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Alert Memo

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SEC Releases Proposed Disclosure Rule Changes for Compensation Program Risk, Compensation Consultant Independence and Equity-Based Compensation Awards

As part of the Obama administration's focus on executive compensation issues,[1] on July 10, 2009, the Securities and Exchange Commission ("SEC") published proposed amendments to disclosure rules for U.S. companies in five loosely-related executive compensation and corporate governance areas (the "Proposed Amendments").[2] The Proposed Amendments would require the following new disclosures in companies' annual proxy statements and Forms 10-K:[3]

1. A new section in the Compensation Discussion and Analysis ("CD&A") that would provide information about how a company's overall compensation policies for employees create incentives that can affect the company's risk and management of that risk;

2. A revised approach for disclosing equity-related compensation awards in the Summary Compensation Table and Directors Compensation Table;

3. Expanded disclosure concerning the background and qualifications of directors and nominees;

4. New disclosure concerning a company's leadership structure and why the company believes it is the best structure for it; and

5. Expanded disclosure relating to compensation consultants' potential conflicts of interest.

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[1] Attached hereto as Appendix A is a list and brief summary of the principal federal legislative and regulatory proposals related to executive compensation for public companies during 2009.

[2] SEC Release No. 33-9052 (July 10, 2009), which can be found at http://www.sec.gov/rules/proposed/2009/33-9052.pdf (the "Proposing Release").

[3] The Proposed Amendments would also require expedited reporting of shareholder voting results and would clarify certain proxy solicitation rules.

This memorandum summarizes the executive compensation portions of the Proposed Amendments. The Proposing Release states that, if the Proposed Amendments are adopted, they would be expected to be effective for the 2010 proxy season. Comments on the Proposed Amendments are due no later than September 15, 2009.

A. Compensation Design and Risk

1. Summary. The Proposed Amendments would require additional disclosure in the CD&A section of the annual proxy statement or Form 10-K "if risks arising from . . . compensation policies and practices [for employees generally] may have a material effect on the company." Under such circumstances, the company would be required to discuss its compensation policies and practices with respect to its employees, including non-executive officers (particularly in circumstances where the creation of risk to the company is not otherwise obvious from a discussion focused exclusively on executive compensation policies), as they relate to risk management practices and risk-taking incentives. Whether or not disclosure is required would be fact-specific and depend on the circumstances of the company for the relevant fiscal year. The Proposed Amendments do not require a company to make an affirmative statement in the event it determines that no such risks exist, but the Proposing Release requests comments as to whether an obligation to make an affirmative statement in that circumstance should be imposed.

To the extent disclosure is required, the Proposed Amendments provide the following list of examples of what might be discussed:

- The general design philosophy and implementation of the company's compensation policies for employees who would be most incentivized by the policies to increase risk to the company;

- The company's risk assessment or incentive considerations, if any, in structuring its compensation policies or in awarding and paying compensation;

- Policies requiring clawbacks, holding periods or other methods relating to the realization of risks resulting from the actions of employees in both the short term and the long term;

- Policies in place to implement adjustments needed to be made to its compensation policies to address changes in its risk profile;

- Any material compensation policy changes resulting from changes in the company's risk profile; and

- How the company monitors its compensation policies to ensure objectives relating to risk management objectives are being met in the context of incentivizing employees.

The Proposing Release provides the following non-exhaustive list of situations that could trigger the enhanced disclosure requirement with respect to the compensation practices of a particular business unit within the company:[4]

- The business unit carries a significant portion of the company's risk profile;
- The business unit's compensation structure is significantly different than other units within the company;
- The business unit is significantly more profitable than other units within the company;
- The business unit's compensation expense is a significant percentage of the unit's revenues; or
- The business unit's risk and reward structure is significantly different from the overall risk and reward structure of the company, such as when bonuses are awarded upon accomplishment of a task, while the income and risk to the company from the task extend over a significantly longer period of time.

2. Discussion. The Proposing Release specifically relates the proposed new disclosure requirement to the recent financial industry turmoil, and the connection is indeed obvious. Many companies operating outside the financial industry may, therefore, be inclined towards the view that the new requirement is not relevant to their circumstances, as the types and nature of the risks faced by them are not thought to be comparable to those faced in the financial industry. We expect that many companies will be challenged to find relevant analogies to the examples listed in the Proposing Release.

