RADFORD ALERT

SEC ISSUES TIMELINE FOR DODD-FRANK REGULATION IMPLEMENTATION PROCESS

By Edward J. Speidel, Ted Buyniski and Ram Kumar

The Securities Exchange Commission (SEC) has issued its timeline for the Dodd-Frank regulation creation process, leaving companies with a longer than anticipated period to respond to many of the provisions. It appears that compliance will not be required until 2012 for many of the new rules, in particular for some of the more challenging to implement, such as regulations surrounding recoupment of short- and long-term incentives related to financial restatements.

Companies will still need to address in the near-term the set of regulations related to the say-on-pay and golden parachute legislation. These new laws give shareholders a non-binding vote on executive pay, and a vote on the frequency of that vote (one, two or three years), as well as a non-binding vote on the compensation executives receive in connection with an acquisition. A 2011 implementation of these votes was required by Dodd–Frank.

The full schedule, as it was announced by the SEC, is as follows:

Date Range (Planned)	Action
October – December 2010	• Proposed rules for say on pay, including say on golden parachutes • Proposed rules for Compensation Committee independence, advisor independence, and advisor disclosure
January – March 2011	• Adoption of rules for say on pay and say on golden parachutes
April – July 2011	• Adoption of listing standards for Compensation Committee independence, determination of advisor independence and disclosure rules • Proposed pay-for-performance rules, pay ratio rules and hedging rules. • Proposed rules for recoupment (“clawbacks”) • Proposed exchange standards for definitions pertaining to broker voting requirements

Radford Perspective

While the schedule might come as a surprise to many (most generally expected these rules to be clarified in time for the 2011 proxy), the order in which the SEC has teed-up the provisions is not particularly surprising. The provisions that would appear to be most difficult to implement – rules governing pay for performance, pay ratios and clawbacks – will not get to the proposal stage until Q2 of 2011, with final regulations in expected in Q3.

While the SEC is taking longer than anticipated to propose and finalize these regulations, the impetus behind them – shareholder and public disenchantment with numerous pay and pay-related practices – has not diminished, and that is not likely to change. Companies will want to continue to look carefully at their practices to ensure they line up with the already clear spirit of the Dodd-Frank legislation. One open question that remains is how many companies, in an attempt to be perceived as progressive from a governance perspective, will voluntarily disclose in the 2011 proxy their interpretation of the pay ratios and pay for performance legislation.

While the implementation of Dodd-Frank is now on a slower timetable, its spirit is already alive, present and scheduled to be rearticulated in the form of updated policies from proxy advisor Institutional Shareholder Services (ISS) and Glass Lewis in November. We will provide updates for both the Dodd-Frank regulation process as warranted, and ISS' 2011 policy updates when they are available later this Fall.

More Information

We encourage you to forward this Alert to your board members. And as always, we encourage you to contact us if you have questions. For more information, contact:

Atlanta Office

Marv Mazer +1 (404) 264-3290
mmazer@radford.com

Austin Office

Gary Starzmann +1 (512) 241-2120
gstarzmann@radford.com

Boston Office

Ed Speidel +1 (508) 628-1552
espeidel@radford.com

Ted Buyniski +1 (508) 628-1553
tbuyniski@radford.com

New York Office

Ram Kumar +1 (212) 441-2007
rkumar@radford.com

Philadelphia Office

Terry Adamson +1 (215) 255-1802
tadamson@radford.com

San Francisco Office

Linda E. Amuso +1 (415) 486-7225
lamuso@radford.com

David Knopping +1 (415) 486-7122
dknopping@radford.com

San Jose Office

Brett Harsen +1 (408) 321-2547
bharsen@radford.com

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