US SECURITIES AND EXCHANGE COMMISSION ISSUES DODD-FRANK ACT RULE PROPOSAL ON EXECUTIVE COMPENSATION

May 2015

On April 29, 2015, the US Securities and Exchange Commission (SEC or Commission) held an open meeting to consider whether to propose amendments under Section 14(i) of the Exchange Act, as added by Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), requiring registrants to disclose in a clear manner the relationship between executive compensation actually paid and the financial performance of the registrant ("Pay-Versus-Performance Proposal").

The Pay-Versus-Performance Proposal was approved by a 3-2 vote. Chair White, Commissioner Stein and Commissioner Aguilar voted in favor of the proposal, whereas Commissioner Gallagher and Commissioner Piwowar voted against the proposal.

The public comment period will be 60 days after publication in the Federal Register.

Pay-Versus-Performance Proposal

Mr. Higgins, Director, Division of Corporation Finance, stated that the Pay-Versus-Performance Proposal would require the disclosure to shareholders of a clear description of executive compensation, including information regarding the relationship between executive compensation actually paid versus financial performance of the registrant. He explained that the Pay-Versus-Performance Proposal includes a proposed phase-in period for registrants to comply with the proposed requirements.

Commission Statements

Chair White stated that it would "require companies to disclose in a clear manner the relationship between executive compensation actually paid and the financial performance of the company." She remarked that the proposal would provide shareholders with "a new metric" for assessing an executive's compensation relative to the company's financial performance, which may in turn inform shareholders when voting in an election for directors and in connection with a shareholder's advisory vote on executive compensation. She also stated that the proposal would require pay-for-performance disclosure "for all companies other than foreign private issuers, registered investment companies, and emerging growth companies, which are statutorily exempted from the requirement."

Commissioner Aguilar supported the Pay-Versus-Performance Proposal, stating that it is designed to "shed light" on the relationship between executive pay and company performance by providing shareholders with additional information "to enable them to better determine whether their companies are appropriately and responsibly setting executive pay." He remarked that the proposal "go[es] to the heart of good corporate governance" and discussed the relationship between corporate governance and accountability.

Commissioner Gallagher opposed the proposal, stating that, though Dodd-Frank requires the Commission to undertake a rulemaking on this topic, the Commission has "other more germane congressional mandates to complete," rather than take "another trudging step on the path towards completing Dodd-Frank's – and thus the federal government's – intrusions into the realm of corporate governance." He remarked that the Commission could have pursued "a more rational approach" by "proposing a performance standard requiring large registrants to disclose how they evaluate the executive compensation actually paid to the principal executive officer, versus the financial performance of the issuer." He expressed concern that, instead, the Pay-Versus-Performance Proposal takes "a far more prescriptive approach" by, for example, defining "pay" in detail and making specified adjustments to existing compensation disclosures.

Commissioner Stein stated that "the net result [of the Pay-Versus-Performance Proposal] . . . should be enhanced pay versus performance disclosure in the proxy statement," and added that the proposal would make it easier for shareholders to locate, understand and analyze executive compensation information before they have to vote. She remarked that comparability is an important part of the proposal, as each registrant would be required to complete a standardized table on its financial performance data and executive compensation that would promote comparability across companies.

Commissioner Piwowar was critical of the Commission's current consideration of the Pay-Versus-Performance Proposal, stating that, instead of prioritizing rules related to the financial crisis, the Commission is addressing Dodd-Frank rulemakings that are unrelated to the financial crisis. He described the proposal as "another questionable use of agency resources," which he would not support while other important rulemakings remain outstanding. In terms of his perspective on the substance of the Pay-Versus-Performance Proposal, he stated that the initial staff draft of the proposal had taken a principles-based approach, but the revised draft considered today has been changed to be "highly prescriptive."

For further information on the SEC's proposal, please contact one of the Squire Patton Boggs lawyers listed in this alert.

Contacts

Micah S. Green
+1 202 457 5258
micah.green@squirepb.com

Richard Shilts
+1 202 457 5228
richard.shilts@squirepb.com

Matthew B. Kulkin
+1 202 457 6056
matthew.kulkin@squirepb.com

Grace H. Kim
+1 202 457 5104
grace.kim@squirepb.com

17309/04/15