February 7, 2011

On January 25, 2011, the SEC issued final rules under the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding proxy disclosure of shareholder advisory votes on say-on-pay proposals and the frequency of those proposals, as well as advisory votes on golden parachute compensation arrangements. This Alert discusses those final rules.

Last proxy season, shareholders' say-on-pay votes served primarily as confirmations of board decisions regarding executive compensation and not, in most cases, as the kind of rock-throwing exercises that many companies feared. This season, however, has already witnessed one rejection of a say-on-pay proposal and, given—among other factors—the prohibition on broker discretionary voting on both say on pay and say on frequency, we could well see a significant increase in negative votes this season.

Although the votes required under the SEC's recently adopted final rules are "advisory" only, they represent another step in the recent steady accretion to shareholders of rights in matters of corporate governance and, in the view of many directors, another incursion into territory that formerly was the sole province of the board. And, while Dodd-Frank specified that the advisory votes required should not be construed "as overruling a decision by such issuer or board of directors," a number of the disclosures mandated by the SEC in the final rules could induce companies to comply with or respond to the shareholders' votes, even if the result may be inconsistent with the board's best judgment or prior company actions. When these votes on compensation are coupled with the trend toward majority voting for directors, the decline in voting by individual investors and the increasing influence of proxy advisory firms, the corporate governance landscape appears to have fundamentally, and perhaps irrevocably, shifted.

While the SEC's final rules do not become effective until April 4, 2011, most companies will likely be guided by the new requirements in advance of the effective date, given that Dodd-Frank requires say-on-pay and say-on-frequency proposals in proxy statements for shareholder meetings held on or after January 21, 2011. For companies that qualify as "smaller reporting companies" under SEC rules (generally, those reporting companies with a public float of less than $75 million), compliance is deferred for two years until their first annual meetings on or after January 21, 2013. The golden parachute vote requirements become effective for all companies, including smaller reporting companies, for proxy statements and other applicable forms filed with the SEC on or after April 25, 2011.

The final rules, which can be found at www.sec.gov/rules/final/2011/33-9178.pdf, were adopted substantially as proposed, with only limited modifications. We discuss those modifications below.

Background

New Section 14A of the Securities Exchange Act of 1934, added in July 2010 by Dodd-Frank, mandates three new non-binding shareholder advisory votes that apply to issuers that have a class of equity securities registered under Section 12 of the Exchange Act and are subject to the SEC's proxy rules:

- At least once every three years, a separate advisory say-on-pay resolution to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K;
- At least once every six years, a separate advisory resolution to indicate whether the shareholder vote to approve the compensation of executives will occur every one, two or three years; and
- Whenever shareholders are asked to approve an acquisition, merger, consolidation or proposed sale or other disposition of all or substantially all the assets of an issuer, a separate advisory shareholder vote to approve executive compensation arrangements that the soliciting person has with its named executive officers (or that it has with the NEOs of the acquiring company) related to that business transaction (often referred to as "golden parachutes"), unless already voted on in connection with the periodic say-on-pay vote described above.

The remainder of this *Alert,* in question-and-answer format, summarizes the key points in the final rules.

Shareholder approval of executive compensation

What are we required to have the shareholders approve under the final say-on-pay rules?
Final Rule 14a-21(a) requires each public company to include in its proxy statement a separate shareholder advisory vote to approve or disapprove the compensation of the company's named executive officers as disclosed pursuant to Item 402 of Regulation S-K, including the Compensation Discussion and Analysis, the compensation tables and other narrative executive compensation disclosures. The required vote is a "yes" or "no" indication on the entirety of the NEO compensation arrangements described in the proxy statement. Compensation of directors is not required to be included in the vote.

May we include more specific approvals?
Yes. Companies desiring to obtain more precise feedback are not precluded from seeking more specific *additional* shareholder votes on separate aspects of compensation.

Do we need to include say-on-pay votes at all shareholder meetings?
No. The final rules clarify that the vote will be required at least once every three *calendar* years, and only at annual meetings of shareholders (or special meetings in lieu of annual meetings) at which directors are to be elected and for which proxy statement disclosure of executive compensation is required under Item 402 of Regulation S-K.

Is the disclosure that we are required to provide regarding compensation policies and practices and their relationship to risk-taking subject to the vote? That disclosure covers all employees, not just NEOs.
The disclosure as it relates to compensation for employees generally would not be part of the vote; however, to the extent that risk considerations are material to the company's compensation policies or decisions for NEOs, they should be discussed in CD&A and would be subject to the vote.

