of an issuer, and may not be construed—

"(1) as overruling a decision by such issuer or board of directors;

"(2) to create or imply any change to the fiduciary duties of such issuer or board of directors;

"(3) to create or imply any additional fiduciary duties for such issuer or board of directors; or

"(4) to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

"(d) DISCLOSURE OF VOTES.—Every institutional investment manager subject to section 13(f) shall report at least annually how it voted on any shareholder vote pursuant to subsections (a) and (b), unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission.

"(e) EXEMPTION.—The Commission may, by rule or order, exempt an issuer or class of issuers from the requirement under subsection (a) or (b). In determining whether to make an exemption under this subsection, the Commission shall take into account, among other considerations, whether the requirements under subsections (a) and (b) disproportionately burdens small issuers.".

**SEC. 952. COMPENSATION COMMITTEE INDEPENDENCE.**

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended by inserting after section 10B, as added by section 753, the following:

**"SEC. 10C. COMPENSATION COMMITTEES.**

"(a) INDEPENDENCE OF COMPENSATION COMMITTEES.—

"(1) LISTING STANDARDS.—The Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any equity security of an issuer, other than an issuer that is a controlled company, limited partnership, company in bankruptcy proceedings, open-ended management investment company that is registered under the Investment Company Act of 1940, or a foreign private issuer that provides annual disclosures to shareholders of the reasons that the foreign private issuer does not have an independent compensation committee, that does not comply with the requirements of this subsection.

"(2) INDEPENDENCE OF COMPENSATION COMMITTEES.—The rules of the Commission under paragraph (1) shall require that each member of the compensation committee of the board of directors of an issuer be—

"(A) a member of the board of directors of the issuer; and

"(B) independent.

"(3) INDEPENDENCE.—The rules of the Commission under paragraph (1) shall require that, in determining the definition of the term 'independence' for purposes of paragraph (2), the national securities exchanges and the national securities associations shall consider relevant factors, including—

"(A) the source of compensation of a member of the board of directors of an issuer, including any consulting, advisory, or other compensatory fee paid by the issuer to such member of the board of directors; and

"(B) whether a member of the board of directors of an issuer is affiliated with the issuer, a subsidiary of the issuer, or an affiliate of a subsidiary of the issuer.

"(4) EXEMPTION AUTHORITY.—The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securities association to exempt a particular relationship from the requirements of paragraph (2), with respect to the members of a compensation committee, as the national securities exchange or national securities association determines is appropriate, taking into consideration the size of an issuer and any other relevant factors.

"(b) INDEPENDENCE OF COMPENSATION CONSULTANTS AND OTHER COMPENSATION COMMITTEE ADVISERS.—

"(1) IN GENERAL.—The compensation committee of an issuer may only select a compensation consultant, legal counsel, or other adviser to the compensation committee after taking into consideration the factors identified by the Commission under paragraph (2).

"(2) RULES.—The Commission shall identify factors that affect the independence of a compensation consultant, legal counsel, or other adviser to a compensation committee of an issuer. Such factors shall be competitively neutral among categories of consultants, legal counsel, or other advisers and preserve the ability of compensation committees to retain the services of members of any such category, and shall include—

"(A) the provision of other services to the issuer by the person that employs the compensation consultant, legal counsel, or other adviser;

"(B) the amount of fees received from the issuer by the person that employs the compensation consultant, legal counsel, or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel, or other adviser;

"(C) the policies and procedures of the person that employs the compensation consultant, legal counsel, or other adviser that are designed to prevent conflicts of interest;

"(D) any business or personal relationship of the compensation consultant, legal counsel, or other adviser with a member of the compensation committee; and

"(E) any stock of the issuer owned by the compensation consultant, legal counsel, or other adviser.

"(c) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS.—

"(1) AUTHORITY TO RETAIN COMPENSATION CONSULTANT.—

"(A) IN GENERAL.—The compensation committee of an issuer, in its capacity as a committee of the board of directors, may, in its sole discretion, retain or obtain the advice of a compensation consultant.

"(B) DIRECT RESPONSIBILITY OF COMPENSATION COMMITTEE.—The compensation committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of a compensation consultant.

