

June 30, 2010

EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE PROVISIONS IN THE DODD-FRANK U.S. FINANCIAL REGULATORY REFORM BILL

To Our Clients and Friends:

On June 30, 2010, the U.S. House of Representatives approved the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Bill," available [here](#)), the most far-reaching financial regulatory reform legislation in decades. This alert presents a chart on the corporate governance and executive compensation provisions contained in the Dodd-Frank Bill. In addition to summarizing each provision, the chart: (1) states whether the legislation requires rulemaking by the Securities and Exchange Commission ("SEC") to implement the provision (note that in many cases the SEC may adopt or amend its rules in response to a provision even if not required by the legislation); (2) provides the effective date of the provision; and (3) describes the types of companies to which the provision would apply.

The Dodd-Frank Bill has not been voted on by the U.S. Senate and is not scheduled to be considered until the week of July 12. We will provide additional analysis of the financial regulatory reform legislation in the coming days, including a memorandum providing more detailed information and recommendations arising from the executive compensation and corporate governance provisions and a comprehensive memorandum describing all significant provisions in the Dodd-Frank Bill.

Provision	Summary	SEC Rulemaking Required	Effective Date	Applicability
Non-Binding Shareholder Vote on Executive Compensation ("Say-on-Pay") (Section 951)	Companies must hold an annual, biennial or triennial non-binding shareholder advisory vote to approve the compensation of named executive officers. Shareholders must vote no less frequently than every six years to determine the	No	Shareholder meetings beginning six months after enactment	All public companies[1]

GIBSON DUNN

Provision	Summary	SEC Rulemaking Required	Effective Date	Applicability
	frequency of such advisory vote.			
Disclosure of Golden Parachute Compensation (Section 951)	In the proxy materials relating to a shareholder vote to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of a company, companies must disclose any compensation of a named executive officer that is based on or otherwise relates to the transaction.	Yes[2]	Shareholder meetings beginning six months after enactment	All public companies[1]
Non-Binding Shareholder Vote on Golden Parachute Compensation (Section 951)	In connection with a shareholder vote to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of a company, companies must hold a non-binding shareholder advisory vote on any named executive officer compensation based on or otherwise relating to the transaction,	No	Shareholder meetings beginning six months after enactment	All public companies[1]

GIBSON DUNN

Provision	Summary	SEC Rulemaking Required	Effective Date	Applicability
	unless such compensation already has been subject to a say-on-pay vote by shareholders. Depending on the transaction's circumstances, two such shareholder votes may be required, one each for the acquiring company and target company.			
Disclosure of Institutional Investment Manager Say-on-Pay and Golden Parachute Votes (Section 951)	Institutional investment managers subject to Section 13(f) of the Securities Exchange Act of 1934 (the "Exchange Act") must disclose no less than annually how they voted on any say-on-pay and golden parachute matters.	No	Six months after enactment	Institutional investment managers subject to Section 13(f) of the Exchange Act[3]
Compensation Committee Independence (Section 952)	Each member of a company's compensation committee must be independent under a definition of independence to be established by the exchanges that includes	Yes[4]	SEC rulemaking no later than 360 days after enactment[5]	Listed companies, other than controlled companies, limited partnerships, companies in bankruptcy, registered

GIBSON DUNN

Provision	Summary	SEC Rulemaking Required	Effective Date	Applicability
	consideration of the sources of compensation paid to compensation committee members (including any consulting, advisory or other compensatory fees) and whether the members are affiliated with the company.			open-ended investment management companies and foreign private issuers that provide annual disclosures to shareholders of reasons why they do not have an independent compensation committee[6]
Compensation Consultant and Other Adviser Independence (Section 952)	Compensation committees may only select a compensation consultant, legal counsel and other advisers after taking into account independence factors to be established by the SEC, which factors must be competitively neutral and treat large and small consultants equally.	Yes[4]	SEC rulemaking no later than 360 days after enactment [5]	Listed companies, other than controlled companies[7]
Compensation Committees' Authority to Retain Independent Compensation Consultants,	Compensation committees will be directly responsible for the appointment, compensation and oversight of independent	Yes[4]	SEC rulemaking no later than 360 days after enactment [5]	Listed companies, other than controlled companies[7]

