

FINANCIAL REFORM BILL FURTHER REGULATES THE PAYMENT AND DISCLOSURE OF EXECUTIVE COMPENSATION BY PUBLIC COMPANIES

On May 20, 2010, the Senate passed the Restoring American Financial Stability Act of 2010 (the “Reform Bill”). In addition to providing for increased consumer and investor protection, as well as strict regulation of the financial services industry, the Reform Bill contains a number of provisions relating to executive compensation at public companies, in terms of both governance and disclosure. The most notable provisions are as follows:

Governance Requirements

- *Annual Say on Pay Vote.* Beginning six months following the enactment of the Reform Bill, any proxy statement that requires compensation disclosure must also include a resolution for a non-binding shareholder vote with respect to the compensation of named executive officers.
- *Compensation Committee Independence.* Listing exchanges will be required to enhance requirements for determining committee members’ independence, taking into account fees paid to directors and their affiliates. All members of a compensation committee will be required to be independent, as determined under this new standard. Compensation committees will also be required to have the authority to engage compensation consultants and other advisors.
- *Clawback of “Erroneously Awarded” Compensation.* Listing exchanges will also be required to adopt new rules providing for the clawback of incentive compensation paid to any of an issuer’s current or former executive officers, where the issuer has prepared an accounting restatement due to material noncompliance with any financial reporting requirements.

Disclosure Requirements

- *Pay for Performance.* Annual compensation disclosure must now include information illustrating the relationship between compensation paid to the issuer’s named executive officers and the financial performance of the issuer.
- *Internal Pay Equity.* Annual compensation disclosure must also include a comparison of the compensation paid to the Chief Executive Officer to the median compensation paid to all other employees.
- *Hedging by Employees and Directors.* Companies will be required to disclose whether employees or directors are permitted to purchase financial instruments that are designed to hedge any decrease in the market value of equity securities held by the employees or directors.

- Chairman and CEO. Companies will also be required to discuss why they have, or have not, separated the positions of Chairman and Chief Executive Officer.

Before it can be enacted, the Reform Bill must be reconciled with the version of the financial reform bill passed by the House in December 2009.

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If you have any questions concerning the foregoing or would like additional information, please contact David E. Rubinsky (212-728-8635, drubinsky@willkie.com), Katie M. Calabrese (212-728-8865, kcalabrese@willkie.com), or the Willkie attorney with whom you regularly work.

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