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RECENT DEVELOPMENTS IN CORPORATE GOVERNANCE
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Although it was the country's large financial institutions and not its community banks that brought about the current crisis, corporate governance changes stemming from it will likely impact small as well as large banks. A primary premise of the proposed Shareholder Bill of Rights Act of 2009 is that "among the central causes of the financial and economic crises that the United States faces today has been a widespread failure of corporate governance." It is only one of three bills that have been introduced into Congress relating to corporate governance issues; the SEC has also proposed changes to its disclosure requirements.

While the SEC's rules and most of the legislative proposals are aimed at institutions that are SEC-reporting companies, Representative Frank's Corporate and Financial Institution Compensation Fairness Act of 2009 (the "Proposed Act"), passed by the House and sent to the Senate, has provisions that would affect all depository institutions and depository institution holding companies. Additionally, for non-reporting companies, there can be a shareholder expectation that requirements or best practices implemented by reporting companies will also be adopted by them. Even if none of the legislation or SEC proposals come to pass, the corporate governance climate will surely change.

The Proposed Act provisions that would apply to all community banks authorize Federal regulators, including the Federal Reserve, the OCC, and the FDIC, to prescribe regulations: (i) requiring financial institutions to disclose their incentive-based compensation arrangements for officers and employees, and (ii) prohibiting any compensation structure or incentive-based payment arrangement that they determine encourages inappropriate risks that could threaten the safety and soundness of the institution.

Other provisions of the Proposed Act, some of which are also reflected in the other bills, would apply to reporting companies and would require an annual non-binding shareholder vote on executive compensation, a non-binding shareholder vote on any golden parachute agreement with any principal executive officer in connection with an acquisition, merger, consolidation or sale of the issuer, and impose new independence criteria for members of the Compensation Committee.

Additional provisions in the other bills deal with the ability of shareholders to use the company's proxy materials for nominating their own director candidates, having an independent chairman, electing all directors annually, requiring that director candidates be elected by a majority, rather than a plurality, of the votes cast, and requiring boards of directors to establish a risk committee responsible for the establishment and evaluation of the risk management practices of the company.

The proposed SEC rules would require greater disclosure about the company's overall compensation policies and their impact on risk taking, and change how the value of stock options and stock grants is reported in the proxy statement. They would require a disclosure detailing for each director and nominee for director the particular experience, qualifications, attributes or skills that qualify that person to serve as a director and as a member of any committee that person serves on, in light of the company's business and structure. Proxy statements would also need to discuss why the company has chosen a particular leadership structure, e.g., a combined or separate Chair and CEO, a lead independent director, and the role the Board plays in the risk management process.

While, as of the writing of this article, there is nothing definitive as to the proposals discussed, it is highly unlikely that nothing will change. The best course of action for community banks is to be aware that change is in the air and to keep informed of the current status of the various proposals and the general corporate governance environment.

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