"(C) RULE OF CONSTRUCTION.—This paragraph may not be construed—

"(i) to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant; or

"(ii) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

"(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after the date of enactment of this section, each issuer shall disclose in the proxy or consent material, in accordance with regulations of the Commission, whether—

"(A) the compensation committee of the issuer retained or obtained the advice of a compensation consultant; and

"(B) the work of the compensation consultant has raised any conflict of interest and, if so, the nature of the conflict and how the conflict is being addressed.

"(d) AUTHORITY TO ENGAGE INDEPENDENT LEGAL COUNSEL AND OTHER ADVISERS.—

"(1) IN GENERAL.—The compensation committee of an issuer, in its capacity as a committee of the board of directors, may, in its sole discretion, retain and obtain the advice of independent legal counsel and other advisers.

"(2) DIRECT RESPONSIBILITY OF COMPENSATION COMMITTEE.—The compensation committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of independent legal counsel and other advisers.

"(3) RULE OF CONSTRUCTION.—This subsection may not be construed—

"(A) to require a compensation committee to implement or act consistently with the advice or recommendations of independent legal counsel or other advisers under this subsection; or

"(B) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

"(e) COMPENSATION OF COMPENSATION CONSULTANTS, INDEPENDENT LEGAL COUNSEL, AND OTHER ADVISERS.—Each issuer shall provide for appropriate funding, as determined by the compensation committee in its capacity as a committee of the board of directors, for payment of reasonable compensation—

"(1) to a compensation consultant; and

"(2) to independent legal counsel or any other adviser to the compensation committee.

"(f) COMMISSION RULES.—

"(1) IN GENERAL.—Not later than 360 days after the date of enactment of this section, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of this section.

"(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have a reasonable opportunity to cure any defects that would be the basis for the prohibition under paragraph (1), before the imposition of such prohibition.

"(3) EXEMPTION AUTHORITY.—

"(A) IN GENERAL.—The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securities association to exempt a category of issuers from the requirements under this section, as the national securities exchange or the national securities association determines is appropriate.

"(B) CONSIDERATIONS.—In determining appropriate exemptions under subparagraph (A), the national securities exchange or the national securities association shall take into account the potential impact of the requirements of this section on smaller reporting issuers.

"(g) CONTROLLED COMPANY EXEMPTION.—

"(1) IN GENERAL.—This section shall not apply to any controlled company.

"(2) DEFINITION.—For purposes of this section, the term 'controlled company' means an issuer—

"(A) that is listed on a national securities exchange or by a national securities association; and

"(B) that holds an election for the board of directors of the issuer in which more than 50 percent of the voting power is held by an individual, a group, or another issuer.".

(b) STUDY AND REPORT.—

(1) STUDY.—The Securities and Exchange Commission shall conduct a study and review of the use of compensation consultants and the effects of such use.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Commission shall submit a report to Congress on the results of the study and review required by this subsection.

**SEC. 953. EXECUTIVE COMPENSATION DISCLOSURES.**

(a) DISCLOSURE OF PAY VERSUS PERFORMANCE.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by this title, is amended by adding at the end the following:

"(i) DISCLOSURE OF PAY VERSUS PERFORMANCE.—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer a clear description of any compensation required to be disclosed by the issuer under section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), including information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions. The

disclosure under this subsection may include a graphic representation of the information required to be disclosed.''.

(b) ADDITIONAL DISCLOSURE REQUIREMENTS.—

(1) IN GENERAL.—The Commission shall amend section 229.402 of title 17, Code of Federal Regulations, to require each issuer to disclose in any filing of the issuer described in section 229.10(a) of title 17, Code of Federal Regulations (or any successor thereto)—

(A) the median of the annual total compensation of all employees of the issuer, except the chief executive officer (or any equivalent position) of the issuer;

(B) the annual total compensation of the chief executive officer (or any equivalent position) of the issuer; and

(C) the ratio of the amount described in subparagraph (A) to the amount described in subparagraph (B).

(2) TOTAL COMPENSATION.—For purposes of this subsection, the total compensation of an employee of an issuer shall be determined in accordance with section 229.402(c)(2)(x) of title 17, Code of Federal Regulations, as in effect on the day before the date of enactment of this Act.