However, we suggest that substantial consideration be given to the benefits of thoughtful and distinctive disclosure in response to this requirement. We note in this regard, first, the history of review and commentary by the staff of the Division of Corporation Finance (the "Staff") over the last few years concerning the CD&A, and the nature of that review. Often, the review appeared in part to reflect a "check the item off the list" approach to the illustrative disclosure items included in the disclosure rule.[5] It is not clear that the same approach would be taken in respect of the proposed new disclosure requirement, and the rules provide that disclosure is necessary only if the risks arising from compensation practices may have a material impact on the company. In sum, in light of the uncertainty concerning the Staff's approach, companies will be required to make a judgment between

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[4] Although not explicit in the Proposed Amendments, most of the examples bring to mind situations that are reported to have existed among financial firms that were central to the recent industry meltdown, particularly the Financial Products unit of AIG.

[5] Item 402(b)(2) of Regulation S-K under the Securities Exchange Act of 1934, as amended ("Reg S-K").

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including disclosure even if they conclude that the relevant risks are not material, or risking a later comment from the Staff and the possibility of having to provide disclosure later in response. Second, we caution companies not to consider the concept of "risk" too narrowly. In fact, any time a business undergoes difficulty, it could be attributed (in retrospect, whether fairly or not) to some risk(s) that were not addressed appropriately in advance. In fact, in many circumstances, risks may evolve over a long term, and may involve the risk of ***not*** acting boldly enough in the conduct of a business (that is, the risk of not taking enough business risk).[6] Third, there can be no guarantee that even the most thoughtful consideration and disclosure of risks arising from compensation practices will accurately predict a risk that does subsequently materialize and that can be related to compensation practices. However, even in that circumstance, a company that included disclosure concerning the issue of risk seems more likely to be able to effectively address criticisms arising from the situation than if the issue of risk was not previously addressed.

As a result, therefore, we believe that if the Proposed Amendments are adopted in substantially the form proposed, most companies should seriously consider examining, and if necessary addressing, the issue of risk in a distinctive way that focuses on the reality of their business circumstances. We believe, further, that compensation design for most companies does reflect in significant ways an approach to dealing with their material business risks.[7] We suggest that, in preparing to draft responsive disclosure, consideration be given in particular to the following aspects of the compensation packages for employees:

> (i) The degree to which performance objectives are tailored to specific job functions or business units. Tailoring of performance objectives suggests attention to the degree to which particular incentives are appropriate for the job or business unit – i.e., appropriate to address the perceived risks in managing that particular job or business unit.
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> (ii) The degree to which there is a mix of performance objectives. Diversification of performance objectives often provides counterbalances against incentives for employees to push too hard to achieve any one particular performance goal (the pursuit of which may be desirable, but which may create business risks if done at the expense of other performance goals).
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> (iii) The degree to which there is a mix of short-, medium- and long-term performance periods, including performance periods implicit in equity awards (such as, for example, the long-term time frame of typical employee stock options). Diversification of the performance horizons for different parts of the compensation

[6] It would appear, for example, that such an argument could be made about the fate of General Motors Corporation.

[7] If nothing else, the design of virtually all compensation programs is significantly affected by perceptions of risks relating to the retention and attraction of key employees.

package should encourage employees to be concerned about long-term, as well as short-term, results (even if short-term awards are not subject to clawback), since if employees focus too much on the short-term, they may be passing up greater long-term compensation opportunities.

(iv) The "slope" of payout opportunities – i.e., whether the incentives are properly calibrated between motivating employees to hit "home runs" as compared to "singles and doubles." Caps and floors, and a modest rate at which performance improvements are reflected in payouts, may be material to the risk characteristics of a compensation program and are factors in many performance incentive programs.

(v) The extent and structure of coordination between the compensation and audit functions at the company. In particular, consideration should be given to the risk factors identified by the company in its publicly-filed disclosure documents and reports, and the extent to which its compensation plans address, or could be considered to contribute to or be associated with, any of those factors. Furthermore, consideration should be given to the controls in place to address areas of financial statement reporting that may be subject to manipulation by employees seeking to achieve compensation objectives.

B. Equity Award Disclosure

1. Summary. The Proposed Amendments would revise the disclosure approach for the Stock Awards and Option Awards columns of the Summary Compensation Table and Director Compensation Table.[8] Currently, the amounts disclosed in those columns for each fiscal year are based on the amount of expense recognized in such year in accordance with Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004) ("FAS 123R") with respect to all outstanding awards, and are not based on the year in which or with respect to which any such awards were granted. The Proposed Amendments would instead require disclosure of the total grant date fair value of equity-based compensation awards, calculated in accordance with FAS 123R, for the fiscal year in which the awards are granted.[9] Thus, the disclosure rule would revert back to the approach required at the time that the current Summary Compensation Table and Director Compensation Table format was originally adopted, in August 2006, which approach was hastily revised in December 2006.[10]

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[8] Items 402(c)(2)(v) and (vi) and 402(k)(2)(iii) and (iv) of Reg S-K.

