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PLANNING FOR THE 2013 ANNUAL MEETING AND REPORTING SEASON: PART 2

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FEBRUARY 22, 2013

Business Law Research Note: Part one of this article was featured on Business Law Currents last week and can be accessed here.

Plan for impact of conflict minerals and resource extraction payments disclosure rules

In August 2012, the SEC adopted the final rules to implement two of the more controversial provisions of the Dodd-Frank Act – the conflict minerals and resource extraction payments disclosure provisions. Although reporting under these rules by public companies will not begin until 2014, it is important to start planning for compliance with these rules now.

Planning for compliance with these disclosure provisions now, even though both rules are the subject of legal challenges. Those challenges are proceeding in the U.S. Court of Appeals for the D.C. Circuit and should be monitored for any impact on the implementation dates for the new rules. Hoping for a reprieve from reporting under the new rules, however, could result in a missed opportunity to use the transition time the SEC provided when it adopted the rules to be ready for compliance if the rules are not overturned.

Conflict minerals disclosure rules: These new rules will require public companies that manufacture or contract to manufacture a product in which certain minerals (referred to as "conflict minerals"), including gold, tin, tungsten and wolframite, are necessary to functionality or production of the product to conduct diligence regarding the use and source of those minerals and to report certain information on a new Form SD filed with the SEC. The first Form SD is due by May 31, 2014, and it will include information regarding calendar year 2013 – regardless of whether the company reports its fiscal results on a calendar-year basis. Additional information regarding the conflict minerals rules is available on the Skadden website.

A number of key implementation issues have been raised as companies consider whether they will need to report information pursuant to the conflict minerals disclosure rules. Those issues include identifying a company's products and determining whether a company contracts to manufacture a product.

Companies also are struggling to determine whether any packaging they use with a product should be considered to be a part of the product. The answers to these questions will impact the level of reporting required under the new rules. Although the SEC provided some guidance in the release it issued when it adopted the conflict minerals disclosure rules, the answers to these and other questions will require companies to conduct a detailed facts-and-circumstances analysis.

The timing on beginning the process for determining whether a company will need to file a Form SD pursuant to the conflict minerals disclosure rules is impacted by two important considerations. First, as noted above, the inaugural reporting year under the new rules is Jan. 1 to Dec. 31, 2013. Companies will need to have procedures in place to begin capturing the information necessary to determine whether compliance with the rules will be required. Second, the SEC provided certain transition relief in the rules that may benefit certain companies.

The transition relief allows companies to not have to consider conflict minerals in its analysis under the rules if those minerals are "outside the supply chain" by Jan. 31, 2013. This relief could be helpful for companies that either may have difficulty in determining the source of minerals or that would like to change supply methods to avoid reporting under the new rules.

Resource extraction issuer disclosure rules: These rules apply to public companies that engage in the commercial development of oil, natural gas or minerals and require disclosure of payments made to foreign governments and to the U.S. federal government for the purpose of commercial development of oil, natural gas or minerals. Additional information regarding the resource extraction issuer disclosure rules is available on the Skadden website.

These disclosures are required to be made on new Form SD and must be filed no later than 150 days after the end of a company's fiscal year, beginning with fiscal years ending after Sept. 30, 2013. As a result, the first Form SD for calendar year resource extraction companies will be due by May 30, 2014.

Similar to the conflict minerals disclosure rules, there are a number of important implementation questions that companies must consider in connection with planning for reporting under the resource extraction issuer disclosure rules. For instance, the rules require that the disclosures regarding payments made must cover those made by the company, any subsidiary of the company and any entity under the control of the company.

Determining whether a company controls another entity requires a detailed facts-and-circumstances analysis. This issue is particularly sensitive when the entity is not one in which the company owns 50 percent or more of the outstanding ownership interests. There also are questions about the details of the required information regarding the payments made and whether certain actions by a company should be deemed commercial development activities. Beginning the process of preparing for the potential need to comply with the new rules soon will likely be beneficial to companies.

Prepare for shareholder proposals

Submitting proposals for inclusion on the annual meeting agenda and in the company's proxy materials remains a focus of certain shareholders and groups. In the 2012 proxy season, the most common shareholder proposal topics included perennial favorites such as separating the chairman and chief executive officer positions, majority voting, board declassification, repealing supermajority voting requirements and providing shareholders a right to call special meetings or to act by written consent. Political spending also was a common topic for proposals in 2012 (see the additional information on this topic below).

