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Executive Compensation and Governance-Related Reforms Propose Extensive Changes to Procedure and Disclosure

While April may be the cruelest month, followers of executive compensation law and lore may be ruing July of 2009 for some time to come. The U.S. Securities and Exchange Commission (the “*Commission*”), the Department of the Treasury (“*Treasury*”) and Congress have released proposals that stand to change the landscape of executive compensation disclosure and practice. While many aspects of the proposals were long anticipated, the sheer volume of the changes, the breadth of the new requirements and the resulting disclosure will garner much attention over the coming months.

Introduction

At its open meeting on July 1, 2009, the Commission approved proposed rules implementing “say-on-pay” for public companies that received financial assistance under the Troubled Assets Relief Program (“*TARP*”). On July 1, the Commission also proposed amendments to its executive compensation and corporate governance disclosure rules. These amendments would require:

- discussions of the relationship between risk assessment and compensation programs;
- changes in how equity-based compensation awards are disclosed;
- enhanced narrative disclosure of director qualifications, the registrant’s leadership structure, and the board’s role in risk management; and
- disclosure of conflicts of interest involving compensation consultants.

Then, on July 16, Treasury issued a press release indicating its support for draft legislation that would make say-on-pay mandatory for all U.S. public companies. It accompanied the press release with draft

legislation captioned the Investor Protection Act of 2009 (the “*Investor Protection Act*”) that add to the federal substantive law regulating pay. The Investor Protection Act:

- implements say-on-pay for all U.S. public companies;
- mandates a separate vote on golden parachutes in the context of mergers or acquisitions, with “clear and simple” disclosure of the amounts executives will receive;
- establishes independence standards for compensation committee members, compensation consultants, outside counsel, and other compensation committee advisors; and
- requires that compensation committees be given the authority and funding to hire independent compensation consultants, legal counsel, and other advisors when negotiating executive compensation packages.

Several proposed reforms targeted at executive compensation and corporate governance have also been circulated in Congress in recent months. On July 17,

2009, Representative Barney Frank, Chairman of the House Financial Services Committee, circulated a discussion draft of proposed legislation entitled the Corporate and Financial Institution Compensation Fairness Act of 2009 (the “**Fairness Act**”), which he intends to introduce before Congress takes recess. The Fairness Act incorporates the requirements of the Investor Protection Act, but also directs the Commission, the Federal Reserve, and other federal regulators to jointly prepare regulations requiring financial institutions to describe the structure of their incentive-based compensation arrangements so regulators can determine whether the compensation structure:

- measures and rewards performance properly;
- accounts for the time horizon of risks;
- aligns with sound risk management; and
- meets other criteria that the agencies establish to reduce unreasonable incentives for executives and other employees to take undue risks that could have serious adverse effects.

The potential impact of these measures could represent a shift in the regulation of compensation and corporate governance, from the Internal Revenue Service and self-regulatory organizations (and, through disclosure requirements, the Commission), to other federal agencies, including Treasury, which historically has limited its reach in the regulation of individual commercial entities to the supervision of financial institutions.

Mandatory “Say-on-Pay” and Golden Parachute Payment Approval

TARP Recipients

On July 1, 2009, the Commission released proposed rules implementing the say-on-pay provisions of the Emergency Economic Stabilization Act of 2008 (“**EESA**”), as amended by the American Recovery and Reinvestment Act of 2009 (“**ARRA**”), for entities receiving governmental assistance under TARP (the

“**TARP Say-on-Pay Rules**”).¹ Notably, the TARP Say-on-Pay Rules do not expand the literal requirements of EESA.²

Proposed Say-on-Pay Requirements for TARP Recipients at a Glance

- Applies to proxy solicitations during the TARP Period
- Requires a non-binding shareholder vote whenever directors are elected
- Vote encompasses disclosure in the CD&A, tabular compensation disclosure and related material
- Includes statement that vote is required by EESA and description of its effects
- Calls for the filing of a preliminary proxy
- Results of vote must be disclosed on Form 8-K within four business days

The TARP Say-on-Pay Rules would add Rule 14a-20 under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”). This rule would require a registrant that has received or will receive financial assistance under TARP (a “**TARP Recipient**”) to hold a separate non-binding shareholder vote on executive compensation at meetings during which proxies are solicited for the election of directors. This separate shareholder vote would be required for the period during which any obligation arising from financial assistance provided under TARP remains outstanding, except for any period during which the government holds only warrants to purchase common stock (the “**TARP Period**”).