[9] The Proposed Amendments would eliminate the requirement to disclose the full grant date fair value of each individual equity award in the Grants of Plan-Based Awards Table and in footnotes to the Director Compensation Table, as currently required.

[10] See SEC Release No. 33-8732A (August 29, 2006), which can be found at http://www.sec.gov/rules/final/2006/33-8732a.pdf (the "August 2006 Release") and SEC Release No. 33-8765

The Proposed Amendments would also amend the instructions to the Salary and Bonus columns of the Summary Compensation Table[11] to eliminate the requirement to disclose in such columns the amounts a named executive officer elects to forgo in return for stock, equity-based or other forms of non-cash compensation. However, such non-cash compensation would be required to be disclosed in the appropriate column in the Summary Compensation Table (e.g., stock awards if the cash compensation is converted to restricted stock units) or, if received under a non-equity incentive plan and not reportable in the Table at grant, in a footnote to the Salary or Bonus column referring to the disclosure of the grant in the Grants of Plan-Based Awards Table.

2. Discussion. As we noted in our recent Alert entitled "SEC Reconsiders Equity Compensation Disclosure Methodology for Summary Compensation Table,"[12] many felt that the change instituted by the December 2006 Release was ill advised, given both the role of the tables – disclosure of compensation paid or awarded in a relevant year – and the unnecessary last-minute changes to the composition of the named executive officers for the 2007 proxy season. We continue to believe that the change back to the original disclosure approach for equity awards should be viewed as a welcome development. The inclusion in the Summary Compensation Table of the grant date fair value of equity awards granted in a year to named executive officers presents a clearer picture of compensation decisions in such year, and makes the determination of the named executive officers more predictable and sensible.

As we also noted in that recent Alert, interesting questions arise from a change back to the approach mandated by the August 2006 Release. The Proposing Release states that the SEC is considering a cost-effective way to facilitate year-to-year comparisons in the transition. It is unclear whether companies will be required to recalculate amounts included in the Stock Awards and Option Awards columns for each preceding fiscal year required to be included in the relevant table. The Proposing Release states that if recalculations are required, no change in the previously determined list of named executive officers for the years that are being recalculated will result. However, if an individual would be a named executive officer for 2009 and was also a named executive officer in 2007, but not in 2008, the company would be required to provide disclosure under the new equity compensation approach with respect to such individual's compensation for all three fiscal years.

(December 22, 2006), which can be found at http://www.sec.gov/rules/final/2006/33-8765fr.pdf (the "December 2006 Release").

[11] Items 402(c)(2)(iii) and (iv) of Reg S-K.

[12] That Alert, dated May 3, 2009, can be found at http://www.cgsh.com/sec_reconsiders_equity_compensation_disclosure_methodology_for_summary_compensation_table/.

However the transition issues are resolved, the change in reporting approach embodied in the Proposed Amendments is likely to impact the identity of the named executive officers in upcoming proxy statement for many companies. We suggest that companies consider what impact this change might have at an early stage in their 2010 proxy preparation process.

We also note the following issues arising from the proposed change:

First, the Proposing Release requests comment concerning the impact of the Proposed Amendments on the willingness of companies to grant performance based equity awards.[13] The request states that performance-based equity awards would be reported in the Summary Compensation Table based on the "full grant date fair value" of each award, without regard to the likelihood of achieving the applicable performance objective. A recent Staff Compliance and Disclosure Interpretation ("C&DI") asks whether the grant date fair value reportable in respect of a performance-based award (in the Grants of Plan-Based Awards Table, as required by the current rules) is determined based on threshold, target or maximum performance. The C&DI concludes that maximum performance should be assumed.[14] A plain reading of those combined statements suggests that the amount required to be disclosed in the Summary Compensation Table under the Proposed Amendments would be grant date fair value assuming payout at maximum performance, even if in fact achievement of minimum performance was determined to be unlikely at the time of grant. That approach certainly would seem to have the effect of discouraging the grant of performance-based awards. Moreover, neither the Proposing Release nor the C&DI discusses one important aspect of FAS 123R, as explained to us. We understand that when a performance-based equity award is determined, at the time of grant, to be not probable of paying out, no expense is actually required to be recorded under FAS 123R in the year in which the award is granted. Accordingly, "grant date fair value" is not used for any purpose under FAS 123R in that circumstance, and would not in fact be required to be calculated but for the disclosure obligation. Requiring disclosure of grant date fair value based on achievement of maximum performance and without taking into account the probability of payout in that circumstance would seem to invite unwanted uncertainty concerning the disclosure amount.