The most closely watched topic of the season, however, was the process for nominating and disclosing shareholder candidates (or "proxy access"). The 2012 proxy season was the first during which shareholders were permitted to require companies to include shareholder proposals related to proxy access in company proxy statements because of a change to the Exchange Act Rule 14a-8.

There were approximately 24 proxy access proposals submitted to companies in 2012. Companies used a number of procedural and substantive bases under Rule 14a-8 to exclude, with concurrence of the staff of the SEC's Division of Corporation Finance, many of these proposals. As a result, only 12 of the submitted proposals were voted on by shareholders and only two of those proposals were approved by a majority shareholder vote. It is unclear whether there will be an increase in the submission of proxy access proposals in 2013, but companies should be prepared to consider and respond to the proposals.

Shareholder proposals requesting board declassification were also high on the agenda of corporate governance activists in 2012. The Harvard Law School Shareholder Rights Project (SRP) reports that it submitted precatory board declassification proposals during the 2012 proxy season to 89 of the companies in the S&P 500 Index.

More than half of the companies receiving such proposals entered into agreements with SRP committing the companies to bring management declassification proposals to a shareholder vote. SRP also reports that 30 of the companies entering into such agreements have already declassified their boards. As there is no indication that SRP is planning to reduce its efforts to declassify boards of public companies, there will likely be more of these proposals during the 2013 proxy season.

The staff of the Division of Corporation Finance released its latest Staff Legal Bulletin concerning the shareholder proposal process governed by Rule 14a-8. SLB 14G clarifies SEC staff positions on three topics arising from last proxy season: (i) who can provide proof of beneficial ownership verifying that a person is eligible to submit a proposal; (ii) what companies must include in their deficiency notices concerning proponents' proof of ownership; and (iii) what limitations apply to website references in proposals and supporting statements. This is essential guidance for companies to consider when determining whether they are able to exclude shareholder proposals under Rule 14a-8. Additional information about the SLB 14G is available on the Skadden website.

Determine impact of SEC staff disclosure initiatives

The staff of the Division of Corporation Finance recently has been focused on a number of key initiatives when reviewing periodic reports. These initiatives should be considered when preparing disclosures in the company's financial statements and annual reports on Forms 10-K, 20-F or 40-F. The disclosure initiatives include:

Cybersecurity disclosures: In October 2011, the staff of the Division of Corporation Finance issued guidance related to cybersecurity disclosures.[1] The guidance was intended to assist companies in assessing what disclosures should be provided with respect to cybersecurity risks and cyber-incidents and how cybersecurity risks and their impact should be described in SEC filings.

Although there is no SEC disclosure requirement explicitly referring to cybersecurity risks and cyber-incidents, the staff guidance noted that a number of existing disclosure requirements may impose an obligation to disclose such matters. Those requirements could include the disclosures related to risk factors, Management's Discussion and Analysis (MD&A), the business and legal proceedings descriptions, and the notes to the financial statements.

As part of its review of the responses to this new disclosure guidance, the staff has been focused on statements made by companies regarding the risk of potential cyber security-related incidents when the company has a history of such incidents. For instance, if a company disclosed that cybersecurity incidents "could" or "may" have a particular impact, the staff has issued comments asking about whether any such incidents have occurred. If such incidents have occurred, the staff has requested that the company's disclosures be revised to put the potential of an incident in context (i.e., not only may incidents occur, incidents have occurred).

The following is an example of the type of corrected risk factor disclosures that companies have included in response to staff comments in this area:

> Our computer systems may be subject to cyber attacks and other cybersecurity incidents. Although the cybersecurity incidents disclosed so far have not had a material effect on our business, financial condition or results of operations, there can be no assurance that cybersecurity incidents will not have a material adverse effect on us in the future.

Companies should be mindful of this staff focus when reviewing and drafting cybersecurity-related disclosures.

Loss contingency disclosures: The accounting staff of the Division of Corporation Finance remains focused on disclosures regarding loss contingencies. Based on public staff statements and comment letters, the staff is focused on disclosures about reasonably possible losses and estimates of such losses. The staff has scrutinized, and viewed skeptically, disclosure that the company is unable to disclose an estimate of a range of reasonably possible losses related to contingencies because such a range cannot be estimated with certainty or with confidence. The staff has stated that it is receptive to having a dialogue with companies with respect to issues related to privileged information – for instance, when requesting that a range of possible losses be disclosed, the staff will accept an aggregate number for all such lawsuits, rather than a dollar disclosure on a case-by-case basis.