Does the SEC specify any particular form of language or form of shareholder resolution that must be used?
No. However, in an instruction to the rule, the SEC indicates that the shareholder advisory vote must be "to approve the compensation of the registrant's named executive officers as disclosed pursuant to Item 402 of Regulation S-K" and provides a non-exclusive example of an acceptable form of resolution, which reads as follows:

RESOLVED, that the compensation paid to the company's named executive officers, as disclosed pursuant to Item 402 of Regulation S-K, including the Compensation Discussion and Analysis, compensation tables and narrative discussion is hereby APPROVED.

While companies retain the flexibility to craft their own resolutions, the vote must cover the required subject and may not be limited to cover only compensation policies and procedures or other segments of the Item 402 disclosure.

We recall that the proposed rules would have required us to explain the general effect of the vote, such as whether the vote is non-binding. Is that requirement still part of the final rules? Is there anything else we need to disclose?
Yes. Companies will still need to include disclosure regarding the general effect of the shareholder advisory vote, such as that the vote is non-binding. In addition, under the final rules, each company (unless it is a smaller reporting company) is required to address in CD&A whether and, if so, how it has considered the results of its *most recent* say-on-pay vote in determining compensation policies and decisions and, if so, how that consideration has affected the company's executive compensation decisions and policies. (Earlier say-on-pay votes should also be discussed to the extent their consideration was material to the compensation policies and decisions.) The SEC believes that mandating this requirement in CD&A will facilitate better investor understanding of compensation decisions.

Is there anything else that we need to disclose in the proxy statement proposal?
Although not mandatory under the final rules, we recommend that each company take the opportunity to advocate its case in its proxy statement either by including in its say-on-pay proposal a brief supporting statement highlighting the key aspects of its compensation programs or cross-referencing to an executive summary in the CD&A. While, in either case, the presentation must be accurate and not misleading, the statement or summary could include discussion highlighting how the company's compensation decisions relate to its performance and business strategy, as well as any steps the company has taken to mitigate or otherwise address features of its past compensation practices that were objectionable to shareholders, such as through the adoption of clawbacks, bonus caps or other mitigating practices, or generally to enhance its corporate governance practices as they relate to executive compensation. In addition, the statement or summary should address the absence of any practices generally viewed by shareholders as problematic, such as 280G gross-up provisions or single trigger change-in-control benefits. Supporting statements and executive summaries are intended to help proxy advisory firms and shareholders that are analyzing large volumes of proxies quickly identify the items that will likely influence their voting recommendations and decisions. Companies that omit these statements or summaries from their proxy statements may feel a need to circulate supplemental soliciting material if ISS or other proxy advisory firms issue negative recommendations.

Shareholder approval of the frequency of say-on-pay votes

What are we required to have the shareholders approve under the final say-on-frequency rules?
Under final Rule 14a-21(b), public companies are required to include in their proxy statements a separate shareholder advisory vote to indicate the frequency of future votes on the compensation of executives preferred by the shareholders. Shareholders must be given four choices: whether a shareholder vote on executive compensation will be solicited every one, two or three years, or to abstain from voting on the matter.

Do we need to include say-on-frequency votes at all shareholder meetings?
No. As with say-on-pay votes, the final rules clarify that the vote will be required only at annual meetings of shareholders (or special meetings in lieu of annual meetings) at which directors are to be elected and for which proxy statement disclosure of executive compensation is required under Item 402 of Regulation S-K. However, this vote is required to be included only once every *six calendar years*.

Are we really required to frame the proposal as a resolution? Given that the proposal is really a kind of "poll" of our shareholders, crafting a resolution seems awkward.
Although Dodd-Frank specifies the use of a resolution, the Staff has informally confirmed to us that, in its view, the proposal need not be framed as a resolution, so long as the proposal is clearly presented. So far, a number of companies have not included resolutions in their say-on-frequency proposals.

Do we need to include a supporting statement in this proxy statement proposal?
Although not mandated by the final rules, we recommend that each company include a paragraph or two in its proxy statement to explain the rationale for its frequency recommendation in an effort to persuade shareholders that it is the appropriate one for that company. This statement may be especially important for shareholders that have a default position regarding frequency of say-on-pay votes, but are willing to vote otherwise if the company provides a convincing rationale.