In light of these considerations, we believe that the best disclosure approach would be to include in the Summary Compensation Table the full grant date fair value of performance-based equity awards based on the following two assumptions:

1. achievement of target performance levels; and

13 "Under the proposal, all stock and option awards would be reported in the Summary Compensation Table at full grant date fair value, including awards with performance conditions. Would the proposal discourage companies from tying stock awards to performance conditions, since the full grant date fair value would be reported without regard to the likelihood of achieving the performance objective?" Proposing Release at p. 22.

14 Compliance and Disclosure Interpretation of the Staff concerning Reg S-K, Question 120.05 (May 29, 2009), which can be found at http://sec.gov/divisions/corpfin/guidance/regs-kinterp.htm.

2. adjustment to take into account the likelihood of achieving the targeted level of performance, based on FAS 123R principles, by multiplying the grant date fair value by the likelihood of achieving targeted performance.

Our suggested approach should result in disclosure that most clearly communicates the intention of a company's compensation committee in respect of the amount of compensation to be delivered through performance-based equity awards. In addition, disclosure that does not adjust for the likelihood of achieving targets would provide an incentive for compensation committees to set easier targets, in order to avoid the appearance (arising from larger amounts being reported in the Summary Compensation Table than would be likely to be actually paid) of excessive compensation. Finally, our suggested approach is consistent with the disclosure rules currently in effect for the Outstanding Equity Awards at Fiscal Year-End Table. Instruction 3 to the disclosure rules for that Table provides, generally, that threshold performance should be used for the purposes of disclosing year-end performance-based equity award values, unless the previous fiscal year's performance exceeded the threshold level of performance.[15]

Second, the Proposing Release also requests comment concerning the appropriate year for disclosure of equity compensation award amounts.[16] Specifically, the Proposing Release asks whether disclosure of an award should appear for the year in which the award is granted or for the year in which the services to which the award relates were performed. For example, it is common in certain industries for equity awards to be granted in the first quarter of each fiscal year in respect of services rendered by executives in the prior fiscal year. Currently, disclosure for equity awards is required to be made for the year in which the award is granted. By contrast, cash bonus compensation is required to be disclosed for the year in which the related services are rendered. The utility of the Summary Compensation Table disclosure would clearly be enhanced by adopting the service-related approach for equity awards, making that approach consistent with the one mandated for cash bonuses.

Third, the Proposing Release also states that the SEC has received a rulemaking petition requesting that the Summary Compensation Table disclosure approach for equity awards be revised to report the annual change in value of awards.[17] For "full value awards" (e.g., restricted stock, restricted stock units and performance shares), the amount reported would be based on the change in market value of the stock from year to year. For stock options, the amount reported would be based on the change in the in-the-money value (i.e., intrinsic value) of the awards over the same period. The Proposing Release seeks comments on the

[15] Instruction 3 to Item 402(d)(2) of Reg S-K.

[16] Proposing Release at p. 21.

[17] Proposing Release at p. 23.

approach described in the rulemaking petition. We believe that the approach is not sensible, insofar as it would result in the Summary Compensation Table including amounts that reflect, on the one hand, the value of compensation paid or awarded by a company in a given year and, on the other hand, the value of wealth accumulated by executives arising from compensation previously paid or awarded by a company in prior years, without distinguishing between the two very different categories.

C. Compensation Consultant Conflicts

1. Summary. Item 407 of Reg S-K currently requires disclosure of (i) the role of compensation consultants in determining or recommending the amount or form of executive compensation, (ii) whether the consultants were engaged directly by the compensation committee, (iii) a description of their role and (iv) material elements of the directions given to them with respect to the performance of such duties. In addition, Item 402(b) of Reg S-K requires, in the CD&A, a discussion of all material elements of the compensation of named executive officers, including, where material, the role of executive officers in determining executive compensation.

The Proposed Amendments would require additional disclosure in the event that, within the relevant fiscal year (i) a compensation consultant provides services to a company related to executive or director compensation[18] and (ii) the consultant or its affiliates provides additional services (e.g., benefits administration, human resources consulting, actuarial services or any other services not related to the recommendation or determination of executive or director compensation) to the company or any of its affiliates. Under such circumstances, the company would be obligated to disclose:

- the nature and extent of all services provided to the company or its affiliates by the compensation consultant or any of its affiliates;
- the aggregate fees paid for such additional services;
- the aggregate fees paid for work relating to executive or director compensation;
- whether engagement of the consultant or its affiliates for the additional services was made or influenced by management; and
- whether the board of directors or the compensation committee approved such additional services as well as those relating to executive compensation.

