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EXEQUITY

Independent Board and Management Advisors

Client Alert

Recent Legislative Developments Impacting Executive Compensation and Corporate Governance

There have been several pieces of legislation introduced in Congress which, if enacted, will impact executive compensation and corporate governance. However, we believe the two pieces of legislation that are the most relevant and possibly have the greatest chance of gaining traction are H.R. 4173, the Wall Street Reform and Corporate Protection Act of 2009, and Senator Dodd's Bill, the Restoring American Financial Stability Act of 2010. Both bills are massive and include a comprehensive set of reforms to address the causes of the recent financial crisis. The executive compensation and corporate governance provisions are relatively small parts of these bills.

This *Client Alert* provides an overview of the elements of the proposed legislation that would have the most significant impact on executive compensation. A table providing a detailed summary of the executive compensation and corporate governance provisions of these bills follows this *Client Alert* (Table 1).

The headlines with respect to the potential impact on executive compensation are as follows:

- An annual advisory vote on executive compensation would be mandated under both bills, with the additional proviso under the Senate bill that brokers can only vote retail shares if they receive instructions from the beneficial owner.
- Notably, a mandated advisory vote on golden parachute payments is included only in the House bill.
- Both bills contain provisions addressing proxy access, and independence standards for compensation committees, compensation consultants, legal counsel, and other advisers.
- Both bills also address executive compensation with respect to certain financial institutions.
- Other notable provisions provided within the Senate bill include:
  - Provisions on clawbacks;
  - Disclosure of the relationship of actual pay to performance;
  - Disclosure of the median of the annual total compensation of all employees, except the CEO, the annual total compensation of the CEO, and the respective ratio;

— Disclosure regarding hedging; and

— Corporate governance provisions addressing majority voting in the election of directors, and disclosing the rationale for separating (or not) the roles of the Chairman of the Board and the Chief Executive Officer (already required by recently amended SEC rules).

There are a number of issues that companies will have to contend with if some or all of these provisions become law. The following briefly discusses some considerations companies should take into account if mandated say on pay and majority vote of directors become required.

Say on Pay

According to RiskMetrics Group (RMG), at least 56 U.S.-based non-TARP companies are either seeking a shareholder advisory vote on executive compensation in 2010 or have indicated they will start including the proposal in 2011.[1] This is a significant increase over the approximately 19 non-TARP companies that included management say on pay proposals in 2009.[2] According to RMG, in 2009, more than 300 companies included a management-sponsored say on pay proposal in their proxies.[3] However, the vast majority of these proposals were from TARP participants that were required to include them effective February 17, 2009. All of the proposals passed with an average overall support of 86%.[4] Interestingly, Georgeson reports that despite the growing unease regarding executive compensation, only 20% of TARP companies received against recommendations from one of the major proxy advisory firms.[5]

Given the significant increase in voluntary management proposals from non-TARP companies, some commentators are suggesting that perhaps we have reached a "tipping point,"[6] where even absent a legislative or regulatory requirement, voluntary proposals may become majority practice. We are not convinced that a "tipping point" has been reached as most of our clients have indicated they will not voluntarily adopt say on pay. However, there may be a couple of reasons for the significant increase in voluntary say on pay proposals. If a company receives a shareholder proposal requesting a say on pay vote and it is not implemented, it is likely the company will receive "repeat" shareholder proposals (or be subject to withhold votes on directors up for election) until the company agrees to implement say on pay. Also, some companies acknowledge that it appears that mandatory say on pay is inevitable, even though there is widespread skepticism regarding its effectiveness. Since support levels are high and the language in the proposals typically requires a high-level yea or nay vote, some companies may view adoption of say on pay as a relatively easy way to appease shareholders with little real risk.