Provision	Summary	SEC Rulemaking Required	Effective Date	Applicability
Legal Counsel and Other Advisers Section 952)	compensation consultants, legal counsel and other advisers. The legislation should not be construed to require compensation committees to follow the recommendations of such consultants and advisers or to affect compensation committees' ability or obligation to exercise their own judgment in fulfilling their duties.			
Disclosure Regarding Use of Compensation Consultants (Section 952)	Companies must disclose in their annual proxy statements whether a compensation consultant has been used, whether the consultant's work has raised any conflicts of interest and how any such conflicts are being addressed.	Yes[4]	Shareholder meetings beginning one year after enactment	Listed companies, other than controlled companies[7]
Funding for Compensation Committee Consultants and Advisers	Companies must provide funding for the reasonable compensation of compensation	Yes[4]	SEC rulemaking no later than 360 days after enactment [5]	Listed companies, other than controlled companies[7]

GIBSON DUNN

Provision	Summary	SEC Rulemaking Required	Effective Date	Applicability
(Section 952)	consultants and other advisers retained by the compensation committee.			
Disclosure of the Relationship Between Pay and Performance (Section 953)	The SEC must adopt rules requiring a company to disclose in its annual proxy statement the relationship between executive compensation actually paid and the company's financial performance, which disclosure may include a graphical representation of the required information.	Yes	Not specified	All public companies
Disclosure of Internal Pay Ratios (Section 953)	The SEC must adopt rules that require each company to disclose in its annual proxy statement and other SEC filings described in Item 10(a) of Regulation S-K: (1) the median of annual total compensation of all employees other than the CEO (or any equivalent position); (2) the annual total compensation of the CEO (or any	Yes	Not specified	All public companies

GIBSON DUNN

Provision	Summary	SEC Rulemaking Required	Effective Date	Applicability
	equivalent position); and (3) the ratio of those two amounts. For the purposes of this requirement, "total compensation" must be calculated in accordance with Item 402 of Regulation S-K, as in effect the day before the Dodd-Frank Bill's enactment.			
Recovery of Erroneously Awarded Compensation (Clawback) (Section 954)	Companies must adopt and implement policies: (1) for disclosure of the company's incentive-based compensation that is based on the financial information required to be reported under the securities laws; and (2) to recoup unearned payments awarded to current or former executive officers as incentive compensation during a three-year look-back period if the company is required to prepare an accounting restatement based on erroneous data due to material noncompliance with	Yes[4]	Not specified[8]	Listed companies

GIBSON DUNN

Provision	Summary	SEC Rulemaking Required	Effective Date	Applicability
	any financial reporting requirement under the securities laws, regardless of whether the individual was involved in misconduct that led to the restatement.			
Disclosure Regarding Employee and Director Hedging (Section 955)	The SEC must adopt rules requiring each company to disclose in its annual proxy statement whether its employees or directors or their designees may purchase financial instruments that are designed to hedge or offset any market value decrease of equity securities granted as compensation or held directly or indirectly by the employees or directors.	Yes	Not specified	All public companies
Broker Voting (Section 957)	A broker that is not the beneficial owner of a company's shares (<i>e.g.</i> , shares held in street name on behalf of retail investors) is prohibited from	Yes	Not specified	All public companies

Provision	Summary	SEC Rulemaking Required	Effective Date	Applicability
	voting on the election of directors, executive compensation matters (including say-on-pay) or other significant matters (as determined by the SEC by rule) unless the beneficial owner has provided the broker with voting instructions.			
Proxy Access (Section 971)	The SEC may, but is not required to, issue rules permitting shareholders to use company proxy solicitation materials for the purpose of nominating directors.	No	Determined by SEC rule, if any	Determined by SEC rule, if any[9]
Disclosures of Board Leadership Structures (Section 972)	The SEC must issue rules requiring companies to include in their annual proxy statements the reasons they have chosen the same person, or different people, to serve as chairman and chief executive officer.	Yes	SEC rulemaking no later than 180 days after enactment	All public companies
Risk Committees for Certain Financial	Publicly traded nonbank financial institutions supervised by the	No, although Federal Reserve rulemaking is required	Federal Reserve rulemaking no later than two	Publicly traded nonbank financial institutions

