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The Dodd-Frank Act — Executive Compensation & Corporate Governance Provisions

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On July 15, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act was approved by the Senate and is expected to be signed into law by President Obama shortly. The Act is massive legislation that provides for sweeping and comprehensive financial and regulatory reform. Although many provisions are self-executing, others, including most dealt with below, require further rulemaking by regulators, and therefore their full impact will not be known for some time.

The chart below summarizes the main provisions of Title IX – *Investor Protections and Improvements to the Regulation of Securities* of the Act and other related sections that relate primarily to corporate governance and disclosure applicable to publicly traded companies and capital raising issues that affect private placements.

New Requirement	Effective Date	Impact / Next Steps
EXECUTIVE COMPENSATION		
Say on Pay ■ Requires annual non-binding shareholder vote on compensation of executives unless shareholders approve that this vote only be taken every two or every three years. ■ The initial shareholder vote has to give all three choices for frequency of subsequent approval of executive compensation, and be voted on again every six years.	■ Effective for the first shareholder meeting occurring six months after enactment.	■ Consider compensation policies and likely shareholder response. ■ Consider whether to take a position on frequency of shareholder vote. ■ Consider informal communications with key shareholders on this issue. ■ Monitor any SEC rulemaking.
Say on Pay—Golden Parachutes ■ Requires non-binding shareholder vote in connection with shareholder approval of an acquisition transaction on any executive officer compensation related to the transaction, unless previously approved. ■ Disclosure of compensation arrangements required.	■ Effective for shareholder meetings occuring six months after enactment in accordance with rules adopted by the SEC.	■ Monitor SEC rulemaking.

New Requirement	Effective Date	Impact / Next Steps

Compensation Committee Independence
■ Requires that each member of the Compensation Committee be independent.
■ Independence must be considered by the Compensation Committee in selecting compensation consultants, legal counsel and other advisors.
  ■ Committee has authority for appointment, compensation and oversight of consultants and advisors.
  ■ Disclosure required in proxy statements if consultant was used, including if the engagement raised any conflicts questions.
■ SEC may allow exchanges to exempt particular relationships.
	■ Subject to adoption of SEC rules to require national securities exchanges to adopt these requirements as listing standards not later than 360 days after enactment.	■ Monitor for final definition of "independence" and other rulemaking.
		■ Review independence of current Compensation Committee members; identify any possible issues by analogy to Audit Committee requirements (*e.g.*, affiliate status).
		■ Revise Compensation Committee charter as necessary.

Clawbacks ■ Requires companies to adopt a policy to recover from current and former executives any incentive compensation (including stock options) received during the three-year period preceding an accounting restatement resulting from erroneous financial data. ■ Requires clawback of any portion of incentive compensation that would not have been awarded based on the corrected data, without regard to executives' involvement in activities requiring the restatement.	■ Subject to adoption of rules by SEC to require national securities exchanges to adopt these requirements as listing standards (no timeline specified).	■ Review existing executive incentive compensation arrangements and potential use of clawbacks. ■ Consider compensation methods and approach to incentive-based compensation to minimize the impact of clawback requirement. ■ Monitor SEC rulemaking and adoption of final listing standards.
Disclosure Regarding Pay Relative to Performance ■ Requires disclosure of the relationship between executive compensation actually paid and the company's financial performance.	■ Subject to adoption of SEC rules (no timeline specified).	■ Monitor SEC rulemaking.
Disclosure Regarding Pay Equity ■ Requires disclosure of the median total compensation of all employees other than the CEO, annual total compensation of the CEO and the ratio of the two.	■ Subject to adoption of SEC rules (no timeline specified).	■ Monitor SEC rulemaking. ■ Determine median total compensation of all employees other than the CEO for fiscal 2009 to assess nature of likely disclosure obligation for 2010.
Disclosure of Hedging Policy ■ Requires disclosure of whether employees or directors may purchase financial instruments designed to hedge or offset a market value decrease of equity securities granted as compensation or held by them.	■ Subject to adoption of SEC rules (no timeline specified).	■ Monitor SEC rulemaking. ■ Review policy on hedging and revise insider trading policy if necessary.

