



Shareholder Rights and Corporate Governance in the Dodd-Frank Act



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Introduction

The Dodd-Frank Wall Street Reform and Consumer Protection Act¹ is a massive piece of legislation that is over 2,300 pages long. It authorizes various regulatory bodies to conduct additional studies and to enact rules to implement the Act.

To date, according to the U.S. Chamber of Commerce, the Act has given rise to 533 proposed administrative rules from over a dozen federal regulatory agencies (more than a third of which are from SEC), 60 studies and 93 Congressional reports. The Act is quite complex, as it contains numerous separate sections which will take shape later through follow-up rulemaking. Moreover, simply determining when the various Dodd-Frank Act provisions come into effect requires significant analysis and discussion, as there are different implementation dates for different provisions of the Act, and those implementation dates are largely moving targets as they are based on events which have not yet occurred or are conditional. Thus, the analysis below may change significantly as we approach the effective dates of the various sections of the Act and as the studies and Congressional reports are completed and the follow-up rules are adopted.

Proxy Access

The Dodd-Frank Act explicitly grants the SEC authority to adopt proxy access rules that enable certain shareholders to place nominees for corporate directors on the company's proxy statement.² Proxy access has long been sought by shareholder activists to make it easier to nominate and replace directors when shareholders are dissatisfied with management's slate of directors. Without proxy access rules, shareholders must distribute their own proxy statement if they wish to nominate and solicit votes for directors. For most shareholders, this process is prohibitively expensive.

Previously, when the SEC was considering adopting proxy access rules, some had questioned whether the Exchange Act—

which, they argued, primarily requires mandatory disclosures—empowered the SEC to adopt such rules. A 2009 letter from the Center for Capital Markets Competitiveness regarding an SEC proposal to adopt proxy access rules stated:

Mandating shareholder access to company proxy materials would create a substantive federal requirement under which a company, in effect, must solicit proxies for dissident director candidates and the establishment of director election procedures that it does not support and that will lead to future proxy contests in opposition to the company's own candidates. Such substantive regulation is clearly inconsistent with Congressional intent, as it goes far beyond the central and process-based purpose of the proxy rules, namely to ensure a fully informed and orderly vote on matters coming before the shareholders.³

The argument relied primarily on a decision issued by the Court of Appeals for the District of Columbia that held that the SEC exceeded its authority by prohibiting listed companies from taking action “with the effect of nullifying, restricting or disparately reducing the per share voting rights of [existing common stockholders].” *Business Roundtable v. S.E.C.*, 905 F.2d 406, 407 (D.C. Cir. 1990) (quoting 17 CFR § 240.19c-4). The court held:

[W]e find that the Exchange Act cannot be understood to include regulation of an issue that is so far beyond matters of disclosure (such as are regulated under § 14 of the Act), and of the management and practices of self-regulatory organizations, and that is concededly a part of corporate governance traditionally left to the states.

After the passage of the Dodd-Frank Act, it is now indisputable that Congress has given power to the SEC to adopt proxy access rules. On August 25, 2010, the SEC adopted a proxy access rule that would allow a shareholder, or group of shareholders, who

own three percent of a company's stock for over three years to nominate directors on the company's proxy card.⁴ The shareholders must have investment and voting power over the stock.⁵ Furthermore, the stockholder must not have the intention to effect a change in control over the company and a company is not required to include a number of shareholder nominees on the proxy that exceed 25% of the board.⁶ A stockholder who nominates a director must file a Schedule 14N, which must state, *inter alia*, the stockholder meets the ownership requirements under Rule 14a-11, the stockholder's purpose in nominating a director, and whether the director meets all requirements for directors set forth in the company's governing documents.

The SEC also issued a new rule changing Rule 14a-8, which requires companies to place shareholder proposals in a company's proxy statement if the proposals meet certain procedural requirements and do not fall into one of thirteen categories enumerated in Rule 14a-8(i)(1)-(13). Prior to the adoption of Dodd-Frank, shareholders had proposed proxy access bylaws under Rule 14a-8. In 2006, the Court of Appeals for the Second Circuit held that Rule 14a-8 required companies to place proxy access shareholder proposals in the company's proxy statement. *See American Federation of State, County & Municipal Employees v. American Int'l. Group, Inc.*, 462 F.3d 121 (2d Cir. 2006). The court rejected defendant's argument that proxy access proposals were excludable under Rule 14a-8(i)(8), which, at the time, allowed companies to exclude a proposal that “relates to an election.” *See id.* at 124. The court held that Rule 14a-8(i)(8) only allowed companies to exclude proposals “used to oppose solicitations dealing with an identified board seat in an upcoming election.” *Id.* at 128. The court held that Rule 14a-8(i)(8) did not allow exclusion of proposals that established procedures to nominate directors on a company's proxy statement in future elections. *See id.*

