BYBEL RUTLEDGE LLP

LEGAL ALERT

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SEC Proposes Rules for "Say-on-Pay" and "Golden Parachutes"

On October 18, 2010, the SEC proposed new rules implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 relating to shareholder approval of executive compensation and "golden parachute" compensation arrangements. A brief summary of the proposed rules follows.

- Shareholders would vote to approve the compensation of the issuer's named executive officers as disclosed in Item 402 of Regulation S-K (the CD&A, compensation tables, and other narrative disclosures). For smaller reporting companies, the shareholders would vote to approve the compensation of the named executive officers disclosed in the proxy. Smaller reporting companies would not be required to include a CD&A in their proxy.

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

- Issuers would be required to address in their CD&A whether and how their compensation policies and decisions have taken into account the results of shareholder advisory votes on executive compensation. For smaller reporting companies, this information would appear in the narrative description of material factors necessary to an understanding of the information disclosed in the Summary Compensation Table.

- If an issuer implements the results of an advisory vote of its shareholders as to how often it will solicit votes to approve the compensation of its executives, it would be permitted to exclude shareholder proposals that propose a vote on the approval of executive compensation.

- Shareholders must be given four choices on when say-on-pay votes will occur: 1, 2, or 3 years or to abstain.

- Although a separate shareholder advisory vote is required on parachute payments in connection with mergers, a separate vote would not be required if disclosure of that compensation had been included in the executive compensation disclosure that was subject to a prior advisory vote.

- The initial shareholder vote on executive compensation and the frequency of votes must be included in proxy statements relating to a shareholders' meeting occurring on or after January 21, 2011, regardless of whether the SEC has issued final rules. Therefore, the SEC has issued some transitional relief. The SEC will not object if issuers do not file proxy material in preliminary form if the only matters that would require a preliminary filing are the say-on-pay vote and frequency of say-on-pay vote. Until the rules are final, the SEC will not object if an issuer with outstanding indebtedness under TARP does not include a resolution for a shareholder advisory vote on the frequency of say-on-pay votes in its proxy statement.

Contact Nicholas Bybel, Jr., Erik Gerhard, or Renée Lieux if you seek guidance regarding how the proposed rules specifically impact your company.

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