The proposal confirms that the shareholder vote relates to the Compensation Discussion and Analysis (“**CD&A**”)

¹ Securities and Exchange Commission Release No. 34-60218 (July 1, 2009), available at <http://www.sec.gov/rules/proposed/2009/34-60218.pdf>.

² Section 111(e) of EESA requires any registrant that has received or will receive financial assistance under TARP to “permit a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related materials).” It is contemplated that the shareholder vote will be non-binding on the board of directors of the TARP Recipient and will not overrule any decision of the board or impose additional fiduciary duties on the board.

and the tabular disclosures. The Commission indicated that the TARP Say-on-Pay Rules were meant to provide TARP Recipients with “adequate flexibility” in meeting their obligations under Section 111(e) of EESA. Accordingly, the proposed rules do not mandate language to be used in connection with the vote. The Commission has requested comments on whether model language should be provided. Absent further changes, however, proxy statements that include the required say-on-pay vote will have to be filed in preliminary form to allow Commission staff the opportunity to comment on the disclosure.

TARP Recipients also will need to disclose that they are providing a separate shareholder vote pursuant to EESA and to describe the general effect of the vote (*e.g.*, that the vote is non-binding). Requiring TARP Recipients to disclose that the shareholder vote was mandated by EESA, as well as the effect of the vote, will likely result in similar disclosure by all TARP Recipients.

If adopted, the amendments would also require the results of this separate shareholder vote to be reported on Form 8-K within four business days following the meeting at which the vote is held.

Say-on-Pay for Other Registrants

Both the Investor Protection Act and the Fairness Act extend the requirement for a non-binding say-on-pay vote to all public companies, not just TARP Recipients. Under both bills, the vote would be non-binding and would not overrule any decision of the board or create or imply additional fiduciary duties of the board. The vote would be required at meetings occurring on or after December 15, 2009.

Separate Vote on Golden Parachute Payments

The Investor Protection Act and the Fairness Act require proxy statements filed in connection with mergers, acquisitions, and transactions involving the sale of substantially all of the registrant’s assets to describe, in clear and simple tabular form, the arrangements the registrant has with executive officers concerning *any* type

of compensation (whether present, deferred, or contingent) that is “based on or otherwise related to” the transaction. Registrants must also disclose the total of all compensation that will be paid or may become payable (together with the conditions to payment) as a result of the transaction to “principal executive officers” (under the Fairness Act) or “executive officers” (under the Investor Protection Act). The payments must then be submitted to shareholders for a non-binding vote. These proposals appear to require a shareholder vote approving golden parachutes only if the transaction requires shareholder approval, and do not seem to impose an independent approval requirement in transactions where no shareholder approval is otherwise required.

Revised Compensation-Related Disclosure Rules

On July 10, 2009, the Commission released proposed rules amending its proxy disclosure rules applicable to all US publicly listed registrants (the “**Proposed Rules**”).³ The Commission stated that the rules are intended to “better inform and empower investors to improve corporate governance and help restore investor confidence.”⁴ The Commission is accepting public comment on the rules until September 15, 2009. It is anticipated that, if the Proposed Rules are adopted, compliance with the amendments would be required in the 2010 proxy season.

³ Securities and Exchange Commission Release Nos. 33-9052; 34-60280 (July 10, 2009).

⁴ Press Release No. 2009-147, U.S. Securities and Exchange Commission (July 1, 2009); Mary Schapiro, Chairman, U.S. Securities and Exchange Commission, Statement at the Commission Open Meeting (July 1, 2009), available at <http://www.sec.gov/news/speech/2009/spch070109mls.htm>.

