RADFORD ALERT

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Yesterday, the United States House of Representatives passed H.R. 1664, which clarifies the compensation restrictions under the Emergency Economic Stabilization Act of 2008, dealing specifically with executive (and other) compensation. (Please search "H.R. 1664" on http://thomas.loc.gov/: for the full details of the bill.)

The bill clarifies the parameters in the Emergency Economic Stabilization Act that prohibit the payment of excessive and unreasonable compensation that is not performance-based for companies receiving money under the Troubled Assets Relief Program (TARP).[1] The following highlights the core elements of the bill:

1. Granting the Secretary of the Treasury the authority to prohibit the payment of compensation that is deemed to be "unreasonable and excessive" (such standards to be developed by Treasury) by any financial institution that has directly received TARP money. This extends to *all* employees of the institution, not just the top executives as was previously the case. Furthermore, this covers any payment made while the institution has outstanding TARP money, regardless of when the compensation arrangement was entered into, therefore providing the opportunity to abrogate prior agreements and limit the ability to make payments post-termination.

2. Specification that payments should be performance-based considering the institutions ability to repay the funds received; *individual performance*; adherence to risk management requirements; and other standards providing accountability to shareholders and taxpayers.

3. Further limits have been enacted on the amount and form of severance pay introducing service limits (must be employed for five years and can not receive more then the annual salary or $250,000).

4. Definition of total compensation to include all forms of cash payment including salary, bonus, retention payments and stock; absent from the definition are pension-related payments and/or deferred compensation arrangements or other such benefit schemes that may be provided - although these may be considered, including as payment for services.

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[1]May not apply to certain community banks.

The bill also sets forth the creation of a Congressional “Commission on Executive Compensation” to study the issue and make recommendations to Congress for legislative action on executive compensation and linking pay and performance. The clear theme of this body is to improve the link between executive pay and performance and create alignment between executive compensation and the creation of value for shareholders.

Although technology and life sciences companies are not directly subject to these restrictions, the bill represent a clear signal to the market that the United States Government intends to implement regulations that will improve governance of executive compensation and provide shareholders with greater voice in executive compensation matters. Radford expects that this will lead to changes across both industries in the use of performance-based equity, severance arrangement including the use of gross-up provisions, and other forms of non-performance-based compensation.