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[CORPORATE GOVERNANCE UPDATE]

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TREASURY CREATES SMALL BUSINESS LENDING FUND, BANKS AWAIT TERM SHEET

In September 2010, President Obama signed the Small Business Jobs Act of 2010, which, amongst other things, established a “Small Business Lending Fund” program to invest capital into small banks as a way to promote small business lending. The Treasury has now established a website, www.ustreas.gov/offices/domestic-finance/sblf/, that is dedicated to the program, though the agency is still working to finalize the policies and develop the processes required to provide capital through the SBLF. Treasury has indicated that term sheets and application materials will be available in the near future. Please contact Mark Aldrich, Esq. or Michael N. Delune, Esq. at (949) 474-1944 at our law firm for assistance in applying for capital under the Small Business Lending Fund.

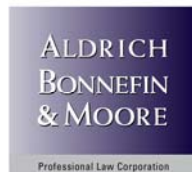
SEC ADOPTS PROXY ACCESS RULES; FACILITATES DIRECTOR NOMINATIONS BY SHAREHOLDERS

On August 25, 2010, the Securities and Exchange Commission (SEC) adopted a final rule which changes the federal proxy and other regulations to facilitate the rights of shareholders to nominate directors to a company’s board. However, the SEC has delayed the implementation of this rule

until further notice in order to let the U.S. Court of Appeals review a legal challenge by business trade groups. The SEC has requested that the court review the challenge on an “expedited” basis. In addition, there is a three-year delay in the effective date as to “smaller reporting companies.” A smaller reporting company is defined in part as “an issuer that is not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent that is not a smaller reporting company and that: had a public float of less than \$75 million as of the last business day of its most recently completed second fiscal quarter . . .” The definition of smaller reporting company is complicated and there are other ways in which a company may qualify; refer to Rule 12b-2 of the Securities Exchange Act of 1934 or contact the law firm for more details.

The final rule requires companies to include the nominees of significant, long-term shareholders in their proxy materials, alongside the nominees of management. This “proxy access” is designed to facilitate the ability of shareholders to exercise their traditional rights under state law to nominate and elect members to a company’s board of directors. Under the rule, shareholders will be eligible to have their nominees included in the proxy materials if they own at least three percent of a company’s shares continuously for at least the prior three years.

The SEC’s approval of these measures follows enactment of the Dodd-Frank Wall Street Reform



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and Consumer Protection Act, which provided the SEC with explicit authority to make rules addressing shareholder access to company proxy materials. A copy of the final rule can be found at www.sec.gov/rules/final/2010/33-9136.pdf.

FDIC ISSUES GUIDANCE ON GOLDEN PARACHUTE PAYMENTS FOR TROUBLED BANKS

The FDIC issued updated guidance on golden parachute payments for “troubled” (CAMELS 4 or 5 rated) banks. While current regulations (at 12 CFR Part 359) prohibit such payments, there are certain exceptions available such as for payments made with the permission of the regulators, payments for “white knights” hired under certain circumstances, and certain change in control payments.

The guidance sets forth how the applicant for the golden parachute payment must show that (and assess whether) the employee has not committed any fraudulent act, breach of trust or fiduciary duty, or insider abuse that has adversely affected the institution, is not “substantially responsible” for the bank’s insolvency or troubled condition, and hasn’t violated any federal or state banking law that had a material effect on the institution. The FDIC has also implemented a *de minimis* golden parachute payment amount of up to \$5,000 per individual for lower-level employees that will not require a supervisory application. The guidance can be found at: www.fdic.gov/news/news/financial/2010/fil10066a.pdf.

SEC APPROVES AMENDMENTS TO NYSE RULES ON EXECUTIVE COMPENSATION

The SEC has approved the NYSE’s proposed amendment to Rule 452 (NYSE Manual Section 402.08) prohibiting broker discretionary voting when the matter voted on relates to executive compensation. The prohibition extends not only to the “say-on-pay” and other executive compensation votes added by the Dodd-Frank Act, but also to any kind of executive compensation matter that is the subject of a shareholder vote. Such matters would include, for example, advisory votes on executive compensation and on the frequency of such advisory

votes. Because this rule change applies to NYSE members, it affects member brokers voting shares of companies listed on any national securities exchange, or even not listed at all.

BASEL COMMITTEE ISSUES PRINCIPLES TO ENHANCE CORPORATE GOVERNANCE

The Basel Committee on Banking Supervision issued on October 4, 2010 a set of principles for enhancing sound corporate governance practices at banking organizations. The principles address fundamental deficiencies in bank corporate governance that became apparent during the financial crisis. The principles cover the role and qualification of the board of directors and the importance of the risk management, compliance and internal audit functions. The principles can be found at: <http://www.bis.org/publ/bcbs176.htm>.