Proposed Disclosure Revisions at a Glance

- Discuss overall compensation policies for employees generally (including non-executives) to the extent these policies create incentives that have a material effect on the registrant's risk and risk management
- Disclose the aggregate grant date fair value of equity awards in the Summary Compensation Table and Director Compensation Table
- Provide additional information regarding the qualifications of directors and nominees
- Discuss the registrant's leadership structure and why the registrant believes it is appropriate
- Analyze how the registrant perceives the board's role in managing material risks
- Disclose the fees paid to compensation consultants that advise on director or executive compensation if the consultants provide other services to the registrant
- Report shareholder vote results on Form 8-K within four business days after the meeting at which the vote is held

Relationship of Compensation Policies to Risk

The Proposed Rules call for a new section in the CD&A requiring discussion of compensation policies or practices applicable to all employees – not only those applicable to the named executive officers (“*NEOs*”) – if risks arising from those policies or practices could have a material effect on the registrant. Disclosure will vary depending on the registrant and its compensation programs. The Commission provides several non-exclusive examples of situations that could trigger this additional disclosure requirement, including disclosure of practices at a business unit:

- that carries a significant portion of the registrant's risk profile;
- where compensation is structured significantly differently than other units;
- that is significantly more profitable than others;
- where compensation expense is a significant percentage of the unit's revenues; or
- that vary significantly from the overall risk and reward structure of the registrant (*e.g.*, where bonuses are awarded upon accomplishment of a

task while the risk to the registrant from that task extends over a significantly longer period of time).

If the registrant determines that risks arising from a broad-based compensation program may have a material effect on it, the Commission provides a non-exclusive list of examples of the issues to be disclosed. These include:

- the general design philosophy of compensation policies for employees whose behavior would be most influenced by the programs;
- the registrant's risk assessment or considerations in structuring its compensation policies;
- how the registrant's compensation policies relate to the realization of risks resulting from the actions of employees (*e.g.*, through the use of clawbacks or holding periods);
- the registrant's policies regarding adjustments to its compensation practices to address changes in its risk profile; and
- the extent to which the registrant monitors its compensation policies to determine whether risk management objectives are being met.

The Proposed Rules place the responsibility for the plan review on the registrant generally. As a practical matter, however, the compensation committee will be responsible for overseeing this process. It is highly likely that many current compensation committee members have no personal knowledge of the compensation programs applicable to employees who are not executive officers. To evaluate the risks presented by these programs in connection with its review of the CD&A, committee members may be required to review management's assessment of the registrant's broad-based compensation programs.

The risk disclosure requirements are subject to a materiality threshold that may limit the number of plans subject to disclosure. The Commission has requested comment regarding whether, if the compensation committee ultimately determines that additional disclosure is not required, registrants should affirmatively

state in the CD&A that they have assessed the risks arising from their broader compensation policies and that they are not reasonably expected to have a material effect on the registrant.

Fair Value Reporting of Stock Options and Other Equity Awards

The proper method of capturing the value of equity awards in the executive compensation disclosure rules has been debated for several years. When the rules were initially revamped in 2006, the rules required disclosure of the full grant date fair value of stock options and equity awards to be reported in the Summary Compensation Table and the Director Compensation Table. In December 2006, however, the Commission adopted an interim final rule that changed this approach by requiring disclosure each year of the annual amount recognized for outstanding awards held by the NEO for financial accounting purposes. The Proposed Rules revert back to the original 2006 proposal and generally require registrants to report in the Summary Compensation Table the full grant date fair value of a stock option or other equity awards in the year of grant, calculated in accordance with Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards No. 123 (revised 2004) Share-Based Payment (“**FAS 123R**”). Consequently, the requirement to disclose the full grant date fair value of stock option awards in the Grants of Plan-Based Awards Table for NEOs and in a footnote to the Director Compensation Table for directors would be eliminated.

Although in some instances the use of the grant date fair value of awards arguably will result in more useful disclosure in the Summary Compensation Table than what is currently required, this valuation methodology is still an accounting notion that generally does not take into account share price appreciation (or depreciation) following the date of grant. Nor does this methodology capture an executive’s actual “take home” compensation. Furthermore, the disclosure required under the Proposed Rules has the potential to significantly overstate the

amount of compensation awarded under equity awards that are subject to certain performance-based vesting conditions. This is because it appears as though the Proposed Rules disregard most performance-based vesting conditions when determining the amount reported in the Summary Compensation Table. This is true even though the achievement of the performance target is not certain to occur.⁵ Conversely, other conditions categorized as “market” conditions under the accounting rules *would* be taken into account when determining the grant date fair value in accordance with FAS 123R.⁶ This difference in the treatment of vesting conditions would have the effect of reducing the grant date fair value of equity awards that are subject to “market” vesting conditions, but not reducing the grant date fair value of equity awards that are subject to other performance-based vesting conditions. Because using the grant date fair value of awards will not reflect the amount an executive actually receives, registrants may continue to use alternate compensation tables to present what they feel is a more accurate reflection of their executives’ pay.⁷

The Commission is considering whether to require registrants to present recomputed disclosure for the prior two fiscal years in the Summary Compensation Table to conform the past disclosure with the new disclosure requirements and to promote year-over-year comparability.