Are we permitted to structure the proposal to require an up or down vote on the company's recommended frequency?
No. While it is certainly expected that companies will make a recommendation to shareholders as to preferred frequency, the SEC emphasizes that the proxy statement must make clear that shareholders are not voting to approve or disapprove the company's recommendation. Under the final rules, shareholders must be given four choices indicated by four voting boxes on the proxy card: whether a shareholder vote on executive compensation will be solicited every one, two or three years, or to abstain from voting on the matter. However, to accommodate any potential technical issues, for meetings to be held on or before December 31, 2011, the SEC will permit the form of proxy to allow the person solicited to specify a choice among one, two or three years (*i.e.,* with no provision for abstention). In that event, the proxyholders would not have discretionary authority to vote proxies on the say-on-frequency proposal if the person solicited does not select a choice among one, two or three years.

How do we determine which frequency to recommend?
We refer you to our *Alert,* "Frequency of Say-on-Pay Votes: Eleven Factors to Consider," which discusses various considerations in making that determination.

Commentators have reported that the breakdown of frequency recommendations by companies that have filed proxy statements with the SEC this proxy season has thus far been approximately 58% recommending triennial votes, 30% annual votes, 6% biennial votes and 6% making no recommendation. Commentators have also indicated that, of the 20 companies that have announced their voting results this season and have recommended triennial votes, 11 have reported that their shareholders preferred an annual vote.

Do we have to make a recommendation?
No. There is no requirement that the company make a recommendation to shareholders. However, some commentators have expressed the view that a board is "obligated" to consider and ultimately recommend the alternative it considers best for the company and its shareholders. Moreover, in the event that no

recommendation is made and the company receives proxy cards that are not voted on this matter, the company would not be permitted (under Rule 14a-4) to vote those proxies on that matter. Rather, a company may vote uninstructed proxy cards in accordance with management's recommendation for the say-on-frequency vote only if the company includes a recommendation on frequency in the proxy statement, permits abstention on the proxy card and includes language in bold on the proxy card advising shareholders how uninstructed shares will be voted.

Do all proxy advisory firms and institutional shareholders favor annual votes?
No. Although ISS, Glass Lewis and a significant number of institutional investors have indicated general support for annual say-on-pay votes, you may be surprised to find that institutional investors do not universally support annual votes and that some prominent institutional shareholders, such as the United Brotherhood of Carpenters, BlackRock Institutional Trust Company and Wellington Management Company, have announced that they favor triennial votes. Glass Lewis recently clarified that it will consider well-reasoned arguments in favor of triennial or biennial votes, and you may also find that some of your significant investors that otherwise generally favor annual votes may be open to making case-by-case determinations if presented with a convincing rationale.

Having considered the matter thoroughly, our board and management want to recommend a triennial vote. Will ISS consider that recommendation to be a problematic pay practice?
No. ISS recently clarified that a management recommendation in favor of a biennial or triennial vote will not be viewed as a problematic pay practice and will not, by itself, trigger a negative vote recommendation from ISS on other proxy proposals, including the election of directors.

We would like to recommend a triennial vote, but we're concerned that we may not be successful. Are there approaches that might be more accommodating to shareholder reservations about triennial votes?
One approach may be to include an undertaking that could mitigate the result from the shareholders' perspective. For example, as part of your say-on-frequency proposal, the company could undertake that, if shareholders approved the recommended triennial vote frequency but the company then received less than a majority vote (or less than a specified super-majority vote) for the say-on-pay proposal, the company would resubmit the say-on-pay proposal to another shareholder vote in the subsequent year (presumably having first addressed any identified shareholder concerns). Alternatively, some investors have reportedly been amenable to the concept of a triennial vote if the company agrees to resubmit to shareholders in year three, not just the say-on-pay proposal, but also the say-on-frequency proposal, even though another say-on-frequency vote would otherwise not be required until year six. Some shareholders may also be convinced to support less frequent votes if the company commits to engage with them in another manner (for example, surveys or meetings) in the years in which the company does not submit a say-on-pay proposal. These types of measures may be enough to tip the frequency vote in favor of a triennial say-on-pay vote.

