

September 2, 2014

White Collar Roundup - September 2014

compensation committee charters to address the new standard; review current compensation committee members to determine whether they meet the heightened standard; assess the engagement of consultants, counsel and advisors; and draft disclosure for their proxy statement to address any conflicts of interest with respect to consultants and advisors.

Additional Executive Compensation Disclosures

Three additional compensation disclosures will be required by public companies once the SEC issues rules pursuant to its directives under the Dodd-Frank Act (see Day Pitney alert titled "New Executive Compensation Disclosures Under Dodd-Frank" dated August 2, 2010 [\[click here\]](#)).

Pay versus Performance:

In future proxy statements, public companies will be required to disclose the relationship between compensation actually paid and a company's financial performance, taking into account any change in the value of shares of stock and dividends of the issuer and any distributions (a graphical representation may be included).

Pay Ratio:

In addition, public companies will be required to disclose the following in their annual report or proxy statement (total compensation is to be determined in same manner as the Summary Compensation Table):

- (i) the median of the annual total compensation of all employees (except the chief executive officer);
- (ii) the chief executive officer's annual compensation; and
- (iii) the ratio between the two.

Effective Date:

The Dodd-Frank Act does not specify a deadline as to when the SEC is required to issue these rules relating to compensation; however, the SEC plans to propose rules between April and July 2011. Companies should assess how executive compensation will measure up to performance and decide on the method to be used to calculate the pay of all employees.

Clawbacks

The Dodd-Frank Act requires the SEC and the stock exchanges to issue rules requiring listed companies to implement a clawback policy providing for:

- (i) disclosure of the company's policy on incentive-based compensation that is based on financial information required to be reported under the securities laws; and

(ii) reimbursement to the company from a current or former executive for any excess incentive-based compensation (including stock options) paid during a three-year period preceding a restatement of the company's financials. This applies regardless of whether or not the error was a result of the officer's misconduct.

The Dodd-Frank Act does not specify a deadline as to when the SEC is required to issue these rules relating to clawback of compensation; however, the SEC plans to propose rules between April and July 2011. These provisions extend the Sarbanes-Oxley clawback provision, which applies only to a company's chief execut