Enhanced Director and Nominee Disclosure

The Proposed Rules amend Item 401 of Regulation S-K by expanding the disclosure requirements in three main areas:

- **Qualifications of Directors and Nominees:** Registrants would be required to disclose the particular experience, qualifications, attributes or

⁵ Service-based vesting requirements also would be disregarded for purposes of determining the grant date fair value of equity awards.

⁶ Examples of “market” conditions include conditions based on relative shareholder return and achievement of a target stock price.

⁷ It should be noted that the elimination of alternate compensation tables was one of the reasons given by the Commission in support of the Proposed Rule’s change to the valuation methodology.

skills that, in light of the registrant's business and structure, qualify the person to serve as a director or committee member;

- **Past Directorships:** The rules would be expanded to require disclosure of any directorships at other public registrants held by each director and nominee at any time during the past five years, even if the director or nominee no longer holds that position (as opposed to disclosing only those director positions held at the time the disclosure is made, which is the current requirement); and
- **Legal Proceedings:** The period of time during which disclosure of certain legal proceedings is required would be lengthened from five to 10 years. These legal proceedings generally include bankruptcy petitions, criminal proceedings, and material violations of securities laws.

It appears that the additional disclosure regarding director qualifications is intended to assist investors in determining whether a particular director is an appropriate choice for the registrant. However, without materiality thresholds for the information to be presented, the requirements could result in overly lengthy director biographies that are not useful to investors.

Disclosure about Company Leadership Structure and the Board's Role in Risk Management

The Proposed Rules would add a new requirement to Item 407 of Regulation S-K requiring disclosure of the registrant's leadership structure and the reasons the registrant believes that structure is appropriate.

Registrants would be required to disclose whether and why they have chosen to combine the principal executive officer and board chair positions. For registrants that combine the roles of principal executive officer and board chairman, and that also have a lead independent director, the Proposed Rules would require disclosure regarding whether and why the registrant has a lead independent director, as well as the specific role that the lead independent director plays in corporate leadership.

The Proposed Rules also require additional disclosure about the board's role in the registrant's risk management process. Specifically, a registrant would be required to provide disclosure about how it perceives the role of the board, and the relationship between the board and senior management, in managing the material risks facing the registrant. For example, the registrant may discuss whether its risk management functions are implemented through the board as a whole or through a committee, such as the audit committee or a separate risk committee. While it is probably a common practice for public boards to have a hand in risk management, these disclosure requirements emphasize the Commission's perceived need for board involvement and may result in a rethinking of board and committee processes.

Potential Conflicts of Interest of Compensation Consultants and Compensation Committee Members

Both the Commission and Treasury are concerned that the use of compensation consultants who provide a broad array of services to a registrant may create a conflict of interest that calls into question the objectivity of the consultant's executive pay recommendations. Treasury has also raised concerns that compensation committees may lack the tools to effectively negotiate with executives over compensation packages or may even stand to gain from the decisions of executives. As a result, the Proposed Rules and the Investor Protection Act introduce measures aimed at reducing the risk that the decisions of compensation consultants and compensation committee members will be influenced by conflicts of interest.

Compensation Consultant and Compensation Committee Changes at a Glance

- The Proposed Rules would require a registrant receiving both executive and non-executive compensation services to disclose:
 - the nature of all non-executive services provided by the compensation consultant during the year;
 - the aggregate fees paid for all additional services and for executive compensation services;
 - whether the decision to retain the compensation consultant for non-executive services was made or approved by management; and
 - whether the registrant's board or compensation committee approved the non-executive services in addition to the executive compensation services.
- The Investor Protection Act and the Fairness Act would prohibit compensation committee members from:
 - accepting additional fees from the registrant; and
 - being an affiliate of the issuer or its subsidiaries.

