PUBLICATION

Smaller Reporting Companies Become Subject to Say-on-Pay in 2013; New Iran/Terrorism Reporting [Ober|Kaler]

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For the first time, smaller reporting companies are subject, in 2013, to the stockholder advisory “say-on-pay” vote to approve executive compensation as disclosed in the proxy statement and “say-on-frequency” vote to vote on how often the say-on-pay vote should be held (every one, two or three years). Smaller reporting companies are still not required to provide the Compensation Discussion and Analysis (CD&A) section required of larger companies, but they may want to consider providing an expanded discussion of their executive compensation program that incorporates certain aspects of the CD&A requirements to explain why stockholders should vote to approve their executive compensation. Further, note that the say-on-frequency vote, which itself must be held at least once every three years, will require changes to the format of the proxy card to account for the proposal's three different time-period choices.

Also new for 2013, beginning with annual and quarterly reports filed after February 6, 2013, all SEC reporting companies will have to consider whether the disclosures required by the Iran Threat Reduction and Syria Human Rights Act enacted last year, which, among other things, provides for tighter restrictions on U.S. companies that transact business with Iran and imposes disclosure obligations on SEC reporting companies with respect to violations of statutes addressing transactions with Iran, Libya and certain other activities linked to terrorism, apply to the company. The disclosure requirements includes actions taken not only by the company but its affiliates, so companies should consider surveying their directors and executive officers to ensure that no such disclosure is required.