SUMMARY OF DODD-FRANK ACT REGARDING CORPORATE GOVERNANCE, PROXY, COMPENSATION AND OTHER MATTERS.

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As you know, on July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act" or the "Dodd-Frank Act"). The Act covers a wide variety of topics, many of which are not directly applicable to the Company. However, the corporate governance, executive compensation, proxy and certain other provisions of the Act will apply to the Company as a smaller reporting company. The purpose of this memorandum is to describe these provisions.

Summary

The following is a brief summary of the corporate governance, executive compensation, proxy and other provisions of the Dodd-Frank Act that may apply to the Company:

- "Say-on-Pay" and Frequency Shareholder Votes: Beginning with the first annual shareholders' meeting held on or after January 21, 2011, a company must (1) submit the compensation of its named executive officers to a non-binding shareholder vote at least once every three years (this is the so-called "say-on-pay" vote); and (2) submit the frequency of the "say-on-pay" vote to a separate non-binding shareholder vote at least once every six years.

- Shareholder Vote on Golden Parachutes: In any shareholder meeting held on or after January 21, 2011 to approve an acquisition, merger, consolidation or proposed sale or other disposition of all or substantially all of the assets of the company (collectively referred to as "M&A Transaction"), shareholders will have a non-binding vote on any agreement or understanding regarding any type of compensation to a named executive officers based on or related to the M&A Transaction. However, no such vote is required if such compensation was approved as part of a previous "say-on-pay" vote.

- Prohibition of Broker Discretionary Voting: The Dodd-Frank Act requires each national securities exchange to adopt rules prohibiting broker discretionary voting in connection with a shareholder vote on executive compensation (including votes on say-on-pay, the frequency of such votes, and golden parachutes). This provision became effective upon the Act's enactment. The NYSE has already implemented this change, and Nasdaq follows the NYSE's rules on this matter.

- Disclosure of Pay versus Performance and Pay Disparity Ratios: The Dodd-Frank Act directs the SEC to issue rules requiring a company to include in its annual proxy statement information showing the relationship between executive compensation paid and the financial performance of the company, disclosure of the median of the annual total compensation of all employees of the company except for the CEO, and disclosure of the ratio of the CEO's compensation to the median compensation of all other employees. There is no deadline for the SEC to issue the required rules.

- Internal Control Audit Exemption for Smaller Companies: The Sarbanes-Oxley Act requires an external audit of internal control over financial reporting, but the deadline for compliance by smaller companies has been extended several times. The Dodd-Frank Act now makes the exemption from compliance permanent for "non-accelerated filers" and "smaller reporting companies". This does not affect a company's ongoing requirement to maintain adequate internal controls over financial reporting and managements assessment of such controls.

- Proxy Access: The Dodd-Frank Act authorized the SEC to issue rules to permit shareholder use of a company's proxy solicitation materials to nominate shareholders to the Board. On August, 25, 2010, the SEC issued rules regarding proxy access.

- Expanded Clawback Requirements: The Dodd-Frank Act directs the SEC to issue rules directing national securities exchanges to prohibit the listing of any company that does not have a compensation recovery (or "clawback") policy that complies with the Dodd-Frank Act. There is no deadline for the SEC to issue the clawback rules.

- Independent Compensation Committee: The Dodd-Frank Act requires the SEC to issue rules directing the national securities exchanges to amend their listing standards to require that each listed company require that each member of its compensation committee meet more stringent requirements for independence. The SEC is required to issue the rules no later than July 16, 2011.

- Independent Compensation Advisers: The Dodd-Frank Act gives compensation committees the authority to engage compensation consultants, legal counsel and other advisers and makes the committee directly responsible for the appointment, compensation and oversight of the work of such advisers. The Company is required to provide funding for the payment of such advisers. The Act also imposes more stringent requirements for the independence of such advisers and requires additional disclosures regarding the advisers in proxy statements. Companies will be required to include the disclosures in any proxy statement for a shareholders' meeting occurring on or after July 21, 2011.

- Whistleblower Protection and Incentives: The Dodd-Frank Act expands the whistleblower protections, expands the class of employees to which the whistleblower provisions apply, and authorizes the SEC to make payments to individuals who provide information to the SEC that leads to a successful action brought by the SEC resulting in monetary sanctions of greater than $1 million. These provisions are effective immediately, but the SEC is directed to issue rules implementing them by April 22, 2011.