After the decision, the SEC amended Rule 14a-8(i)(8) so that it allowed companies to exclude proxy access proposals. The new rule stated that companies could exclude a proposal if it “relates to a nomination or an

election for membership on the company's board of directors or analogous governing body *or a procedure for such nomination or election.*" (emphasis added).⁷

At the same time that the SEC adopted rules to require proxy access in certain circumstances, it amended Rule 14a-8 again, requiring a company to place shareholder proposals in its proxy statement that provide for greater proxy access than required under the new Rule 14a-11.⁸ Therefore, Rule 14a-8 now gives shareholders a tool to expand proxy access.

On October 4, 2010, the SEC issued an order⁹ delaying the effectiveness of the recently adopted proxy access rules pending resolution of a lawsuit challenging their validity.¹⁰ An SEC spokesman stated that the SEC expects the lawsuit to be resolved by late spring of 2011. As a result, the new proxy access rules will likely not be effective for most public companies until the 2012 proxy season. These developments make clear the need for investors to continue to monitor the ongoing rulemaking process designed to implement the Dodd-Frank Act.

Say-On-Pay

The Dodd-Frank Act requires companies to have a non-binding say-on-pay vote in which shareholders vote on whether they approve or disapprove of the company's executive compensation practices. Previously, the default rule was that shareholders do not get such a vote. However, shareholder activists who disapproved of a company's executive compensation practices could submit a proposal under Rule 14a-8 requesting that a company have a say-on-pay vote at the company's next annual meeting.

Under the Dodd-Frank Act, a company would not be required to take any action if a majority of shareholders do not support executive compensation practices. However, where a large number of shareholders express disapproval of executive compensation, the board is alerted to the perception that its executive compensation practices do not benefit

the company and such a result may be a catalyst for the board to change its compensation policy. Under the Dodd-Frank Act, a company must have a say-on-pay vote at least once every three years. Shareholders have discretion on determining the frequency of the vote. At least once every six years, shareholders will vote on whether they want a say-on-pay vote every one, two, or three years.¹¹

Golden Parachutes

The Dodd-Frank Act requires companies to disclose in "clear and simple form" any golden parachute an executive receives in connection with the sale of all assets of the corporation or a change in corporate control.¹² Shareholders must be given the opportunity to have a non-binding vote on such compensation.¹³ The increased disclosures will help shareholders punish boards that award oversized pay packages to executives when there is a change in corporate control.

The Dodd-Frank Act requires federal regulators to establish guidelines or regulations that "prohibit any types of incentive-based payment arrangement . . . [that] encourages inappropriate risks by covered financial institutions - (1) by providing an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or (2) that could lead to material financial loss to the covered financial institution."¹⁴ Thus, the Dodd-Frank Act recognizes high compensation can incentivize reckless risk-taking.

Disclosure Of Say-On-Pay Votes And Golden Parachutes

The Dodd-Frank Act directed the SEC to adopt new rules describing the nature and scope of the disclosures required in proxy statements concerning say-on-pay votes and golden parachute payments.¹⁵

On October 18, 2010, the SEC announced proposed rules requiring companies to disclose whether and, if so, how their compensation policies and decisions have taken into account the results of shareholder advisory votes in executive compensation.¹⁶ These new disclosures would provide investors with a better understanding of companies' compensation decisions.

The proposed SEC rules also provide that the proxy or solicitation materials for shareholder meetings to consider certain merger and acquisition transactions disclose all golden parachute compensation agreements of certain executive officers of the target and acquiring companies. While disclosure of golden parachute compensation is generally required under the existing rules, the new rules would impose more extensive requirements concerning the scope and substance of the disclosures, requiring, among other things, the disclosures to be provided in tabular and narrative formats, and requiring certain information, including the total aggregate dollar value of all cash severance payments (*e.g.*, base salary, bonus and non-equity incentive compensation), stock awards and in-the-money option awards for which vesting would be accelerated, pension and other deferred compensation benefit enhancements, perquisites and other personal and health and welfare benefits, and tax gross-ups.