Notwithstanding the staff's focus, the accounting provisions do not require that an estimate of a range of reasonably possible losses be disclosed when it cannot be made. The intent of this focus seems to be to ensure that companies make a "strong, diligent effort" to provide the estimate. Companies should consider whether an estimate can be provided and discuss the conclusion with the disclosure team, including the independent auditors and legal advisors.

The staff's focus on this topic followed on the heels of the plans by the Financial Accounting Standards Board's (FASB) to consider changes to the requirements of Accounting Standards Codification Topic 450 (formerly Statement of Financial Accounting Standards No. 5; "Disclosure of Certain Loss Contingencies"). FASB announced its intention to reconsider Topic 450 in 2007 and then, after a number of delays in the timing of the project, announced in July 2012 that the project had been removed from its agenda. This decision by FASB does not appear to have impacted the staff's focus on loss-contingency disclosures.

Segment reporting: The staff of the Division of Corporation Finance has continued to focus on the proper identification of segments for reporting purposes. Based on comment letters issued over the past year, the staff has focused primarily on whether a company's identification of reporting segments and, in some the cases, the aggregation of multiple operating segments into one reporting segment is consistent with the guidance set forth in Accounting Standards Codification (ASC) 280-10-50.

Staff comments often requested supplemental explanations, with a view toward revised future disclosure, in order to better understand the way in which the company's operations are viewed through the lens of its chief operating decision maker(s) and sought enhanced disclosure regarding the factors used to identify reporting segments.

Companies that have not adequately disclosed their rationale for the identification of their reporting segments and companies that have recently completed an acquisition, undergone an internal reorganization, or experienced a change in management appear to be most prone to receiving these comments. Such companies, therefore, should consider revisiting their segment disclosure to ensure that they have properly identified their reporting segments consistent with the applicable accounting guidance.

Goodwill impairment: Disclosure regarding the testing of goodwill for impairment has remained a focal point for the staff of the Division of Corporation Finance. Staff comments, which have requested enhanced narrative discussions in company filings, have concentrated on obtaining information regarding management's insights concerning the recoverability of goodwill and the methodologies and significant assumptions used in impairment testing. The staff has focused on companies that appear to have one or more reporting units with a carrying value at risk of exceeding fair value and that lack robust disclosure regarding the probability of an impairment charge.

Relevant staff comments typically have requested that companies provide a supplemental analysis of the fair value, taking into account both quantitative and qualitative factors, compared to the carrying value of the goodwill. The staff also has asked companies that face a probability of future charges to enhance their discussion of the same by disclosing:

- the percentage by which fair value exceeded carrying value as of the date of the most recent impairment test;
- the amount of goodwill allocated to the related reporting unit, the methods and key assumptions used in the company's analysis;
- how those assumptions were determined;
- the degree of uncertainty associated with those assumptions; and
- the potential events and/or changes in circumstances that could reasonably be expected to negatively affect those assumptions.

To address these concerns, companies that experience significant declines in operating performance, either directly or through one of their reporting units, should consider providing enhanced disclosure regarding goodwill impairment and the possibility of future charges.

Comply with the new Iran-related disclosure requirements

On Aug. 10, 2012, President Barack Obama signed the Iran Threat Reduction and Syria Human Rights Act of 2012 (ITR Act) into law. Among other things, the ITR Act requires public companies to disclose information pertaining to certain Iran-related activities and transactions in their annual and quarterly reports filed on or after Feb. 6, 2013. Additional information about the ITR Act is available on the Skadden website.

Companies should review their activities and the activities of their affiliates to determine whether they have engaged in any specified activities or transactions involving Iran and whether disclosures will be required under the new requirements.

A disclosure obligation under the ITR Act will be triggered if, during the period covered by a periodic report, a public company or any of its affiliates knowingly engaged in activities that are sanctionable pursuant to the Iran Sanctions Act of 1996 or the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, and if they have engaged in any unlicensed transaction with the government of Iran or with persons designated for sanctions pursuant to certain executive orders (a group that includes most Iranian banks and many large commercial enterprises).