We understand that the rules related to shareholder proposals allow companies to exclude proposals from proxy materials where the substance of the proposal has already been substantially implemented. Will compliance with the final rules mean that shareholder proposals on these topics may be excluded as "substantially implemented"?
Yes, in some circumstances. In the final rules, the SEC added a note to Rule 14a-8(i)(10) to clarify that shareholder proposals that seek an advisory say-on-pay vote or future say-on-pay votes, or that relate to the frequency of say-on-pay votes, including those drafted as requests to amend the company's governing documents, may be excluded on the basis of substantial compliance if, in the company's most recent vote on say on frequency, any single frequency achieves a *majority* vote *and* the company has adopted a policy regarding the frequency with which the company will solicit say-on-pay votes that is consistent with the *majority* of votes cast. (Note that, for purposes of this analysis only—and not the general voting standard for determining whether a particular frequency was approved—an abstention would not count as a vote cast.) The final rules represent a significant change from the proposal, which had set the threshold for exclusion at just a *plurality* of votes cast. Because the vote involves a decision among three choices, it may be difficult for any single choice to achieve a majority of votes. As a result, the SEC's raising of the exclusion threshold to majority vote may well mean, as a practical matter, that many companies are not permitted to exclude subsequent shareholder proposals on these topics. In addition, as contended by one of the dissenting SEC commissioners at the open meeting at which the final rules were adopted, the imposition of the higher threshold could have the effect of coercing companies into recommending an annual vote to facilitate obtaining a majority vote, especially in light of the announced policy positions by proxy advisory firms (such as ISS and Glass Lewis) advocating annual votes.

If we adopt a policy on say-on-frequency votes that is consistent with the frequency preferred by a majority of our shareholders, will we be able to exclude shareholder proposals on say on pay and say on frequency without going through the typical SEC process to exclude shareholder proposals?
No. Companies seeking to exclude a shareholder proposal under the note to Rule 14a-8(i)(10) are required to follow the same shareholder proposal process with the Staff of the SEC as would be required if the company were relying on any other substantive basis for exclusion under Rule 14a-8.

We recall that, under the proposed rules, we would have had to report, in light of the shareholder vote on say on frequency, our decision regarding how frequently we planned to solicit say-on-pay votes in our 10-Q for the period of the vote. We were concerned that the proposed timing would not allow us sufficient time to consider our decision. Do the final rules continue to impose that timing?
No. Under the final rules, a company will be required to report its decision regarding the frequency of say-on-pay votes by filing an amendment to its Item 5.07 Form 8-K that disclosed the results of the shareholder vote on frequency. The amendment will not be due until 150 calendar days after the date of the meeting in which the required say-on-frequency vote took place, but no later than 60 calendar days prior to the deadline for the submission of shareholder proposals under Rule 14a-8 for the subsequent annual meeting. As a result, companies and their boards will now have more time to deliberate and consult with their shareholders, if desired.

Aren't we precluded by Regulation FD from having private discussions with our shareholders about our frequency considerations?
Not necessarily. If a company's directors or other persons are authorized to speak on behalf of the company and plan on speaking privately with shareholders, then the company should implement policies and procedures to help avoid Regulation FD violations, such as pre-clearing discussion topics with the shareholder, having company counsel participate in the meeting or obtaining confidentiality agreements.

Issues relating to both advisory shareholder votes

Will we have to file preliminary proxy statements as a result of including say-on-pay or say-on-frequency proposals?
No. The SEC will not require the filing of a preliminary proxy, even before the rules become effective.

Is there any new disclosure required for say-on-pay and say-on-frequency proposals under the final rules?
Yes. The final rules have been modified from the proposal to require disclosure of the current frequency of say-on-pay votes, as determined by the board following a shareholder advisory vote, and when the next say-on-pay vote will occur. Those disclosures are not required in proxy materials for the initial say-on-pay and say-on-frequency votes.

We just concluded our IPO, so the executive compensation that will be discussed in our proxy statement will be pre-public compensation. It seems odd to ask our public shareholders to express their approval or disapproval of compensation actions taken while we were a private company. Will we be required to include say-on-pay and say-on-frequency proposals?
Yes. Although this aspect of the final rules was one of the bases for two of the SEC commissioners to dissent from adoption of the final rules, the majority of the commissioners believed that including say-on-pay and say-on-frequency votes "will give shareholders the opportunity to express a view on these matters while the company is in the process of establishing policies that will apply as a public company and could benefit from understanding its shareholders' point of view."

Will brokers be able to cast say-on-pay and say-on-frequency votes on behalf of beneficial owners of shares who do not instruct their brokers on how to vote?
No. Dodd-Frank imposed a new prohibition on broker discretionary voting in matters related to executive compensation, including say-on-pay and say-on-frequency votes. Since brokers have historically tended, when not otherwise instructed by the beneficial owners of the shares they hold, to vote in line with management recommendations, this new prohibition could have a significant impact on the voting results and make proxy advisory firm vote recommendations and institutional stockholder votes more influential.

