MorrisonCohen LLP

KEY GOVERNANCE CHANGES PROPOSED IN THE SHAREHOLDER BILL OF RIGHTS

May 19, 2009. Legislation introduced by Senators Charles Schumer (D-NY) and Maria Cantwell (D-WA) would provide a public company's shareholders with a greater say over executive pay, and increase board accountability and independence. The legislation, called the "Shareholder Bill of Rights Act of 2009," is currently before the Senate Committee on Banking, Housing, and Urban Affairs but has not picked up any additional sponsors. The bill, S. 1074, proposes the following:

Say-on-Pay

- Shareholders would be entitled to an annual non-binding vote on executive pay, as disclosed pursuant to SEC rules.
- If "change of control" payments to be made to the company's principal executive officers in connection with an acquisition, merger or similar transaction have not been previously subject to a shareholder vote, shareholders would be entitled to a non-binding vote on all such "change of control" payments.

Increased Board Accountability and Independence

- The chairperson of the board of directors must be independent and cannot have previously served as an executive officer of the corporation.
- A shareholder or a group of shareholders acting by agreement that have beneficially owned at least 1% of the company's voting securities for at least two years before the next scheduled annual meeting can use the proxy materials to nominate individuals to the company's board.
- Each member of the board would be subject to annual election by shareholders, thus preventing "classes" of directors.
- Directors in uncontested elections would have to be elected by a majority of the votes cast, while directors in contested elections would have to be elected by a plurality of the shares represented at any meeting and entitled to vote.
- The establishment and evaluation of the company's risk management practices would be under the purview of a risk committee comprised entirely of independent directors.

Consequence of Noncompliance

- Corporations not in compliance with law's requirements would be delisted from public markets after having been given an opportunity to cure.

The legislation would take effect one year from enactment.

If you have questions regarding these or other parts of the proposed legislation please call Alan Levine, a Partner in our Executive Compensation and Benefits/ERISA Department, at 212 735 8694.