

Internet Appendix to “The Effect of the Say-on-Pay Vote in the U.S.”

Selected Excerpts from the Rules and Regulations Defining the Say-on-Pay Vote

“DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT”

SEC. 951. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 14 (15 U.S.C. 78n) the following:

‘SEC. 14A. SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.

“(a) SEPARATE RESOLUTION REQUIRED.—

“(1) IN GENERAL.—Not less frequently than once every 3 years, a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to shareholder vote to approve the compensation of executives, as disclosed pursuant to section 229.402 of title 17, Code of Federal Regulations, or any successor thereto.

“(2) FREQUENCY OF VOTE.—Not less frequently than once every 6 years, a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to shareholder vote to determine whether votes on the resolutions required under paragraph (1) will occur every 1, 2, or 3 years.”

“(3) EFFECTIVE DATE.—The proxy or consent or authorization for the first annual or other meeting of the shareholders occurring after the end of the 6-month period beginning on the date of enactment of this section shall include—

“(A) the resolution described in paragraph (1); and

“(B) a separate resolution subject to shareholder vote to determine whether votes on the resolutions required under paragraph (1) will occur every 1, 2, or 3 years.

“(e) EXEMPTION.—The Commission may, by rule or order, exempt an issuer or class of issuers from the requirement under subsection (a) or (b). In determining whether to make an exemption under this subsection, the Commission shall take into account, among other considerations, whether the requirements under subsections (a) and (b) disproportionately burdens small issuers.”.

From SEC Proposed Rule 33-9153 on SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION AND GOLDEN PARACHUTE COMPENSATION. (Oct. 18, 2010)

“E. Treatment of Smaller Companies

Our proposed rules would not exempt small issuers from the requirements of Sections 14A(a) and 14A(b). We believe the shareholder advisory votes and additional disclosure required by Section 14A and our proposed rules would be significant for investors in all issuers, including smaller reporting companies.¹³² As a result, the proposed rules discussed above will all apply to smaller reporting companies, with the exception of our proposed amendment to Item 402(b) of Regulation S-K, as smaller reporting companies are not required to provide a CD&A. We do not believe that smaller reporting companies should be exempt

from the say-on-pay vote, frequency of say-on-pay votes and golden parachute disclosure and vote because we believe investors have the same interest in voting on the compensation of smaller reporting companies and in clear and simple disclosure of golden parachute compensation in connection with mergers and similar transactions as they have for other issuers.”

From SEC Final Rule 33-9178 on SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION AND GOLDEN PARACHUTE COMPENSATION. (Jan. 25, 2011)

“SUMMARY: We are adopting amendments to our rules to implement the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to shareholder approval of executive compensation and “golden parachute” compensation arrangements. Section 951 of the Dodd-Frank Act amends the Securities Exchange Act of 1934 by adding Section 14A, which requires companies to conduct a separate shareholder advisory vote to approve the compensation of executives, as disclosed pursuant to Item 402 of Regulation S-K or any successor to Item 402. Section 14A also requires companies to conduct a separate shareholder advisory vote to determine how often an issuer will conduct a shareholder advisory vote on executive compensation. In addition, Section 14A requires companies soliciting votes to approve merger or acquisition transactions to provide disclosure of certain “golden parachute” compensation arrangements and, in certain circumstances, to conduct a separate shareholder advisory vote to approve the golden parachute compensation arrangements.”

“In addition to their non-binding status, none of the shareholder votes required pursuant to Section 14A is to be construed “as overruling a decision by such issuer or board of directors.”

“Section 14A(a)(3) requires that both the initial shareholder vote on executive compensation and the initial vote on the frequency of votes on executive compensation be included in proxy statements “for the first annual or other meeting of the shareholders occurring after the end of the 6-month period beginning on the date of enactment” of the Act.³³ Thus, the statute requires separate resolutions subject to shareholder vote to approve executive compensation and to approve the frequency of say-on-pay votes for proxy statements relating to an issuer’s first annual or other meeting of the shareholders occurring on or after January 21, 2011, whether or not the Commission has adopted rules to implement Section 14A(a).”

“Many commentators agreed with our proposed approach not to exempt smaller reporting companies from Rule 14a-21(a) and Exchange Act Section 14A(a)(1). Some commentators did suggest that smaller reporting companies should be exempt from the say-on-pay vote or required to conduct a say-on-pay vote on a triennial basis beginning in 2013.”

“Companies that qualify as “smaller reporting companies” (as defined in 17 CFR 240.12b-2) as of January 21, 2011, including newly public companies that qualify as smaller reporting companies after January 21, 2011, will not be subject to Exchange Act Section 14A(a) and Rule 14a-21(a) and (b) until the first annual or other meeting of shareholders at which directors will be elected and for which the rules of the Commission require executive compensation disclosure pursuant to Item 402 of Regulation S-K (17 CFR 229.402) occurring on or after January 21, 2013.”

From SEC Final Rule 33-8876, SMALLER REPORTING COMPANY REGULATORY RELIEF AND SIMPLIFICATION (Jan 4, 2008)

“As adopted, a smaller reporting company is defined as a company that meets all of the following criteria: is not an investment company, an asset-backed issuer, or the majority-owned subsidiary of a parent that was not a smaller reporting company; had a public float of less than \$75 million as of the last business day of its most recently completed second fiscal quarter; and in the case of an issuer whose public float was zero, had annual revenues of less than \$50 million during its most recently completed fiscal year for which audited financial statements are available on the date of the filing.”

“As adopted, once an issuer fails to qualify for smaller company status, it will remain unqualified unless it determines that its public float, as calculated in accordance with the definition, was less than \$50 million as of the last business day of its second fiscal quarter.”