Additional Disclosure Regarding Compensation Consultants

In 2006, the Commission amended Item 407 of Regulation S-K to require registrants to describe the role played by compensation consultants in determining or recommending executive and director compensation. The Proposed Rules expand this requirement by requiring disclosure of the fees paid to compensation consultants that play any role in determining or recommending the amount or form of executive and director compensation if the consultants also provide other services to the registrant. Specifically, the rules would require the registrant to disclose:

- the nature and extent of all additional services provided to the registrant during the last fiscal year by the compensation consultant;
- the aggregate fees paid for all additional services and the aggregate fees paid for work related to determining or recommending the amount or form of executive and director compensation;
- whether the decision to engage the compensation consultant for non-executive compensation services was made, recommended, screened or reviewed by management; and

- whether the registrant's board of directors or compensation committee has approved all of the additional services.

This additional disclosure would not be required where the compensation consultant's only input into executive or director compensation is under broad-based plans that do not discriminate in favor of executive officers or directors of the registrant, such as 401(k) plans.

These changes appear to be motivated, at least in part, by concerns that consultants may be more likely to recommend higher compensation packages for executives in order to retain other, more lucrative, consulting business from the employers. A December 2007 report issued by the House Committee on Oversight and Government Reform found a direct correlation between the amount of additional work provided by compensation consultants and the aggregate value of executive compensation packages.⁸ Since then, other studies have determined that there is no compelling evidence of compensation consultant conflicts of interest in the form of unjustified compensation to senior executives.⁹

Independence Standards for Compensation Committees

The Investor Protection Act and the Fairness Act seek to establish independence standards for compensation committee members that would prohibit a compensation committee member from:

- accepting any fees from the registrant (other than for service as a member of the compensation committee, the board of directors, or any other board committee); and
- being an affiliated person of the issuer or any of its subsidiaries.

⁸ Majority Staff of the United States House of Representatives Committee on Oversight and Government Reform, *Executive Pay: Conflicts of Interest Among Compensation Consultants* (Dec. 2007), available at <http://oversight.house.gov/documents/20071205100928.pdf>.

⁹ See, e.g., Brian Cadman et al., *The Role and Effect of Compensation Consultants on CEO Pay* (Nov. 2007), available at <http://www.kellogg.northwestern.edu/accounting/papers/Carter.pdf>.

All public companies (including foreign private issuers) would need to satisfy these requirements no later than 270 days after enactment of the proposals.

Registrants would be required to provide adequate funds to allow compensation committees to retain compensation consultants, legal counsel, and other advisors meeting the established independence requirements. Both legislative proposals would not *require* compensation committees to use independent compensation consultants, or even require the committees to use consultants at all. A registrant must disclose, however, whether an independent compensation consultant was retained by its compensation committee and, if not, the basis for the compensation committee's decision not to retain one. This disclosure requirement would not extend to legal advisors.

The Investor Protection Act and the Fairness Act would prohibit the national securities exchanges and associations from listing any security of issuers not in compliance with the new rules after the issuers have had an opportunity to cure any defects. In addition, the Commission would be permitted to exempt certain categories of issuers from the compensation committee independence requirements, particularly taking into account the impact of the requirements on smaller reporting issuers.

As drafted, these proposals would also apply to foreign private issuers, unless the regulations implementing the legislation create a specific exclusion.

Accelerated Reporting of Results of Shareholder Votes

The Proposed Rules would add new Item 5.07 to Form 8-K to require a registrant to disclose the results of a shareholder vote within four business days after the end of the meeting at which the vote was held. Currently, the results of any matter submitted to a vote of shareholders must be disclosed either on a Form 10-Q (if submitted during the first, second, or third fiscal quarter) or Form 10-K (if submitted during the fourth fiscal quarter).

If the matter voted upon relates to a contested election of directors and the voting results are not definitely determined at the end of the meeting, registrants would be required to disclose the preliminary voting results on Form 8-K within the four business days and later file an amended report on Form 8-K within four business days after the final voting results are certified.