Sanctionable activities include, among other things, transactions relating to Iran's petroleum industry, the transfer of technology or services to Iran that are likely to be used for human rights abuses against the Iranian people, and certain financial transactions with Iranian financial institutions and other Iranian entities.

Companies that are required to provide disclosure must describe the nature and extent of the subject activity, the gross revenues and net profits, if any, attributable to the activity, and whether the company or any affiliate of the company intends to continue the activity. Each such company also must file with the SEC concurrent with its periodic report a separate notice indicating that the disclosure prompted by the ITR Act has been included in the periodic report and identifying the company and the detailed information described above.

Obtaining the information necessary to determine whether the disclosure provisions of the ITR Act have been triggered may prove difficult, especially from non- controlled affiliates (i.e., entities that are "affiliates" for securities law purposes, such as parent companies or entities under common control, but with respect to which the company does not have the actual power to compel cooperation). Issues may exist even in obtaining information from controlled affiliates, for example, if there are third-party investors in such affiliates to which fiduciary or contractual duties may be owed.

Thus, companies that believe they may be required to provide the new disclosures will need to move quickly to ensure that they are ready to provide them within the timetable for initial reporting. Companies also should be mindful of the fact that the conduct described in this part of the ITR Act may violate other U.S. laws – specifically, the U.S. economic sanctions with respect to Iran, which include criminal penalties – and also may meet the criteria for the imposition of broader economic sanctions against the company.

Note say-on-pay rules now apply to smaller reporting companies

The temporary exemption from the say-on-pay rules afforded to smaller reporting companies (generally, those with a public float below $75 million) when the SEC adopted the rules in 2011 expired on Jan. 21, 2013. Beginning with their first annual meeting (or special meeting in lieu of an annual meeting) occurring on or after Jan. 21, 2013, smaller reporting companies are required to conduct both a shareholder advisory vote on executive compensation and a shareholder advisory vote on the frequency of say-on-pay votes.

Smaller reporting companies will need to comply with the say-on-pay rules to the same extent as other companies subject to the SEC's proxy rules. In particular, smaller reporting companies must disclose in their proxy statements that they are providing say-on-pay and frequency votes and that such votes are nonbinding. Following the shareholder meeting, they must disclose their frequency determination either by amending the Form 8 K filed to report the annual meeting voting results, as required by Item 5.07, or by including the disclosure in a Form 10-Q or Form 10-K, provided the timing deadlines are otherwise satisfied. Additionally, in subsequent proxy statements, smaller reporting companies must disclose the current frequency of say-on-pay votes and indicate when the next say-on-pay vote will occur.

The applicability of the say-on-pay rules to smaller reporting companies does not change the scaled disclosure requirements of Item 402 of Regulation S-K. For example, smaller reporting companies are not required to provide a CD&A and thus need not disclose in subsequent proxy statements whether the company considered the results of the most recent say-on-pay vote in determining executive compensation policies and decisions.

Smaller reporting companies, however, should determine whether the results of a say-on-pay vote formed a material factor necessary to an understanding of the information disclosed in the summary compensation table and thus should be disclosed pursuant to Item 402(o) of Regulation S-K. In addition, smaller reporting companies also should consider enhancing their compensation disclosure to facilitate shareholder understanding of their compensation arrangements and reduce the potential for an unfavorable say-on-pay vote.

Consider new PCAOB auditing standard relating to communications with audit committees

In December 2011, the SEC approved Public Company Accounting Oversight Board (PCAOB) Audit Standard No. 16 (AS 16). AS 16 applies to audits of all issuers, including audits of emerging growth companies (EGCs) and supersedes interim standards AU Sec. 80 and AU Sec. 310. The new standard will be effective for audits and quarterly reviews for fiscal years beginning on or after Dec. 15, 2012. For calendar-year companies, then, the new standard will apply to the auditor's review of financial statements for the first quarter of 2013 and to the engagement of the auditor for 2013.