We qualify as a "smaller reporting company" under the SEC's rules. Will we be required to comply with the say-on-pay and say-on-frequency rules?
Yes, but compliance with respect to say-on-pay and say-on-frequency votes for smaller reporting companies is deferred for two years until the company's first annual or other meeting of shareholders occurring on or after January 21, 2013. The amendments do not change the "scaled disclosure" requirements that apply to smaller reporting companies and, as result, these companies will not be required to provide CD&As. Because smaller reporting companies are not required to provide a CD&A, it may be even more important for these companies to provide supporting statements in their say-on-pay proposals explaining the rationale for their executive compensation programs and policies. Note that the temporary exemption does not apply to shareholder advisory votes on golden parachute compensation in connection with mergers or other extraordinary transactions (discussed below).

The SEC insists that these votes are "non-binding," but aren't there possible consequences to losing, or receiving a low approval percentage, on either of these votes?
Certainly an unfavorable vote can lead to reputational issues and other serious consequences. In addition, many institutions view executive pay as a key gauge of the performance of the board, and failure to comply with or adopt the voting results and expressed desires of shareholders regarding these compensation matters could very well affect the vote for the company's directors in the following year and, in some circumstances, invite shareholder proposals.

Disclosure and shareholder approval of golden parachute arrangements

What are we required to disclose under the new say-on-parachute rules?
New Item 402(t) of Regulation S-K will require, when any persons solicit shareholder approval of an acquisition, merger, consolidation or proposed sale or disposition of all or substantially all of an issuer's assets and in specified other forms of business combination, disclosure regarding golden parachute compensation arrangements or understandings (whether written or unwritten) between each named executive officer and the acquiring company or the target company, including disclosure in both tabular and narrative format.

Does the SEC prescribe a format for the tabular disclosure?
Yes. The SEC has mandated the use of the table below, which is required to quantify cash severance, equity awards that are accelerated or cashed out, pension and nonqualified deferred compensation enhancements, perquisites and tax reimbursements. In addition, the table requires disclosure and quantification of the value of any other compensation related to the transaction.

The company must provide footnote identification of each separate form of compensation reported, as well as separate footnote identification of amounts attributable to "single-trigger" and to "double-trigger" arrangements. In the event of uncertainties regarding payments and benefits, or the amounts involved, the company should make a reasonable estimate and disclose material assumptions underlying the estimate.

Golden parachute compensation

Name (a)	Cash ($) (b)	Equity ($) (c)	Pension/ NQDC ($) (d)	Perquisites/ Benefits ($) (e)	Tax Reimburse-ment ($) (f)	Other ($) (g)
PEO						
PFO						
A						
B						
C						

What disclosure is required in the accompanying narrative?

The narrative disclosure must describe the circumstances that would trigger the payment, whether the payment would be lump sum or periodic installments, the duration of payments, by whom the payments would be provided, and any other material factors regarding the payments, including restrictive covenants such as non-competes or confidentiality agreements, their duration, and provisions regarding waiver or breach.

Are we required to disclose all change-in-control compensation arrangements?
No. The Item 402(t) disclosure must include only that compensation based on or otherwise related to the subject transaction. Golden parachute compensation arrangements that are not triggered by the transaction need not be disclosed. For example, previously vested equity awards are not considered compensation triggered by the transaction, nor is compensation from bona fide post-transaction employment agreements to be entered into in connection with the merger or acquisition transaction.

Do we need to include former NEOs in the table?
The disclosure will cover the NEOs identified in the company's most recent filing requiring Summary Compensation Table disclosure, except that no disclosure is required regarding former NEOs who were not serving as executive officers at the end of the last completed fiscal year.

May we exclude de minimis perquisites and other personal benefits?
No.

Does the disclosure that we usually provide in our proxy statement regarding potential payments upon termination or change in control satisfy these requirements?
No. The new disclosure requirements are more extensive and complex, requiring, for example, disclosure regarding agreements between the acquiring company and the target's executives.

