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Navigating the Executive Benefits Landscape
with The Todd Organization

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Proxy Disclosure and Executive Benefits: Key Things to Know

IN RECENT YEARS, the U.S. Securities and Exchange Commission has set a number of requirements regarding what companies need to disclose about their executive compensation and benefits programs in annual proxy statements. With annual meeting season approaching, and many companies about to file their proxies, there will be more information than ever provided and available to the public.

One reason for this is on December 16, 2009, the SEC approved and announced rules intended to improve corporate disclosure regarding risk, compensation and corporate governance matters. The rules encompass seven areas:

- The relationship of a company's compensation policies and practices to risk management.
- The background and qualifications of directors and nominees.
- Legal actions involving a company's executive officers, directors and nominees.
- The consideration of diversity in the process by which candidates for director are considered for nomination.
- Board leadership structure and the board's role in risk oversight.
- Stock and option awards to company executives and directors.
- Potential conflicts of interests in compensation consultants.

The new rules became effective February 28, 2010. To view the new rules visit:
http://www.sec.gov/rules/final/2009/33-9089.pdf.

The new requirements, coupled with existing ones pertaining to executive pay and benefits in proxies, will be more onerous than ever to companies, while also providing additional information to peers, competitors, and other business adversaries.

There are, however, two steps which many companies should consider.

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The first is to discuss the at-risk nature of most non-qualified deferred compensation and other non-qualified plans. Contrary to popular perception, most executives will not receive supplemental retirement plan and other executive benefits in the event of bankruptcy or insolvency.

Below is some template language that is appropriate for some companies:

> “All of the non-qualified deferred compensation plans, including the ___________ and the _____________, are considered “unfunded” general contractual obligations of the Company and are subject to the claims of the Company’s creditors. In the event that the Company becomes insolvent, the participants will be unsecured general creditors of the Company. This status with respect to these benefits should help insure that the interests of the officer and director participants are aligned with the long-term interests of the Company and its shareholders.”

A far greater concern for executives than bankruptcy is the possibility that management will have a “change of heart” or that their company will be acquired and that will lead to the loss of executive benefits. By following an IRS private letter ruling, companies can set aside assets for executives on a tax-advantaged basis, in what is known as a rabbi trust. In the event that the company in the future tries to rescind executive benefits, or an acquiring company tries to do so, the plan assets are protected.

If your company does not already have a rabbi trust, consider implementing one. You may also want to consider language about the risk nature of many executive benefit plans.

The Todd Organization has numerous experts available to help companies address these matters.

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