[18] No disclosure would be required pursuant to the Proposed Amendments if a compensation consultant's role with regard to executive compensation is limited solely to consulting with regard to non-discriminatory broad based plans, participation in which is generally open to all salaried employees.

2. Discussion. We question the utility of the additional proposed conflict of interest disclosure, and believe that the absence of a materiality condition in the proposed new disclosure requirement makes the requirement impractical from a compliance perspective – i.e., a disclosure trap even for the wary. Specifically, we note that corporate groups of any size with scattered employee populations are likely to solicit the advice and services of compensation consultants and related service providers on a routine and frequent basis. Many consultants and consulting firms are affiliated with other firms in ways that may not be obvious to their clients, including affiliation with businesses that provided services unrelated to compensation. Particularly for companies with non-U.S. employee populations, the risk of a failure to identify a discloseable relationship or payment, even for companies with very robust disclosure controls and procedures, seems unreasonably high. Therefore, in order to properly balance the concern that the Proposed Amendments are designed to address with the risks and the practical difficulties of compliance, particularly in light of the related disclosure requirements already in place (which are identified above), we believe at a minimum that the Proposed Amendments should be revised to add a materiality condition with a high bright-line threshold. We note the $120,000 per transaction materiality threshold under Item 404 of Reg S-K in respect of related party transactions, which we believe present a much clearer and more direct conflict of interest issue than the one that would be addressed by the Proposed Amendments. We believe that the materiality threshold in respect of the Proposed Amendments should therefore be a substantial multiple of the threshold under Item 404. We believe that disclosure under the Proposed Amendments should only be required if fees for additional services provided by a consultant or its affiliates to a company or its affiliates, considering each separate consulting assignment separately, at least meet the applicable threshold.

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Please contact any of the lawyers listed in the Corporate Governance or Employee Benefits section of our website (www.cgsh.com) or any of your other regular contacts at the firm for further information about the matters discussed above.

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Recent Legislative and Regulatory Proposals and Statements
Concerning Executive Compensation
As of July 23, 2009

TARP Measures

Bill / Amendment / Proposed Regulation	Sponsor	Date Introduced	Status	Key Provisions	Date Effective (If Passed)
H.R. 1: American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5)	Rep. David Obey	1/26/2009	In effect as of 2/17/2009.	Amends the Emergency Economic Stabilization Act of 2008 to direct the Secretary of the Treasury to require each entity receiving financial assistance under the Troubled Assets Relief Program (TARP) to meet certain standards for executive compensation and corporate governance during the period that it has a financial obligation to the federal government. These standards include: (1) limits on compensation that exclude incentives for senior executive officers of the TARP recipient to take unnecessary and excessive risks; (2) the recovery by the TARP recipient of any bonus, award, or compensation paid to a senior executive officer and any of the next 20 most highly-compensated employees based on statements of earnings, revenue, or other criteria that are later found to be materially inaccurate; (3) a prohibition against any TARP recipient making any "golden parachute" payment to a senior executive officer or any of the next five most highly-compensated employees; (4) a prohibition against any TARP recipient paying or accruing any bonus, award, or incentive compensation, except with respect to the payment of certain long-term restricted stock; (5) a prohibition against any compensation plan that would encourage the manipulation of reported earnings; and (6) the establishment of a Board Compensation Committee. This legislation mandates that the board of directors of each TARP recipient be comprised entirely of independent directors, and that the TARP recipient establishes a company-wide policy limiting excessive or luxury expenditures (e.g. entertainment or events; office and facility renovations; and aviation or other transportation services.). TARP recipients are also required to receive annual shareholder approval of their executive compensation programs. Finally, it directs the Treasury Secretary to review and, if necessary, take appropriate action with respect to, compensation paid to the senior executive officers and the next 20 most highly-compensated employees of each TARP recipient prior to the enactment of this Act.	Applies to companies during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding.
Treasury Guidelines: New Restrictions on Executive Compensation	Treasury Department	2/4/2009	In effect as of 2/4/2009.	Provides guidelines on executive compensation for financial institutions that are receiving government assistance in response to the economic crisis. The measures seek to align the compensation of executives with the interests of the companies, the shareholders, and the taxpayers who are providing assistance to these institutions. Among the measures that companies receiving exceptional financial recovery assistance under these guidelines must comply with include: • Limiting Senior Executives to $500,000 in Total Annual Compensation – Other than Restricted Stock • Fully Disclosing Executive Compensation Structure and Strategy, and Subjecting it to a "Say on Pay" Shareholder Resolution • Requiring Provisions to Clawback Bonuses for Top Executives Engaging in Deceptive Practices • Increasing Ban on Golden Parachutes for Senior Executives • Requiring the Board of Directors' to Adopt a Company Policy Relating to Approval of Luxury Expenditures	2/4/2009