New Requirement	Effective Date	Impact / Next Steps
CORPORATE GOVERNANCE		
Proxy Access ■ Requires companies to include candidates nominated by shareholders who meet certain ownership thresholds in the company's proxy materials. ■ SEC authorized to exempt certain companies, such as smaller issuers.	■ Subject to SEC adoption of rules specifying ownership and related requirements. ■ SEC proposed proxy access rules in 2009, so prompt adoption is anticipated.	■ Expect adoption of final SEC regulations in 2010 effective for 2011 annual shareholders' meetings. ■ Consider necessary bylaw amendments and permissible alternatives and variations depending on final SEC rules.
Separation of Chairman / CEO ■ Requires disclosure regarding why the company decided to have a separate Chairman of the Board and CEO or the same individual serving in both roles.	■ Subject to SEC adoption of rules not later than 180 days after enactment.	■ Existing rules already require disclosure regarding the Board's leadership structure. ■ Monitor for changes in SEC rules.
Broker Non-Votes ■ Requires national securities exchanges to prohibit member broker-dealers from voting shares held in street name in the election of directors, on executive compensation and other matters to be determined by the SEC.	■ Effective immediately.	■ NYSE Rule 452 already prohibits broker voting in the election of directors and approval of equity compensation plans. ■ Monitor for changes in rules.

Risk Committees for Financial Institutions
■ Requires certain non-bank financial companies to establish a Risk Committee that is:
  ■ Responsible for oversight of enterprise-wide risk management.
  ■ Consists of such number of independent directors as determined by Federal Reserve.
  ■ Includes at least one risk management expert.
	■ Required not later than one year following notice that institution is subject to supervision by the Federal Reserve.
	■ Final regulations to be issued by the Federal Reserve not later than one year after the transfer date (12 months after Act's enactment, subject to six-month extension) and take effect not later than 15 months after the transfer date.
		■ Monitor regulatory actions.
		■ Consider creation of Risk Committee if one does not already exist.

PRIVATE PLACEMENT CHANGES		
Revision of "Accredited Investor" Definition ■ Excludes value of the primary residence from the $1,000,000 net worth test for individuals. ■ Authorizes SEC to make other changes in the future.	■ May be effective immediately.	■ Monitor any SEC rulemaking. ■ Apply immediately in the case of any private capital raising. ■ Revise questionnaires for private placements.
Addition of "Bad Boy" Disqualifiers ■ Requires addition of "bad boy" disqualification tests to Rule 506, which is the exemption most commonly relied upon for private placements. Tests are based on securities law violations, sanctions by national securities exchanges, and enforcement orders of state regulators and certain other regulators.	■ Subject to adoption of SEC rules not later than one year from enactment. ■ SEC previously proposed adding disqualifiers to Rule 506, so prompt adoption is possible.	■ Monitor SEC rulemaking. ■ Confirm that no officers, directors or affiliates have disqualifying events in the past ten years.

New Requirement	Effective Date	Impact / Next Steps
MISCELLANY		
Exemption from SOX Auditor Attestation Requirement for Smaller Issuers ■ Eliminates the requirement for non-accelerated filers to obtain an auditor's attestation of internal controls over financial reporting.	■ Effective immediately.	■ Requirement that management assess internal controls over financial reporting remains unchanged. ■ Based on status as non-accelerated filer and steps already taken, consider proceeding with auditor attestation or being ready should company become an accelerated filer.
Reg FD Applicable to Credit Agencies ■ Requires that Regulation FD regarding selective disclosure be amended to remove the exemption for entities whose primary business is the issuance of credit ratings.	■ SEC to amend Regulation FD no later than 90 days after enactment.	■ Revise Disclosure Policy, if necessary.

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