

Corporate & Financial Weekly Digest

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SEC Division of Corporation Finance Issues Seven New C&DIs Regarding Say-On-Pay and Golden Parachute Compensation

Co-authored by [Kari E. Hoelting](#)

On February 11, the Securities and Exchange Commission's Division of Corporation Finance issued Compliance and Disclosure Interpretations (C&DIs) with respect to Regulation S-K, Item 402(t) – Golden Parachute Compensation and Rule 14a-21 under the Securities Exchange Act of 1934 – Shareholder Approval of Executive Compensation.

C&DI 128B.01 clarifies Instruction 1 to new S-K Item 402(t)(2) relating to golden parachute compensation disclosure. Although the instruction provides that disclosure is required for those executive officers included in the most recently filed Summary Compensation Table, disclosure is always required for the principal executive officer and principal financial officer, even if disclosure was not provided for such individuals in the most recently filed Summary Compensation Table pursuant to Items 402(a)(3)(i) and (ii) because they assumed such positions after the Summary Compensation Table was filed.

C&DI 169.04 states that the say-on-frequency vote required by Rule 14a-21(b) does not need to be in the form of a resolution.

C&DI 169.05 states that the say-on-pay vote does not need to include the formal words “pursuant to Item 402 of Regulation S-K” and may instead include a plain English equivalent, such as “pursuant to the compensation disclosure rules of the Securities and Exchange Commission, including the compensation discussion and analysis, the compensation tables and any related material disclosed in this proxy statement.”

C&DI 169.06 states that it is permissible for the say-on-frequency vote to include the words “every year, every other year, or every three years, or abstain” in lieu of “every 1, 2, or 3 years or abstain.”

C&DI 169.01, 169.02 and 169.03 all address how to determine whether an issuer is a smaller reporting company as of January 21, 2011. If an issuer is a smaller reporting company as of that date, the issuer will be entitled to rely on the delayed phase-in period for holding say-on-pay and say-on-frequency votes. An issuer's status as a smaller reporting company is based on such issuer's public float or annual revenues at the end of the second fiscal quarter of 2010. A change

in status, if any, based on the issuer's second fiscal quarter of 2010 results is effective on the first day of such issuer's first quarter of 2011, regardless of whether such issuer has filed a report with the SEC indicating its new status.

C&DI 169.03 provides an example of an issuer who, based on its public float at the end of the second fiscal quarter of 2010, will no longer qualify as a smaller reporting company in its next fiscal year, which for such issuer begins on April 1, 2011. As this issuer's reporting status will change on the first day of its first quarter of 2011, April 1, 2011, such issuer will still be a smaller reporting as of the January 21, 2011 determination date and entitled to rely on the delayed phase-in period.

Click [here](#) to read C&DI 128B.

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Katten Muchin Rosenman LLP

Charlotte Chicago Irving London Los Angeles New York Washington, DC