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1 Ted Allen, comment on "Has 'Say on Pay' Reached a Tipping Point?," RiskMetrics Blog, comment posted March 4, 2010, http://blog.riskmetrics.com/gov/2010/03/has-say-on-pay-reached-a-tipping-point
2 Ibid
3 Valerie Ho, quoted in "Say on Pay Takes Early Lead in Proxy Season Shareholder Proposal Race," The Conference Board Governance Center Blog posted on March 12, 2010, http://tcblogs.org/governance/2010/03/12/say-on-pay-takes-early-lead-in-proxy-season-shareholder-proposal-race/
4 Ibid
5 "2009 Annual Corporate Governance Review," Georgeson, http://www.georgeson.com/usa/acgr09.php
6 Allen, 2010

However, even though **all** management say on pay proposals to date have passed with generally high support, this may not be an accurate indicator of the future. If a company is evaluating a voluntary adoption of say on pay or if say on pay becomes a mandatory requirement, we believe companies should consider the following:

- **Clearly Communicate**: Most important, companies must evaluate the clarity of its compensation decisions in their proxies. Is there a succinct executive summary of key compensation decisions? Is the relationship of pay to performance clearly articulated? Is the process and rationale for pay decisions clearly explained (particularly pay decisions that may be viewed as controversial)?

- **Focus on Shareholder Views, Not Advisory Firm's Views (For Now)**: The Shareholder Forum recently conducted an independent survey of investors to rank their criteria and information sources for voting on compensation-related issues. Two conclusions were reached. Most investors want to know what the company's board has done to establish a compensation plan that supports their corporate strategies, rather than whether the compensation conforms to guidelines established by corporate governance experts. Investors also want to get both the facts and explanations directly from the company, rather than from firms selling governance opinions. [7]

  The four criteria that investors identified as the most critical or important were:

  — Relationship of pay to criteria for corporate performance (89%);

  — Process followed by the board including assurances of independence (79%);

  — Provisions of employment agreements including perks and parachutes (73%); and

  — The amount of compensation (71%).

- **Focus on Proxy Disclosure as the Main Source of Shareholder Information/Influence**: Only 26% of surveyed investors in the Shareholder Forum survey identified conformance with guidelines defined by RMG or other proxy advisory firms as critical or important. The sources of information participants most identified as critical or important to their voting decisions were the company's proxy statement and other SEC filings (81%). 70% also indicated that management responses to questions were a critical or important source of information.[8] This indicates the criticality of clear communication of a company's compensation plans and policies in the proxy statement, since this is investors' primary source of information for determining how they will vote on a say on pay proposal.[9]

- **Be Aware of Views of Advisory Groups and Activist Shareholders**: While the Shareholder Forum survey questions advisory groups' influence, companies should consider the impact of the recommendations of proxy advisory firms (e.g., RMG, Glass Lewis) and activist shareholder policies. If an annual say on pay vote is mandated, institutional investors will need to evaluate literally thousands of proposals to determine how they will vote. It is unclear whether institutional investors will have the resources to engage in this undertaking. Thus, they may be more inclined to rely on the recommendations of a proxy advisory firm.

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[7] The Shareholder Forum Reconsidering "Say on Pay" Proposals, "December 14, 2009 Forum Report: Survey of Investor Voting Criteria for Compensation Issues," http://www.shareholderforum.com/sop/Program/20091214_report.htm
[8] Ibid
[9] Ibid

However, it is important for companies to recognize that the proxy advisory firms apply different standards, criteria, and weightings in determining a say on pay vote recommendation. RMG uses a detailed checklist to compile an overall assessment. Glass Lewis compares last year's pay levels with those of peers and looks at financial performance. It suggests "no" votes only for "pretty egregious" problems. Proxy Governance Inc. considers pay versus performance over several years.[10]

Table 2 following this *Client Alert* outlines RMG's and Glass Lewis' guidelines with respect to evaluating management say on pay proposals.

