The pace of legislation and administrative and executive activity designed to reform the corporate governance landscape has been dizzying. However, those in the driver’s seat, including the United States Congress, Securities and Exchange Commission (the “SEC”) and Treasury Department, expect public companies to be prepared when the reforms become effective. In order to assist those who will be impacted by pending and recently adopted reforms, including our clients, the McGuireWoods LLP Corporate Governance team has created the chart below, which provides information on pending federal legislation, selected state statutes and proposed and recently adopted rules of the SEC; legislative sponsors; the governance areas impacted by the legislation, statutes and rules and the status of these reforms.

The chart is organized into the three areas impacted most significantly by the reforms: executive compensation, boards of directors and proxy access. Within these broader categories, the chart is further divided by subtopics such as golden parachutes, compensation consultant independence, board declassification and shareholder nominations.
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Pending Federal Legislation

H.R. 2861 — Shareholder Empowerment Act of 2009 (Representative Peters)
H.R. 3269 — Corporate and Financial Institution Compensation Fairness Act of 2009 (Representative Frank)
H.R. 3272 — Corporate Governance Reform Act of 2009 (Representative Ellison)
H.R. 3351 — Proxy Voting Transparency Act of 2009 (Representative Kilroy)
H.R. 4173 — The Wall Street Reform and Consumer Protection Act of 2009 (Representative Frank)
S. 1006 — Excessive Pay Shareholder Approval Act (Senator Durbin)
S. 1074 — Shareholder Bill of Rights Act of 2009 (Senator Schumer)
S. 3049 — Corporate Executive Accountability Act of 2010 (Senator Menendez)
Restoring American Financial Stability Act of 2010 (Senator Dodd)
Investor Protection Act of 2009 (Treasury Department)

Proposed SEC Rules

Facilitating Director Shareholder Nominations (Release No. 33-9046)

Adopted SEC Rules

Proxy Disclosure Enhancements (Release No. 33-9089)
Proxy Disclosure Enhancements; Correction (Release No. 33-9089A) (technical corrections to amendments to Forms 10-K, 10-Q and 8-K)
Staff Legal Bulletin No. 14E (Shareholder Proposals) (October 27, 2009)
## Executive Compensation

### SAY-ON-PAY

<table>
<thead>
<tr>
<th>Bill/Rule</th>
<th>Proposed Amendment</th>
<th>Status</th>
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</table>
  - Nonbinding vote by shareholders to approve the compensation of named executive officers disclosed in the proxy statement (includes compensation committee report, CD&A, compensation tables and related materials).  
  - Will not restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation. | Passed by House. In Senate committee.       |
| New Section 14(i)(1) of Exchange Act                                      |                                                                                                                                                                                                                  |                                             |
| Shareholder Bill of Rights Act of 2009 (Senator Schumer)                 | Annual Shareholder Approval of Executive Compensation —  
  - Proxy materials must include a resolution subject to a nonbinding shareholder vote to approve the compensation of executives as disclosed in the proxy statement (includes the CD&A, compensation tables and related materials).  
  - Will not restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation. | In Senate committee.                        |
| New Section 14A(a) of Exchange Act                                        |                                                                                                                                                                                                                  |                                             |
| Shareholder Empowerment Act of 2009 (Representative Peters)              | Annual Shareholder Approval of Executive Compensation —  
  - Nonbinding vote by shareholders to approve the compensation of senior executive officers as disclosed in the proxy statement (includes the CD&A, compensation tables and related materials).  
  - Will not restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation. | In House committee.                         |
| New Section 16B of Exchange Act                                           |                                                                                                                                                                                                                  |                                             |
| Investor Protection Act of 2009 (Treasury Department) | Annual Shareholder Approval of Executive Compensation —  
- Nonbinding vote by shareholders to approve the compensation of named executive officers disclosed in the proxy statement (includes compensation committee report, CD&A, compensation tables and related materials).  
- Will not restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation. | Draft legislation released. |
|---|---|---|
| Corporate Governance Reform Act of 2009 (Representative Ellison) | Annual Shareholder Approval on Executive Compensation —  
- Nonbinding vote by shareholders to approve the compensation of executives disclosed in the proxy statement (includes CD&A, compensation tables and related materials).  
- Will not restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation. | In House Committee. |
| Proxy Voting Transparency Act of 2009 (Representative Kilroy) | Annual Shareholder Approval on Executive Compensation —  
- Nonbinding vote by shareholders to approve the compensation of executives disclosed in the proxy statement (includes compensation committee report, CD&A, compensation tables and related materials).  
- Will not restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation. | In House Committee. |
| Excessive Pay Shareholder Approval Act (Senator Durbin) | Annual Shareholder Approval of Executive Compensation —  
- The compensation for an employee in any single taxable year may not exceed an amount equal to 100 times the average compensation for services performed by all employees of an issuer during such taxable year, unless not fewer than 60% of the shareholders have voted to approve such compensation.  
- Proxy materials for a shareholder vote required above shall include:  
  - the amount of compensation paid to the lowest paid employee,  
  - the amount of compensation paid to the highest paid employee,  
  - the average amount of compensation paid to all employees,  
  - the number of employees of the issuer who are paid more than 100 times the average amount of compensation for all employees, and  
  - the total amount of compensation paid to employees who are paid more than 100 times the average amount of compensation for all employees. | In Senate Committee. |
<table>
<thead>
<tr>
<th>Bill/Rule</th>
<th>Proposed Amendment</th>
<th>Status</th>
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<tbody>
<tr>
<td>New Section 14A of Exchange Act</td>
<td>• Nonbinding vote by shareholders to approve the compensation of executives disclosed in the proxy statement.</td>
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<td></td>
<td>• Will not restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.</td>
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<tr>
<td>Corporate Executive Accountability Act of 2010 (Senator Menendez)</td>
<td>Annual Shareholder Approval of Executive Compensation —</td>
<td>In Senate Committee.</td>
</tr>
<tr>
<td>New Section 14(i)(1) of Exchange Act</td>
<td>• Nonbinding vote by shareholders to approve the compensation of executives disclosed in the proxy statement (includes compensation committee report, CD&amp;A, compensation tables and related materials).</td>
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<tr>
<td></td>
<td>• Will not be construed as overruling a decision by the board and will not create or imply any fiduciary duty by the board.</td>
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<tr>
<td></td>
<td>• Will not restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.</td>
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**GOLDEN PARACHUTES**

