CHEAT SHEET: THE LATEST DEVELOPMENTS IN GOVERNANCE AND COMPENSATION

- **Shareholder Bill of Rights Act of 2009 (the "Schumer Bill") – Proposed Legislation**
  - Introduced by Senator Charles Schumer on May 19, 2009.
  - For *all public companies*, the bill would require:
    - Say-on-Pay – nonbinding shareholder vote on executive compensation
    - Say on severance – separate nonbinding shareholder vote on executive severance packages
    - Proxy access –1% of outstanding stock, two-year holding requirement
  - For *listed companies*, the bill would also require:
    - Annual election of all directors (i.e., elimination of classified boards)
    - Majority vote for directors
    - Independent board chair (cannot have previously served as executive officer)
    - Risk Committee composed entirely of independent directors
  - ***Status***: Referred to Committee on Banking, Housing, and Urban Affairs on May 19, 2009

- **Shareholder Empowerment Act of 2009 – Proposed Legislation**
  - Introduced by Rep. Gary Peters on June 12, 2009.
  - Required for *all public companies*:
    - Say-on-Pay – nonbinding shareholder vote on executive compensation
    - Proxy access – 1% of outstanding stock, two-year holding requirement
    - Elimination of broker discretionary voting for directors
    - Majority vote for directors
    - Independent board chair
    - Compensation adviser (consultant), if hired, must be independent
    - Clawbacks – companies must develop and disclose a policy for reviewing and recovering unearned compensation
    - No severance pay agreements for executives terminated for poor performance
    - Proxy must disclose specific performance targets used to determine executive compensation
  - ***Status***: Referred to the House Committee on Financial Services on June 12, 2009.

- **Excessive Pay Shareholder Approval Act of 2009 and Excessive Pay Capped Deduction Act of 2009 – Proposed Legislation**
  - Both bills introduced by Senator Richard Durbin on May 7, 2009.
  - Shareholder Approval Act would require, for *all public companies*, that any employee's compensation be limited to 100x average compensation of all employees of the company in that tax year, unless approved by 60% shareholder vote. Proxy materials must include specified compensation statistics.
  - Capped Deduction Act would disallow tax deduction for "excessive compensation" (total compensation exceeding 100x average compensation of all employees).
  - ***Status***: Shareholder Approval Act referred to House Committee on Financial Services, June 12, 2009. Capped Deduction Act referred to House Committee on Finance on June 2, 2009.

- **Corporate and Financial Institution Compensation Fairness Act of 2009 – Proposed Legislation**
  - Introduced by Rep. Barney Frank on July 21, 2009, based on proposals sent to Congress by Treasury Secretary Geithner, consistent with the White Paper issued by Secretary Geithner in June.
  - Say-on-Pay – all annual meetings must include a non-binding shareholder vote on compensation, effective six months after date of final SEC rules.
    - Also, for any shareholders meeting for an M&A transaction, the proxy or consent materials must disclose parachute payments and include a non-binding shareholder vote on payments
  - Compensation committee independence and advice requirements – for *listed companies*, compensation committee members subject to same restrictive independence standards as audit committee members; committee has the right to retain independent advisors.
  - Covered financial institutions must disclose the structure of incentive compensation arrangements and cause the arrangements to conform to new regulations meant to avoid risk.
  - ***Status***: Referred to the House Committee on Financial Services on July 21, 2009.

- **Corporate Governance Reform Act of 2009 – Proposed Legislation**
  - Introduced by Rep. Keith Ellison on July 21, 2009.
  - Required for *all public companies*:
    - Independent board chair
    - Independent Risk Management Committee
    - Independent Compensation Committee
    - Say-on-Pay – annual non-binding shareholder vote on compensation
  - SEC required to study whether directors should have to be certified by the SEC and to issue appropriate regulations
  - ***Status***: Referred to the House Committee on Financial Services on July 21, 2009.

- **Amendment to NYSE Rule 452 – Broker Discretionary Voting – Final Regulations**
  - Final rule, approved by the SEC on July 1, 2009, applies to all public companies, for shareholder meetings held on or after January 1, 2010.
  - Broker can't vote shares on election of directors without instructions from beneficial owner.

- **Regulatory Clarification of TARP Requirements for Financial Institutions**
  - Under 2008 stimulus bill and 2009 recovery bill, TARP recipients are subject to Say-on-Pay, severance limits, denial of tax deductions over certain limits, clawbacks, disclosure requirements, etc.
    - Limitations vary depending on various factors, including whether institutions have repaid TARP funds, and whether they are regular participants or received exceptional assistance.
  - The ***Treasury Department*** issued an *Interim Final Rule* on June 10, 2009, that codifies the restrictions and appoints a special master to review compensation for specific companies.
    - The rules prohibit golden parachutes to certain individuals, require that bonuses be paid in restricted stock, prohibit compensation that encourages unnecessary risk, clarify Say-on-Pay, clawback and disclosure requirements.
  - The ***SEC*** *proposed rules* on July 1, 2009 to clarify Say-on-Pay standards for TARP recipients.

- **Proposed Amendments to the SEC Proxy Disclosure and Solicitation Rules**
  - The SEC proposed enhanced disclosures and clarifications to the proxy solicitation rules in a 137-page release issued on July 10, 2009. If adopted, likely effective for the 2010 proxy season.
  - The compensation disclosure rules would be amended to:
    - require disclosure of the relationship to risk of the company's overall compensation policies
    - require disclosure of potential conflicts of interest of compensation consultants and other extensive information about consultants, including fee information
    - change calculation of equity compensation in the Summary Compensation Table – based on fair value of awards during the year, rather than adjusted FAS 123R expense during the year
  - The proxy statement would be required to include more information about each director or nominee's background, and about the company's leadership structure (including role of lead director, if any).
  - The rules governing proxy solicitations would be clarified in several ways.

- **SEC Proposed Rules Requiring Shareholder Access – Proposed Rule 14a-11**
  - The SEC on June 10, 2009, proposed amendments to the proxy rules to grant large shareholders the right to nominate directors and have the nominees included in management's proxy statement – public comments are due by August 17, 2009.
  - Right granted to holders who have for at least one year beneficially owned at least the following percentages of outstanding stock: 1% for large accelerated filers (public float at least $700M), 3% for accelerated filers, or 5% for non-accelerated filers (public float less than $75M).
  - The company would be required to include shareholder nominees for up to 25% of the board positions. If nominees received above this limit, access granted on a first-come-first-served basis.

The descriptions above offer only a general overview of complex legal topics. These materials are not intended as a substitute for legal, financial or tax advice and should not be relied upon as such.

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