- **Know Your Shareholder Base**: Companies also should consider the composition of their shareholder base, including the percentage of retail and institutional shareholders. Note that under the House bill, brokers will be able to vote the retail shares for which they have not received voting instructions, and generally these are cast in support of management. However, under the Senate bill, brokers would be precluded from voting these shares unless they have received instructions from their customers. The result under the Senate bill is that if voting instructions are not received, brokers cannot cast their votes, and because the tally is based on votes cast, the votes of the institutional investors have more weight.

Majority Vote in Uncontested Director Elections

A recent analysis of the director election standards in place at U.S. companies found that 49.5% of S&P 500 companies have a majority vote standard and an additional 18.4% have a plurality plus resignation standard (i.e., plurality standard but a director who does not receive majority support must submit his/her resignation). This is a significant change from the previous year when more than 50% of S&P 500 companies had a straight plurality voting standard.[11]

For shareholder meetings occurring before January 1, 2010, brokers were allowed to vote uninstructed retail shares in routine director elections. As stated above, brokers tend to cast their votes with management. However, effective January 1, 2010, under revised New York Stock Exchange Rule 452, brokers are no longer permitted to cast uninstructed retail shares in routine director elections.

Ultimately, the impact of this rule change depends, to a large degree, on the composition of the company's shareholder base. Amy Borrus, deputy director of the Council of Institutional Investors, believes that the disallowance of broker votes could deprive management of 15%–20% of the vote, which would result in more close votes and more directors who fail to win a majority.[12] A Proxy Governance Inc. study found that board leadership positions accounted for 59.1% of shareholder opposition votes totaling more than 20%, and compensation committee chairs are the main target, garnering 15.1% of the total.[13] This data indicates that compensation issues appear to be a primary factor in investors' decisions to withhold votes from a director up for election.

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[10] Phred Dvorak, "Investors Diverge as Votes on Pay Near," *The Wall Street Journal*, April 14, 2009
[11] "Majority Voting for Director Elections," *Directorship*, 2010, http://www.directorship.com/majority-voting-for-director-elections/
[12] Paul Sweeney, "Will 2010 be the 'Year of the Shareholder?'" *Financial Executive*, January 1, 2010
[13] Ibid

Georgeson started tracking trends in director withhold votes in 2004 and they have noticed a significant increase in the number of directors with high withhold vote levels. According to Georgeson, in 2009, more than 1,000 directors received withhold votes of 15% or greater, representing a 68% increase from 2008 to 2009. Seventy-nine directors had withhold votes of 50% or more. Georgeson reports that of the 40 companies with directors who received a majority withhold vote, only 2 companies had adopted a majority vote standard that required the directors to tender their resignations. In both of those cases, the boards did not accept the resignations. Georgeson cites several reasons for the large increase in withhold votes, including directors allowing excise tax gross-up payments or failing to adjust executive compensation practices when the market declined.[14]

If majority election of directors becomes law, companies that have not already adopted majority voting will need to evaluate its impact by analyzing their shareholder base and the criteria investors use to determine whether to withhold votes from directors. Because compensation committee chairs are a primary target of withhold votes, companies' compensation policies and the clear articulation of the rationale for those policies is increasingly important.

Notes on Process and Timing

Senator Schumer was instrumental in crafting the provisions in the Senate bill related to executive compensation and corporate governance. As you may recall, Senator Schumer had introduced the Shareholder Bill of Rights Act of 2009, S. 1074, on May 19, 2009, and many of the provisions in S. 1074 are included in Senator Dodd's bill.

Whether Congress will pass legislation on executive compensation and corporate governance is difficult to predict. It is generally anticipated that the Dodd bill will undergo significant debate in the Senate. Both Senator Richard Shelby, Ranking Member of the Committee on Banking, Housing, and Urban Affairs, and Republican Senator Bob Corker, who was negotiating with Dodd on the bill, have issued statements that seem to imply that the bill does not currently have widespread bipartisan support. If (and that may be a big if) Dodd's bill passes the Senate, the next step in the process will be to reconcile the Dodd bill to H.R. 4173. In a statement released on March 15, Chairman of the House Financial Services Committee, Barney Frank, stated that although there are some differences between the House-passed bill and Senator Dodd's version, they are more alike than different.