**SEC. 954. RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION.**

The Securities Exchange Act of 1934 is amended by inserting after section 10C, as added by section 952, the following:

**''SEC. 10D. RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION POLICY.**

''(a) LISTING STANDARDS.—The Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that does not comply with the requirements of this section.

''(b) RECOVERY OF FUNDS.—The rules of the Commission under subsection (a) shall require each issuer to develop and implement a policy providing—

''(1) for disclosure of the policy of the issuer on incentive-based compensation that is based on financial information required to be reported under the securities laws; and

''(2) that, in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws, the issuer will recover from any current or former executive officer of the issuer who received incentive-based compensation (including stock options awarded as compensation) during the 3-year period preceding the date on which the issuer is required to prepare an accounting restatement, based on the erroneous data, in excess of what would have been paid to the executive officer under the accounting restatement.''.

**SEC. 955. DISCLOSURE REGARDING EMPLOYEE AND DIRECTOR HEDGING.**

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by this title, is amended by adding at the end the following:

''(j) DISCLOSURE OF HEDGING BY EMPLOYEES AND DIRECTORS.—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer whether any employee or member

of the board of directors of the issuer, or any designee of such employee or member, is permitted to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars, and exchange funds) that are designed to hedge or offset any decrease in the market value of equity securities—

"(1) granted to the employee or member of the board of directors by the issuer as part of the compensation of the employee or member of the board of directors; or

"(2) held, directly or indirectly, by the employee or member of the board of directors.".

**SEC. 956. ENHANCED COMPENSATION STRUCTURE REPORTING.**

(a) ENHANCED DISCLOSURE AND REPORTING OF COMPENSATION ARRANGEMENTS.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this title, the appropriate Federal regulators jointly shall prescribe regulations or guidelines to require each covered financial institution to disclose to the appropriate Federal regulator the structures of all incentive-based compensation arrangements offered by such covered financial institutions sufficient to determine whether the compensation structure—

(A) provides an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or

(B) could lead to material financial loss to the covered financial institution.

(2) RULES OF CONSTRUCTION.—Nothing in this section shall be construed as requiring the reporting of the actual compensation of particular individuals. Nothing in this section shall be construed to require a covered financial institution that does not have an incentive-based payment arrangement to make the disclosures required under this subsection.

(b) PROHIBITION ON CERTAIN COMPENSATION ARRANGEMENTS.—Not later than 9 months after the date of enactment of this title, the appropriate Federal regulators shall jointly prescribe regulations or guidelines that prohibit any types of incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions—

(1) by providing an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or

(2) that could lead to material financial loss to the covered financial institution.

(c) STANDARDS.—The appropriate Federal regulators shall—

(1) ensure that any standards for compensation established under subsections (a) or (b) are comparable to the standards established under section of the Federal Deposit Insurance Act (12 U.S.C. 2 1831p–1) for insured depository institutions; and

(2) in establishing such standards under such subsections, take into consideration the compensation standards described in section 39(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831p– 9 1(c)).

(d) ENFORCEMENT.—The provisions of this section and the regulations issued under this section shall be enforced under section

505 of the Gramm-Leach-Bliley Act and, for purposes of such section, a violation of this section or such regulations shall be treated as a violation of subtitle A of title V of such Act.

(e) DEFINITIONS.—As used in this section—

(1) the term "appropriate Federal regulator" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Securities and Exchange Commission, the Federal Housing Finance Agency; and

(2) the term "covered financial institution" means—

(A) a depository institution or depository institution holding company, as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o);

(C) a credit union, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act;

(D) an investment advisor, as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11));

(E) the Federal National Mortgage Association;

(F) the Federal Home Loan Mortgage Corporation; and

(G) any other financial institution that the appropriate Federal regulators, jointly, by rule, determine should be treated as a covered financial institution for purposes of this section.

(f) EXEMPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—The requirements of this section shall not apply to covered financial institutions with assets of less than $1,000,000,000.

**SEC. 957. VOTING BY BROKERS.**

Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended—

(1) in paragraph (9)—

(A) in subparagraph (A), by redesignating clauses (i) through (v) as subclauses (I) through (V), respectively, and adjusting the margins accordingly;

(B) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and adjusting the margins accordingly;

(C) by inserting "(A)" after "(9)"; and

(D) in the matter immediately following clause (iv), as so redesignated, by striking "As used" and inserting the following:

"(B) As used".