- Employee and Director Hedging: The Dodd-Frank Act directs the SEC to adopt rules requiring companies to disclose in their proxy statements whether any employees or directors are allowed to hold financial instruments designed to hedge or offset any decrease in the market value of the company's equity securities either granted to them as part of their compensation or otherwise held by them. There is no deadline for the SEC to issue these rules.

- Board Leadership Structure: The Act requires the SEC to issue rules that would require a company to explain in its annual proxy statement why it has chosen to either combine or separate its chairman and CEO positions. Although the Dodd-Frank Act requires the rules within 180 days, current SEC rules already require this disclosure, and your recent proxy statement contained such disclosure.

The many of the above topics are explained in more detail below in the order that they appear above.

Discussion

"Say-on-Pay" and Frequency Shareholder Votes

What are say-on-pay votes?

A say-on-pay vote is a non-binding advisory vote by shareholders on executive compensation required at least every three years. The Company will be required to include in its proxy statement (beginning with its 2011 proxy statement) a say-on-pay proposal regarding the compensation paid to its named executive officers.

In addition, beginning with shareholder meetings held on or after January 21, 2011, shareholders will be able to determine the frequency of the say-on-pay vote (that is, once every one, two or three years) in a separate non-binding vote held at least once every six years.

Will inclusion of the say-on-pay and the frequency votes trigger a preliminary proxy statement filing requirement?

The Act is silent on the preliminary proxy statement filing requirement, and it remains to be seen whether the SEC will impose such a requirement. If a preliminary proxy statement is required, companies would have to file their preliminary proxy statements with the SEC and wait for 10 calendar days for any SEC comments.

Voting requirements for the frequency of the say-on-pay vote?

Currently, Delaware law provides that in all matters other than the election of directors, the affirmative vote of a majority of the shares present and entitled to vote shall be the act of the stockholders, unless the Certificate of Incorporation provides otherwise. The Company's bylaws requires the same vote for shareholder actions other than the election of directors. However, the frequency on the say-on-pay vote will provide shareholders the right to approve one of three possible actions (that is, whether the say-on-pay vote should be once every one, two or three years). As the bylaws and DE law provide that only the election of directors is by a plurality of the vote, it is uncertain how this vote will work if none of the three possible choices receive a majority vote. We will keep you informed as this issue is flushed out.

What are the action items the Company should take?

The board should analyze the current compensation packages of executive officers in anticipation of potential controversies with the shareholders. In addition, the Company should allow additional time next year to draft language in support of the executive compensation arrangements in next year's proxy statement.

The Company may be required to take some action in connection with the frequency of the say-on-pay vote, such as amending the bylaws to permit a plurality vote on such action. But as previously mentioned, we will keep you informed as this issue is flushed out.

The Dodd-Frank Act permits the SEC to consider exemptions for small companies regarding these two say-on-pay votes. We will keep you informed on this issue as well as it is developed.

When will the new rules become effective?

The required votes must be held at the first annual meeting of shareholders that occurs on or after January 21, 2011.

Shareholder Vote on Golden Parachutes Payments

What are golden parachute payments under this vote?

Any agreements or understandings between named executive officers of the company and the company (or the acquiring issuer if the company is not the acquiring issuer) regarding <u>any</u> type of compensation (whether present, deferred or contingent) that is based on or otherwise relates to an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all of the assets of the company (collectively referred to as "M&A Transactions").

What does the Act require regarding golden parachute payments?

The Dodd-Frank Act requires a separate non-binding vote on golden parachute payments to named executive officers related to any M&A Transaction. It also imposes a "clear and simple" disclosure requirement for all proxy solicitation materials pursuant to which shareholders are asked to approve such a transaction. These provisions of the Act apply only to the proxy materials prepared for the shareholder meeting to approve the M&A Transaction.

There is an exception for the golden parachute vote requirement if shareholders have already approved the agreements or arrangements under which the golden parachute payments are to be made in an earlier say-on-pay vote.

What are the action items the Company should consider?

The Company should consider whether to include any applicable agreements or provisions in agreements in its first shareholder say-on-pay vote to qualify for the exception described above.

When will the golden parachute rules become effective?

The vote must be held at any shareholder meeting that occurs on or after January 21, 2011 to approve a M&A Transaction.

The Dodd-Frank Act permits the SEC to consider exemptions for small companies regarding this vote. We will keep you informed on this issue as well as it is developed.

Prohibition of Broker Discretionary Voting

What are the new discretionary voting rules?