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<thead>
<tr>
<th>Bill/Rule</th>
<th>Proposed Amendment</th>
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<tbody>
<tr>
<td>New Section 14(i)(2) of Exchange Act</td>
<td>• When shareholders are asked to approve an acquisition, merger, consolidation or proposed sale or other disposition or all or substantially all the assets of an issuer, the person making the solicitation must disclose in the proxy materials any agreements or understandings that such person has with any named executive officers concerning any type of compensation that is based on or otherwise relates to the acquisition, merger, etc. that may be paid to or on behalf of the named executive officer.</td>
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</tr>
<tr>
<td></td>
<td>• Nonbinding vote by shareholders to approve such agreements or understandings and compensation disclosed in the proxy materials.</td>
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</tbody>
</table>
| Shareholder Bill of Rights Act of 2009 (Senator Schumer) | Shareholder Approval of Golden Parachute Compensation —  
- When shareholders are asked to approve an acquisition, merger, consolidation or proposed sale or other disposition or all or substantially all the assets of an issuer, the person making the solicitation must disclose in the proxy materials any agreements or understandings that such person has with any principal executive officers concerning any type of compensation that is based on or otherwise relates to the acquisition, merger, etc.  
- Nonbinding vote by shareholders to approve such agreements or understandings. | In Senate committee. |
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<tbody>
<tr>
<td>New Section 14A(b) of Exchange Act</td>
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</table>
| Investor Protection Act of 2009 (Treasury Department) | Shareholder Approval of Golden Parachute Compensation —  
- When shareholders are asked to approve an acquisition, merger, consolidation or proposed sale or other disposition or all or substantially all the assets of an issuer, the person making the solicitation must disclose in the proxy materials any agreements or understandings that such person has with any named executive officers concerning any type of compensation that is based on or otherwise relates to the acquisition, merger, etc. that may be paid to or on behalf of the named executive officer.  
- Nonbinding vote by shareholders to approve such agreements or understandings and compensation disclosed in the proxy materials. | Draft legislation released. |
| New Section 14(i)(2) of Exchange Act | | |
| Proxy Voting Transparency Act of 2009 (Representative Kilroy) | Shareholder Approval of Golden Parachute Compensation —  
- When shareholders are asked to approve an acquisition, merger, consolidation, proposed sale or other disposition of all or substantially all of the assets of an issuer, the person making the solicitation must disclose in the proxy materials, in tabular form, any agreements or understandings that such person has with any principal executive officers concerning any type of compensation that is based on or otherwise relates to the acquisition, merger, etc. that may be paid or become payable to or on behalf of such executive officer.  
- Nonbinding vote by shareholders to approve such agreements or understanding and compensation disclosed in the proxy materials. | In House Committee, |
| New Section 14(i)(1) of Exchange Act | | |
| Corporate Executive Accountability Act of 2010 (Senator Menendez) | New Section 14(i)(2) of Exchange Act | Shareholder Approval of Golden Parachute Compensation —  
- When shareholders are asked to approve an acquisition, merger, consolidation, proposed sale or other disposition of all or substantially all of the assets of an issuer, the person making the solicitation must disclose in the proxy materials, in clear and simple form, any agreements or understandings that such person has with any named executive officers concerning any type of compensation that is based on or otherwise relates to the acquisition, merger, etc. and the aggregate total of all such compensation that may be paid or become payable to or on behalf of such executive officer.  
- Nonbinding vote by shareholders will not be construed as overruling a decision by the person and will not create or imply any additional fiduciary duty by any such person. | In Senate Committee. |

### COMPENSATION COMMITTEE INDEPENDENCE

<table>
<thead>
<tr>
<th>Bill/Rule</th>
<th>Proposed Amendment</th>
<th>Status</th>
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</table>
- Each member of the compensation committee of the board of directors must be independent.  
- In order to be considered independent, a compensation committee member may not, other than in his capacity as a member of the compensation committee, the board of directors or any other board committee, accept any consulting, advisory or other compensatory fee. | Passed by House. In Senate committee. |
| Investor Protection Act of 2009 (Treasury Department) New Section 10B(b) of Exchange Act | Independence of Compensation Committees —  
- Each member of the compensation committee of the board of directors must be a member of the board of directors and must otherwise be independent.  
- In order to be considered independent, a compensation committee member may not, other than in his capacity as a member of the compensation committee, the board of directors or any other board committee, accept any consulting, advisory or other compensatory fee or be an affiliated person of the issuer or any subsidiary. | Draft legislation released. |
| Corporate Governance Reform Act of 2009 (Representative Ellison) | Compensation Committee Independence Required —  
- Each member of the compensation committee must be independent. | In House Committee. |
<table>
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<th></th>
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<tbody>
<tr>
<td>New Section 10D of Exchange Act</td>
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</table>
| Restoring American Financial Stability Act of 2010 (Senator Dodd) | Independence of Compensation Committees —  
- Each member of the compensation committee must be a member of the board of directors and independent.  
- In determining what is “independent,” national securities exchanges must consider relevant factors, including:  
  o the source of compensation of a member of the board of directors, including any consulting, advisory, or other compensatory fee paid by the issuer to such member of the board of directors and  
  o whether a member of the board of directors is affiliated with the issuer, a subsidiary of the issuer or an affiliate of a subsidiary of the issuer. | Draft Bill released. |
| New Section 10C(a) of Exchange Act                             |                                                                                  |                     |

## INDEPENDENT COMPENSATION CONSULTANTS

<table>
<thead>
<tr>
<th>Bill/Rule</th>
<th>Proposed Amendment</th>
<th>Status</th>
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</table>
| The Wall Street Reform and Consumer Protection Act of 2009 / Corporate and Financial Institution Compensation and Fairness Act of 2009 (Representative Frank) | Independence Standards for Compensation Consultants and Other Committee Advisors —  
- Any compensation consultant or other similar advisor to the compensation committee must meet standards for independence established by the SEC. | Passed by House. In Senate committee. |
<table>
<thead>
<tr>
<th>Shareholder Empowerment Act of 2009 (Representative Peters)</th>
<th>New Section 16B(b) of Exchange Act</th>
<th>In House committee.</th>
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</thead>
<tbody>
<tr>
<td>Independent Compensation Advisors —</td>
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<tr>
<td>• In an issuer’s board or directors or a committee retains an individual advisor or advisory firm in conjunction with negotiating employment contracts or compensation agreements with the issuer’s executives, the individual advisor and his firm must be independent of the issuer, its executives and directors.</td>
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<tr>
<td>• The individual advisor and his firm will report solely to the board or directors of committee responsible for executive compensation.</td>
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<tr>
<td>• In determining the extent to which an advisor or advisory firm is independent, the SEC will consider such matters as</td>
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<tr>
<td>o the extent to which an individual advisor or advisory firm provides services in conjunction with negotiating employment contracts or compensation agreements as compared to other services that the advisor or advisory firm provides to the issuers or executives;</td>
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<tr>
<td>o whether individual advisors are permitted to hold equity and do hold equity in the issuer; and</td>
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<tr>
<td>o whether an advisory firm’s incentive compensation plan links the compensation of individual advisors to the advisory firm’s provision of other services to the issuer.</td>
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<tr>
<td>Investor Protection Act of 2009 (Treasury Department)</td>
<td>New Section 10B(c) of Exchange Act</td>
<td>Draft legislation released.</td>
</tr>
<tr>
<td>Independence Standards for Compensation Consultants and Other Compensation Committee Advisors —</td>
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<tr>
<td>• Any compensation consultant, legal counsel or other advisor to the compensation committee must meet standards for independence.</td>
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<tr>
<td>Bill/Rule</td>
<td>Proposed Amendment</td>
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</tbody>
</table>
| Restoring American Financial Stability Act of 2010 (Senator Dodd) | Independence of Compensation Consultants and Other Compensation Committee Advisors —  
  - The compensation committee may only select a compensation consultant, legal counsel or other advisor after taking into consideration factors identified by the SEC.  
  - The SEC shall identify factors that affect the independence of a compensation consultant, legal counsel or other advisor including:  
    - the provision of other services to the issuer by the person that employs the compensation consultant, legal counsel or other advisor;  
    - the amount of fees received from the issuer by the person that employs the compensation consultant, legal counsel or other advisor, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel or other advisor;  
    - the policies and procedures of the person that employs the compensation consultant, legal counsel or other advisor that are designed to prevent conflicts of interest; and  
    - any stock of the issuer owned by the compensation consultant, legal counsel or other advisor. |
| New Section 10C(b) of Exchange Act | Draft Bill released. |

**COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS**

<table>
<thead>
<tr>
<th>Bill/Rule</th>
<th>Proposed Amendment</th>
<th>Status</th>
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</table>
  - The compensation committee will have the authority, in its sole discretion, to retain and obtain the advice of a compensation consultant meeting the standards for independence.  
  - The compensation committee will be directly responsible for the appointment, compensation, and oversight of the work of such independent compensation consultant.  
  - Each issuer must disclose in proxy materials whether the compensation committee retained and obtained the advice of a compensation consultant meeting the standards for independence. | Passed by House. In Senate committee. |
| New Section 10B(d) of Exchange Act | | |
| **Investor Protection Act of 2009 (Treasury Department)**  
New Section 10B(d) of Exchange Act | **Compensation Committee Authority Relating to Compensation Consultants —**  
- The compensation committee will have the authority, in its sole discretion, to retain and obtain the advice of a compensation consultant meeting the standards for independence.  
- The compensation committee will be directly responsible for the appointment, compensation, and oversight of the work of such independent compensation consultant.  
- Each issuer must disclose in proxy materials whether the compensation committee retained and obtained the advice of a compensation consultant meeting the standards for independence.  
- If the compensation committee has not retained or obtained the advice of a compensation consultant meeting the standards for independence, each issuer must provide in proxy materials an explanation of the basis for the compensation committee’s determination not to retain an independent compensation consultant. | **Draft legislation released.** |
| --- | --- | --- |
| **Restoring American Financial Stability Act of 2010 (Senator Dodd)**  
New Section 10C(c) of Exchange Act | **Compensation Committee Authority Relating to Compensation Consultants —**  
- The compensation committee may, in its sole discretion, retain or obtain the advice of a compensation consultant.  
- The compensation committee will be directly responsible for the appointment, compensation and oversight of the work of a compensation consultant.  
- Each issuer must disclose in proxy materials whether the compensation committee retained or obtained the advice of a compensation consultant and whether the work of the compensation committee has raised any conflict of interest and, if so, the nature of the conflict and how the conflict is being addressed. | **Draft Bill released.** |
<table>
<thead>
<tr>
<th>Bill/Rule</th>
<th>Proposed Amendment</th>
<th>Status</th>
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<tbody>
<tr>
<td>The Wall Street Reform and Consumer Protection Act of 2009 / Corporate</td>
<td>Authority to Engage Independent Counsel and Other Advisors —</td>
<td>Passed by House. In Senate committee.</td>
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<tr>
<td>and Financial Institution Compensation and Fairness Act of 2009 (</td>
<td>• The compensation committee will have the authority, in its sole discretion, to</td>
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<tr>
<td>Representative Frank) New Section 10B(e) of Exchange Act</td>
<td>retain and obtain the advice of independent counsel and other advisors meeting the</td>
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<td></td>
<td>standards for independence.</td>
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<td>• The compensation committee will be directly responsible for the appointment,</td>
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<td>compensation, and oversight of the work of such independent counsel and other</td>
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<td>advisors.</td>
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<tr>
<td>Investor Protection Act of 2009 (Treasury Department) New Section 10B(e)</td>
<td>Authority to Engage Independent Counsel and Other Advisors —</td>
<td>Draft legislation released.</td>
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<tr>
<td>of Exchange Act</td>
<td>• The compensation committee will have the authority, in its sole discretion, to</td>
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<td>retain and obtain the advice of independent counsel and other advisors meeting the</td>
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<td>standards for independence.</td>
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<td>• The compensation committee will be directly responsible for the appointment,</td>
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<td>compensation, and oversight of the work of such independent counsel and other</td>
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<td></td>
<td>advisors.</td>
<td></td>
</tr>
<tr>
<td>Restoring American Financial Stability Act of 2010 (Senator Dodd) New</td>
<td>Authority to Engage Independent Counsel and Other Advisors —</td>
<td>Draft Bill released.</td>
</tr>
<tr>
<td>Section 10C(d) of Exchange Act</td>
<td>• The compensation committee may, in its sole discretion, retain and obtain the</td>
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<td>advice of independent counsel and other advisors.</td>
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<td></td>
<td>• The compensation committee will be directly responsible for the appointment,</td>
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<td></td>
<td>compensation and oversight of the work of independent legal counsel and other</td>
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<td></td>
<td>advisors.</td>
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</table>
## COMPENSATION CONSULTANT FUNDING

<table>
<thead>
<tr>
<th>Bill/Rule</th>
<th>Proposed Amendment</th>
<th>Status</th>
</tr>
</thead>
</table>
| The Wall Street Reform and Consumer Protection Act of 2009 / Corporate and Financial Institution Compensation and Fairness Act of 2009 (Representative Frank) | Funding —  
  • Each issuer must provide for appropriate funding, as determined by the compensation committee for payment of compensation:  
    ○ to any compensation consultant to the compensation committee that meets the standards for independence, and  
    ○ to any independent counsel or other adviser to the compensation committee. | Passed by House. In Senate committee. |
| New Section 10B(f) of Exchange Act                                        |                                                                                                                                                                                                                  |                                             |
| Investor Protection Act of 2009 (Treasury Department)                     | Funding —  
  • Each issuer must provide for appropriate funding, as determined by the compensation committee, for payment of compensation to any compensation consultant, independent legal counsel or other advisor to the compensation committee that meets the standards for independence. | Draft legislation released.                |
| New Section 10B(f) of Exchange Act                                        |                                                                                                                                                                                                                  |                                             |
| Restoring American Financial Stability Act of 2010 (Senator Dodd)        | Compensation of Compensation Consultants, Independent Legal Counsel and Other Advisors —  
  • Each issuer must provide appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to a compensation consultant, independent legal counsel or any other advisor to the compensation committee. | Draft Bill released.                       |
| New Section 10C(e) of Exchange Act                                        |                                                                                                                                                                                                                  |                                             |
**COMPENSATION CONSULTANT DISCLOSURE**