Another factor impacting the likelihood of passage of a bill by Congress is time. There are only about two months left before members of Congress begin to focus on midterm elections. Senator Dodd is retiring and will no longer chair the Committee on Banking, Housing, and Urban Affairs. If not passed before his retirement, it is difficult to say how its status in the Senate will be impacted.

[14] Georgeson, 2009

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Table 1: Comparison of Executive Compensation and Corporate Governance Provisions of H.R. 4173 and Senator Dodd's Bill, Restoring American Financial Stability Act of 2010

Executive Compensation and Corporate Governance Provisions	H.R. 4173—Wall Street Reform and Corporate Protection Act of 2009	S.__—Restoring American Financial Stability Act of 2010
Current Status	• Passed by the House on December 11, 2009 • Received in the Senate and referred to the Committee on Banking, Housing, and Urban Affairs • House Financial Services Committee Chairman Barney Frank wants all conference committee deliberations televised on C-SPAN	• Introduced on March 15, 2010 by Senator Christopher Dodd in the Senate Committee on Banking, Housing, and Urban Affairs • Committee markup concluded on March 22 with the Republicans choosing not to offer any amendments • Bill passed through the Committee with a vote of 13-10 (all Democrats voted "for" and all Republicans voted "against") • Full Senate likely will not take up the bill until after the Easter recess • If passed by the Senate, the hope is to reconcile the House and Senate bills by the July 4 recess
Annual Shareholder Approval of Executive Compensation/"Say on Pay"	• Nonbinding, separate **shareholder vote** to approve the compensation of executives as disclosed in the compensation committee report, the CD&A, the tables, and any related materials • SEC must issue rules within 6 months after enactment with rules effective for meetings occurring 6 months after SEC issuance • Every institutional investment manager must report at least annually how it voted • The SEC may exempt certain issuers	• Nonbinding, separate **shareholder vote** to approve the compensation of executives, as disclosed in the proxy • Effective for meetings occurring 6 months after enactment • Brokers not allowed to vote retail shares unless they have received instructions from the beneficial owner

Executive Compensation and Corporate Governance Provisions	H.R. 4173—Wall Street Reform and Corporate Protection Act of 2009	S.__—Restoring American Financial Stability Act of 2010
Shareholder Approval of Golden Parachutes	• If shareholders are asked to approve an acquisition, merger, consolidation, or proposed sale or disposition of all or substantially all of the assets, must **disclose** any agreements or understandings with any NEOs concerning any type of compensation related to the proposed transaction and the aggregate total of all compensation that may be paid or become payable • Nonbinding, separate **shareholder vote** to approve the agreements or understandings and total compensation that is disclosed • SEC must issue rules within 6 months after enactment with rules effective for meetings occurring 6 months after SEC issuance • Every institutional investment manager must report at least annually how it voted • The SEC may exempt certain issuers	• No provision
Compensation Committee Independence	• Each member of the compensation committee must be independent • In order to be independent, a member cannot accept any fees other than fees in capacity as a director (i.e., no consulting, advisory, or other compensatory fees permitted) • Effective 9 months after enactment • Issuers not in compliance are delisted; however, companies will have an opportunity to cure any defects before delisting is imposed • The SEC may exempt certain issuers	• Each member of the compensation committee must be independent • In defining the term "independence," the national securities exchanges and the national securities associations shall consider relevant factors including the source of compensation of a board member and whether a board member is affiliated with the issuer • Effective no later than 360 days after enactment • Companies not in compliance are delisted; however, companies will have an opportunity to cure any defects before delisting is imposed • National securities exchanges or national securities associations can exempt certain issuers