Effective January 1, 2010, the New York Stock Exchange (NYSE) amended its rules to prohibit brokers from voting for directors without voting instructions from the beneficial owner of the shares. The new rules mandated by the Dodd-Frank Act require each national securities exchange to adopt rules expanding this prohibition to shareholder votes on executive compensation "or any other significant matter, as determined by the Securities and Exchange Commission, by rule." Thus, brokers cannot vote shares on say-on-pay, frequency of say-on-pay or say-on-pay golden parachutes without instruction from the beneficial owners of the shares.

What will be the effects of the new rules?

Because broker non-votes will not be available to be cast in favor of executive compensation packages, it will be more difficult to obtain majority support for executive compensation. However, such vote is a non-binding vote.

In addition, it will be important for companies to include in the matters on which shareholders are to vote at a meeting a vote on the approval of the auditors so companies can achieve a quorum at shareholder meetings.

When will the new rules be effective?

There is no deadline for the SEC or the exchanges to implement the rules. However, on August 4, 2010, the NYSE issued an Information Memo announcing that it intends to file an amendment to NYSE Rule 452 to prohibit members from voting uninstructed shares if the matter to be voted on relates to executive compensation (including say-on-pay proposals) at shareholder meetings occurring after July 21, 2010. Nasdaq normally follows the rules issued by the NYSE as to the matter of broker non-votes.

Disclosure of Pay versus Performance and Pay Disparity Ratios

What are the new pay versus performance and pay disparity ratio disclosures of the Dodd-Frank Act?

The Dodd-Frank Act directs the SEC to issue rules requiring a company to include in its annual proxy statement a clear description of the executive compensation required to be disclosed under Item 402 of Regulation S-K, including information that shows the relationship between executive compensation and the financial performance of the company, taking into account any change in the value of the shares of stock and dividends of the company and any distributions. The disclosures may be provided in a narrative form or graphically.

In addition, the SEC is to amend Item 402 to require the following "pay disparity" disclosures:

- The median of the annual total compensation of all employees of the company except the CEO;
- The annual total compensation of the CEO; and
- The ratio of the CEO's compensation to the median compensation of all other employees.

For purposes of the disclosures described in the above bullets, the total compensation of an employee of a company is to be determined in accordance with Item 402(c)(2)(x) of Regulation S-K. Item 402(c)(2)(x) requires that the total compensation of the NEOs must be determined by adding all of the dollar amounts in columns (c) through (i) of the Summary Compensation Table. Thus, for each employee, the company must compute the applicable compensation components reported in the Summary Compensation Table.

What are the practical implications of the new disclosure requirements?

Implementing the disclosure requirement of Item 402(c)(2)(x) regarding employees' compensation likely will result in a significant amount of additional work, effort and expense.

What are the action items the Company should take?

The Company should begin to implement a system to calculate employees' compensation soon after the SEC adopts the rules regarding the calculation of total compensation for all employees.

When will the pay for performance and compensation ratios rules be effective?

Unknown, as there is no deadline for the SEC to issue the required rules or amend Item 402.

Proxy Access

What are the new proxy access requirements?

The Dodd-Frank Act authorized the SEC to issue rules that would implement a proxy access process, and on August 25, 2010, the SEC issued them. Proxy access, under new Rule 14a-11, is the right of shareholders of a company to include their nominees for the board of directors in the company's proxy statement. It allows shareholders to avoid the significant costs and procedural challenges that would otherwise be involved in proposing a board nominee. Here is a brief outline of the relevant elements of proxy access:

- "Smaller reporting companies" get a three-year delay in effectiveness, but there is no opt-out procedure and a more restrictive process may not be adopted.

- Shareholders (or groups) must have 3% of the voting power and have held their shares for three years when they give notice of the nomination on Schedule 14N. When calculating the 3%, shareholders will be able to pool assets and include securities loaned to a third party as long as they can be called back - but securities sold, shorted or not held through the company's annual meeting will need to be deducted.

- Shareholders nominees must satisfy the applicable stock exchange's independence standards - and the shareholder exercising the right must not have the intent of changing control of the company. If a company wants to challenge a nominee's qualification, it can use the SEC's no-action process.

- The number of nominees that can be placed on the ballot by shareholders is the greater of one director or 25% of the entire board. If the number of shareholder nominees exceeds the number permitted under Rule 14a-11, then preference will be given to the larger holder.

When will the new proxy access rules be effective?

Assuming the Company still qualifies as a "smaller reporting company" next year, the rules will not apply for another three years. That said, for other filers (and if the Company does not qualify as an smaller reporting company), the rules are not effective until 60 days after their publication in the Federal Register, which is expected to occur soon.