<table>
<thead>
<tr>
<th>Bill/Rule</th>
<th>Adopted Amendment</th>
<th>Status</th>
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</thead>
<tbody>
<tr>
<td>Proxy Disclosure</td>
<td>Consistent with prior rules, if a compensation consultant or its affiliates played</td>
<td>Final rule approved</td>
</tr>
<tr>
<td>Enhancements (Release No. 33-9089)</td>
<td>a role in determining or recommending the amount or form of executive or</td>
<td>December 16, 2009. Effective February 28,</td>
</tr>
<tr>
<td>Revised S-K 407(e)(3)(iii)</td>
<td>director compensation, then the company would be required to disclose the</td>
<td>2010.</td>
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<td></td>
<td>following:</td>
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<td>o the identity of the compensation consultant,</td>
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<td>o who engaged the compensation consultant,</td>
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<td>o the nature and scope of the compensation consultant’s assignment, and</td>
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<td></td>
<td>o the material elements of instructions given to the compensation consultant.</td>
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<td>If the compensation consultant or its affiliates engaged by the compensation</td>
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<td>committee also provided additional services in an amount in excess of $120,000,</td>
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<td>then the company would be required to disclose the following:</td>
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<tr>
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<td>o the aggregate fees for executive and director compensation services and the</td>
<td></td>
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<tr>
<td></td>
<td>aggregate fees for the additional services,</td>
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<tr>
<td></td>
<td>o whether the decision to engage the compensation consultant or its affiliates</td>
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<tr>
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<td>for non-executive compensation services was made or recommended by management,</td>
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<td>o whether the board of directors or the compensation committee has approved</td>
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<td></td>
<td>the additional services.</td>
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<td></td>
<td>If the compensation committee did not engage a compensation consultant but</td>
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<tr>
<td></td>
<td>management engaged a consultant to provide advice or recommendations on the</td>
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<td>amount or form of executive and director compensation and such compensation</td>
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<td>consultant has provided additional services in an amount in excess of $120,000,</td>
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<td>then the company would be required to disclose the following:</td>
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<td>o the aggregate fees for executive and director compensation services and the</td>
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<td>aggregate fees for the additional services.</td>
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<td></td>
<td>o Excepted services are consulting on broad-based, non-discriminatory plans or</td>
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<td>providing information that is either not customized or is customized based on</td>
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<td>parameters not developed or advised upon by the compensation consultant.</td>
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## CLAWBACKS

<table>
<thead>
<tr>
<th>Bill/Rule</th>
<th>Proposed Amendment</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Shareholder Empowerment Act of 2009 (Representative Peters)</strong>  &lt;br&gt; New Section 16B(c) of Exchange Act</td>
<td><strong>Clawbacks of Unearned Performance-Based Pay —</strong>  &lt;br&gt; - The board of directors or a committee must develop and disclose a policy for reviewing unearned bonus payments, incentive payments or equity payments that were awarded to executive officers owing to fraud, financial results that require restatement or some other cause.  &lt;br&gt; - The policy should require recovery or cancellation of any unearned payments to the extent that it is feasible and practical to do so.</td>
<td>In House committee.</td>
</tr>
<tr>
<td><strong>Restoring American Financial Stability Act of 2010 (Senator Dodd)</strong>  &lt;br&gt; New Section 16(h) of Exchange Act</td>
<td><strong>Recovery of Erroneously Awarded Compensation Policy —</strong>  &lt;br&gt; - Each issuer must develop and implement a policy providing  &lt;br&gt; o for disclosure of the policy of the issuer on incentive-based compensation that is based on financial information required to be reported under securities laws; and  &lt;br&gt; o that, in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under securities laws, the issuer will recover from any current or former executive officer of the issuer who received incentive-based compensation (including stock options awarded as compensation) during the 3-year period preceding the date on which the issuer is required to prepare an accounting restatement based on the erroneous data, in excess of what would have been paid to the executive officer under the accounting restatement.</td>
<td>Draft Bill released.</td>
</tr>
<tr>
<td>Bill/Rule</td>
<td>Proposed Amendment</td>
<td>Status</td>
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</tbody>
</table>
| **Corporate Executive Accountability Act of 2010** (Senator Menendez)  
New Section 16(h) of Exchange Act | **Clawback Policy —**  
- Each issuer must develop and implement a policy providing that, in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under securities laws, the issuer will:  
  - recover from any current or former employee of the issuer who received incentive-based compensation (including stock options awarded as compensation) based on the erroneous data, an amount equal to the difference between the amount actually paid to the employee and that amount that would have been paid to the employee under the accounting restatement; and  
  - disclose, together with the accounting treatment, (i) a list of any bonuses or stock sales by the employees that are affected by the accounting restatement, including the amounts of such bonuses or stock sales, and (ii) the extent to which the employees have been repaid any of the amounts in (i). | In Senate Committee. |
| **SEVERANCE AGREEMENTS TIED TO PERFORMANCE** | | |
| **Shareholder Empowerment Act of 2009** (Representative Peters)  
New Section 16B(d) of Exchange Act | **Severance Agreements Tied to Performance —**  
- The board of directors or a committee must not enter into agreements providing for severance payments to a senior executive officer who is terminated because of poor performance as an executive. | In House committee. |
| **Corporate Executive Accountability Act of 2010** (Senator Menendez)  
New Section 10B of Exchange Act | **Severance Agreements Tied to Performance —**  
- The board of directors or a committee may not enter into an agreement providing for severance payments to a senior executive officer who is terminated for cause, as determined by the board of directors.  
- New Section 10B(c) defines “for cause.” | In Senate Committee. |
## EXECUTIVE COMPENSATION DISCLOSURE

<table>
<thead>
<tr>
<th>Bill/Rule</th>
<th>Proposed Amendment</th>
<th>Status</th>
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</table>
- Each issuer must disclose in the annual proxy statement a clear description of any compensation required to be disclosed under S-K 402 including:  
  - information that shows the relationship between executive compensation actually paid and the financial performance of the issuers, and  
  - the financial performance of the issuer, taking into account any change in the value of stock an dividends of the issuer and any distributions.  
- The disclosure may include a graphic representation of the information required to be disclosed. | Draft Bill released. |
| Corporate Executive Accountability Act of 2010 (Senator Menendez) Amended S-K Item 402 | Disclosure of Compensation —  
- Each issuer must disclose:  
  - the median of the annual total compensation of all employees of the issuer, except the CEO;  
  - the annual total compensation of the CEO; and  
  - the ratio of the amount described the first bullet point to the amount described in the second bullet point.  
- Total compensation of an employee will be determined in accordance with S-K Item 402(c)(2)(x). | In Senate Committee. |
### LIMITATIONS ON EQUITY COMPENSATION OF EXECUTIVE OFFICERS

<table>
<thead>
<tr>
<th>Bill/Rule</th>
<th>Proposed Amendment</th>
<th>Status</th>
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</table>
| Corporate Executive Accountability Act of 2010 (Senator Menendez)        | Limitations on Equity Compensation of Executive Officers —  
  - The SEC rules must prohibit an executive officer or director who receives an award of equity compensation from selling more than:  
    - 20% of the shares he is entitled to receive during the first year following the vesting of the award;  
    - 40% of the shares he is entitled to receive during the second year following the vesting of the award, less any shares sold above;  
    - 60% of the shares he is entitled to receive during the third year following the vesting of the award, less any shares sold above; and  
    - 80% of the shares he is entitled to receive during the fourth year following the vesting of the award, less any shares sold above. | In Senate Committee.        |
| New Section 16(j) of Exchange Act                                          |                                                                                                                                                                                                                     |                             |

