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CLIENT UPDATE

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Peggy focuses her practice in the area of corporate and securities law with extensive experience in organization, acquisitions, sales, mergers, recapitalizations and other reorganizations of both publicly and privately-held corporations, partnerships and limited liabilities companies, and in personal and business tax planning. She has extensive experience in handling equity and debt securities offerings, both fully registered public offerings and exempt private placements and venture capital financings, ongoing SEC regulatory compliance and reporting, and investment company, investment adviser and broker-dealer registration and regulation.

U.S. DEPARTMENT OF THE TREASURY ISSUES STATEMENTS ON EXECUTIVE COMPENSATION

In a speech on June 10, 2009, Secretary of the U.S. Department of the Treasury Timothy Geithner announced a set of principles designed to guide the future of executive compensation. The announcement was framed as a set of "standards that reward innovation and prudent risk-taking, without creating misaligned incentives." These principles are not specific to recipients of federal aid under the Troubled Asset Relief Program, but are intended to apply to all public companies. The following summarizes the five principles outlined by Geithner:

Compensation plans should properly measure and reward performance.

Compensation should be based upon performance metrics that support long-term value creation and that do not reward performance that is subpar relative to its peers. Generally, performance-based pay should be conditioned on a wide range of internal and external metrics and not just stock price.

Compensation should be structured to account for the time horizon of risks.

Compensation packages of top executives should be tightly aligned with the long-term value and soundness of the company. Directors and experts should be given the flexibility to determine how best to align incentives in different industries; however, the most effective means of doing this may be to ask executives to hold stock for a longer period of time.

Compensation practices should be aligned with sound risk management.

Compensation committees should conduct and publish risk assessments of pay packages to ensure pay packages do not encourage excessive or imprudent risk-taking. Likewise, risk managers should be provided with the tools and authority needed to improve their ability to manage the complex relationship between compensation incentives and risk-taking.

Golden parachutes and supplemental retirement packages should be re-examined.

Companies should re-evaluate golden parachutes to determine whether these compensation tools provide incentives to perform or whether they reward executives even if the company's shareholders lose value.

Transparency and accountability in the compensation process should be promoted.

Compensation committees should be sufficiently independent of management and companies must be transparent in explaining their compensation packages to shareholders.

For the time being these principles are not legal requirements or regulations; they are simply proposed compensation practices supported by the Treasury. In order to advance the principles listed above, the Treasury intends to work with Congress to pass legislation in two specific areas. First, the Treasury will propose "say on pay" legislation giving the SEC the authority to require companies to give shareholders the right to: (i) cast a non-binding annual vote on executive compensation packages; (ii) vote on annual compensation for the top five executives; and (iii) cast a non-binding vote on any golden parachute compensation. Second, the Treasury will propose legislation giving the SEC the power to ensure compensation committees are independent of company management and adhere to standards similar to those in place for audit committees under the Sarbanes-Oxley Act. Similarly, compensation committees would be given the responsibility and resources to hire their own independent compensation consultants and outside counsel.

In conjunction with Secretary Geithner's speech, the Treasury issued two "fact sheets," intended to provide more information on the upcoming legislation. The fact sheet outlining the "say on pay" legislation is available at: http://www.treas.gov/press/releases/reports/fact_sheet_say%20on%20pay.pdf, and the fact sheet outlining the legislation providing compensation committees with greater independence is available at: http://www.treas.gov/press/releases/reports/fact_sheet_indepcompcmte.pdf. The principles announced by the Treasury should serve to focus companies on these areas of compensation as likely targets for rulemaking in the future.

If you would like to discuss the proposed legislation and whether and how it would affect your company, or would like us to monitor the developments in this area on your behalf, please contact any member of the Securities Practice Group.

If you have any additional questions regarding this Update or have any other Securities Law needs, please contact any member of the Securities Law Group.

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