

# CLIENT CORPORATE LAW ADVISORY

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AUGUST 2010

**GANFER & SHORE, LLP WELCOMES MARTIN E. SCHLOSS  
AND ESTABLISHES CLIENT CORPORATE LAW ADVISORY**

Earlier this year, Martin E. Schloss became Of Counsel to Ganfer & Shore, LLP and has been expanding our corporate practice. Mr. Schloss has almost four decades of experience as a corporate attorney in Manhattan. Prior to joining Ganfer & Shore, LLP, he spent 13 years as Vice President, General Counsel and Secretary of Scientific Games Corporation, a public multinational corporation that supplies wagering products and services and operates gaming venues. As General Counsel, Mr. Schloss led all of the company's corporate acquisitions; handled public offerings of the company's common stock as well as debt financings; and supervised legal and regulatory compliance. Mr. Schloss also served for several years as an officer and in-house counsel for General Instrument Corporation. He also has years of experience as a corporate attorney in law firm practice.

In conjunction with this expansion of our practice, Ganfer & Shore, LLP will periodically issue this *Client Corporate Law Advisory* beginning with this issue. This advisory is intended to keep the firm's clients and friends updated on important developments in the area of corporate law. If you would like to be included on the mailing list for future issues of this advisory, please send an e-mail to [agarcia@ganfershore.com](mailto:agarcia@ganfershore.com). Please be sure to include your name, contact information, affiliation (for our files), and whether you would like to receive the advisory by regular mail, e-mail, or both. Please also e-mail the same address if you would like to receive our monthly *Client Advisory* covering the areas of cooperative, condominium and real estate law, or our *Client Employment Law Advisory* covering labor and employment law. Back issues of these advisories can also be found on our website, [www.ganfershore.com](http://www.ganfershore.com).

**DODD-FRANK WALL STREET REFORM AND  
CONSUMER PROTECTION ACT SIGNED INTO LAW**

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"). The Act contains provisions concerning a variety of reforms in the areas of regulation of financial institutions, consumer protection, mortgages, credit agencies, and corporate governance, as well as giving the Securities and Exchange Commission (SEC) additional regulatory authority in certain areas. The Act also includes a set of provisions regarding executive compensation, which generally apply to public, listed companies registered with the SEC. Some highlights of these provisions are summarized below.

**Shareholder Approval of Executive Compensation – "Say on Pay"**. Shareholders of public companies will now have opportunities to vote their approval or disapproval of executive compensation. Such approval must be sought at least once every three years, in connection with the issuance of proxies for the annual shareholder meeting. Shareholders must also vote at least once

every six years on how frequently their approval of executive compensation will be sought. Shareholders must also be asked for approval of any "golden parachute" compensation offered in connection with any business combination requiring a shareholder vote. Certain institutional investment managers will be required to disclose at least annually how they voted on these issues. These provisions take effect six months after enactment of the Act. Significantly, however, the results of the shareholder approval votes on executive compensation required by the Act are *not binding* on the company or its board of directors, will not overrule any decision by the company or its board, and will not change or create fiduciary duties for the company's board. (Act Section 951)

**Compensation Committee Independence.** The Act contains a number of provisions relating to compensation committees of corporate boards of public, listed companies. It requires that most companies have an independent compensation committee of the board as a condition for listing on any national securities exchange. Each committee member must be independent of the company and its subsidiaries. Compensation consultants and other compensation committee advisors, including attorneys, must also be independent of the company. (The Act contains detailed provisions defining independence for this purpose.) Compensation committees are to have sole discretion to hire consultants and determine their compensation, and are free to accept or reject their recommendations, as the compensation committee must ultimately exercise its own judgment in fulfilling its duties. The company's annual proxy statement must disclose the identity of any compensation consultant and describe how any conflicts associated with its retention have been addressed. (Act Section 952)

**Executive Compensation Disclosures.** In addition to already prescribed executive compensation disclosure, the Act requires public companies to disclose information showing the relationship between executive compensation paid and the company's financial performance, taking into account changes in the company's share price, dividends, and distributions. This information may be disclosed in a graph (similar to the stock performance graph already required). The Act further requires disclosure relating to the ratio between compensation (including pension benefits) of the CEO and the median compensation of all employees other than the CEO. (Act Section 953)

The Act also requires disclosure in a public company's annual-meeting proxy materials regarding whether any employee or director of the company is permitted to engage in the purchase of securities designed to hedge against losses in the market value of the company's equity securities held or granted to such employee or director as part of his compensation. (Act Section 955)

**Clawback of Erroneously Awarded Compensation.** As a condition to continued listing on a national exchange, the Act requires that every company must develop and implement a policy, to be disclosed to shareholders, which provides that, in the event of an accounting restatement by the company, it will recover from any current or former officer incentive compensation which was improperly awarded based on the erroneous data leading to the restatement for the three years prior to the date on which the restatement was required (including stock options). (Act Section 954)

**Conclusion.** The Dodd-Frank Act will have an impact on every publicly traded company. The most important tasks now facing each company are to identify the new data that must be collected for disclosure purposes, to determine how best to make such disclosures, and to determine whether new policies should be prepared and implemented. Any company or official with questions about the Act should consult with qualified corporate and securities law counsel such as Ganfer & Shore, LLP.

If you have any questions concerning corporate or securities law issues, please contact Martin E. Schloss, Esq., who heads this practice area at Ganfer & Shore, LLP, or your contact at the firm.