

**Corporate Governance and Executive Compensation Requirements within
The Dodd-Frank Wall Street Reform and Consumer Protection Act
P.L. No. 111-203¹**

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173enr.txt.pdf

Title I – Financial Stability

Subtitle C – Additional Board of Governors Authority for Certain Nonbank Financial Companies and Bank Holding Companies

- **Sec. 165 – Enhanced supervision and prudential standards for nonbank financial companies supervised by the Board of Governors and certain bank holding companies** – Requires the following firms to establish risk committees:
 - Nonbank financial companies governed by the Federal Reserve
 - Bank holding companies with assets of \$10 billion or more
 - Bank holding companies with assets less than \$10 billion as the Federal Reserve sees fit

This committee is tasked with the responsibility of overseeing the company's risk management practices. The risk committee will must include

- As many independent directors as the Federal Reserve deems appropriate
- An expert with experience in addressing risk exposure for large, complex firms

Title IX – Investor Protections and Improvements to the Regulation of Securities

Subtitle E – Accountability and Executive Compensation

- **Sec. 951 – Shareholder vote on executive compensation disclosures** - Addition to Securities Exchange Act of 1934 section 14A. -
 - a – Requires a non-binding resolution subject to shareholder vote on executive compensation be included every one to three years in any proxy materials required by the Securities and Exchange Commission (SEC) to include executive compensation disclosure. Frequency of the vote must be determined by a separate vote every six years beginning six months after the signing of this law.

¹ Signed into law by President Obama July 21, 2010

- b – Requires any proxy or consent solicitation materials for a meeting seeking shareholder approval for any transaction which affects all or nearly all of the company's assets to include:
 - Clear and simple disclosure of any executive compensation related to the transaction
 - The aggregate total of potential executive compensation
 - A separate nonbinding shareholder resolution approving those compensation agreements
- **Sec. 952 - Compensation committee independence** – Requires that the compensation committees of any issuer listed on the national securities exchanges or associations be independent. In determining independence, the exchanges and associations will consider
 - The source of committee member compensation, including consulting, advisory, or other fees
 - Whether the member is affiliated with or is a subsidiary or affiliate of the company

The committee will have sole discretion to hire compensation consultants, advisers, and legal counsel, but must do so based on factors forthcoming in rules by the SEC. Companies will appropriately fund these staffing needs.

- **Sec. 953 – Executive compensation disclosures** – Requires the SEC to adopt rules which will require companies to disclose in any proxy statement
 - A clear description of compensation and its relationship to the financial performance of the company, considering the value of shares of stock and dividends
 - The median annual compensation of all employees save for the CEO, the annual compensation of the CEO, and the ratio of the two
- **Sec. 954 – Recovery of erroneously awarded compensation** – Requires the SEC to instruct the national securities exchanges and associations to require companies to
 - Disclose the company's policy on incentive-based compensation based on reported financial information
 - Enforce a policy requiring the recovery of any incentive-based compensation paid during the three years preceding an accounting restatement due to the company's material noncompliance with any securities laws' financial reporting requirements
- **Sec. 955 – Disclosure regarding employee and director hedging** – Requires the SEC to implement rules requiring companies to disclose in proxy statement whether any employee or board member is permitted to purchase financial instruments designed to hedge or offset a decrease in the market value of the company's securities given to that individual as compensation or generally held by that individual

- **Sec. 956 – Enhanced compensation structure reporting** – Requires the appropriate regulators to issue regulations within nine months
 - Requiring various financial institutions to disclose their incentive-based compensation structure to determine if that compensation is excessive or could cause the institution significant financial loss
 - Prohibiting incentive-based compensation which could encourage inappropriate risk

- **Sec. 957 – Voting by brokers** – Requires the SEC to instruct the national securities exchanges to forbid proxy voting on board member selection, executive compensation, or other significant matters by a broker who is not the owner of a security, unless the owner has instructed the broker on how to vote

Subtitle G – Strengthening Corporate Governance

- **Sec. 971 – Proxy access** – Amends the Securities Exchange Act of 1934 to allow the SEC to issue rules to require that a solicitation of proxy, consent, or authorization by a company include a nominee put forward by a shareholder to serve on the board

- **Sec. 972 – Disclosures regarding chairman and CEO structures** – Adds to the Securities Exchange Act of 1934 section 14(B), "Corporate Governance," which requires a rule within 180 days of the signing of this law that requires a company to disclose in the annual investor proxy the reason the company
 - Chose the same person as chairman of the board of directors and chief executive officer
 - Chose different individuals to fill those roles

Tibor D. Klopfer
 Baker & Daniels LLP
 300 N. Meridian St., Suite 2700
 Indianapolis, IN 46204

Phone: 317.237.1133
 Fax: 317.237.8433
 E-mail: tibor.klopfer@bakerd.com
 www.bakerdaniels.com