Executive Compensation and Corporate Governance Provisions	H.R. 4173—Wall Street Reform and Corporate Protection Act of 2009	S.__—Restoring American Financial Stability Act of 2010
Independence Standards for Compensation Consultants	• Compensation committee has the authority to retain and obtain the advice of an independent compensation consultant • Compensation committee is directly responsible for the appointment, compensation, and oversight of the work of the independent compensation consultant • Must disclose in the proxy whether the compensation committee retained an independent compensation consultant—effective for meetings occurring 1 year after enactment • SEC will establish standards of independence • In promulgating regulations, the SEC must ensure that the regulations are competitively neutral among categories of consultants and preserve the ability of compensation committees to retain the services of members of any category	• Compensation committee has the authority to retain or obtain the advice of a compensation consultant • Compensation committee is directly responsible for the appointment, compensation, and oversight of the work of a compensation consultant • Must disclose in the proxy whether the compensation committee retained or obtained the advice of a compensation consultant and whether the work of the compensation consultant raised any conflict of interest and, if so, the nature of the conflict and how the conflict is being addressed—effective for meetings occurring 1 year after enactment • Compensation committee may only select a compensation consultant after taking those factors into consideration factors identified by the SEC, which shall include: — Other services provided by the person who employs the compensation consultant — Amount of fees received by the person who employs the compensation consultant as a percentage of the person's total revenue — Policies and procedures put in place by the person who employs the compensation consultant that are designed to prevent conflicts of interest — Business or personal relationships between the compensation consultant and a member of the compensation committee — Stock of the issuer owned by the compensation consultant

Executive Compensation and Corporate Governance Provisions	H.R. 4173—Wall Street Reform and Corporate Protection Act of 2009	S.__—Restoring American Financial Stability Act of 2010
	• Companies must provide for appropriate funding for payment of compensation to an independent compensation consultant • Subject to same effective date, noncompliance action, and exemption authority as described under Compensation Committee Independence • SEC must conduct a study and review of the use of compensation consultants and the effects of such use and report the results to Congress within 2 years of the effective date	• Companies must provide for appropriate funding for payment of reasonable compensation to a compensation consultant • Subject to same effective date and noncompliance action as described under Compensation Committee Independence
Independence Standards for Independent Counsel and Other Advisers	• Compensation committee has the authority to retain and obtain the advice of independent counsel and other advisers • Compensation committee is directly responsible for the appointment, compensation, and oversight of the work of such independent counsel and other advisers • SEC will establish standards of independence	• Compensation committee has the authority to retain or obtain the advice of independent legal counsel and other advisers • Compensation committee is directly responsible for the appointment, compensation, and oversight of the work of independent legal counsel and other advisers • Compensation committee may only select independent counsel or other advisers after taking into consideration factors identified by the SEC, which shall include: — Other services provided by the organization who employs the legal counsel or other adviser — Amount of fees received by the organization who employs the legal counsel or other adviser as a percentage of the organization’s total revenue — Policies and procedures put in place by the organization who employs the legal counsel or other adviser that are designed to prevent conflicts of interest — Business or personal relationships between the legal counsel or other adviser and a member of the compensation committee — Stock of the issuer owned by the legal counsel or other adviser

Executive Compensation and Corporate Governance Provisions	H.R. 4173—Wall Street Reform and Corporate Protection Act of 2009	S.__—Restoring American Financial Stability Act of 2010
	• Companies must provide for appropriate funding for payment of compensation to any independent counsel or other advisers • Subject to same effective date, noncompliance action, and exemption authority as described under Compensation Committee Independence	• Companies must provide for appropriate funding for payment of reasonable compensation to legal counsel or other adviser • Subject to same effective date and noncompliance action as described under Compensation Committee Independence
Recovery of Erroneously Awarded Compensation	• No provision	• Each issuer must develop and implement a policy providing: — For disclosure of the policy of the issuer on incentive-based compensation that is based on financial information required to be reported under the securities laws, and — In the event of an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement, the issuer must recover from any current or former executive officer who received incentive-based compensation, including stock options awarded, during the 3-year period preceding the date on which the issuer is required to prepare an accounting restatement, any excess of what would have been paid under the accounting restatement • Noncompliance results in delisting
Disclosure of Pay Versus Performance	• No provision	• SEC must require issuers to disclose the relationship between executive compensation actually paid and the financial performance of the company (TSR)—this can be presented graphically
Disclosure of Pay of All Employees Versus CEO	• No provision	• SEC will require issuers to disclose the median annual total compensation of all employees, except the CEO, the annual total compensation of the CEO, and the respective ratio