AS 16 retains or enhances the communication requirements of the superseded standards and adds additional communication requirements. Among other things, AS 16 clarifies that auditors must establish an understanding of the terms of the audit engagement with the audit committee (rather than with management) and requires that this understanding be recorded in an engagement letter. The new standard also requires the auditor to communicate the following items, among others, to the audit committee in a timely manner and before the issuance of the audit report:

- an overview of the overall audit strategy, including timing of the audit, significant risks the auditor identified, and significant changes to the planned audit strategy or identified risks;
- information about the nature and extent of specialized skill or knowledge needed in the audit, and the extent of the planned use of internal auditors, company personnel or other third parties and other independent public accounting firms or other persons not employed by the auditor that are involved in the audit;
- certain matters regarding the company's accounting policies, practices and estimates (consistent with Rule 2-07 of Regulation S-X);
- information related to significant unusual transactions, including the business rationale for such transactions;
- the auditor's evaluation of the quality of the company's financial reporting;
- difficult or contentious matters for which the auditor consulted outside the engagement team;
- the auditor's evaluation of going concern;
- uncorrected misstatements aggregated by the auditor that management has determined to be immaterial;
- nontrivial corrected misstatements that might not have been detected without the audit (including the implications of the same on internal control over financial reporting);
- expected departures from the auditor's standard report; and
- other matters arising from the audit that are significant to the oversight of the company's financial reporting process, including complaints or concerns regarding accounting or auditing matters that have come to the auditor's attention during the audit.

To address the new communications requirements, public companies should ensure that audit committee members are aware of the new standard and, to the extent necessary, consider updating their audit committee agendas, calendars and charters to reflect the new requirements.

Assess disclosure policy concerning political contributions and lobbying expenditures

In the wake of the U.S. Supreme Court's decision in the *Citizens United*[2] case and the record-breaking political spending that took place during the 2012 presidential election, there should be heightened interest from shareholders concerning companies' political and lobbying spending and related activities.

Of the groups focusing on political spending, the nonprofit Center for Political Accountability (CPA), which scores the top 200 companies in the S&P 500 Index based on their political accountability disclosure, policies, and compliance and oversight practices, was one of the most active last year. In particular, the CPA submitted over 50 shareholder proposals to companies concerning their political spending during the 2012 proxy season. Some of these proposals focused on indirect political spending by requesting disclosure of trade association dues that went toward political activities.

As for its scoring process, the CPA assesses 25 indicators, such as whether companies publicly disclose their political contributions to specific candidates, parties or causes, whether companies have a publicly available policy governing their political contributions and expenditures made with corporate funds, and whether companies have a specific board committee that reviews and approves the political contributions made with corporate funds.

The CPA and other shareholder groups also have requested information about companies' lobbying expenditures, which often occur outside of a campaign season. Shareholder proposals on this topic have sought disclosure on, for example, amounts spent on lobbying legislators and regulators and on trade association dues and membership in tax-exempt policy organizations that draft model legislation. Requests by shareholders for enhanced transparency regarding lobbying expenditures are expected to continue during the upcoming proxy season.

Companies that believe they may be the target of interest concerning disclosure of political and/or lobbying spending should consider taking measures to address these concerns. Best practices in this area include adopting or revising stand-alone political and/or lobbying spending policies and amending appropriate board committee charters to delineate specifically the responsibility for analyzing and determining which political and/or lobbying activities, if any, the company will engage in. It also may be prudent for companies to consider the CPA's 25 indicators when taking steps to implement these measures.

On another front, the Committee on Disclosure of Corporate Political Spending submitted a rulemaking petition to the SEC in August 2011 to require companies to publicly disclose the use of corporate resources for political activities. To date, the SEC has received over 322,000 comment letters regarding the petition. The SEC indicated in its most recently published semiannual regulatory agenda that the SEC staff is considering whether to recommend that the SEC issue a proposed rule to require that public companies provide disclosure to their shareholders regarding the use of corporate resources for political activities.

Although SEC officials have disclosed previously that they were considering whether to recommend that the SEC issue a proposed rule requiring political activity disclosure, this issue had not previously appeared on the SEC's regulatory agenda. Future action by the SEC on this issue could come as early as April 2013.

Consider policy on hedging and pledging of company stock by officers and directors

Recently there have been several high-profile instances of public company executives having to dispose of company stock in order to meet margin calls. These instances, combined with the provision in the Dodd-Frank Act that mandates the SEC to adopt rules to require public companies to provide proxy statement disclosures indicating whether they have a policy permitting directors and employees to hedge against decreases in the company stock price, have led to a renewed interest in company policies regarding hedging and pledging of company stock by officers and directors.

ISS has picked up on the interest in this issue and added it as an element of its voting guidelines when considering matters that it believes should be deemed governance failures. Additional information regarding ISS's 2013 voting policies updates is available on the Skadden website.