Expanded Clawback Requirements

What is the clawback policy?

In the event that a company is required to prepare an accounting restatement due to a material noncompliance of the company with any financial reporting requirement, the clawback policy would require current and former executives to pay back the portion of incentive-based compensation (including stock option awards) previously paid or received based on the erroneous data in excess of what would have been paid to such officer under the accounting restatement during the three-year period preceding the date on which the company becomes required to restate its financials.

What are the expanded requirements regarding clawbacks?

The Dodd-Frank Act directs the SEC to issue rules directing national securities exchanges to prohibit the listing of any company that does not have a compensation recovery policy (or clawback policy) that complies with the Dodd-Frank Act. The Dodd-Frank Act's requirements for clawback policies are different from those under the Sarbanes-Oxley Act.

The Sarbanes-Oxley Act requires a CEO or a CFO to return incentive-based compensation to the company when a financial restatement occurs "as a result of misconduct." The Dodd-Frank Act expands the clawback requirements to all current and former executive officers (not only the CEO and the CFO) who received compensation during the three-year period before the date on which the company is required to prepare an accounting restatement. In addition, the Dodd-Frank Act does not require direct misconduct or fraud by the executives to trigger the clawback, and it expands the clawback look-back period to three years rather than one year.

What are the action items the Company should take?

The Company should begin considering and drafting a clawback policy, and be ready to evaluate the requirements of the exchange rules once they are adopted so it will be poised to timely adopt a compliant policy.

When will the clawback requirements become effective?

There is no deadline for the SEC to issue the clawback rules, but it is expected that the SEC will act so that they will be effective for the 2011 proxy season.

Independent Compensation Committee

What are the requirements of the Dodd-Frank Act regarding independent compensation committees?

The Act requires the SEC to issue rules directing the national securities exchanges to amend their listing standards to require that each listed company require that each member of the compensation committee be a director and be "independent" (as defined by the SEC).

What is the SEC's definition of independence?

The Act provides that the exchanges, in adopting their rules, must consider factors such as the source of compensation of a member of the compensation committee (including any consulting, advisory or other compensatory fee paid by the company) and whether the member is affiliated with the company, a subsidiary of the company, or an affiliate of a subsidiary of the company.

What are the action items the Company should take?

The new independence requirements appear to be substantially similar to the current audit committee member independence requirements of Rule 10A-3 under the Securities Exchange Act of 1934 (Exchange Act). Thus, the Company should review the independence of the members of its compensation committee to determine if they would meet the independence requirements of Rule 10A-3.

Once the rules are finalized, director questionnaire will likely need to be modified to add the independence-related questions for compensation committee members.

When will the new independence rules be effective?

The SEC is required to issue the rules no later than July 16, 2011.

Independent Compensation Advisers

What are the new requirements regarding independent compensation advisers?

The Dodd-Frank Act permits compensation committees to retain and manage independent advisers (compensation consultants, legal counsel, etc.) subject to such advisers meeting certain "competitively neutral" factors such as other services performed for the company, fees received from the company as a percentage of total revenue of adviser, company's policies designed to prevent conflicts of interest, business or personal relationships of adviser with the members of the compensation committee and amount of company stock owned by the adviser.

Each company is required to provide appropriate funding determined by the compensation committee for payment of reasonable compensation to a compensation consultant, legal counsel or other adviser.

In connection with an annual meeting, a company is required to disclose in its proxy statement whether its compensation committee retained or obtained the advice of a compensation adviser and whether such engagement raised any conflicts of interest, and how such conflicts are/were addressed.

What are the action items that the Company should take?

Assuming that the Company's compensation committee does not retain compensation consultants or other advisers, there are no actions the Company needs to take. However, the Company should consider the independence requirements when evaluating future compensation adviser arrangements.

When will the new compensation adviser rules become effective?

Companies are required to include disclosures regarding retention of compensation committee advisers and related conflicts of interest in any proxy statement for an annual shareholders meeting occurring on or after July 21, 2011.

Whistleblower Protection and Incentives

What are the new incentives for whistleblowers?

The Dodd-Frank Act creates a complex new system to incentivize whistleblowers and protect them against retaliation. It also expands the class of employees to whom the whistleblower provisions apply. Under the Dodd-Frank Act, the SEC is authorized to make a payment to an individual who provides original information to the SEC that leads to a successful judicial or administrative action brought by the SEC resulting in the imposition of monetary sanctions in excess of $1 million. The amount of the payment is between 10% and 30% of the monetary sanctions, and the SEC is to determine the percentage based on the level and type of assistance provided by the whistleblower. The Dodd-Frank Act establishes a fund financed by money collected pursuant to sanctions containing a maximum of $300 million to provide a source of payment to whistleblowers.