### HEDGING DISCLOSURE

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<tr>
<th>Bill/Rule</th>
<th>Proposed Amendment</th>
<th>Status</th>
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</table>
| Restoring American Financial Stability Act of 2010 (Senator Dodd)        | Disclosure Regarding Employee and Director Hedging —  
  - Each issuer must disclose in the annual proxy statement whether the employees or directors of the issuer, or any designees of the employee or director, are permitted to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars and exchange funds) that are designed to hedge or offset any decrease in the market value of equity securities:  
    - granted to employees or directors by the issuer as part of employee or director compensation; or  
    - held, directly or indirectly, by the employee or director. | Draft Bill released.        |
<p>| New Section 14(l) of Exchange Act                                          |                                                                                                                                                                                                                     |                             |</p>
<table>
<thead>
<tr>
<th>Bill/Rule</th>
<th>Adopted Amendment</th>
<th>Status</th>
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</table>
| Proxy Disclosure Enhancements (Release No. 33-9089) | Narrative disclosure of the registrant’s compensation policies and practices as they relate to the registrant’s risk management —  
  - To the extent that risks arising from the registrant’s compensation policies and practices for employees are reasonably likely to have a material adverse effect on the registrant, the registrant must discuss its policies and practices of compensating its employees, including non-executive officers, as they relate to risk management practices and risk-taking incentives.  
  - The following are examples of the issues that registrant may need to address for the business units or employees discussed:  
    o the general design philosophy of the registrant’s compensation policies and practices for employees whose behavior would be most affected by the incentives established by the policies and practices, as such policies and practices relate to or affect risk taking by employees on behalf of the registrant, and the manner of its implementation,  
    o the registrant’s risk assessment or incentive considerations, if any, in structuring compensation policies and practices or in awarding and paying compensation,  
    o how the registrant’s compensation policies and practices relate to the realization of risks resulting from the actions of employees in both the short term and long term, such as through policies requiring claw backs or imposing holding periods,  
    o the registrant’s policies regarding adjustments to its compensation policies and practices to address changes in its risk profile,  
    o material adjustments the company has made to its compensation policies and practices as a result of changes in risk profile, and  
    o the extent to which the registrant monitors its compensation policies and practices to determine whether its risk management objectives are being met with respect to incentivizing its employees. | Final rule approved December 16, 2009. Effective February 28, 2010. |

New S-K 402(s)
## DISCLOSURE OF STOCK AND OPTION AWARDS

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<th>Bill/Rule</th>
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  - The summary compensation table and director compensation table will be amended to report stock awards and option awards based on aggregate grant date fair value of awards computed in accordance with FASB ASC Topic 718 (formerly FAS 123R), rather than the incremental annual value reported for the year’s financial statements purposes.  
  - Disclosure of the maximum potential payout based on the attainment of maximum performance criteria will be made in a footnote to the relevant compensation table.                                                                                     | Final rule approved December 16, 2009.  
  Effective February 28, 2010.                                                                                                     |
<table>
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<tr>
<th>Bill/Rule</th>
<th>Proposed/Adopted Amendment</th>
<th>Status</th>
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</table>
| Shareholder Bill of Rights Act of 2009 (Senator Schumer) New Section 14A(e)(2) of Exchange Act | Director Independence —  
- The chairperson of the board of directors must be independent and must not have previously served as an executive officer of the issuer. | In Senate committee. |
| Shareholder Empowerment Act of 2009 (Representative Peters) New Section 16A(d) of Exchange Act | Independent Chairman of the Board of Directors —  
- The chairman of the board of directors must be an independent director who has not previously served as an executive officer of the issuer.  
- An “independent director” will be one who during the preceding 5 years has not been:  
  o Employed by the issuer in an executive capacity,  
  o An employee, director or owner greater than 20% of the beneficial shares of a firm that is a paid advisor or consultant to the issuer,  
  o Employed by a significant customer or supplier of the issuer,  
  o A party to a personal services contact with the issuer, as well as with the issuer’s chair, chief executive officer or other senior executive officer,  
  o An employee, officer or director of a foundation, university or other non-profit organization that receives the greater of $100,000 or 1% of total annual donations from the issuer,  
  o A relative of an executive officer,  
  o Part of an interlocking directorate in which the issuer’s chief executive officer or another executive serves on the board of another issuer employing that director, and  
  o Engaged in any other relationship with the issuer or senior executives that the SEC determines would not render that director an independent director. | In House committee. |
| Corporate Governance Reform Act of 2009 (Representative Ellison) | Independence of Chairman of the Board —  
- The chairman of the board of directors must be independent.  
- An individual may not serve as an executive officer of an issuer while serving as the chairman of the board of directors of such issuer. | In House Committee. |
<table>
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<tbody>
<tr>
<td>New Section 10B of Exchange Act</td>
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</table>
| Restoring American Financial Stability Act of 2010 (Senator Dodd) | Disclosures Regarding Chairman and CEO Structures —  
- Each issuer must disclose in the annual proxy statement the reasons why the issuer has chosen:  
  o the same person to serve as chairman and CEO or  
  o different individuals to serve as chairman and CEO. | Draft Bill released. |
| New Section 14B of Exchange Act |  |
- The registrant must briefly describe its leadership structure, such as whether the same person serves as both principal executive officer and chairman, or whether 2 individuals serve in those positions.  
- If 1 person serves as both principal executive officer and chairman, disclose whether the registrant has a lead independent director and what specific role the lead independent director plays in the leadership of the board.  
- This disclosure should indicate why the registrant has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the registrant.  
- Disclose the extent of the board’s role in the registrant’s risk oversight, such as how the board administers its oversight function, and the effect that this has on the board’s leadership structure. | Final rule approved December 16, 2009. Effective February 28, 2010. |
| New S-K 407(h) |  |  |
### DECLASSIFIED BOARD

<table>
<thead>
<tr>
<th>Bill/Rule</th>
<th>Proposed Amendment</th>
<th>Status</th>
</tr>
</thead>
</table>
| Shareholder Bill of Rights Act of 2009 (Senator Schumer) New Section 14A(e)(3) of Exchange Act | Annual Elections Required —  
- Each member of the board of directors must be subject to annual election by the shareholders. | In Senate committee. |

### MAJORITY VOTING

<table>
<thead>
<tr>
<th>Bill/Rule</th>
<th>Proposed Amendment</th>
<th>Status</th>
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</table>
- Directors in uncontested elections must be elected by a majority of votes cast as to each nominee.  
- If a member of the board of directors is not elected to a new term in an uncontested election, such director must tender his resignation to the board of directors.  
- The board of directors must:  
  o accept the resignation,  
  o determine a date on which the resignation will take effect, and  
  o make that date public within a reasonable period of time. | In Senate committee. |
| Shareholder Empowerment Act of 2009 (Representative Peters) New Section 16A(a) of Exchange Act | Standards Relating to Election of Directors —  
- Directors in uncontested elections must be elected by a majority of the votes cast as to each nominee.  
- Any director who is not elected to a new term must offer to tender his resignation to the board of directors.  
- The board of directors will determine what action should be taken as to that resignation and will publicly disclose its decision and the rationale for that decision within a reasonable period after certificate of the election results. | In House committee. |
Restoring American Financial Stability Act of 2010 (Senator Dodd)

New Section 14A(a) of Exchange Act

Commission Rules on Elections —
- Directors in uncontested elections must be elected by a majority of the votes cast.
- If a director receives less than a majority of the votes cast in an uncontested election, the director must tender his resignation.
- The board of directors can:
  - accept the resignation of the director,
  - determine a date on which the resignation will take effect, within a reasonable period of time and
  - make the resignation date public within a reasonable period of time.
- Alternatively, the board can, upon a unanimous vote of the board, decline to accept the resignation and, not later than 30 days after the date of the vote make public, together with a discussion of the analysis used in reaching the conclusion, the reasons that:
  - the board chose not to accept the resignation and
  - the decision was in the best interests of the issuer and the shareholders.

