Restoring American Financial Stability Act of 2010: Senate Bill Would Make Significant Changes in Governance Rules for Public Companies

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On May 20, 2010, the United States Senate passed the Restoring American Financial Stability Act of 2010, in order to "provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes." The 1,616-page Senate bill is an amended version of the financial reform legislation passed by the House of Representatives on December 11, 2009. While both bills cover a wide range of issues, this memorandum focuses on the potential ramifications of the Senate bill for boards of directors and individual directors of public companies.

If enacted into law, the Senate bill would: significantly alter the manner in which directors are elected at many public companies; underscore efforts to provide greater proxy access for shareholders; impose new rules on disclosure of executive compensation and compensation committee independence; impose restrictions on proxy voting by brokers; and impose disclosure rules regarding the Chairman and CEO structures of public companies. The Senate bill would require that the Securities and Exchange Commission ("SEC") direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with any of these new rules.

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