Recent Legislative and Regulatory Proposals and Statements Concerning Executive Compensation
As of July 23, 2009

TARP Measures

Bill / Amendment / Proposed Regulation	Sponsor	Date Introduced	Status	Key Provisions	Date Effective (If Passed)
S. 0431: Economic Recovery Adjustment Act of 2009	Sen. Sheldon Whitehouse	2/12/2009	Referred to the Committee on Banking, Housing, and Urban Affairs on 2/12/2009.	This legislation would establish the Office of the Taxpayer Advocate within the Department of Justice, whose responsibility it would be to conduct audits and oversee the compensation of the officers and directors of institutions receiving financial assistance under the Troubled Asset Relief Program (TARP). It also would authorize the Advocate to aid the Secretary of the Treasury in the negotiation of TARP assistance in order to: (1) assure that fair and reasonable executive compensation is paid by entities receiving TARP funds; and (2) defend such agreements in the event of any challenge to the adjustments to compensation obligations.	Effective upon enactment.
"AIG Bonus Legislation" I. H.R. 1586 II. S. 651: Compensation Fairness Act of 2009 III. H.R. 1575: End Government Reimbursement of Excessive Executive Disbursements (End GREED) Act'	I. Rep. Charles Rangel II. Sen. Max Baucus III. Rep. John Conyers	I. 3/19/2009 II. 3/19/2009 III. 3/17/2009	None of the bills were signed into law.	I. H.R. 1586 was introduced in and approved by the House on March 19, 2009, several days after the announcement of bonuses paid to executives of the financial products division of AIG. It would have imposed income tax on bonuses paid on or after January 1, 2009 to employees or former employees of covered TARP recipients at a rate of 90% of the lesser of: (1) the bonus amounts paid to such individual or (2) the amount of the individual's adjusted gross income exceeding $250,000 ($125,000 in the case of a married individual filing a separate return). This tax would have been imposed in lieu of ordinary income tax on the bonus. II. S. 651 would have amended the Internal Revenue Code to impose an excise tax on excessive bonuses paid by federal emergency economic assistance recipients to their employees (including directors or officers). It also would have set the overall rate of such tax at 70% of the amount of such bonuses, 35% payable by federal emergency economic assistance recipients and 35% payable by the employees of such recipients, and exempts bonus recipients who repay bonus amounts to the federal government. III. HR 1575 would have authorized the Attorney General, after consultation with Treasury, to review (1) any employment contract made by a "recipient entity" and (2) any payment made on or after September 1, 2008 by a recipient entity to an employee.	N/A
H.R. 1664: Grayson-Himes Pay for Performance Act of 2009	Rep. Alan Grayson	3/23/2009	Passed by the House. Placed on Calendar in Senate on 4/23/2009.	Would amend the Emergency Economic Stabilization Act of 2008 (EESA) to prohibit a financial institution that receives or has received a direct capital investment under the Troubled Asset Relief Program (TARP) from making a compensation payment (other than a longevity bonus or a payment in the form of restricted stock) to an executive or employee under a preexisting compensation arrangement, or from entering into a new compensation payment arrangement, while that capital investment remains outstanding, if such compensation: (1) is unreasonable or excessive according to standards established by the Secretary of the Treasury in consultation with the Chairperson of the Congressional Oversight Panel; or (2) includes any bonus or other supplemental payment, whether payable before employment, during employment, or after termination of employment, that is not directly based upon such standards. This legislation would also establish the Commission on Executive Compensation, which would be responsible for conducting a study on the executive compensation system for recipients of a direct capital investment under the TARP. The findings of this study would then be reported to the President and Congress, along with a list of recommendations for executive and Congressional action.	Effective upon enactment