What are the new protections of whistleblowers?

The Dodd-Frank Act prohibits employers from retaliating against whistleblowers and permits an employee who has been the subject of retaliation to bring claims for reinstatement, two times back pay and legal expenses.

How do the new whistleblower incentive and protection provisions differ from those contained in the Sarbanes-Oxley Act?

Section 806 of the Sarbanes-Oxley Act protects whistleblowers against retaliation, but it does not provide them with incentive. Also, although the Sarbanes-Oxley Act provides for reinstatement and back pay plus interest and attorneys' fees, the Dodd-Frank Act provides for two times back pay.

Who are the additional employees covered by the whistleblower provisions?

Employees of non-publicly traded subsidiaries of publicly-held companies are now covered by the whistleblower protections. Before this amendment, the U.S. Department of Labor took the position that employees of non-publicly traded subsidiaries were generally not covered by the protections.

What are the practical implications of the new whistleblower provisions?

The new provisions may create an incentive for employees to bypass a company's corporate compliance mechanism (which is unlikely to provide any significant monetary award for reporting noncompliance) and to report any issue directly to the SEC. Also, because an employee receives a payment for reporting only "original information," the employee is further incentivized to avoid reporting any information to the company, as the company could self report to the SEC, thus preventing the whistleblower from providing original information to the SEC.

What are the action items the Company should take?

The Company should review its whistleblower policy to assure that it requires internal reporting and the maximum opportunity to address compliance concerns before employees provide information to the SEC. Also, the Company should amend its whistleblower policy to make it clear that it applies to the employees of its subsidiaries. If it has not already done so, it should train the management of those subsidiaries about the Company's whistleblower policy.

When do the new rules become effective?

The provisions are effective immediately. However, the SEC deadline for adopting rules is April 22, 2011.

Employee and Director Hedging

What are the new requirements regarding employee and director hedging?

The Dodd-Frank Act directs the SEC to adopt rules requiring companies to disclose in their proxy statements whether any employees or directors are allowed to own financial instruments (including prepaid variable forward contracts, equity swaps, collars and exchange funds) designed to hedge or offset any decrease in the market value of equity securities of the company granted to them as part of their compensation or otherwise held by them. The Act requires that the company disclose its hedging policy in this regard. However, it does not require companies to adopt such a policy or disclose specific hedging transactions by its employees or directors (although disclosure of these transactions may be required by Section 16(a) of the Exchange Act).

Also, please note that Section 16(c) of the Exchange Act prohibits "short sales" and "short sales against the box" by directors, executive officers and 10% shareholders. If a company does not prohibit short selling, or prohibits short selling only by its directors and officers, it would have to disclose that fact in its proxy statement.

What are the action items the Company should take?

If the Company does not have a hedging policy, or if it applies only to directors and officers, it may want to consider adopting an appropriate hedging policy or amending it to apply to all employees. The individuals to whom the new policy or amendment applies should be notified of the new requirements.

When are the new hedging disclosure rules effective?

The Act imposes no deadline on the SEC for adopting the new rules.

Board Leadership Structure

What are the new requirements regarding Board leadership structure?

The Dodd-Frank Act calls for the SEC to issue rules that would require companies to explain in their annual proxy statement why they have chosen to either combine or separate their chairman of the board and CEO positions. Disclosure of the reasons that the chairman and CEO positions are filled by the same person is already required. After the effective date of the SEC rules, companies will also be required to disclose why the roles are split.

When will the board leadership structure rules be effective?

The deadline for the SEC's adoption of the rules is January 17, 2011.

About Joy S. Newborg
Joy Newborg focuses her practice primarily in the areas of corporate securities and finance, general corporate law and mergers and acquisitions. Joy has extensive experience in providing legal counsel to companies in the real estate, finance, banking, and medical device/health sciences industries that range from start-up companies to large, publicly held corporations.

Joy is also developing the entertainment law practice at the firm, focusing on providing general corporate, contracts and corporate securities services to businesses and individuals in the entertainment industry, specifically in film, television, music and publishing. She is an experienced lawyer who enjoys helping clients by identifying and handling the legal issues so that clients are free to develop their business and be creative.

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