What types of business combination transactions require disclosure (but not necessarily an advisory vote) under the final golden parachute rules?
The final rules require golden parachute compensation disclosure not just in proxy or consent solicitation materials seeking shareholder approval of an acquisition, merger, sale of assets or similar business combination transaction, but also in connection with a number of transactions not mandated by Dodd-Frank. These include information statements, proxy statements that do not contain merger proposals but require merger transaction disclosure (such as increases in authorized shares or reverse stock splits, which may be necessary for the company to effect a merger transaction), registration statements filed on Forms S-4 and F-4 containing disclosure relating to mergers and acquisitions, going-private transactions and tender offers. However, bidders in third-party tender offers (other than going-private tender offers) are not required to provide the disclosure. Similarly, disclosure is not required for golden parachute arrangements with executives of foreign private issuers where the target or acquirer is a foreign private issuer.

Are we required to solicit separate advisory shareholder approval of the golden parachute compensation as disclosed in all of those types of transactions identified above?
No. Under the final rules, a separate advisory shareholder vote is required only in connection with a proxy or consent solicitation seeking shareholder approval of an acquisition, merger, consolidation or proposed sale or disposition of all or substantially all of a company's assets.

Is there any way to avoid this vote?
An exception to this vote requirement would be available if the golden parachute arrangements were previously disclosed as required under the final rules and if that previous disclosure were subject to a Rule 14a-21(a) say-on-pay vote, regardless of the outcome of that vote. However, any new arrangements or modifications to arrangements not previously subject to the say-on-pay vote would still require a separate merger proxy advisory vote under the final rules. Changes related only to the value of items in the Golden Parachute Compensation Table to reflect price movements in the securities would not require a new vote, nor would changes that result only in a *reduction* in value of the total compensation payable under the arrangement. In contrast, changes in connection with the employment of a new NEO, salary increases and additional equity grants (even in the ordinary course) would be subject to a new merger proxy separate shareholder vote. If, as permitted, the company solicits advisory approval of only the new arrangements or revised terms of the arrangements, the merger proxy statement must include two separate tables, one showing all golden parachute compensation and one showing only compensation under the new arrangements or revisions.

Given the likelihood of changes of this type, it appears that this voting exception will rarely be used.

Does the SEC specify any particular form of language or form of shareholder resolution that must be used?
No particular form of resolution is prescribed.

We recall that the shareholder vote is non-binding. Do we need to disclose this to our shareholders?
Yes. Where a separate merger proxy vote is required, the company will need to explain the general effect of the vote, such as that it is non-binding.

Is golden parachute compensation for all NEOs required to be disclosed under the final rules subject to the shareholder vote?
No. Golden parachute arrangements between the *acquiring* company and the NEOs of the *target* company must be disclosed but are not required to be subject to the vote. However, if these compensation arrangements are not included in the vote, companies would need to provide separate tables indicating those arrangements subject to the vote and those not subject to the vote.

All of our golden parachute arrangements are included in contracts with our NEOs. What is the impact if we receive a negative vote on these arrangements?
It remains to be seen whether advisory shareholder votes on golden parachute arrangements will have any impact on parachute payments or business combination transactions or on the approval of those transactions. Because, in the question posed, the NEOs are contractually entitled to the golden parachute compensation, they may well not be willing to forgo that compensation in the face of a purely advisory negative vote. As a result, the vote may have little or no impact on compensation that the NEOs ultimately receive. And, unlike the say-on-pay vote—where the SEC requires companies to disclose the effect of the prior vote on decision-making—board members are not held accountable under the proposed rules if the combining companies proceed with the golden parachute payments despite a negative vote, with the result that the vote on parachute payments may seem especially toothless. However, the potential for a negative shareholder vote could well fuel a debate during transaction negotiations, particularly in light of the conflicting incentives of each party to make or resist making parachute payments. In addition, it may be that proxy advisory firms will recommend a vote against directors who approved proceeding with golden parachute compensation that shareholders did not approve, even in elections at unrelated companies.

If you have any questions about this *Alert,* please contact one of your Cooley team members or one of the attorneys identified above.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or

any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

Kenneth Guernsey San Francisco	kguernsey@cooley.com +1 415 693 2091
Cydney Posner San Francisco	cposner@cooley.com +1 415 693 2132
Sam Livermore San Francisco	slivermore@cooley.com +1 415 693 2113
Tom Reicher San Francisco	treicher@cooley.com +1 415 693 2381
Thomas Welk San Diego	twelk@cooley.com +1 858 550 6016
Darren DeStefano Reston	ddestefano@cooley.com +1 703 456 8034
Francis Wheeler Colorado	fwheeler@cooley.com +1 720 566 4231
Miguel J. Vega Boston	mvega@cooley.com +1 617 937 2319
Eric Jensen Palo Alto	ejensen@cooley.com +1 650 843 5049

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.