

Alert 10-119



Corporate Governance Legislation Passes Senate

You should be aware of certain provisions of Sen. Christopher Dodd's (D-Conn.) financial reform bill that passed the Senate Thursday, May 20, 2010. The proposal is considered by many to be the most extensive overhaul of financial-sector regulation since the 1930s. The legislation now moves to the House, where it must be reconciled with a similar bill that passed there in December 2009. The legislation approved in the Senate would affect all public companies, not just financial services companies, and the following corporate governance areas are worth noting:

Majority Voting

The proposal requires majority voting in uncontested elections of directors. Accordingly, a director who does not receive a majority vote would be required to submit a resignation. The board may accept the resignation or vote to reject it. If the board votes to reject a resignation, the issuer must disclose the reasons for the rejection and how the board concluded that rejection is in the best interests of the company and its shareholders.

Proxy Access

The proposal authorizes the SEC to adopt proxy access rules pursuant to which shareholders would be permitted to nominate directors using the company's proxy materials.

CEO/Chairman Role

The proposal requires issuers to disclose in their annual proxy statements the reasons supporting their decision either to separate or not to separate the chairman and CEO positions.

Shareholder Vote on Pay

The proposal requires annual non-binding shareholder votes to approve the compensation of named executive officers.

Compensation Committee

The proposal (1) requires compensation committee members to satisfy independence standards to be established by the applicable stock exchange; (2) requires compensation consultants, counsel and other advisers to the compensation committee to be independent; and (3) allows compensation committees to retain independent advisers, and requires compensation committees to oversee the advisers they retain.

Required Proxy Disclosures

The proposal requires annual proxy disclosure of the following:

- Whether the compensation committee has retained a compensation consultant
- Whether the work of the compensation committee raises any conflicts of interest
- The relationship between executive compensation and financial performance
- Depiction of the amount of executive compensation relative to the company's financial performance or investor-return over a specific multi-year period
- Whether any company employees may engage in hedging transactions involving the issuer's stock

Clawbacks

The proposal provides for a three-year lookback and recapture in the event of accounting restatements because of material noncompliance with financial reporting standards. Clawback is permitted of compensation amounts in excess of what would have been paid under the restated financial statements from any current or former executive who received cash or equity-based incentive compensation. All public companies must have a clawback policy in place.

Broker Voting

Brokers who are not beneficial owners of a security cannot vote through company proxies unless the beneficial owner has instructed the broker to do so.

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