SEC Issues Proposals to Implement TARP and Disclosure and Governance Agenda

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At a meeting this morning, the Securities and Exchange Commission voted to move forward with key components of Chairman Mary Schapiro's previously announced disclosure and governance agenda, as well as to implement requirements of the Troubled Asset Relief Program (TARP). The Commission voted to propose rule amendments regarding shareholder votes on executive compensation applicable to institutions receiving financial assistance under TARP and rule amendments to enhance proxy disclosures and solicitations. The Commission also voted to approve amendments to New York Stock Exchange Rule 452 regarding broker discretionary voting. This alert focuses on the new rule proposals. Broker discretionary voting will be addressed in a separate alert.

Say-on-pay. Reporting companies that have received financial assistance under TARP are required, under Section 111(e) of the Emergency Economic Stabilization Act of 2008 (EESA), to permit a separate advisory shareholder vote to approve executive compensation. The Commission considered and voted unanimously in favor of proposing amendments to the proxy rules under the Securities Exchange Act of 1934 to clarify how firms may comply with this requirement. In a proxy statement for an annual meeting or for a special meeting held in lieu of an annual meeting for which proxies will be solicited for the election of directors, TARP recipients would be required to disclose that they are providing a separate shareholder vote on executive compensation and to briefly explain the general effect of the vote. The requirements would apply as long as the Secretary of the Department of Treasury holds an equity or debt position in the TARP recipient.

The Commission stressed that the amendments will be consistent with Section 111(e) and past Commission practice and the Commission will not propose specific disclosure language. Rather, the proposed amendments will allow for "maximum flexibility" to comply with EESA requirements. The rule proposal will, however, seek comment on whether the industry would find more detailed guidance helpful. The rule proposal would also clarify that smaller reporting companies would not be required to include a compensation discussion and analysis section in their proxy statements. Click here to view the proposed rules.

Disclosures and solicitations. The Commission also considered and voted unanimously in favor of proposing amendments to rules under the Securities Act of 1933, the Securities Exchange Act of 1934 and the Investment Company Act of 1940 to enhance disclosures by registrants on compensation and other corporate governance matters, and to clarify certain of the rules governing proxy solicitations. Specifically, the proposals will address disclosure in proxy and information statements in four areas:

- the relationship of a company's overall compensation policies to risk (including disclosure regarding an expanded group of employees);
- director, executive officer and nominee qualifications;
- corporate "leadership structure" (including why the registrant chose a particular governance structure over others); and
- potential conflicts of interest of compensation consultants. In addition, the proposals aim to improve the reporting of annual stock and option awards to company executives and directors and require quicker reporting of election results.

Meredith Cross, Director of the Division of Corporation Finance, emphasized that the proposed amendments will help in evaluating potential conflicts of interest, provide for more accountability and enhance transparency. Chairman Mary Schapiro stressed that the proposed amendments will focus on making proxy disclosures better and more timely, and not simply adding to the volume of already weighty disclosures.

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