Provision	Summary	SEC Rulemaking Required	Effective Date	Applicability
Institutions (Section 165)	Federal Reserve and publicly traded bank holding companies with at least \$10 billion in assets must establish a separate risk committee of the board of directors, which is required to: (1) oversee the financial institution's risk management practices; (2) include a number of independent directors determined by the Federal Reserve, based on the nature of operations, size of assets and other criteria; and (3) include at least one risk management expert.		years after enactment, to take effect no later than two years and three months after enactment	supervised by the Federal Reserve and publicly traded bank holding companies with at least \$10 billion in assets[10]
Beneficial Ownership and Short-Swing Profit Reporting (Section 929R)	The SEC may, but is not required to, issue rules shortening the period of time within which the following must be filed with the SEC: (1) a Schedule 13D in connection with acquiring beneficial ownership of more than 5% of a registered class of equity securities; and	No	Determined by SEC rule, if any	Determined by SEC rule, if any

Provision	Summary	SEC Rulemaking Required	Effective Date	Applicability
	(2) a Form 3 in connection with becoming a director, officer or greater than 10% shareholder of a public company.			

[1] The SEC has the authority to exempt companies from this requirement, taking into account, among other factors, whether the requirement disproportionately burdens small issuers.

[2] The SEC is required to adopt rules describing the type of disclosure required in proxy statements in connection with a shareholder vote on golden parachute compensation.

[3] Institutional investment managers who already are required by the SEC to report how they have voted are exempt from this requirement.

[4] The SEC is required to direct the exchanges to prohibit the listing of companies not in compliance this requirement. Companies will be provided with a reasonable opportunity to cure any defects prior to delisting.

[5] The exchanges must adopt rules with respect to compensation committee independence, including: (a) implementing policies to prohibit the listing of companies not in compliance with this requirement; and (b) determining a definition of "independence" that is based on the factors identified in "Compensation Committee Independence (Section 952)--Summary."

[6] The exchanges have the authority to exempt companies from this requirement as they determine appropriate, taking into consideration the size of the company and any other relevant factors.

[7] The exchanges have the authority to exempt companies from this requirement as they determine appropriate, taking into account the potential impact on smaller companies.

[8] The exchanges must implement policies to prohibit the listing of companies not in compliance with this requirement.

[9] The SEC has the authority to exempt companies from any proxy access rules, taking into account, among other factors, whether the rules disproportionately burden small issuers.

[10] The Federal Reserve also has the authority to require that publicly traded bank holding companies with less than \$10 billion in assets establish a separate risk committee of the board of directors.



Gibson, Dunn & Crutcher's lawyers are available to assist in addressing any questions you may have regarding these issues. Please contact the Gibson Dunn lawyer with whom you work, or any of the following:

*John F. Olson - Washington, D.C. (202-955-8522, jolson@gibsondunn.com)
Brian J. Lane - Washington, D.C. (202-887-3646, blane@gibsondunn.com)
Ronald O. Mueller - Washington, D.C. (202-955-8671, rmueller@gibsondunn.com)
Amy L. Goodman - Washington, D.C. (202-955-8653, agoodman@gibsondunn.com)
James J. Moloney - Orange County (949-451-4343, jmoloney@gibsondunn.com)
Stephen W. Fackler - Palo Alto (650-849-5385, sfackler@gibsondunn.com)
Sean C. Feller - Los Angeles (213-229-7579, sfeller@gibsondunn.com)
Elizabeth Ising - Washington, D.C. (202-955-8287, eising@gibsondunn.com)
Gillian McPhee - Washington, D.C. (202-955-8230, gmcphoe@gibsondunn.com)
Amber Busuttil Mullen - Los Angeles (213-229-7023, amullen@gibsondunn.com)*

© 2010 Gibson, Dunn & Crutcher LLP

Attorney Advertising: The enclosed materials have been prepared for general informational purposes only and are not intended as legal advice.