Executive Compensation and Corporate Governance Provisions	H.R. 4173—Wall Street Reform and Corporate Protection Act of 2009	S.__—Restoring American Financial Stability Act of 2010
Disclosure Regarding Employee and Director Hedging	• No provision	• Must disclose in the proxy whether any employee or member of the board, or any designee of such employee or member, is 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 the stock granted to the employee or member of the board as compensation, or is held, directly or indirectly, by the employee or member of the board
Special Provisions Applicable to Certain Financial Institutions	• Disclosure—Federal regulators must prescribe regulations to require covered financial institutions to disclose to the appropriate federal regulator the structures of **all** incentive-based compensation arrangements to determine whether the compensation structure is aligned with sound risk management, is structured to account for the time horizon of risks, and meets other criteria that the federal regulators deem to be appropriate to reduce unreasonable incentives to take undue risks that could threaten the safety and soundness of the covered financial institutions or could have serious adverse effects on economic conditions or financial stability • Prohibition—Federal regulators must prescribe regulations to prohibit any incentive-based arrangements that could threaten the safety and soundness of covered financial institutions or could have serious adverse effects on economic conditions or financial stability • Broad definition of covered financial institutions, including non-TARP institutions but excluding financial institutions with less than $1B of assets • Regulations promulgated cannot be allowed to require the recovery of incentive-based compensation under arrangements in effect on the date of enactment	• Board of Governors, in consultation with the Comptroller of the Currency and the FDIC, must establish standards prohibiting as an unsafe and unsound practice any compensation plan of a bank holding company that provides an executive officer, employee, director, or principal shareholder with excessive compensation, fees, or benefits, or could lead to material financial loss to the bank holding company • In establishing these standards, the Board of Governors must take into account the compensation standards of the Federal Deposit Insurance Act and the views and recommendations of the Comptroller of the Currency and the FDIC • Effective not later than 180 days after the transfer date established in the Act • Publicly traded nonbank financial companies that are supervised by the Board of Governors and all publicly traded bank holding companies with assets over $10B must have a risk committee. Board of Governors must issue final rules no later than 1 year after the transfer date to take effect no later than 15 months after the transfer date

Executive Compensation and Corporate Governance Provisions	H.R. 4173—Wall Street Reform and Corporate Protection Act of 2009	S.__—Restoring American Financial Stability Act of 2010
	provided the compensation arrangements are for a period of no more than 24 months • Federal regulators must prescribe regulations within 9 months of enactment • GAO must undertake a study to determine whether there is a correlation between compensation structures and excessive risk taking and report to Congress within 1 year of enactment • No requirement to establish a risk committee	
Election of Directors by Majority Vote in Uncontested Elections	• No provision	• In an uncontested election of a member to the board, each director who receives a majority of the votes cast is deemed elected • In an uncontested election, if a director does not receive a majority of the votes cast, the director must tender his/her resignation to the board and the board shall either accept the resignation, determine the effective date, and make the effective date public or upon a unanimous vote of the board decline to accept the resignation and make public within 30 days the reasons the board chose not to accept the resignation and the reasons the decision was in the best interests of the issuer and its shareholders • In a contested election, if the number of nominees exceeds the number of directors to be elected, each director will be elected by the vote of a plurality of the shares represented at a meeting and entitled to vote • Effective not later than 1 year after enactment • Issuers not in compliance are delisted; however, companies will have an opportunity to cure any defects before delisting is imposed • The SEC may exempt certain issuers

