



G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-321512

February 16, 2011

The Honorable Tim Johnson
Chairman
The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Spencer Bachus
Chairman
The Honorable Barney Frank
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Shareholder Approval of Executive Compensation and Golden Parachute Compensation*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (Commission), entitled “Shareholder Approval of Executive Compensation and Golden Parachute Compensation” (RIN: 3235-AK68). We received the rule on January 28, 2011. It was published in the *Federal Register* as a final rule on February 2, 2011, with an effective date of April 4, 2011. 76 Fed. Reg. 6010.

The final rule implements section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.¹ Section 951 requires companies to conduct a separate shareholder advisory vote to approve the compensation of executives. Section 951 also requires companies to conduct a separate shareholder advisory vote to determine how often an issuer will conduct a shareholder advisory vote on executive compensation. In addition, section 951 requires companies soliciting votes to approve merger or acquisition transactions to provide disclosure of certain “golden parachute” compensation arrangements and, in certain circumstances, to

¹ Pub. L. No. 111-203, § 951, 124 Stat. 1376, 1899 (July 21, 2010).

conduct a separate shareholder advisory vote to approve the golden parachute compensation arrangements.

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Commission complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Elizabeth M. Murphy
Secretary, Securities and
Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION
AND GOLDEN PARACHUTE COMPENSATION"
(RIN: 3235-AK68)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) analyzed the costs and benefits of this final rule. The Commission expects that the enhanced disclosure required by this final rule regarding the shareholder approval of executive compensation and companies' responses to shareholder votes will provide shareholders and investors with timely information about such votes that is consistent with the information required to be provided and that enhance the operation of the Commission's rules. The Commission also expects that the enhanced disclosure regarding golden parachute compensation will provide a more complete picture of the compensation to shareholders as they consider voting and investment decisions relating to mergers and similar transactions.

The Commission recognized that the amendments it is adopting will impose new disclosure requirements on companies and are likely to result in costs related to information collection. The final rule requires the disclosure of executive compensation in a tabular format, which is likely to result in certain costs. However, the Commission expects these costs to be limited since much of the compensation required to be disclosed under this rule is currently required to be disclosed in narrative format in the existing disclosure regime. The Commission estimates the annual incremental paperwork burden for all companies to prepare the disclosure that would be required under this rule to be approximately 24,942 hours of company personnel time and a cost of approximately \$7,841,200 for the services of outside professionals.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Commission prepared a Final Regulatory Flexibility Analysis for this final rule that discussed the reasons for, and objectives of, the rule; the legal basis; significant issues raised by public comment; small entities subject to the final rule; reporting, recordkeeping, and other compliance requirements; duplicative, overlapping, or conflicting federal rules; and significant alternatives.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Commission is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On October 28, 2010, the Commission published a notice of proposed rulemaking. The Commission received over 60 comment letters in response to the proposed rule in addition to over a dozen letters received before the proposed rule was published. The comment letters came from corporations, pension funds, professional associations, trade unions, law firms, consultants, academics, individual investors, and other interested parties. The Commission responded to the comments in the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The Commission determined that this final rule contains 13 information collection requirements under the Act, which it submitted to the Office of Management and Budget (OMB) for review. The Commission estimates that the total incremental burden for current reports and proxy and information statements to be 27,630 hours with \$2,766,800 professional costs. The Commission also estimates that the total incremental burden for registration statements, merger proxy and information statements, tender offer documents, and Schedule 13E-3 to be 16,915 hours and \$5,074,400 in professional costs.

Statutory authorization for the rule

The Commission promulgated this rule under the authority of sections 6, 7, 10, and 19(a) of the Securities Act of 1933 and sections 13, 14(a), 14A, 23(a), and 36 of the Securities Exchange Act of 1934. 15 U.S.C. §§ 77f, 77g, 77j, 77s(a), 78m, 78n, 78n-1, 78w(a), 78mm.

Securities Act of 1933 and Securities Exchange Act of 1934, 15 U.S.C. §§ 77b(b), 78c(f), 78w(a)

The Commission analyzed the final rule to determine if it will promote efficiency, competition, and capital formation, and that any burden imposed by this rule on competition is necessary or appropriate. The Commission determined that this final rule will promote or have no effect on efficiency, competition, and capital formation.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, the Commission is not subject to the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to the Order.