Compensation Committee Independence

The Dodd-Frank Act requires that national exchanges adopt rules requiring that compensation committee members be independent.¹⁷ In defining independence, the exchanges must take in account, "the source of compensation of a member of the board of directors of an issuer, including any consulting, advisory, or other compensatory fee paid by the issuer to such member of the board of directors; and . . . whether a member of the board of directors of an issuer is affiliated with the issuer, a subsidiary of the issuer, or an affiliate of a subsidiary of the issuer."¹⁸ Thus, the Dodd-Frank Act recognizes

high director compensation can erode director independence. In addition, the compensation committee can only select an independent compensation consultant and legal counsel.¹⁹

Pay For Performance And Pay Parity Disclosures

The Dodd-Frank Act requires the SEC to adopt rules requiring a “clear description” in a company’s proxy statement of certain executive compensation arrangements. The required disclosures include the relationship between executive compensation actually paid and the company’s financial performance, taking into account any change in the company’s stock price and dividends and other distributions. The total annual compensation of the CEO compared to the total median annual compensation of all employees of the company (including the ratio of those compensation figures) must also be disclosed, along with an explanation whether employees or directors are permitted to purchase financial instruments that are designed to hedge or offset any decrease in the market value of equity securities of the company that are granted as compensation or otherwise held by the employee or director.²⁰ The disclosures could include a graphic representation of the required information. Although Item 402 of Regulation S-K currently requires discussion of these topics in the Compensation Discussion and Analysis section of proxy statements, the Dodd-Frank Act would require specific quantitative disclosure.

Clawback

The Dodd-Frank Act requires the SEC to issue rules requiring a company listed on a national exchange to clawback incentive compensation of executives based on financial metrics that were restated.²¹ Importantly, the Act does not require that the executive or company engage in any culpable conduct to clawback compensation.²² Previously, the SEC could clawback compensation

where “an issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer, *as a result of misconduct*, with any financial reporting requirement under the securities laws[.]”²³ Shareholders have long been advocating that companies adopt broad clawback provisions as now required by the Dodd-Frank Act.

Financial Institutions Compensation Restrictions

The Dodd-Frank Act requires bank holding companies and certain other “covered financial institutions” with at least \$1 billion in assets to disclose to the “appropriate financial regulators” (such as the Federal Reserve, the Comptroller of the Currency, the FDIC, the Office of Thrift Supervision, the SEC, and the Federal Housing Finance Agency) the structures of the institution’s incentive-based compensation arrangements with the institution’s executive officers, employees, directors and principal shareholders.²⁴

The Act also requires financial regulators to jointly issue rules to prohibit any incentive-based compensation arrangements that they believe encourage inappropriate risks by the covered financial institutions by providing compensation that is excessive or could lead to a material financial loss to the financial institution. The disclosures will enable the regulators to make that analysis of the compensation. The disclosures are similar to those that TARP recipient financial institutions must make to their primary federal regulators and to the U.S. Department of the Treasury. It remains to be seen whether the required prohibitions on excessive compensation will, in fact, be incorporated in the rule that will ultimately be promulgated by regulators, effectively giving rise to a cap on compensation.

Beneficial Ownership Definition Changes

The Dodd-Frank Act also provides for amendments to Sections 13 and 16 of the Exchange Act, including revising the definition of “beneficial ownership” to include beneficial ownership of security-based swaps. The SEC is also empowered to adopt rules shortening the Schedule 13D filing deadline (currently 10 days after an acquisition of more than 5% of registered equity) and the Form 3 filing deadline (currently 10 days after a person becomes a director, officer or beneficial owner)

Broker Non-Votes

The Dodd-Frank Act disallows brokers from casting votes without authority from a beneficial owner in votes concerning the “election of a member of the board of directors of an issuer, executive compensation, or any other significant matter, as determined by the Commission.”²⁵ Oftentimes, a broker holds shares on behalf of a beneficial owner and receives proxy materials from the company. The broker then forwards the information to the beneficial owner of the stock. If the broker does not receive instructions on how to vote from the beneficial owner, a broker may cast an uninstructed vote on behalf of the beneficial owner in certain circumstances.