Executive Compensation and Corporate Governance Provisions	H.R. 4173—Wall Street Reform and Corporate Protection Act of 2009	S.__—Restoring American Financial Stability Act of 2010
Disclosure Regarding Chairman and CEO Structure	• No provision	• The SEC must issue rules that require an issuer to disclose in its proxy the reasons why the issuer has chosen the same person to serve as Chairman of the Board and Chief Executive Officer or why different persons are chosen • Effective not later than 180 days after enactment
Proxy Access	• The SEC is given the authority to prescribe rules and regulations that govern the process for including a shareholder nominee to serve on the board	• The SEC **may** include a requirement that an issuer include a shareholder nominee to serve on the board and a requirement that the issuer follow a certain procedure in relation to such solicitation • The SEC **may** issue rules permitting the use by shareholders of proxy solicitation materials supplied by the issuer

Table 2: RMG and Glass Lewis "Say on Pay" Guidelines

RMG	Glass Lewis
Currently, RMG determines its vote recommendation on a case-by-case basis based on five global principles:[1] • Maintaining appropriate pay-for-performance alignment, with emphasis on long-term shareholder value. This takes into consideration the link between pay and performance, the mix between fixed and variable pay, performance goals, and the cost of equity plans. • Avoiding arrangements that "pay for failure." This principle addresses long or indefinite contracts, excessive severance packages, and guaranteed compensation. • Maintaining an independent and effective compensation committee. This principle focuses on director oversight of executive pay programs and the process for compensation decision making, including access to independent experts. • Providing shareholders with clear, comprehensive disclosures. • Avoiding inappropriate pay to non-employee directors. Director compensation should not compromise their independence or ability to make judgments regarding executive pay. RMG has indicated it will consider the following factors in the context of a company's specific circumstances and the board's disclosed rationale for its practices and will generally determine its vote recommendation based on whether negative features outweigh positive features:[2] • Assessment of performance metrics relative to business strategy; • Evaluation of peer groups used to set target pay or award opportunities;	Glass Lewis will support proposals where pay is aligned with performance and shareholders are provided with a clear, comprehensive discussion of the processes and procedures related to executive compensation. Likewise, they will not support proposals where pay is "grossly" misaligned with performance, where the information presented in the CD&A is vague, and where a reasonable analysis suggests that a compensation structure is in drastic need of reform. More specifically, Glass Lewis' approach to evaluating management say on pay proposals involves the following:[3] • **CD&A Analysis**: Evaluates content and clarity, consists of a nuanced approach when assessing companies' rationale for significant adjustments made to performance metrics, target payouts, and benchmarking. CD&A disclosure is rated based on a critique of several key elements, including: — Whether the company provides a reasonable rationale for benchmarking at a specific percentile; — Its disclosure of performance metrics; — Its disclosure of how actual performance translates into pay decisions; — Its evaluation of a companies' rationale for granting discretionary cash or equity awards; and — Its review of the extent to which performance plays a role in the granting of equity incentives. • **Proprietary Pay-for-Performance Analysis**: Evaluates the relationship between relative executive compensation and relative performance. Glass Lewis benchmarks the compensation of the NEOs to the compensation of the NEOs at peer companies and compares the company's performance to that of those same peers.

RMG	Glass Lewis
• Alignment of company performance and executive pay over time; • Assessment of the disparity between the CEO's total pay and the pay of other named executive officers; • Balance of fixed versus performance-based pay; • Assessment of excessive practices with respect to perks, severance packages, supplemental retirement plans, and burn rates; • Evaluation of the CD&A regarding how compensation is determined; and • Assessment of the board's responsiveness to shareholder concerns on compensation issues.	

[1] "U.S. Proxy Voting Manual," RiskMetrics Group
[2] Ibid
[3] Glass Lewis & Co., Glass Lewis World Governance Focus Special Edition: 2010 Proxy Season Preview, Volume 1, Issue 4, January 2010