M Benefit Solutions®
Bank Strategies

An M Financial Group Company

The Bottom Line

Executive and Director Benefits and BOLI

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Agencies Issue Final Rules Implementing the Volcker Rule

Impact on Bank Owned Life Insurance (BOLI)

On December 10, 2013 the Board of Governors of the Federal Reserve System, Commodity Futures Trading Commission, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency and the Securities and Exchange Commission adopted final rules implementing the "Volcker Rule", a provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The rules prohibit banks from engaging in proprietary trading of certain types of financial instruments for their own account as well as owning, sponsoring or having certain relationships with "covered funds", which includes certain hedge and private equity funds. The final rules become effective April 1, 2014.

These rules also included exemptions for several specific activities and clarified exclusions that aren't considered proprietary trading or covered funds. One such exclusion from the definition of a covered fund is separate account bank owned life insurance (BOLI).

Subpart C; Section __.10(c)(7) of the rules excludes BOLI separate accounts from the definition of covered fund as long as the banking entity that purchases the BOLI is a beneficiary and follows the current established Interagency Statement on the Purchase and Risk Management of Life Insurance (OCC 2004-56).

Source: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20131210a2.pdf

SEC Proposes Rules for CEO Pay Ratio Disclosure

On September 18, 2013, the Securities and Exchange Commission (SEC) voted 3-2 to propose for public comment a new rule under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that would require public companies to disclose the ratio of the compensation of its chief executive officer to the median compensation of its employees.

The rule as proposed would not prescribe a specific methodology for companies to use in calculating a "pay ratio." Instead, companies would have the flexibility to determine the median annual total compensation of its employees in a way that best suits its particular circumstances.

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Background

Section 953(b) of the Dodd-Frank Act directs the SEC to amend existing rules to require companies to disclose:

- The median of the annual total compensation of all employees of the company, excluding the CEO;
- The annual total compensation of the CEO; and
- The ratio of the median to the annual total compensation of the CEO.

Under current SEC rules, companies are required to provide extensive information about the compensation of their CEO and other named executive officers. Companies are not, however, required to disclose the same compensation information for other employees.

SEC Proposal

New Pay Ratio Disclosure Requirement

As required by the Dodd-Frank Act, the proposal would amend existing executive compensation disclosure rules to require companies to disclose the median annual total compensation of all employees, the annual total compensation of its CEO, and the ratio of these two amounts.

Identification of Employees Covered by the Proposed Rule

"All employees" would include:

- All employees (including full-time, part-time, temporary, seasonal and non-U.S. employees).
- Those employed by the company or any of its subsidiaries.
- Those employed as of the last day of the company's prior fiscal year.

Methodology for Identifying the Median Employee

The proposed rule would not specify any required calculation methodologies for identifying the median employee in terms of total compensation for all employees. Instead, it would allow companies to select a methodology that is appropriate to the size and structure of their business and the way they compensate employees.

For example, a company would be permitted to identify the median employee based on total compensation using either its full employee population or a statistical sample of that population.

A company could, for example, identify the median of its population or sample:

- Using annual total compensation as determined under existing executive compensation rules.
- Using any consistently used compensation measure such as compensation amounts reported in its payroll or tax records. A company would then calculate the annual total compensation for that median employee in accordance with the definition of total compensation set forth in the SEC's executive compensation rules.

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Summary of Proposal

Disclosure Required. Ratio of annual total compensation of the CEO (already reported annually in proxy) to the median of annual total compensation of all a company's employees.

Likely Effective Date. The disclosure will likely be effective for most companies not earlier than the 2016 proxy season.

Rules Provided To Determine:

- Identification of "all" employees
- Identification of "median" employee
- Calculation of "annual total compensation" of median employee

Flexibility. The SEC has tried to make the proposal as flexible as possible to ease the cost of compliance. However, for large multi-national companies, compliance is likely to be costly and time-consuming.

Determination of Annual Total Compensation

As required by the Dodd-Frank Act, median employee total compensation would be calculated using the definition of "annual total compensation" in existing executive compensation rules, as now reported in annual proxies for named executive officers.

The proposal would allow companies to use reasonable estimates when:

- Calculating the annual total compensation.
- Calculating any element of total compensation.
- Determining the annual total compensation of the median employee.

Companies would be permitted but not required to annualize the total compensation for a permanent employee who did not work for the entire year, such as new hires. In contrast, full-time equivalent adjustments for part-time workers, annualizing adjustments for temporary and seasonal workers, or cost-of-living adjustments for non-U.S. workers would not be permitted.