The SEC had previously approved a New York Stock Exchange (“NYSE”) Rule prohibiting brokers from casting uninstructed votes in non-contested director elections and other non-routine matters.²⁶ Thus, the Dodd-Frank Act expands this NYSE Rule by disallowing brokers from casting votes in matters involving executive compensation. The change will effect the voting totals of non-binding say-on-pay votes. Because brokers generally vote in favor of management, vote totals counted without broker non-votes will likely increase the percentage of votes expressing disapproval of executive compensation and better reflect the views of shareholders who have decided to cast their vote.

Chairman-CEO Position

The Dodd-Frank Act requires companies to state the reasons why they have chosen “(1) the same person to serve as chairman of the board of directors and chief executive officer . . . or (2) different individuals to serve as chairman of the board of directors and chief executive officer.”²⁷ In the past, shareholder activists have submitted proposed bylaws under Rule 14a-8 to split the chairman and CEO position. A board headed by an independent chairman oftentimes is better able to monitor executives and ensure that they are acting in the best interest of shareholders. Where the board is headed by the CEO, this oversight function is diminished. While the Dodd-Frank Act does not require that companies split the Chairman and CEO position, it requires companies to explain why it is in the best interest of the company to have the two positions held by the same person.

Whistleblower Litigation

The Dodd-Frank provides for awards to whistleblowers who furnish the SEC with original information concerning violations of the securities laws.²⁸ A whistleblower may get between 10% and 30% of any sanctions exceeding \$1,000,000 resulting from an SEC judicial or administrative action.²⁹ This incentivizes employees to report egregious wrongdoing and will help the SEC to enforce securities laws.

Credit Rating Agency Governance

Credit rating agencies contributed to the financial crisis by giving high ratings to risky debt securities, making them seem safer than they were. Credit rating agencies have been criticized for the inherent conflict of interest in their business model: they are paid by the same companies whose debt securities they rate. Credit rating agencies are, therefore, incentivized to give high ratings to obtain repeat business from their

clients. The Dodd-Frank Act increases regulation of credit rating agencies and takes steps to minimize the effects of this conflict of interest.

The Dodd-Frank Act requires credit rating agencies to adopt “an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings.”³⁰ The Act empowers the SEC to issue rules listing the factors that credit rating agencies must consider when establishing their internal controls.³¹ Furthermore, credit rating agencies must submit an annual report to the SEC on compliance with these procedures.³² The Act requires credit rating agencies to establish procedures for determining whether conflicts of interest existed in rating a security when a person participates in rating a security and then becomes an employee of the issuer, sponsor, or underwriter of the security.³³ The Act enables the SEC to revoke the registration of a credit rating agency if the SEC finds that “sales and marketing considerations” influenced that agency’s ratings.³⁴ The Dodd-Frank Act requires at least one-half of the board of credit rating agencies to consist of independent directors³⁵

Private Right of Action to Sue Credit Rating Agencies

Changes in the Securities and Exchange Acts with respect to private suits against credit rating agencies demonstrate that Congress believes that shareholder litigation can play an important role in reforming deceptive practices. The Dodd-Frank Act repeals Rule 436(g) of the Securities Act, which exempts credit rating agencies from liability under Section 11 of the Securities Act where they consent to their ratings being included in a registration statement.³⁶ The Dodd-Frank Act also reduces the pleading standard for shareholders suing credit rating agencies under Section 10(b) and Rule 10b-5 of the Exchange Act. Under the Private Securities Litigation Reform Act (“PSLRA”), a plaintiff must

plead with “particularity facts giving rise to a strong inference” that the defendant acted with scienter.³⁷ Previously, some courts held that plaintiffs’ allegations that credit rating agencies failed to adequately investigate the basis for their ratings did not adequately plead that defendants acted with scienter under the Exchange Act.³⁸ Under the Dodd-Frank Act, such allegations are sufficient to survive a motion to dismiss. Now, a plaintiff must only “state with particularity facts giving rise to a strong inference that the credit rating agency knowingly or recklessly failed— (i) to conduct a reasonable investigation of the rated security with respect to the factual elements relied upon by its own methodology for evaluating credit risk; or (ii) to obtain reasonable verification of such factual elements”³⁹

The Dodd-Frank Act states that ratings by credit rating agencies are not forward looking statements.⁴⁰ The Exchange Act exempts from liability a statement that is “identified as a forward-looking statement, and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward looking statement.”⁴¹ Thus, false and misleading ratings are actionable under the Exchange Act.

