Paul|Weiss

Client Memorandum

March 30, 2011

SEC Proposes Compensation Committee Rules as Required by the Dodd-Frank Act

The SEC today unanimously voted to propose rules to implement Section 952 of the Dodd-Frank Act, which imposes new compensation committee independence and other requirements and new disclosure requirements regarding compensation consultants.

The SEC is proposing that the securities exchanges require U.S. listed companies with committees that oversee executive compensation (regardless of whether that committee performs other functions or is formally designated as a compensation committee) to comply with certain independence and other requirements. Among other things, that committee must be composed of fully independent members of the board, as determined pursuant to new independence requirements that consider relevant factors, including the director's source of compensation (such as consulting, advisory or other compensatory fees paid by the company) and whether the director is affiliated with the company. Compensation committees would be explicitly charged with hiring and overseeing compensation consultants, legal counsel and other committee advisors, and companies must provide appropriate funding for the retention of these advisors. When engaging compensation consultants, legal counsel or other advisors, compensation committees would be required to consider certain independence factors, including factors that examine the relationship between the consultant or advisor's employer and the company. Controlled companies, foreign private issuers that are not otherwise subject to similar rules and certain other issuers are not subject to the compensation committee independence requirements, but only controlled companies are so far explicitly exempted from the other requirements related to compensation committee responsibilities and compensation consultants. Further, the proposed rules would clarify that these requirements do not apply to companies without a board committee that oversees compensation and that such companies would not have to adopt a compensation committee structure. By all indications, the SEC's proposed rules will hew closely to what was mandated by the Dodd-Frank Act. The stock exchanges must still propose and adopt rules related to these requirements before they become effective.

The SEC is also proposing to require that all registered issuers be required to disclose whether their compensation committees retained or obtained the advice of a compensation consultant and whether the consultant's work raised any conflict of interest (based on certain specified factors) and, if so, the nature of such conflict and how it was addressed. Existing compensation consultant-related disclosure would be broadened to reflect the Dodd-Frank Act required disclosure. Under the proposed rules, the trigger for disclosure related to compensation consultants would be changed from where the compensation consultant had a role in "determining or recommending the amount or form of executive and director compensation" to if the compensation committee "retained or obtained the advice of a compensation consultant." Also, the exemption for advice on broad-based plans that do not discriminate in favor of executive officers or directors would be eliminated.

The above is based on oral discussions from, and the press release related to, the open meeting. The SEC's rule proposal is also now available at: http://sec.gov/rules/proposed/2011/33-9199.pdf.

We will update you on its details in a separate memorandum.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to David S. Huntington (212-373-3124), John C. Kennedy (212-373-3025) and Frances F. Mi (212-373-3185).

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