

Treasury Secretary Geithner and SEC Chairman Schapiro Issue Statements on Executive Compensation

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Yesterday, Treasury Secretary Timothy Geithner and Securities and Exchange Commission ("SEC") Chairman Mary Schapiro issued statements on executive compensation that could alter the compensation and disclosure practices of public companies.¹

Secretary Geithner's Statement

Secretary Geithner's statement includes a set of five broad-based principles on executive compensation and proposes legislation that would (i) give the SEC authority to require non-binding annual say-on-pay votes for all public companies and (ii) direct the SEC to promulgate rules requiring companies listed on national securities exchanges to meet enhanced independence standards for compensation committee members.

Say-On-Pay

In Secretary Geithner's statement, the Obama Administration calls for Congress to enact "say-on-pay" legislation authorizing the SEC to require all public companies to include in their annual proxy statement a shareholder resolution requesting approval or disapproval of the company's executive compensation as disclosed in the proxy statement. Although the results of this vote would not be binding on a company's board of directors, the vote is intended to cause directors to more carefully consider shareholder interests when designing executive pay. Secretary Geithner's statement also contemplates that the legislation would give companies the opportunity to ask shareholders their views on specific compensation decisions.

The statement also calls for legislation authorizing the SEC to provide shareholders a non-binding vote to approve or disapprove so-called "golden parachutes" in proxy solicitation materials prepared for shareholder meetings relating to mergers, acquisitions or other change in control transactions.

¹ Treasury Secretary Geithner's statement is available at <http://www.ustreas.gov/press/releases/tg163.htm> and SEC Chairman Schapiro's statement is available at <http://www.sec.gov/news/press/2009/2009-133.htm>.

Compensation Committee Independence

The Obama Administration will propose legislation directing the SEC to require each member of a listed company's compensation committee to meet independence requirements similar to those required of audit committee members under Sarbanes-Oxley. Under the new requirements, the compensation committee would also be directly responsible for the appointment, compensation, retention and oversight of compensation consultants. The compensation committee would also have authority to hire legal counsel and other advisors, and the company would be required to provide appropriate funding to compensate such advisors. The SEC would establish standards to ensure independence of these advisors.

This memorandum is intended only as a general discussion of these issues. It is not considered to be legal advice. We would be pleased to provide additional details or advice about specific situations. For additional information on this important topic, please feel free to call upon your Dewey & LeBoeuf relationship partner.

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SEC Chairman Schapiro's Statement

Chairman Schapiro's statement notes that the SEC is actively considering a package of new proxy disclosure rules. These rules would require greater disclosure about:

- How a company—and its board—manages risk;
- A company's overall compensation approach;
- Potential conflicts of interest by compensation consultants;
- Director nominees, including their experience and qualifications; and
- Why a board has chosen its particular leadership structure.

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