

“Say on Pay” Votes to Become Mandatory Under Obama Administration Proposal

June 18, 2009

On June 17, President Barack Obama proposed broad changes to the manner in which the U.S. government supervises financial markets. Among the numerous elements of the administration’s plan is a requirement that public companies implement “say on pay” rules, under which they would submit executive compensation packages to a nonbinding vote of their shareholders.

The brief description contained in the plan suggests that the “say on pay” requirement would extend to all public companies, regardless of size, though details of the proposal and the timing of any eventual adoption have not yet been announced. It is not yet clear whether the votes would be required annually or on some other regular basis, or only be required following material changes to a compensation structure that has previously been subject to a vote. The votes would be nonbinding, but the plan posits that they would “provide a strong message to management and boards and serve to support a culture of performance, transparency, and accountability in executive compensation.” The Obama administration also believes that “say on pay” rules “could help restore investor trust by promoting increased shareholder participation and increasing accountability of board members and corporate management.”

The Obama administration’s plan is only the latest example of a current federal focus on executive compensation. In a June 10 statement, Securities and Exchange Commission (SEC) Chairman Mary Schapiro expressed SEC concerns regarding executive compensation, saying “I firmly believe that better disclosure of compensation leads to more informed shareholders and in turn to more accountable corporate directors. This is the foundation of our capital markets.” She indicated that the SEC will be considering proposals mandating disclosure of the following:

- How a company and its board manage risk
- A company’s overall compensation approach, with particular attention given to incentive structures that might reward short-term risk taking without regard for potential long-term effects on the company
- Potential conflicts of interest affecting compensation consultants retained by companies, including disclosure of relationships between the consultants and the company and their affiliates

The SEC is also focused on company boards of directors. Ms. Schapiro’s June 10 statement suggested that the SEC will be requiring further disclosure of information regarding director nominees, including their experience and qualifications to serve on the board or on particular board committees, and an explanation as to why a board has chosen its particular leadership structure. The SEC’s focus on board issues was also

demonstrated in its May 2009 proposal of rules designed to better facilitate shareholder nominations of director candidates.

In addition to the Obama administration's plan and the SEC rulemaking initiatives, the Treasury Department recently published its interim final rule containing TARP-related standards on compensation and corporate governance matters.

As more information regarding all of these initiatives becomes available, Morgan Lewis will provide additional information and guidance on these issues.

If you have any questions regarding any of the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

Philadelphia

Justin W. Chairman	215.963.5061	jchairman@morganlewis.com
James W. McKenzie, Jr.	215.963.5134	jmckenzie@morganlewis.com
Alan Singer	215.963.5224	asinger@morganlewis.com
Joanne R. Soslow	215.963.5262	jsoslow@morganlewis.com

New York

Stephen P. Farrell	212.309.6050	sfarrell@morganlewis.com
John T. Hood	212.309.6281	jhood@morganlewis.com
Thomas P. Giblin, Jr.	212.309.6277	tgiblin@morganlewis.com
Walter J. Godlewski III	212.309.6284	wgodlewski@morganlewis.com
Christopher T. Jensen	212.309.6134	cjensen@morganlewis.com
Howard A. Kenny	212.309.6843	hkenny@morganlewis.com
Finnbarr D. Murphy	212.309.6704	fmurphy@morganlewis.com
David W. Pollak	212.309.6058	dpollak@morganlewis.com

Los Angeles

Ingrid A. Myers	213.612.2696	imyers@morganlewis.com
-----------------	--------------	--

Palo Alto

Thomas W. Kellerman	650.843.7550	tkellerman@morganlewis.com
S. James DiBernardo	650.843.7560	jdibernardo@morganlewis.com

Pittsburgh

Kimberly A. Taylor	412.560.3322	ktaylor@morganlewis.com
--------------------	--------------	--

Princeton

Andrew P. Gilbert	609.919.6603	agilbert@morganlewis.com
Emilio Ragosa	609.919.6633	eragosa@morganlewis.com

Washington, D.C.

Linda L. Griggs	202.739.5245	lgriggs@morganlewis.com
David A. Sirignano	202.739.5420	dsirignano@morganlewis.com
George G. Yearsich	202.739.5255	gyearsich@morganlewis.com
Daniel L. Hogans	202.739.5510	dhogans@morganlewis.com
Benjamin I. Delancy	202.739.5608	bdelancy@morganlewis.com

About Morgan, Lewis & Bockius LLP

Morgan Lewis is an international law firm with more than 1,400 lawyers in 22 offices located in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, Minneapolis, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, and Washington, D.C. For more information about Morgan Lewis, please visit www.morganlewis.com.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes.

© 2009 Morgan, Lewis & Bockius LLP. All Rights Reserved.