### MAJORITY VOTING STATE ENABLING STATUTES

<table>
<thead>
<tr>
<th>Bill/Rule</th>
<th>Current Law</th>
<th>Status</th>
</tr>
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<tbody>
<tr>
<td>Delaware General Corporation Law</td>
<td>§216 — Quorum and required vote for stock corporations —</td>
<td>Current law.</td>
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<td>- In the absence of a contrary specification in the certificate of incorporation or bylaws of the corporation:</td>
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<td></td>
<td>o Directors are elected by the plurality of the votes of the shares present in person or represented by proxy. Note that majority vote provisions may be included in bylaws and do not require amendment of the certificate of incorporation.</td>
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<td>§141 — Board of directors; powers; number, qualifications, terms and quorum; committees; classes of directors; nonprofit corporations; reliance upon books; action without meeting; removal —</td>
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<td>- §141(b) allows advance resignations and resignations conditioned upon failure to received specified votes for the purpose of avoiding the effect of holdover terms when elections are by majority vote.</td>
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</table>
Other States have adopted or are considering similar enabling statutes to those in Delaware. See, for example, the Virginia Stock Corporation Act.

§13.1-669 — Voting for directors; cumulative voting —
- Unless otherwise provided in the articles of incorporation or the bylaws, the directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

§13.1-679 — Resignation of directors —
- A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the occurrence of one or more events. If a resignation is made effective at a later date, the board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date. A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable.

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<tr>
<th>Bill/Rule</th>
<th>Proposed/Adopted Amendment</th>
<th>Status</th>
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| Shareholder Bill of Rights Act of 2009 (Senator Schumer) | Risk Committee —
- Each issuer must establish a risk committee, comprised entirely of independent directors, which will be responsible for the establishment and evaluation of the risk management practices of the issuer. | In Senate committee. |
| New Section 14A(e)(5) of Exchange Act          |                                                                  |                 |
| Corporate Governance Reform Act of 2009 (Representative Ellison) | Risk Management Committee —
- Each member of the risk management committee must be independent.
- The risk management committee will periodically review the risk management policies of the issuer.
- Each issuer must have a chief risk officer who will establish, evaluate and enforce the risk management policies and procedures of the issuer and report directly to the risk management committee. | In House Committee. |
**Proxy Disclosure Enhancements (Release No. 33-9089)**

**New S-K 407(n)**

Board role in risk oversight —
- The registrant must disclose the extent of the board’s role in the registrant’s risk oversight, such as how the board administers its oversight function, and the effect that this has on the board’s leadership structure.
- Disclosure might address questions such as whether the board has a risk management committee; whether the persons who oversee risk management report directly to the board as a whole, to a committee, such as the audit committee, or to one of the other standing committees of the board; and whether and how the board, or a board committee, monitors risk.

**Final rule approved December 16, 2009. Effective February 28, 2010.**

<table>
<thead>
<tr>
<th>ENHANCED DIRECTOR AND NOMINEE DISCLOSURE</th>
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<tbody>
<tr>
<td><strong>Bill/Rule</strong></td>
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</tbody>
</table>
| Proxy Disclosure Enhancements (Release No. 33-9089) | Director and Nominee Qualifications —
- For each director or person nominated or chosen to become a director, issuers must briefly discuss the specific experience, qualifications, attributes or skills that led to the conclusion that the person should serve as a director for the registrant at the time that the disclosure is made, in light of the registrant’s business and structure.
- If material, the disclosure should cover more than the past 5 years, and include information about the person’s areas or expertise or other relevant qualifications. | Final rule approved December 16, 2009. Effective February 28, 2010. |
| Revised S-K 401(e)(1)                   | Other Directorships —
- Indicate any other directorships held, including any other directorships held during the past 5 years, by each director or person nominated or chosen to become a director. | Final rule approved December 16, 2009. Effective February 28, 2010. |
| Proxy Disclosure Enhancements (Release No. 33-9089) | Legal Proceedings —
| Revised S-K 401(f)                     |                           |                               |

Evaluation of shareholder nominees, consideration of diversity —
- Describe the nominating committee’s process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder, and whether, and if so how, the nominating committee considers diversity in identifying nominees for director.
- If the nominating committee has a policy with regard to the consideration of diversity in identifying director nominees, describe how this policy is implemented, as well as how the nominating committee assesses the effectiveness of its policy.


<table>
<thead>
<tr>
<th>BILL/RULE</th>
<th>ADOPTED AMENDMENT</th>
<th>STATUS</th>
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</table>
| Proxy Disclosure and Solicitation Enhancements (Release No. 33-9089) New Item 5.07 to Form 8-K | Submission of Matters to a Vote of Security Holders —
- Adopted rule transfers the requirement to disclose vote results of security holders from Forms 10-Q and 10-K to Form 8-K. Registrant must provide the following information:
  - the date of the meeting and whether it was an annual or special meeting,
  - if the meeting involved the election of directors, the name of each director elected at the meeting, as well as a brief description of each other matter voted upon at the meeting; and state the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes as to each such matter, including a separate tabulation with respect to each nominee for office, and
  - a description of the terms of any settlement between the registrant and any other participant terminating any solicitation subject to Rule 14a-12(c), including the cost or anticipated cost to the registrant.
- The information would be filed within 4 business days after the end of the meeting at which the vote was held. | Final rule approved December 16, 2009. Effective February 28, 2010. |
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<tr>
<th>Bill/Rule</th>
<th>Proposed Amendment</th>
<th>Status</th>
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<tbody>
<tr>
<td>Shareholder Bill of Rights Act of 2009 (Senator Schumer)</td>
<td>Confirmation of Commission Authority on Shareholder Access to Proxies for Board Nominations —</td>
<td>In Senate committee.</td>
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</tbody>
</table>
| New Section 14A(d) of Exchange Act                              | • The SEC will establish rules relating to the use by shareholder of proxy solicitation materials supplied by the issuer for the purpose of nominating individuals to membership on the board of directors of an issuer.  
  • Shareholders, or a group of shareholders acting by agreement, must beneficially own, directly or indirectly, an aggregate of not less than 1% of the voting securities for at least the 2-year period preceding the dated of the next scheduled annual meeting. |                               |
| Shareholder Empowerment Act of 2009 (Representative Peters)     | Shareholder Access to the Proxy in Director Elections —                                                     | In House committee.           |
| New Section 16A(b) of Exchange Act                              | • The SEC must require that in proxy statements the issuer will identify and provide security holders with an opportunity to vote on candidates for the board of directors who have been nominated by shareholders.  
  • Shareholders or a group of shareholders must hold at least 1% of the voting securities for at least 2 years prior to a record date established by the issuer for the shareholders meeting. |                               |
| New Section 14(a)(2) of Exchange Act                            | • The SEC rules and regulations may include a requirement that a proxy solicitation include a nominee submitted by a shareholder to serve on the board of directors.  
  • The SEC rules and regulations may include a requirement that an issuer follow a certain procedure in relation to a proxy solicitation. |                               |
## STATE ENABLING STATUTES

