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SECURITIES LAW ALERT

SEC RULE AMENDMENTS GIVE SHAREHOLDERS ADVISORY VOTES ON EXECUTIVE COMPENSATION AND GOLDEN PARACHUTE ARRANGEMENTS

In January 2011, the Securities and Exchange Commission ("SEC") adopted amendments to its rules to implement the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") relating to shareholder approval of executive compensation and "golden parachute" compensation arrangements for public companies subject to the Federal proxy rules.

The executive compensation disclosure rules are effective commencing with the first annual or other meeting of shareholders at which directors will be elected and for which the rules of the SEC require executive compensation disclosure occurring on or after January 21, 2011 (January 21, 2013 for companies that qualify as "smaller reporting companies"). The golden parachute-related disclosure rules are effective commencing with the first shareholders meeting at which a merger or related transaction will be voted upon on or after April 25, 2011.

The rule amendments implement Section 951 of the Act, which added Section 14A to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which statute requires public companies subject to the Federal proxy rules to:

- Provide their shareholders with an advisory vote on executive compensation, generally known as "say-on-pay" votes.
- Provide their shareholders with an advisory vote on the desired frequency of say-on-pay votes.
- Provide their shareholders with an advisory vote on compensation arrangements and understandings in connection with merger transactions, known as "golden parachute" arrangements.

Shareholder Approval of Executive Compensation

Under new Rule 14a-21(a), companies will be required, not less frequently than once every three years, to provide a separate shareholder advisory vote in proxy statements to approve the compensation of their named executive officers, as defined in Item 402(a)(3) of Regulation S-K. A separate shareholder vote on executive compensation is required only when proxies are solicited for an annual or other meeting of security holders at which directors will be elected and for which the SEC's rules require the disclosure of executive compensation pursuant to Item 402 of Regulation S-K. Companies (other than smaller reporting companies) will be required to disclose in the Compensation Discussion and Analysis ("CD&A") section of their proxy statements whether and, if so, how their compensation policies and decisions have taken into account the results of the most recent shareholder advisory vote on executive compensation.

Shareholder Approval of the Frequency of Shareholder Votes on Executive Compensation

Under new Rule 14a-21(b), companies will be required, not less frequently than once every six calendar years, to provide a separate shareholder advisory vote in proxy statements for annual meetings to determine whether the shareholder vote on the compensation of executives required by Section 14A(a)(1) will occur every 1, 2, or 3 years.

Under new Item 24 of Schedule 14A, companies will be required to disclose in their proxy statements that they are providing a separate shareholder advisory vote on the frequency of say-on-pay votes and to briefly explain the general effect of this vote, such as whether the vote is non-binding. This Item also includes a requirement for companies to

(Please see next page for more information.)

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provide disclosure of the frequency of say-on-pay votes and when the next scheduled say-on-pay vote will occur, in their proxy materials.

Item 5.07 of Form 8-K has been amended to require a company to disclose its decision regarding how frequently it will conduct shareholder advisory votes on executive compensation following each shareholder vote on the frequency of say-on-pay votes. To comply, a company will file an amendment to its prior Form 8-K filings under Item 5.07 that disclose the preliminary and final results of the shareholder vote on frequency. This amended Form 8-K will be due no later than 150 calendar days after the date of the end of the annual or other meeting in which the vote required by Rule 14a-21(b) took place, but in no event later than 60 calendar days prior to the deadline for the submission of shareholder proposals under Rule 14a-8 for the subsequent annual meeting, as disclosed in the company's proxy materials for the meeting at which the frequency vote occurred.

A proxy statement that includes a solicitation with respect to any advisory vote on executive compensation, including a say-on-pay vote or a vote on the frequency of say-on-pay votes, will not trigger a requirement that the company file the proxy statement in preliminary form, so long as any other matters to which the solicitation relates include only other matters for which a preliminary filing is not required.

Disclosure of Golden Parachute Arrangements and Shareholder Approval of Golden Parachute Arrangements

Under new Rule 14a-21(c), companies will be required to provide a separate shareholder advisory vote in proxy statements on golden parachute arrangements (i.e., compensation arrangements that are based upon or relate to the transaction) for meetings at which shareholders are asked to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all assets, consistent with Section 14A(b)(2) of the Act, but not for meetings at which shareholders are asked to approve other proposals, such as an increase in authorized shares or a reverse stock split, which may be necessary for the company to effectuate a transaction. A vote under Rule 14a-21(c) is required only if the shareholders are voting to approve the merger or disposition transaction and the transaction and golden parachute arrangements come within those covered by Section 14A(b).

Section 14A(b)(1) requires disclosure of any agreements or understandings between the soliciting person and any named executive officer of the target company or any named executive officers of the acquiring company, if the soliciting person is not the acquiring company. When a target company conducts a proxy or consent solicitation to approve a merger or similar transaction, golden parachute compensation agreements or understandings between the acquiring company and the named executive officers of the target company are not within the scope of disclosure required by Section 14A(b)(1), and thus a shareholder vote to approve arrangements between the soliciting target company's named executive officers and the acquiring company is not required by Exchange Act Section 14A(b)(2) or Rule 14a-21(c). However, disclosure of all golden parachute arrangements will be required, even though a vote on the arrangements will not be required.

New Item 402(t) of Regulation S-K requires companies to disclose their named executive officers' golden parachute arrangements in both tabular and narrative formats. This new tabular disclosure must be included in any proxy or consent solicitation material seeking approval of an acquisition, merger, or similar transaction. Companies will not be required to include in the merger proxy a separate shareholder vote on the golden parachute compensation disclosed under Item 402(t) of Regulation S-K if Item 402(t) disclosure of that compensation had been included in the executive compensation disclosure that was subject to a prior vote of shareholders under Section 14A(a)(1) of the Exchange Act and Rule 14a-21(a).

For additional information concerning the new rules, see the SEC's Adopting Release No. 33-9178; 34-63768 at the following location: <http://www.sec.gov/rules/final/2011/33-9178.pdf>.

We are available to provide counsel and guidance concerning similar Securities Law issues, as well as others not discussed in this Alert. Please contact any of the attorneys named below.

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