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LEGAL UPDATES AND NEWS

Dodd-Frank Executive Compensation Rulemaking Delayed Will Not Apply to 2012 Proxy Season

On July 29, 2011, the Securities and Exchange Commission ("SEC") released a revised schedule of its planned rulemaking activities to implement the remaining executive compensation rules to be issued under Sections 953 through 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). According to the newly revised schedule, the SEC now plans to adopt rules for Sections 953 through 956 between January and June 2012. The delay in implementation means that, for calendar year companies, these rules will not apply to the 2012 proxy season. A summary of these sections is set forth below.

SECTION 953 – PAY FOR PERFORMANCE AND INTERNAL PAY EQUITY. This Section requires proxy statement disclosure of total executive compensation paid and a comparison of how executive compensation relates to company performance. This may require charts and graphs explaining the pay/performance relationship.

In addition, it is expected that the SEC will amend its disclosure requirements to require disclosure of the median of the annual total compensation of all employees except the Chief Executive Officer ("CEO"), the annual total compensation of the CEO, and the ratio of the median employee compensation to the total compensation of the CEO, otherwise known as the internal pay equity ratio. The internal pay equity calculation will involve significant work because frequent re-computations of the internal pay ratio may be necessary based on when SEC filings are made. It is unclear whether there will be delayed implementation for smaller reporting companies. A bill to repeal the internal pay equity disclosure requirement has been introduced in Congress. This provision has been widely criticized but the SEC has informally stated that it would require an act of Congress to stop these provisions from being implemented because Dodd-Frank compels the SEC to publish these rules.

SECTION 954 – CLAWBACKS. This section requires issuers with listed securities to establish a clawback policy that would provide, in the event of an accounting restatement, for the recovery of incentive-based compensation received by any current or former executive officer of the issuer in excess of what he or she would have been paid in the absence of the accounting restatement.

Dodd-Frank's clawback rules expand the Sarbanes-Oxley clawback rules. Sarbanes-Oxley's clawback rules only applies to the CEO and Chief Financial Officer, only looks back 12 months and requires both a restatement of financials and misconduct as triggers. Dodd-Frank's clawback

rules include all current and former executive officers with a three-year look-back period, and no fraud or malfeasance is required for the clawback to apply.

SECTION 955 - DISCLOSURE REGARDING EMPLOYEE AND DIRECTOR HEDGING. Under this rule, the Company will be required to disclose in its proxy statement whether any employee or director is permitted to purchase financial instruments that are designed to hedge or offset a decrease in the value of the company's equity securities held by the employee or director. Types of financial instruments that may be used to hedge include prepaid variable forward contracts, equity swaps, collars, and exchange funds. While this Section requires the Company to make an additional disclosure of corporate policies, it does not require the Company to disclose actual hedging transactions by its employees and directors.

SECTION 956 - ENHANCED COMPENSATION STRUCTURE REPORTING. This Section requires a joint final rule between the SEC, the Federal Reserve, OCC, FDIC, FHFA, and the NCUA that requires "covered financial institutions" (those with more than $1 billion in total assets) to disclose to their federal regulator the structure of their incentive-based compensation arrangements. A covered financial institution includes a depository institution, a depository institution holding company, a registered broker-dealer, a credit union, an investment advisor, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and any other financial institution federal regulators determine ought to be treated as a covered financial institution.

Covered financial institutions will be required to adopt policies and procedures regarding "incentive-based arrangements", which include any variable compensation that serves as an incentive to performance. The regulator will make a determination as to whether compensation is excessive or could lead to a material financial loss for the covered financial institution. Should the regulator determine that compensation is excessive or materially risky, the regulator may prohibit those aspects of the compensation plan.

The joint rule will also impose additional stringent requirements on "larger covered financial institutions" ($50 billion or more in assets), including a requirement that at least half of the annual incentive compensation for "covered persons" (any executive officer, employee, director or principal shareholder of a covered financial institution) must be deferred for at least three years.

As proposed and final rules are published on these sections, we will provide updates of the particular effects to executive compensation and necessary corporate disclosure requirements.

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