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TARP Measures

Bill / Amendment / Proposed Regulation	Sponsor	Date Introduced	Status	Key Provisions	Date Effective (If Passed)
S. 0928: TARP Accountability Act of 2009	Sen. Mark Pryor	4/29/2009	Referred to the Committee on Banking, Housing, and Urban Affairs on 4/29/2009.	Would amend the Emergency Economic Stabilization Act of 2008 to require that the monthly reports, which TARP recipients must submit to Secretary of the Treasury, include detailed information on the use of capital investments by each financial institution. Additionally, these reports would have to indicate compliance by the TARP recipient with the restrictions on dividends, stock repurchases, and executive compensation under the Security Purchase Agreement and executive compensation guidelines of the Department of Treasury.	Effective upon enactment.
SEC Release No. 34-60218: Shareholder Approval of Executive Compensation of TARP Recipients	SEC	7/8/2009	Comment period will last until September 8, 2009.	Proposed amendments to the proxy rules under the Securities Exchange Act of 1934 to set forth certain requirements for U.S. registrants subject to Section 111(e) of the Emergency Economic Stabilization Act of 2008. Section 111(e) of the Emergency Economic Stabilization Act of 2008 requires companies that have received financial assistance under the Troubled Asset Relief Program ("TARP") to permit a separate shareholder advisory vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission, during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding. The proposal would require the filing of preliminary proxy statements.	Applies to all TARP recipients in the programs under the TARP, subject to certain exceptions for TARP recipients that do not hold outstanding obligations.

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Concerning Executive Compensation
As of July 23, 2009

Non-TARP Measures

Bill / Amendment / Proposed Regulation	Sponsor	Date Introduced	Status	Key Provisions	Date Effective (If Passed)
S. 1006: Excessive Pay Shareholder Approval Act	Sen. Richard Durbin	5/7/2009	Referred to the Committee on Banking, Housing, and Urban Affairs on 5/7/2009.	Would amend the Securities Exchange Act of 1934 to prohibit the compensation for an employee of an issuer of securities in any single taxable year from exceeding 100 times the average compensation for services performed by all the issuer's employees during that taxable year. Higher compensation would only be permitted if at least 60% of the shareholders have voted to approve it (through a proxy or consent or authorization for an annual or other meeting of the shareholders, occurring within the preceding 18 months).	Effective upon enactment.
S. 1074: Shareholder Bill of Rights Act of 2009	Sen. Charles Schumer	5/19/2009	Referred to the Committee on Banking, Housing, and Urban Affairs on 5/19/2009.	Would amend the Securities Exchange Act of 1934 to require any proxy or consent or authorization for an annual or other meeting of the shareholders include a separate resolution for a shareholder vote to approve the compensation of executives. Would require any person making a proxy solicitation concerning a transaction (e.g. acquisition, merger, consolidation, or proposed sale or other disposition of substantially all of the assets of an issuer) to clearly disclose in the proxy solicitation material agreements with the issuer's principal executive officers concerning any type of compensation based on or otherwise related to that transaction (e.g. golden parachute payments). Furthermore, any golden parachute payments would be subject to a separate shareholder vote to approve it within the proxy solicitation material. This legislation would also direct the SEC to establish rules regarding the nomination process of individuals to membership on the issuer's board of directors. Finally, it would require the SEC to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with any specified requirements pertaining to director independence, mandatory annual elections, SEC rules on elections, and mandatory establishment of a risk committee to establish and evaluate the issuer's risk management practices.	Effective upon enactment. Applies to proxy voting for meetings held on or after 1/1/2010.
H.R. 2861: Shareholder Empowerment Act of 2009	Rep. Gary C. Peters	6/12/2009	Referred to the House Committee on Financial Services on 6/12/2009.	Would amend the Securities Exchange Act of 1934 to provide for rules and standards relating to the election of boards of directors and certain requirements relating to compensation of executives including: • Shareholder Approval of Executive Compensation • Independent Compensation Advisers • Clawbacks of Unearned Performance-Based Pay • Severance Agreements Tied to Performance • Improved Disclosure of Compensation Targets	Effective upon enactment. Applies to proxy voting for meetings held on or after 1/1/2010.

Recent Legislative and Regulatory Proposals and Statements Concerning Executive Compensation
As of July 23, 2009

