July 17, 2009

Treasury Submits Draft Legislation Mandating Say-on-Pay and Independence Standards for Compensation Committees to Congress

Yesterday, the Treasury delivered to Congress draft legislation that would require publicly traded companies to include a non-binding, advisory say-on-pay vote on executive compensation packages for each annual meeting and in the context of a change-in-control transaction, and to take steps intended to ensure the independence of compensation committees.

The proposed say-on-pay legislation would require all publicly traded companies to provide their shareholders a separate, non-binding vote to approve the compensation of executives, as disclosed pursuant to the SEC's compensation disclosure rules. Furthermore, in connection with a change-in-control transaction, the legislation would require an additional, separate non-binding shareholder advisory vote on any so-called "golden parachute" arrangements between the executive officers and the company or its potential acquiror for compensation related to the proposed transaction. The legislation would also require disclosure of such arrangements, the conditions upon which they may become payable and the aggregate amount of all such compensation in a "clear and simple tabular form." These requirements would apply with respect to any annual meeting (or special meeting in lieu thereof) or meeting to approve a transaction occurring on or after December 15, 2009. The proposed legislation would require the SEC to issue regulations (including regulations on the format of tabular disclosure of golden parachute arrangements) within one year after the date of enactment of the legislation.

The proposed legislation also would require members of the compensation committees of publicly traded companies and their advisors to be independent, and, if a compensation committee did not retain an independent compensation consultant, would require disclosure of why it did not.

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Whether these proposals will ultimately be adopted in their current form remains to be seen and, if adopted, it is unclear whether they will increase communication between companies and their shareholders or lead to any modification of executive compensation practices – or merely increase governance and disclosure burdens. If the rules are adopted, the SEC will be hard pressed to promulgate the required guidance so that it may be available to companies in advance of the 2010 proxy season when the first shareholder advisory votes will be required.

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