The Dodd-Frank Act subjects credit rating agencies to Section 18 of the Exchange Act, which creates liability for persons who file false statements with the SEC. Previously, credit rating agencies had to only “furnish” certain information to the SEC in order to register as a nationally recognized rating agency. 15 U.S.C. § 78o-7. The Dodd-Frank Act requires credit rating agencies to file information including, *inter alia*,

- (i) credit ratings performance measurement statistics over short-term, mid-term, and long-term periods (as applicable) of the applicant;
- (ii) the procedures and methodologies that the applicant uses in determining credit ratings;
- (iii) policies or procedures adopted and implemented by the applicant to prevent the misuse, in violation of this chapter (or the rules and regulations hereunder), of material,

nonpublic information;

(iv) the organizational structure of the applicant;

(v) whether or not the applicant has in effect a code of ethics, and if not, the reasons therefor; [and]

(vi) any conflict of interest relating to the issuance of credit ratings by the applicant[.]

15 U.S.C. § 78o-7.

Sarbanes-Oxley Amendment

The Dodd-Frank Act exempts companies that are not accelerated filers or large accelerated filers from the requirement in Section 404 of Sarbanes-Oxley to provide an attestation from the company's auditor on the company's internal controls over financial reporting.⁴² The Dodd-Frank Act also requires the SEC to study "how the Commission could reduce the burden of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 for companies whose market capitalization is between \$75,000,000 and \$250,000,000 for the relevant reporting period while maintaining investor protections for such companies."

Expansion Of SEC Power To Bring Enforcement Suits

The Dodd-Frank Act clarifies the scope of the Exchange Act with respect to securities that trade on a foreign exchange and those who aid and abet violations of the securities law. In *Morrison v. National Australia Bank Ltd.*,¹³⁰ S. Ct. 2869 (U.S. 2010), the U.S. Supreme Court held that the Exchange Act only applies to securities "listed on an American stock exchange, and the purchase or sale of any other security in the United States." For actions brought by the SEC, the Dodd-Frank Act expands the scope of the antifraud provisions of the Exchange Act to apply to "conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs

outside the United States and involves only foreign investors" and "conduct occurring outside the United States that has a foreseeable substantial effect within the United States."⁴³ While the Dodd-Frank Act does not alter the holding of *Morrison* with respect to private securities actions, it requires the SEC to study whether private rights of actions under the securities laws should be similarly expanded.⁴⁴

In *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 177 (U.S. 1994), the Supreme Court held that "the text of the 1934 Act does not itself reach those who aid and abet a § 10(b) violation." Under the PSLRA, Congress restored aiding and abetting liability under the Exchange for suits brought by the SEC.⁴⁵ The Dodd-Frank Act restores aiding and abetting liability for violations of the Securities Act in actions brought by the SEC.⁴⁶

Aiding And Abetting Liability

The Dodd-Frank Act did not overturn the Supreme Court's decision holding that there is no aiding and abetting liability for private rights of action.⁴⁷ However, the Dodd-Frank Act requires the Government Accountability Office to study "the impact of authorizing a private right of action against any person who aids or abets another person in violation of the securities laws."⁴⁸

Additional Studies

As explained at the beginning of this article, the Dodd-Frank Act authorizes the completion of numerous studies. For example, the Act requires the SEC to complete a fiduciary duty study and submit a report to Congress on whether any legal or regulatory gaps exist in the protection of retail customers relating to the standard of care for brokers, dealers, and investment advisors, and whether any additional statutory authority would be required to resolve such gaps.⁴⁹ The GAO must submit reports on the effectiveness of state and federal regulations to protect

consumers from individuals who hold themselves out as financial planners; on international coordination relating to the orderly resolution of financial companies under the Bankruptcy Code and applicable foreign law; and on the orderly liquidation of such companies under the Bankruptcy Code, among other studies.⁵⁰ The SEC must complete additional studies, including recommendations, on: (i) ways to improve investor access to registration information about investment advisers, broker-dealers and their respective associated persons;⁵¹ (ii) current financial literacy among investors and ways to improve it;⁵² and (iii) the state of short selling, with particular attention to the impact of recent rule changes and the incidence of failure to deliver shares sold short, among numerous other studies.⁵³ To date, about 60 such studies have commenced.