In its 2013 voting policy update, ISS explicitly notes that "hedging of company stock and significant pledging of company stock by directors and/or executives are considered failures of risk oversight". ISS may recommend "against" or "withhold" votes for directors individually or for the entire board due to material failures of risk oversight under "extraordinary circumstances". There are no specific guidelines provided to determine what ISS means by extraordinary circumstances.

Companies should consider the application of the revised ISS voting guidelines and the forthcoming Dodd-Frank Act proxy disclosure requirements (which as noted below will not be in effect for the 2013 proxy season) to determine if any changes in their current policies should be made at this time.

Confirm director nominee compliance with advisory firm policies on overboarding

Companies should consider whether their CEO or any of their directors may be "overboarded" under the newly revised ISS voting policies. ISS considers directors overboarded if they sit on more than six public company boards or if they serve as the CEO of a public company who sits on the boards of more than two additional public companies. ISS recommends "against" or "withhold" votes for directors it deems to be overboarded. In the past, ISS has counted publicly traded subsidiaries owned 20 percent or more by the parent company as having one board with the parent company.

Starting with the 2013 proxy season, ISS will count all subsidiaries with publicly traded stock as separate companies from their parent companies for purposes of determining if an officer or a director is overboarded. Subsidiaries with only publicly traded debt will still be deemed to have one board with the parent company. This change is not expected to have a significant impact, but companies should confirm compliance with the new policy.

Comply with the XBRL filing requirements and, if applicable, account for the expiration of the two-year limited liability provisions

All U.S. domestic companies (other than investment and business development companies) and foreign private issuers that prepare their financial statements in accordance with U.S. GAAP are now required to comply with the XBRL filing requirements. Foreign private issuers that prepare their financial statements in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board have been provided relief from the XBRL requirements by the staff of the Division of Corporation Finance until an SEC approved XBRL taxonomy for their financial statements is available. This relief is expected to remain in effect for the 2013 reporting season. Foreign private issuers that prepare their financial statements in accordance with local GAAP are not required to comply with XBRL filing requirements.

Each company that submits interactive data files as part of an XBRL filing enjoys the benefit of certain limited liability protections for a two-year period. The limitations include deeming interactive data files "furnished" and not "filed" or part of a registration statement or prospectus for purposes of the liability provisions in Securities Act Sections 11 and 12 and Exchange Act Section 18, and exempting the interactive data file from the anti-fraud provisions of the securities laws if the company makes a good-faith attempt to comply with the data-tagging rules and promptly amends any deficiency after becoming aware of it. The two-year limited liability period runs from the due date of the first Form 10-Q – exclusive of the rule-based 30-day grace period for first-time filers – for which a company was required to submit XBRL data.

For the second group of companies that were required to comply with the XBRL requirements, large accelerated filers that did not have a market cap of over $5 billion, these limited liability provisions ended on Aug. 9, 2012. Given the expiration of the limited liability periods, these companies should ensure they are properly evaluating their disclosure controls and procedures for interactive data files. The limited liability provisions ended on Aug. 10, 2011 for the first group of large accelerated filers that had a market cap of over $5 billion.

Update Form 10-K items

The SEC amended certain of its rules and forms to implement the mine safety disclosure provisions that were included in the Dodd-Frank Act that went into effect on Jan. 27, 2012. Additional information regarding the SEC's mine safety disclosure rules is available on the Skadden website.

One of the amendments to the SEC's rules included a new Item 4 (entitled Mine Safety Disclosures) to Form 10-K. Companies should update their Forms 10-K to include new Item 4 and either provide the required disclosures or note that the item does not apply to the company.

Plan for additional Dodd-Frank Act requirements

There are a number of corporate governance and disclosure provisions in the Dodd-Frank Act that require SEC action but have not been implemented yet. These provisions include rules related to mandatory compensation claw-back provisions and new disclosure requirements related to compensation matters, such as pay-for-performance, pay ratios, and the hedging activities of company employees and directors. These rules will not be in effect for the 2013 annual meeting and reporting season, but companies may want to advise their board committee members about these impending rules now and their anticipated impact moving forward.

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The authors extend their thanks for the contributions to this article made by Skadden's Securities Regulation, Corporate Governance and Executive Compensation and Benefits groups.

[1] CF Disclosure Guidance: Topic 2 (cybersecurity), Oct. 13, 2011.

[2] Citizens United v. FEC, 558 U.S. 310 (2010).