<table>
<thead>
<tr>
<th>Bill/Rule</th>
<th>Current/Proposed Law</th>
<th>Status</th>
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</table>
| Delaware General Corporation Law §112 | Access to proxy solicitation materials —  
- The bylaws may provide that if the corporation solicits proxies with respect to an election of directors, it may be required, to the extent and subject to such procedures as may be provided in the bylaws, to include in its proxy solicitation materials, 1 or more individuals nominated by a stockholder. Such procedures may include any of the following:  
  o minimum ownership requirements or duration of ownership by the nominating shareholder,  
  o receipt of information from the nominating shareholder concerning the shareholder or nominees,  
  o limits on the number or proportion of directors that may be nominated,  
  o limits based on whether the shareholder previously sought to nominate individuals,  
  o prohibitions if the shareholder, nominee or an affiliate has acquired or publicly proposed to acquire shares constituting a specified percentage of the voting power of the company’s outstanding voting stock within a specified period before the election of directors, or  
  o agreements from nominating shareholders to indemnify the company relating to any false or misleading statement submitted by the shareholder. | Current law. |
Other states are considering similar enabling statutes to those in Delaware. See, for example, revisions to the Virginia Stock Corporation Act approved by the General Assembly and awaiting signature by the Governor.

§13.1-624(c) — Bylaws —
- The bylaws may contain … the following provision:
  - a requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to such procedures or conditions as are provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors.

<table>
<thead>
<tr>
<th>SHAREHOLDER NOMINATIONS</th>
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<tbody>
<tr>
<td><strong>Bill/Rule</strong></td>
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</table>
| Facilitating Shareholder Director Nominations (Release No. 33-9046) | Applicability —
  - In connection with an annual meeting at which directors are elected, a registrant will be required to include in its proxy statement and form of proxy the name of a person or persons nominated by a shareholder of group of shareholders for election to the board of directors and include in its proxy statement the disclosure about such nominee(s) and the nominating shareholder(s) that is specified in the SEC rules provided that:
    - applicable state law or the registrant’s governing documents do not prohibit such nomination,
    - the nominee’s candidacy would not violate any laws, rules or governing documents,
    - the nominating shareholder(s) has satisfied the eligibility requirements,
    - no representation or certification required by this rule is false or misleading in any material respect and
    - the provisions of the rule limiting the number of nominees required to be included would not necessitate exclusion of the nominee. | Proposed rules released by SEC. Comment period reopened with comments due by January 19, 2010. Awaiting release of final rules. |
| New Rule 14a-11(a) of the Exchange Act | | |
| Facilitating Shareholder Director Nominations (Release No. 33-9046) | Nominating Shareholder Eligibility —  
- A shareholder or group of shareholders nominating a person or persons must satisfy the following requirements:  
  o the shareholder individually, or the shareholder group in the aggregate, must beneficially own, as of the date the shareholder or group provides notice of their intent to include nominee(s):  
    - for large accelerated filers, at least 1% of the voting securities,  
    - for accelerated filers, at least 3% of the voting securities and  
    - for non-accelerated filers, at least 5% of the voting securities;  
  o the shareholder or each member of the group must have held the securities continuously for at least 1 year as of the date it provides notice and intend to continue to hold those securities through the date of the director election. | Proposed rules released by SEC. Comment period reopened with comments due by January 19, 2010. Awaiting release of final rules. |
| --- | --- | --- |
| Facilitating Shareholder Director Nominations (Release No. 33-9046) | Shareholder Notice —  
- To have a nominee included in the proxy statement and form of proxy, the nominating shareholder must provide notice to the registrant on Schedule 14N of its intent to require that the registrant include that shareholder’s nominee on the form of proxy and include disclosures required pursuant to Rule 14a-18.  
- The notice must be filed with the SEC on the date provided to the registrant. | Proposed rules released by SEC. Comment period reopened with comments due by January 19, 2010. Awaiting release of final rules. |
| Facilitating Shareholder Director Nominations (Release No. 33-9046) | Number of Shareholder Nominees —  
- The registrant will not be required to include in its proxy statement and form of proxy more than 1 shareholder or the number of nominees that represents 25% of the registrant’s board of directors, whichever is greater.  
- Where the registrant has 1 or more directors currently serving on its board of directors who were elected as a shareholder nominee pursuant to Rule 14a-11(d), and the term of that director(s) extends past the date of the shareholder meeting, the registrant will not be required to include in the proxy statement or form of proxy more shareholder nominees that could result in the total number of directors who were elected as shareholder nominees pursuant to Rule 14a-11 and serving on the board being more than 1 shareholder nominee or 25% of the registrant’s board of directors, whichever is greater.  
- In the event that more than 1 shareholder or group is otherwise permitted to | Proposed rules released by SEC. Comment period reopened with comments due by January 19, 2010. Awaiting release of final rules. |
nominate persons to a registrant’s board of directors, the registrant will include in the proxy statement and form of proxy the nominee(s) of the first nominating shareholder or group from which the registrant receives timely notice.

| Facilitating Shareholder Director Nominations (Release No. 33-9046) | False or Misleading Statements —  
• The registrant is not responsible for any information in the notice from the nominating shareholder or group or otherwise provided, except where the registrant knows or has reason to know that the information is false or misleading. | Proposed rules released by SEC. Comment period reopened with comments due by January 19, 2010. Awaiting release of final rules. |
| Determinations Regarding Eligibility —  
• Upon the registrant’s receipt of a notice, the registrant will determine whether any of the events permitting exclusion of a shareholder nominee has occurred.  
• If the registrant determines that it will include a shareholder nominee, it must notify in writing the nominating shareholder or group no later than 30 calendar days before it filed its definitive proxy statement and form of proxy with the SEC.  
• If the registrant determines that it may exclude a shareholder nominee, the registrant must notify in writing the nominating shareholder or group. This notice must be postmarked or transmitted electronically no later than 14 calendar days after the registrant receives the shareholder notice.  
• The registrant’s notice regarding exclusion must include an explanation of the registrant’s basis for determining that it may exclude the nominee.  
• The nominating shareholder or group will have 14 calendar days after receipt of the registrant’s notice to exclude to respond to the registrant’s notice and to correct any eligibility or procedural deficiencies identified in that notice.  
• Neither the composition of the nominating shareholder group nor the shareholder nominee may be changed as a means to correct a deficiency.  
• If a registrant determines that it may exclude a shareholder nominee, after providing requisite notice of and time for the nominating shareholder or group to remedy any eligibility or procedural deficiencies in the nomination, the registrant must provide notice of the basis for its determination to the SEC no later than 80 calendar days before it files its definitive proxy statement. | Facilitating Shareholder Director Nominations (Release No. 33-9046) | Proposed rules released by SEC. Comment period reopened with comments due by January 19, 2010. Awaiting release of final rules. |
Facilitating Shareholder Director Nominations (Release No. 33-9046)  
New Rule 14a-11(f) of the Exchange Act