Conclusion

Many of the Dodd-Frank Act's provisions require further regulatory action for implementation, and to date over 500 such rules have been proposed. For example, the disclosure requirements concerning say-on-pay votes and golden parachute payments have only recently been proposed and the comment period just closed on November 18, 2010. Those rules have not yet been adopted nor is there any deadline for their adoption. Likewise, there is no deadline for the SEC to establish rules to include beneficial ownership of security-based swaps. Regulators are required to jointly establish rules within nine months after "enactment" of the relevant provisions of the Dodd-Frank Act to prohibit incentive-based compensation arrangements that are excessive or present a risk of material loss to the financial institution, but such rules have not yet been proposed. The various studies discussed above may spur additional legislation and rulemaking. Thus, the Dodd-Frank Act is not a static piece of legislation—it is growing and evolving over time.

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1. The Dodd-Frank Wall Street Reform and Consumer Protection Act is referred to herein as the “Dodd-Frank Act” or “Act.”
2. Act at § 971.
3. See Letter from Richard H. Murray, Chairman of the Center for Capital Markets, an organization created by the U.S. Chamber of Commerce to The Honorable Mary Schapiro, Chairman of the SEC 2 (Apr. 28, 2009), available at <http://www.sec.gov/comments/s7-10-09/s71009-181.pdf>
4. See SEC Release, Facilitating Shareholder Election of Directors, Release Nos. 33-9136; 34-62764; IC-29384; File No. S7-10-09 23-28 (Aug 25, 2010).
5. See *id.* at 25.
6. See *id.* at 26.
7. Shareholder Proposals Relating to the Election of Directors, SEC Release No. 27914, 27914 (Jul. 27, 2007).
8. See SEC Release, Facilitating Shareholder Director Nominations, Release Nos. 33-9136; 34-62764; IC-29384; File No. S7-10-09 23-28 (Aug 25, 2010).
9. *In the Matter of the Motion of the Business Roundtable and the Chamber of Commerce of the United States of America for Stay of Effect of Commission’s Facilitating Shareholder Director Nominations Rules (Order Granting Stay)*, Release No. 33-9149 (Oct. 4, 2010).
10. The SEC’s order came in response to a motion filed September 29, 2010 by the Business Roundtable and the U.S. Chamber of Commerce to delay the effectiveness of the new rules because, those petitioners argue, the rules are “arbitrary and capricious,” create ambiguities in the application of federal and state law to the director nomination and election process, and because the SEC did not properly consider the costs and consequences the new rules would impose on U.S. public companies. *Business Roundtable, et al. v. SEC*, No. 10-1305 (D.C. Cir., filed Sept. 29, 2010). Thus, the petitioners did not challenge the SEC’s authority to issue the new rules.
11. Act at § 951.
12. Act at § 951.
13. *Id.*
14. Act at § 956(b).
15. Act at § 951.
16. SEC Release Nos. 33-9153; 34-63124; File No. S-7-3 1-10, “Shareholder Approval of Executive Compensation and Golden Parachute Compensation.”
17. Act at § 952.
18. *Id.*
19. *Id.*
20. Act at § 953 & 955
21. Act at § 954.
22. *Id.*
23. 15 U.S.C. § 7243 (emphasis added).
24. Act at § 956.
25. Act at § 957.
26. See NYSE Rule 452.
27. Act at § 972.
28. Act at § 922.
29. See *id.*
30. Act at § 932(a).
31. Act at § 932(a).
32. Act at § 932(a)(5).
33. Act at § 932(a)(4).
34. Act at § 932(a)(3).
35. Act at § 932(t).
36. Act at § 936G.
37. 15 U.S.C. § 78u-4(b)(2).
38. See *In re National Century Financial Enterprises, Inc., Inv. Litig.*, 580 F.Supp.2d 630, 643 (S.D. Ohio 2008).
39. Act at § 933(a).
40. Act at § 933(a).
41. Exchange Act at 21E(c)(1)(A)
42. Act at § 989G
43. Act at § 929P(b).
44. Act at § 929Y.
45. See PSLRA at § 104, amending 15 U.S.C. 78t.
46. Act at § 929M.
47. See *Stoneridge Inv. Partners, LLC v. ScientificAtlanta*, 552 U.S. 148, 162 (U.S. 2008).
48. Act at § 929Z.
49. *Id.* at § 913.
50. *Id.* at § 919C.
51. *Id.* at § 919B.
52. *Id.* at § 917.
53. *Id.* at § 417.



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