

Newsletter: August 2009

This is the first edition of our newsletter. Its purpose is to provide some noteworthy comments on current compensation issues and discuss topics that may be of interest to our clients.

"Say on Pay", Compensation Committee Independence, and Compensation Consultants

Say on pay will allow shareholders with an annual non-binding vote on a number of executive compensation items. This will likely include; compensation practices disclosed in the proxy, the "Report" of the compensation committee, and pay levels disclosed in the tables. This will likely take effect for shareholder meetings on or after December 15, 2009.

The *watch out* here is how the major institutional investors will vote on these matters. Of course as the 2010 proxy season unfolds institutional investor positions will become known. In the meantime, some research on the posture your company's major shareholders may take would be a worthwhile undertaking by your shareholder relations department. Your proxy solicitor should be helpful.

Sec Proxy Disclosure Proposed Rules

Compensation Committee Independence will come under greater scrutiny. The compensation levels of working members of the committee will likely get more attention by the press. There has been talk of insuring that the committee members are "qualified". Committee member attendance at "seminars" sponsored by independent groups would be worthwhile. Compensation Committees will be facing the same kinds of scrutiny as Audit Committees in the years ahead. *Much more attention must be given to the minutes of the compensation committee and it will be more important for committees to conduct "closed sessions"*. If you have every talked with a committee member who has been sued for breach of fiduciary duties you will understand how important the minutes are in a court of law.

Compensation Consultants will be facing a significant level of scrutiny. Consultants, as well as attorneys, and other advisors used by the compensation committee will be required to meet tough SEC standards of independence. Disclosure of all fees paid by both the company and the compensation committee to such advisors is likely. This will be similar to what occurred with auditors. Often times a consultant may be doing work with a foreign subsidiary, such as actuarial work or pension administration, unknown to the executive compensation department. Full reporting by consultants of all fees paid to them by the company should be requested now. In addition, every compensation committee must be allocated monies and given the authority to retain the services of an independent compensation consultant. Given the extent that large firms are also proving the company other services they will not be viewed as independent. *There will likely be a shortage of qualified consultants available to go around*. The compensation committees will be required to disclose if they are using an independent consultant; and if they are not, they will be required to explain why they are not! So if your committee does not yet have its own consultant, the processes to hire one should get underway.