The Proposed Rules also seek to clarify certain issues with respect to the proxy solicitation process.¹⁰

NYSE Rule Regarding Discretionary Voting by Broker-Dealers

On July 1, 2009, the Commission approved, by a vote of 3-2, the New York Stock Exchange's ("**NYSE**") proposed amendment to Rule 452 of the Listed Company Manual to eliminate discretionary broker voting in uncontested director elections ("**Rule 452**").¹¹ Prior to the amendment, Rule 452 allowed a broker to vote shares on "routine" matters, such as uncontested director elections, when affirmative voting instructions were not received by the beneficial owner within a specified period of time prior to the meeting. As amended, Rule 452 adds the "election of directors" to the list of enumerated items that are "non-routine" and, therefore, may not be voted by the broker without specific instructions from the beneficial owner. Rule 452 also codifies two previously published interpretations precluding discretionary broker voting in matters that relate to material amendments to, or shareholder approvals of, investment advisory contracts.

Rule 452 will apply to all elections of directors, whether contested or not, at shareholder meetings held on or after January 1, 2010. Rule 452 will impact all public

¹⁰ For a more in-depth discussion of the clarifications to the proxy solicitation process, please see Shearman & Sterling LLP Client Publication, *SEC Proposed Amendments - Proxy Disclosure, Solicitation Enhancements and NYSE Rule 452* (July 9, 2009), available at <http://www.shearman.com/sec-proposed-amendments-proxy-disclosure-solicitation-enhancements-and-nyse-rule-452/>.

¹¹ Securities and Exchange Commission Release No. 34-60215 (July 1, 2009); see also Securities Exchange Act Release No. 59464 (Feb. 26, 2009), 74 FR 9864 (Mar. 6, 2009).

companies,¹² whether or not listed on the NYSE, since Rule 452 applies to brokers.

Two members of the Commission who voted against the proposed amendment were concerned that the elimination could further disenfranchise retail investors in favor of institutional shareholders, who have historically voted their shares in greater percentages thereby increasing the power of proxy advisory firms who influence their vote. Others argue that the elimination of discretionary broker votes will increase the voice of shareholders in an important matter of corporate governance – the election of directors. Whether the elimination of discretionary broker voting will have these effects is unclear and will depend, in part, on the fate of the proxy access proposal issued by the Commission last month.¹³ It is clear, however, that investor education will play a critical role in ensuring adequate and informed participation by shareholders.

Special Rules Regarding Financial Institution Compensation

The Fairness Act would impose additional requirements on all banks, bank holding companies, broker-dealers, credit unions, investment advisors and other financial institutions designated by the federal regulators in an effort to eliminate “perverse incentives” in those institutions’ compensation structures. If adopted, the Fairness Act would require financial institutions to describe their incentive compensation structures so that regulators can evaluate those structures. The Fairness Act also directs regulators to develop rules prohibiting any compensation structure or incentive-based payment arrangement that the regulators conclude would encourage risks by financial institutions, or their officers and employees, that could either (i) have serious adverse

effects on economic conditions or financial stability or (ii) threaten the safety and soundness of the covered financial institution. An all-out ban on certain compensation structures is certainly a departure from traditional federal regulatory posture on compensation matters. Whether this provision will ultimately be adopted is unclear, as is the manner in which the federal regulatory agency charged with administering the provision would exercise this authority.

Conclusion

The Commission’s numerous requests for comments in the Proposed Rules suggest that, in some instances, regulators may be unsure of the need for, or breadth of, the required disclosure. Commenters are asked to weigh in on a number of important issues, such as whether:

- any disclosure currently required by the proxy rules should be eliminated in light of the Proposed Rules;
- companies should be required to disclose compensation paid to all executive officers (not only NEOs); and
- the disclosure rules should make it more difficult for a registrant to refrain from disclosing performance targets based on the confidential and competitive nature of the targets.

This broad solicitation presents a somewhat rare opportunity for interested parties to comment not only on the Proposed Rules, but also on other disclosure requirements that they believe should be reformed or eliminated.

¹² Rule 452 contains a specific exemption for companies registered under the Investment Company Act of 1940, as amended.

¹³ Securities and Exchange Commission Release No. 33-9046 (June 10, 2009); see also Shearman & Sterling LLP Client Publication, *Treasury and SEC Issue Executive Compensation Pronouncements* (June 12, 2009), available at <http://www.shearman.com/treasury-and-sec-issue-executive-compensation-pronouncements/>.

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

If you wish to receive more information on the topics covered in this memorandum, you may contact your regular Shearman & Sterling contact person or any of the following:

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