Disclosure of Methodology, Assumptions, and Estimates

Companies would be required to disclose the methodology used to identify the median, and any material assumptions, adjustments or estimates used to identify the median or to determine total compensation. If a company identifies a median employee based on a consistently applied compensation measure, the proposed rule would require disclosure of the measure that it used. Also, companies would be required to clearly identify any amounts that are estimated.

Additional Disclosure Permitted But Not Required

Companies would be permitted but not required to supplement the required disclosure with a narrative discussion or additional ratios if they choose to do so.

Filings Where Disclosure Is Required

Companies would be required to describe the information in registration statements, proxy and information statements, and annual reports that must already include executive compensation information as set forth under Item 402 of Regulation S-K.

- Disclose the pay ratio information in reports that do not require executive compensation information such as current and quarterly reports.
- Update their disclosure for the most recently completed fiscal year until the company files its proxy or information statement for its annual meeting of shareholders (or annual report for companies that do not file proxy or information statements for annual meetings).

Companies Subject to the Proposed Disclosure Requirement

The proposed rule would not apply to emerging growth companies, smaller reporting companies, or foreign private issuers.

The proposal would provide a transition period for newly public companies. For these companies, initial compliance would be required with respect to compensation for the first fiscal year commencing on or after the date the company becomes subject to the reporting requirements.

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Upcoming Event

2014 ICBA National Convention

March 2–6

Hilton Hawaiian Village

Honolulu, HI

M Benefit Solutions – Bank Strategies is proud to sponsor and exhibit at ICBA Community Banking Live 2014. Join us at Booth #805 for free ice cream and enter to win a prize!

Proposed Compliance Date

A company would be required to report the pay ratio with respect to compensation for its first fiscal year commencing on or after the effective date of the final rule. Assuming the rule will not be finalized until 2014, the first fiscal year to which the rule will be applicable will be fiscal years ending in 2015.

Comments Requested

The SEC has asked the public to respond to numerous questions regarding each aspect of the proposal, encouraging companies to submit robust responses. The two dissenting commissioners encouraged detailed, data-heavy comment letters along with estimates of the costs of compliance with the proposed rule.

The proposal is subject to a 60-day public comment period once it is published in the Federal Register.

Just the FAQs

Q: What is the Net Amount at Risk of a life insurance policy?

A: The net amount at risk of a life insurance policy is the difference between the total policy death benefit and the cash value. For example, if a life insurance policy has a total death benefit of $500,000 and the cash value is $50,000, the net amount at risk is equal to $450,000.

The cash value is the amount the policy owner has paid in premiums, less policy expenses and charges, plus earnings. It serves as a reserve that is set aside to help support the death benefit. The net amount at risk is the portion of death benefit that is "at risk" to the insurance carrier because it would have to be paid from the carrier's assets upon the death of the insured. For this reason, the insurance company only assesses mortality charges on the net amount at risk (i.e., not on the entire policy death benefit).

Fitch: Modest Improvement in Earnings Outlook for U.S. Life Insurers

Low interest rates and equity market volatility moderated in the first half of 2013, contributing to a modest improvement in Fitch Rating's 2013 earnings outlook for U.S. life insurers.

Fitch noted that the recent run-up in interest rates and equity market valuations, if sustained in the second half, would be primary drivers of the improvement. Longer term, industry earnings remain vulnerable to still low interest rates and uncertainty tied to the weak economic recovery in the U.S. and abroad.

Results through the first half were mixed, with some large insurers reporting improvement, while others were flat to down. The average operating return on equity improved to 11% from 10% for the full year 2012. The average operating return on assets was flat at 1.25%.

Asset-based fee income has been a significant positive due in large part to equity market appreciation and lower volatility. Net flows have also remained positive, although lower, in many lines, particularly variable annuities, where companies have pulled back on more generous guarantees. Lower equity market volatility also stabilizes asset based fee income and reduces the cost of equity market hedges.

Interest margins continue to hold up reasonably well due primarily to reduced crediting rates. While the rise in interest rates in the first half of 2013 has provided some relief, Fitch expects further, albeit modest, spread compression for the balance of 2013 due to still low reinvestment rates on assets supporting in-force business and limited crediting rate flexibility.

Advisor Firms

M Benefit Solutions - Bank Strategies is structured to provide our clients with consistent nationwide coverage. We have identified several Advisors with extensive experience in bank executive and director benefits and BOLI to provide consulting services to clients nationwide.*

Distributed throughout the country, these Advisors work interactively with M Benefit Solutions and bank clients to design programs which meet each bank's specific needs and to ensure high quality administrative and compliance services.

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About M Benefit Solutions - Bank Strategies

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