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<tr>
<th>Determinations Regarding Eligibility cont. —</th>
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<tbody>
<tr>
<td>• The registrant’s notice must include:</td>
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<tr>
<td>o identification of the nominating shareholder or each member of the group,</td>
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<td>o the name of the nominee,</td>
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<tr>
<td>o an explanation of the registrant’s basis for determining that the registrant may exclude the nominee, and</td>
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<td>o a supporting opinion of counsel when the registrant’s basis for excluding a nominee relies on a matter of state law.</td>
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<tr>
<td>• The registrant must file its notice with the SEC and simultaneously provide a copy to the nominating shareholder or each member of the group.</td>
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<tr>
<td>• The nominating shareholder or group may submit a response to the registrant’s notice to the SEC. This response must be postmarked or transmitted electronically to the SEC no later than 14 calendar days after the nominating shareholder’s or group’s receipt of the registrant’s notice to the SEC.</td>
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<tr>
<td>• The SEC staff may provide an informal statement of its views to the registrant and the nominating shareholder or group.</td>
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<tr>
<td>• The registrant will provide the nominating shareholder or group with notice, no later than 30 calendar days before it files its definitive proxy statement and form of proxy, of whether it will include or exclude the shareholder nominee.</td>
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<tr>
<td>• The exclusion of a shareholder nominee by a registrant where that exclusion is not permissible under Rule 14a-11(a) will be a violation.</td>
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**NOMINATING SHAREHOLDER AND NOMINEE DISCLOSURE**

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<tr>
<th>Bill/Rule</th>
<th>Proposed Amendment</th>
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<tr>
<td>• To have a nominee included in a registrant’s proxy materials pursuant to Rule 14a-11, the nominating shareholder or group must provide notice to the registrant of its intent to do so on a Schedule 14N and file that notice with the SEC on the date first sent to the registrant.</td>
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<tr>
<td>• Schedule 14N must be sent to the registrant by the date specified by the registrant’s advance notice bylaw provision or, where no such provision is in place, no later than 120 calendar days before the date that the registrant mailed its proxy materials for the prior year’s annual meeting, except that, if the registrant did not hold an annual meeting during the prior year, or if the date of</td>
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the meeting has changed by more than 30 calendar days from the prior year, then the nominating shareholder or group must provide and file the notice a reasonable time before the registrant mails its proxy materials.

- The notice must include:
  - a representation that the nominee’s candidacy would not violate controlling state law, federal law or securities exchange rules,
  - a representation that the nominating shareholder or group satisfies the conditions of Rule 14a-11(b),
  - in the case of a registrant other than an investment company, a representation that the nominee meets the objective criteria for “independence” of the national securities exchange applicable to the registrant,
  - a representation that neither the nominee nor the nominating shareholder or group has an agreement with the registrant regarding the nomination of the nominee,
  - a statement from the nominee that the nominee consents to be named in the proxy materials and, if elected, to serve on the board of directors,
  - a statement that the nominating shareholder or group intends to continue to own the requisite shares through the date of the shareholder meeting and what the intent is with respect to continued ownership after the election,
  - disclosure about the nominee as required by Schedule 14A,
  - disclosure about the nominating shareholder or group as required by Schedule 14A,
  - disclosure about whether the nominating shareholder or group has been involved in any legal proceedings during the past 5 years,
  - disclosure of certain information regarding the nature and extent of the relationships between the nominating shareholder or group and nominee and the registrant or any affiliate of the registrant,
  - the website address on which the nominating shareholder or group may publish soliciting materials and
  - any statement in support of the shareholder nominee(s), which may not exceed 500 words, if the nominating shareholder or group elects to have such statement included in the registrant’s proxy materials.
Facilitating Shareholder Director Nominations (Release No. 33-9046)

New Rule 14a-19 of the Exchange Act

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<tr>
<th>Disclosure Regarding Nominating Shareholders and Nominees Submitted for Inclusion in a Registrant’s Proxy Materials Pursuant to Applicable State Law or a Registrant’s Governing Documents —</th>
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<tbody>
<tr>
<td>To have a nominee included in a registrant’s proxy materials pursuant to a procedure set forth under applicable state law or the registrant’s governing documents addressing the inclusion of shareholder director nominees in the proxy materials, the nominating shareholder or group must provide notice to the registrant of its intent to do so on a Schedule 14N and file that notice with the SEC on the date first sent to the registrant.</td>
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<tr>
<td>Schedule 14N must be sent to the registrant by the date specified by the registrant’s advance notice bylaw provision or, where no such provision is in place, no later than 120 calendar days before the date that the registrant mailed its proxy materials for the prior year’s annual meeting, except that, if the registrant did not hold an annual meeting during the prior year, or if the date of the meeting has changed by more than 30 calendar days from the prior year, then the nominating shareholder or group must provide and file the notice a reasonable time before the registrant mails its proxy materials.</td>
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<td>The notice must include:</td>
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<tr>
<td>o a statement from the nominee that the nominee consents to be named in the proxy materials and, if elected, to serve on the board of directors,</td>
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<tr>
<td>o disclosure about the nominee as required by Schedule 14A,</td>
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<tr>
<td>o disclosure about the nominating shareholder or group as required by Schedule 14A,</td>
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<tr>
<td>o disclosure about whether the nominating shareholder or group has been involved in any legal proceedings during the past 5 years,</td>
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<tr>
<td>o disclosure of certain information regarding the nature and extent of the relationships between the nominating shareholder or group and nominee and the registrant or any affiliate of the registrant and</td>
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<tr>
<td>o the website address on which the nominating shareholder or group may publish soliciting materials.</td>
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| Facilitating Shareholder Director Nominations (Release No. 33-9046) Revised Rule 14a-8(i)(8) of the Exchange Act | Director Elections —  
- A shareholder proposal may be excluded if the proposal:  
  - would disqualify a nominee who is standing for election,  
  - would remove a director from office before his term expired,  
  - questions the competence, business judgment, or character of one or more nominees or directors,  
  - nominates a specific individual for election to the board of directors, other than pursuant to Rule 14a-11, an applicable state law provision or the company’s governing documents or otherwise could affect the outcome of the upcoming election of directors. | Proposed rules released by SEC. Comment period reopened with comments due by January 19, 2010. Awaiting release of final rules. |
| Staff Legal Bulletin No. 14E (Shareholder Proposals) Rule 14a-8(i)(7) of the Exchange Act | The application of Rule 14a-8(i)(7) to proposals relating to risk —  
- On a going-forward basis, rather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, the SEC staff will instead focus on the subject matter to which the risk pertains or that gives rise to the risk.  
- In those cases in which a proposal’s underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company. | Released October 27, 2009. |

The application of Rule 14a-8(i)(7) to proposals focusing on succession planning for a company’s chief executive officer (CEO) —  
- Going forward, the SEC staff will take the view that a company generally may not rely on Rule 14a-8(i)(7) to exclude a proposal that focuses on CEO succession planning.  
- The staff is now of the view that CEO succession planning raises a significant policy issue regarding the governance of the corporation that transcends the day-to-day business matter of managing the workforce (proposals relating to day-to-day workforce management remain excludable under the “ordinary business” ground for exclusion).