Non-TARP Measures

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Treasury Regulations: TARP Standards For Compensation and Corporate Governance	Treasury Department	6/15/2009	In effect as of 6/15/2009.	These interim final rules provide guidance on the executive compensation and corporate governance provisions of EESA that apply to entities receiving TARP financial assistance. Among its requirements are (1) limits on compensation that exclude incentives for senior executive officers (SEOs) to take unnecessary and excessive risks that threaten the value of the TARP recipient; (2) a provision for the recovery of any bonus, retention award, or incentive compensation paid to a SEO or the next twenty most highly compensated employees based on materially inaccurate statements of earnings, revenues, gains, or other criteria; (3) a prohibition on making any golden parachute payment to a SEO or any of the next five most highly compensated employees; (4) a prohibition on the payment or accrual of bonus, retention award, or incentive compensation to SEOs or certain highly compensated employees, subject to certain exceptions for payments made in the form of restricted stock; (5) a prohibition on employee compensation plans that would encourage manipulation of earnings reported by the TARP recipient to enhance an employee's compensation; (6) the establishment of a compensation committee of independent directors to meet semi-annually to review employee compensation plans and the risks posed by these plans to the TARP recipient; (7) the adoption of an excessive or luxury expenditures policy; (8) the disclosure of perquisites offered to SEOs and certain highly compensated employees; (9) the disclosure related to compensation consultant engagement; (10) a prohibition on tax gross-ups to SEOs and certain highly compensated employees; (11) compliance with federal securities rules and regulations regarding the submission of a non-binding resolution on SEO compensation to shareholders; and (12) the establishment of the Office of the Special Master for TARP Executive Compensation (Special Master) to address the application of these rules to TARP recipients and their employees. Among the duties and responsibilities of the Special Master with respect to TARP recipients of exceptional assistance is to review and approve compensation payments and compensation structures applicable to the SEOs and certain highly compensated employees, and to review and approve compensation structures applicable to certain additional highly compensated employees. TARP recipients that are not receiving exceptional assistance may apply to the Special Master for an advisory opinion with respect to compensation payments and structures.	In effect as of 6/15/2009.
H.R. 3126: Consumer Financial Protection Agency Act of 2009	Rep. Barney Frank	7/8/2009	Referred to the Referred to House Energy and Commerce Committee on 7/8/2009.	The executive compensation provisions of this legislation includes: authorization by the newly-formed Consumer Financial Protection Agency to prescribe regulations establishing duties regarding compensation practices applicable to a covered person, employee, agent, or independent contractor who deals or communicates directly with a consumer in the provision of a consumer financial product or service. However, the Agency would not be permitted to prescribe a specific limit on the total dollar amount of compensation paid to any person.	Effective upon enactment.
Investor Protection Act of 2009	Treasury Department	7/16/2009	Introduced by the Treasury Department.	Draft "say-on-pay" legislative language sent to Congress that would require all publicly traded companies to give shareholders a non-binding vote on executive compensation packages. Also, it would seek to ensure the independence of compensation committees by requiring members of the compensation committee meet exacting new standards for independence, just as Sarbanes-Oxley did for members of audit committees. For instance, it would require that any compensation consultants and legal counsel the compensation committee hires is independent from management.	Effective upon enactment.

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H.R. 3269: Corporate & Financial Institution Compensation Fairness Act of 2009	Rep. Barney Frank	7/17/2009	Bill mark-up in the House Committee on Financial Services scheduled for 7/28/2009.	**HOUSE VERSION of the Treasury proposal above.** Would require an annual say-on-pay vote for all public companies. Would adopt an independent compensation committee requirement. Would set specific compensation standards for financial institutions (such as requiring federal regulators to proscribe inappropriate or imprudently risky compensation practices as part of solvency regulation). Would also require all "financial institutions" to disclose compensation structures that include any incentive-based elements.	Effective upon enactment.
SEC Release No. 33-9052: Proxy Disclosure and Solicitation Enhancements	SEC	7/17/2009	Comment period will last until 9/15/2009.	These are proposed amendments to rules enhancing the compensation and corporate governance disclosures that registrants are required to make about their overall compensation policies and their impact on risk taking; stock and option awards of executives and directors; director and nominee qualifications and legal proceedings; company leadership structure; the board's role in the risk management process; and potential conflicts of interest of compensation consultants that advise companies. The proposed amendments would be applicable to proxy and information statements, annual reports and registration statements under the Securities Exchange Act of 1934, and registration statements under the Securities Act of 1933 as well as the Investment Company Act of 1940. Amendments are also proposed to transfer from Forms 10–Q and 10–K to Form 8–K the requirement to disclose shareholder voting results.	Applies to proxy voting for meetings held on or after 1/1/2010.
S. 1491: Ending Excessive Corporate Deductions for Stock Options Act	Sens. Carl Levin and John McCain	7/22/2009	Referred to the Senate Committee on Finance on 7/22/2009.	Would amend the Internal Revenue Code of 1986 by prohibiting corporations from taking tax deductions for stock option compensation greater than the stock option book expenses shown on their financial statements. The legislation is in response to the "mismatch" between the treatment of stock options on companies' books and their treatment for tax purposes.	The legislation would apply to stock options exercised or granted after the date of the enactment.