

# PUBLICATION

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## SEC Proposes Rules to Implement Shareholder Approval of Executive Compensation and Golden Parachute Compensation

November 10, 2010

The U.S. Securities and Exchange Commission (Commission) recently proposed rules designed to implement Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 951 adds Section 14A to the Securities Exchange Act of 1934

- Section 14A(a)(1) requires, beginning with shareholder meetings held after January 21, 2011, companies to submit at least once every three years for an advisory vote by shareholders (Say-on-Pay Vote) the compensation of executives.
- Section 14A(a)(2) further requires that not less frequently than once every six years, a separate resolution be submitted to an advisory vote of shareholders to determine whether votes referred to in the preceding bullet point will occur every one, two or three years (Frequency Vote).
- Section 14A(b) requires disclosure of certain golden parachute compensation arrangements and a non-binding shareholder vote (Golden Parachute Vote) to approve such compensation arrangements when shareholders are asked to approve a merger or similar transaction.
- Section 14A(e) provides that the Commission may, by rule or order, exempt an issuer or class of issuers from the preceding requirements.

Comments addressing the proposed rules are due to the Commission by November 18, 2010.

None of these shareholder advisory votes are binding upon the issuer or its board of directors. Issuers must conduct the Say-on-Pay Vote and Frequency Vote for annual shareholder meetings held on or after January 21, 2011, regardless of whether the Commission adopts the proposed rules. The Golden Parachute Vote and related disclosures will not be required until the Commission adopts final rules. Under the proposed rules, smaller reporting companies are not exempt from the requirements of Section 14A. Notably, the non-routine nature of the Say-on-Pay Vote will magnify the impact of institutional shareholders' votes, as brokers will not have discretion to vote without instructions from beneficial owners. Issuers should revisit their compensation practices in light of proxy advisory firms' compensation policies and assess the potential response of their institutional investors if the issuers were to receive "no" recommendations from proxy advisory firms.

Prior to the Commission proposing its rules, Baker Donelson securities attorneys met with staff members of the Commission on October 4, 2010 to discuss Section 951 and other provisions of the Dodd-Frank Act. A memorandum containing the agenda for the meeting and a summary of Baker Donelson's suggestions can be viewed [here](#).

We are pleased to report that the Commission's proposed rules address several of our suggestions, including our suggestions that (i) the submission of the Say-on-Pay Vote and/or Frequency Vote should not require the filing of preliminary proxy materials and (ii) the Commission should exempt any issuer that is including a Say-on-Pay Vote in its proxy materials from having to include any shareholder proposal under Rule 14a-8 that relates to the same subject matter. Under the proposed rules, if after a Say-on-Pay Vote or Frequency Vote the issuer's board of directors adopts a policy that is consistent with the plurality of votes cast, the issuer may exclude shareholder proposals that propose a vote on the approval of executive compensation or the frequency of such votes.

If you have questions about this or any other securities-related issues, please contact one of the attorneys listed below or your Baker Donelson attorney.