

SEC's Proposed Rules on Shareholder Approval of Executive Compensation and Golden Parachutes

On October 18, 2010, the SEC proposed for comment a new Rule 14a-21 and amendments to existing rules to implement Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The Dodd-Frank Act amended the Securities Exchange Act of 1934 (the "Exchange Act") by adding a new Section 14A. New Section 14A(a)(1) requires that, not less frequently than once every three years, a proxy or consent or authorization for an annual or other meeting of shareholders for which the proxy solicitation rules require compensation disclosure must include a separate resolution subject to shareholder vote to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K. The shareholder vote is not binding on the company or its board of directors.

Section 14(A)(a)(2) to the Exchange Act requires that, not less frequently than once every six years, a proxy or consent or authorization for an annual or other meeting of shareholders for which the proxy solicitation rules require compensation disclosure shall include a separate resolution subject to shareholder vote to determine whether the shareholder vote to approve the compensation of executives will occur every one, two or three years. This shareholder vote is also not binding on the company or its board of directors.

New Section 14A(b)(1), requires that, in any proxy or consent solicitation material for a meeting of shareholders 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, 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 ("golden parachute" payments) that is based on or otherwise relates to the proposed transaction. The disclosure must include the aggregate total of all such compensation that may be paid or become payable to or on behalf of such named executive officer, and the conditions upon which it may be paid or become payable. Under Section 14A(b)(2), unless such agreements or understandings have been subject to the vote described in Section 14A(a)(1), a separate shareholder vote to approve such agreements or understandings and compensation is also required. Like the votes above, this shareholder vote is not binding on the company or its board of directors.

The requirement for the shareholders' votes to approve executive compensation and to approve the frequency of executive compensation is effective for proxy statements relating to an issuer's first annual or other meeting of shareholders occurring on or after January 21, 2011. The requirements relating to the disclosure of golden parachute arrangements will not be effective for merger proxy statements until the effective date of the SEC's proposed rules.

Proposed Rule 14a-21 and new Item 24 of Schedule 14A implement these requirements. Additional proposed amendments would require disclosure regarding golden parachute arrangements in connection with mergers, going-private transactions and tender offers.

The SEC is also proposing amendments to Item 402 of Regulation S-K to address the issuer's response to the shareholder vote on executive compensation in Compensation Discussion and Analysis, and to prescribe disclosure about golden parachute compensation arrangements, as well as amendments to Form 10-K and Form 10-Q to require disclosure about whether and how the issuer will implement the results of the shareholder advisory vote on the frequency of shareholder votes on executive compensation.

In a companion release, also intended to implement provisions of the Dodd-Frank Act, the SEC is proposing amendments under the Exchange Act and the Investment Company Act of 1940 that would require institutional investment managers subject to Section 13(f) of the Exchange Act to report annually how such managers voted proxies relating to the executive compensation matters as required by Section 14A.

Comments on both rule proposals must be received by November 18, 2010.

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William E. Wallace, Jr.
e-mail: wwallace@kayescholer.com

Chicago Office
+1.312.583.2300

Frankfurt Office
+49.69.25494.0

London Office
+44.20.7105.0500

Los Angeles Office
+1.310.788.1000

Menlo Park Office
+1.650.319.4500

New York Office
+1.212.836.8000

Shanghai Office
+86.21.2208.3600

Washington, DC Office
+1.202.682.3500

West Palm Beach Office
+1.561.802.3230

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