

***The Dodd-Frank Wall Street
Reform and
Consumer Protection Act –
The Implications for Institutional
Investors***

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Background to the Dodd-Frank Act

- 2007-2008 The Financial Collapse and Credit Crisis
- Congress' Response
- Opportunity for Shareholders Rights
- Rule-Making: Shaping the Dialogue



Topics of Importance to Institutional Investors

- Executive Compensation Provisions
- Proxy Access
- Changes in Derivative Markets
- Credit Rating Agency Reforms



Executive Compensation Provisions

- Say on Pay
- Say On Golden Parachutes
- Pay v. Performance Disclosures
- Independent Compensation Committees
- Clawbacks



Say-on-Pay ... Say-on-Frequency

- Companies must submit the compensation of named executive officers to a shareholder vote.
- Vote is advisory, not binding.
- Provides a powerful opportunity to influence management.
- Companies also must provide shareholders an advisory vote on the frequency of the Say-on-Pay vote, i.e. 1, 2 or 3 years.



Say-on-Golden Parachutes

- Golden parachute - compensation relating to a change in control transaction, such as a merger or similar transaction.
- Golden parachute arrangements are subject to a separate, advisory shareholder vote.
- Compensation must be disclosed in clear and simple form for each executive.
- Applies to proxy statements filed on or after April 25, 2011.



Say-on-Pay & Golden Parachutes: Additional Provisions

- Companies with a public float of less than \$75 million are exempt for 2 years from conducting shareholder vote.
- No broker discretionary voting authority on executive compensation.
- Institutional investment managers, and pension funds that manage own investments must disclose their votes on their Form 13 F filings with the SEC.



Pay Versus Performance Disclosures

- New disclosures required for pay v. performance.
- Must show CEO compensation in relation to median pay of all other company employees
- SEC is required to adopt rules requiring companies to provide information that shows the relationship between executive compensation and the company's financial performance.
- Rulemaking scheduled for second half of 2011.



Independent Compensation Committee

- SEC is required to direct the exchanges to adopt listing standings relating to the independence of members on the Compensation Committee, and to ***prohibit*** listing the securities of companies not in compliance.
- Proposed rule issued. Relevant factors include compensation sources by the issuer, affiliations with the company, its subsidiaries & affiliates.
- Comment period extended to May 19. Will the Act's July 21, 2011 deadline be met?



Clawbacks

- SEC is required to adopt rules directing the exchanges to prohibit the listing of securities of a company that does not implement a clawback policy.
- Policy must provide for recovery of money paid in incentive compensation when a company restates its financials due to material non-compliance with financial reporting requirements.
- Applies to current or former executive officers.
- Strict liability.



New Proxy Access Rules

- Adopted by the SEC on August 25, 2010
- Provide shareholders with direct access to the proxy statements of public companies.
- Shareholders can have their nominees listed on the company's proxy materials. Before, shareholders had to pay for separate ballots & mailings.
- Can nominate candidates for up to 25% of the board.



Proxy Access Rules, cont'd

- To be eligible, a shareholder, or group of shareholders,
 - Must own shares equal to at least 3% vote,
 - For at least 3 years,
 - Through the date of meeting and
 - Certify they do not hold the shares with the purpose/ effect of changing control of the company, or to gain seats that exceeds the maximum number of nominees allowed

- Amendments to 14a-8 provide that shareholders may submit proposals for inclusion in proxy materials relating to procedures in a company's governing documents for including shareholder nominees.



Proxy Access, cont'd

- Rules apply to all reporting companies, registered investment companies and foreign companies that report on US SEC forms.
- Smaller companies, with public float under 75 million are deferred for three years.
- Rules were to go into effect in November 2010, but the SEC stayed the rules because of a court challenge by U.S. Chamber of Commerce and the Business Roundtable to the proxy access rules (14a-11).
- Arguments heard, with summer decision expected.



Another Major Provision of Interest - Regulation of Derivatives

- Standardized derivatives must be cleared by a central counterparty, and traded on an exchange or swap execution facility.
- Shared responsibility of the CFTC and the SEC to regulate. Budget cuts and agency funding will impact.
- CFTC has proposed rules, many with closed comment periods in June/July. Most of the rule making due in 3rd quarter of 2011 related to OTC derivatives regulation.
- H.R. 1573 proposes to delay the implementation derivatives reforms until 2013.



Another Major Provision - Volcker Rule

- Goal to stop banks from gambling with depositors' money
- Prohibits banking entities from engaging in proprietary trading and from owning, investing in or sponsoring hedge funds or private equity funds for their own profit. They can still do so if directly serves their customers.
- In next few months, rules will be proposed to implement, but will not take effect until earlier of 2 years after enactment, or 12 months after issuance of final rules.



Another Major Provision – Credit Rating Agencies

- Dodd-Frank Act charged the SEC with writing rules governing credit rating agencies.
- On May 18, 2011 the SEC proposed rules. Among the provisions, credit rating agencies will have to:
 - report on internal controls
 - protect against conflicts of interests
 - establish analyst standards
 - disclose methodology and due diligence
- Dodd-Frank removed CRA exemptions from liability for false or misleading statements when ratings are used in registration statements, and provides investors private right of action.



Shaping the Dialogue.

As implementation of the Dodd-Frank Bill continues, public pension funds should continue to play an active role in the rule-making and budgetary process.

Congress, the SEC and CFTC need to hear from stakeholders like the public pension funds.

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