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U.S. District Court Refuses to Grant Motion to Dismiss in "Say-on-Pay" Lawsuit

Date: 10/11/11

Since January 2011, reporting companies have been required to afford shareholders the opportunity to vote, at least once every three calendar years, on resolutions regarding the compensation of the companies' named executive officers ("NEOs"), as disclosed in the companies' annual proxy statements ("say-on-pay"). This say-on-pay vote is required pursuant to Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") and the final rules promulgated by the Securities and Exchange Commission ("SEC") which implement Section 951 of the Dodd-Frank Act (collectively, "say-on-pay rules"). The language of the say-on-pay rules makes clear that such votes are merely advisory; they are "not ... binding on the issuer or the board of directors of an issuer, and may not be construed ... as overruling a decision by such issuer or board of directors." In addition, the say-on-pay rules state that the say-on-pay vote "may not be construed ... to create or imply any change to the fiduciary duties of such issuer or board of directors ... [or] to create or imply any additional fiduciary duties for such issuer or board of directors."

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