

# SEC Outlines Dodd-Frank Rulemaking Schedule

The Securities and Exchange Commission has published its tentative schedule for proposing and adopting rules to implement the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. As you know, although the Dodd-Frank Act contains a number of provisions affecting executive compensation practice and disclosure, most of these provisions do not contain an effective date. Instead, the provisions become effective only upon the completion of Commission (and, in some cases, national securities exchange) rulemaking.

The SEC's tentative schedule for its Dodd-Frank Act rulemaking indicates that, with the exception of the various shareholder advisory ("Say on Pay") votes on executive compensation and related matters, most of the executive compensation-related provisions won't be ready until next year. Consequently, they will not be applicable to companies with calendar fiscal year-ends that hold their annual shareholder meetings in the spring of 2011.

## Announced Rulemaking Schedule

Here's the schedule, listed by executive compensation provision:

### Section 951

Shareholder approval of executive compensation ("Say on Pay"), including the Say on Frequency of Say on Pay vote and the Say on Change in Control Arrangements vote

- Proposed rules: October–December 2010
- Final rules: January–March 2011

Note that Section 951 is effective for annual meetings of shareholders occurring after January 20, 2011, irrespective of the status of any Commission rulemaking.

### Section 952

Compensation committee independence, including the requirement that compensation committees assess the

independence of compensation consultants, legal counsel, or other advisers before engaging such advisers

- Proposed rules: October–December 2010
- Final rules: April–July 2011

### Section 953

Executive compensation disclosure, including the new "pay versus performance" disclosure and the "CEO – employee pay ratio" disclosure

- Proposed rules: April–July 2011

### Section 954

Recovery of erroneously awarded compensation (the "clawback" policy requirement)

- Proposed rules: April–July 2011

### Section 955

Disclosure regarding employee and director hedging

- Proposed rules: April–July 2011

### Section 957

Voting by brokers on executive compensation and other significant matters as determined by the SEC

- Proposed rules: April–July 2011

For purposes of Section 957, these proposals will address the "other significant matters" for which brokers will not be permitted to vote uninstructed shares.

While this information is very helpful, it's important to note that this is just the Commission's "planned" schedule. Some projects may slip and some may be accelerated.

## Our Preliminary Observations

- It appears that, with the exception of the "Say on Pay" votes – the advisory vote on executive compensation programs, Say on Frequency of Say on Pay vote, and the Say on Change in Control Arrangements vote,

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**SEC Outlines Dodd-Frank Rulemaking Schedule (continued)**

none of the new provisions will be in effect for the traditional 2011 proxy season.

- While we should have proposed rules on the compensation committee independence requirement and the committee adviser independence assessment by the end of 2010, those rules won't be adopted until May or June – after the end of the traditional proxy season. It remains to be seen whether these rules will go into effect during 2011 (which could affect companies with fiscal year-ends of June 30 or later) or will be delayed until 2012.
- The rules clarifying and implementing the new compensation recovery (“clawback”) provision and the new disclosure provisions (“pay versus performance”,

“CEO-employee pay ratio,” and employee and director hedging) won't even be proposed until May or June 2011 (or later). At the moment, it appears that the SEC is aiming to have these provisions finished in time for the 2012 proxy season.

### Need Assistance?

Compensia has experience in helping companies to address the new Say on Pay vote requirements and analyze their potential impact on their executive compensation programs. If you have any questions on the subjects addressed in this Thoughtful Pay Alert or would like assistance in assessing their likely impact on your executive compensation plans and arrangements, please feel free to contact us. ■

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