(2) by adding at the end the following:

"(10)(A) The rules of the exchange prohibit any member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote described in subparagraph (B), unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.

"(B) A shareholder vote described in this subparagraph is a shareholder vote with respect to the election of a member

of the board of directors of an issuer, executive compensation, or any other significant matter, as determined by the Commission, by rule, and does not include a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80b–1 et seq.).

"(C) Nothing in this paragraph shall be construed to prohibit a national securities exchange from prohibiting a member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote not described in subparagraph (A).".

# Subtitle F—Improvements to the Management of the Securities and Exchange Commission

**SEC. 961. REPORT AND CERTIFICATION OF INTERNAL SUPERVISORY CONTROLS.**

(a) ANNUAL REPORTS AND CERTIFICATION.—Not later than 90 days after the end of each fiscal year, the Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the conduct by the Commission of examinations of registered entities, enforcement investigations, and review of corporate financial securities filings.

(b) CONTENTS OF REPORTS.—Each report under subsection (a) shall contain—

(1) an assessment, as of the end of the most recent fiscal year, of the effectiveness of—

(A) the internal supervisory controls of the Commission; and

(B) the procedures of the Commission applicable to the staff of the Commission who perform examinations of registered entities, enforcement investigations, and reviews of corporate financial securities filings;

(2) a certification that the Commission has adequate internal supervisory controls to carry out the duties of the Commission described in paragraph (1)(B); and

(3) a summary by the Comptroller General of the United States of the review carried out under subsection (d).

(c) CERTIFICATION.—

(1) SIGNATURE.—The certification under subsection (b)(2) shall be signed by the Director of the Division of Enforcement, the Director of the Division of Corporation Finance, and the Director of the Office of Compliance Inspections and Examinations (or the head of any successor division or office).

(2) CONTENT OF CERTIFICATION.—Each individual described in paragraph (1) shall certify that the individual—

(A) is directly responsible for establishing and maintaining the internal supervisory controls of the Division or Office of which the individual is the head;

(B) is knowledgeable about the internal supervisory controls of the Division or Office of which the individual is the head;

# Subtitle G—Strengthening Corporate Governance

**SEC. 971. PROXY ACCESS.**

(a) PROXY ACCESS.—Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following:

"(2) The rules and regulations prescribed by the Commission under paragraph (1) may include—

"(A) a requirement that a solicitation of proxy, consent, or authorization by (or on behalf of) an issuer include a nominee submitted by a shareholder to serve on the board of directors of the issuer; and

"(B) a requirement that an issuer follow a certain procedure in relation to a solicitation described in subparagraph (A).".

(b) REGULATIONS.—The Commission may issue rules permitting the use by a shareholder of proxy solicitation materials supplied by an issuer of securities for the purpose of nominating individuals to membership on the board of directors of the issuer, under such terms and conditions as the Commission determines are in the interests of shareholders and for the protection of investors.

(c) EXEMPTIONS.—The Commission may, by rule or order, exempt an issuer or class of issuers from the requirement made by this section or an amendment made by this section. In determining whether to make an exemption under this subsection, the Commission shall take into account, among other considerations, whether the requirement in the amendment made by subsection (a) disproportionately burdens small issuers.

**SEC. 972. DISCLOSURES REGARDING CHAIRMAN AND CEO STRUCTURES.**

The Securities Exchange Act of 1934 (15 U.S. C. 78a et seq.) is amended by inserting after section 14A, as added by this title, the following:

**"SEC. 14B. CORPORATE GOVERNANCE.**

"Not later than 180 days after the date of enactment of this subsection, the Commission shall issue rules that require an issuer to disclose in the annual proxy sent to investors the reasons why the issuer has chosen—

"(1) the same person to serve as chairman of the board of directors and chief executive officer (or in equivalent positions); or

"(2) different individuals to serve as chairman of the board of directors and chief executive officer (or in equivalent positions of the issuer).".

# Subtitle H—Municipal Securities

**SEC. 975. REGULATION OF MUNICIPAL SECURITIES AND CHANGES TO THE BOARD OF THE MSRB.**

(a) REGISTRATION OF MUNICIPAL SECURITIES DEALERS AND MUNICIPAL ADVISORS.—Section 15B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(a)) is amended—