HOUSE MAJORITY WHIP

JAMES E. CLYBURN

THE DAILY WHIPLINE

Friday, April 20, 2007

House Meets At…	Votes Predicted At…
9:00 a.m. For Legislative Business Five "One-minutes" Per Side	Last Vote: 12:00 p.m.

Any anticipated Member absences for votes this week should be reported to the Office of the Majority Whip at 226-3210.

Floor Schedule and Procedure

- **H.R. 1257 – Shareholder Vote on Executive Compensation Act** *(Rep. Frank – Financial Services):* Today the House will complete consideration of H.R. 1257, which was debated on Wednesday. Consideration of the bill today will proceed as follows:
  - Complete debate and vote on amendments to the bill.
  - Possible debate and vote on a Republican motion to recommit the bill.
  - Vote on final passage of the bill. **Democrats are urged to vote yes on final passage.**

Bill Summary and Key Issues

Amendments expected to be considered today:

- Price Amendment #8
- Price Amendment #9
- Price Amendment #10
- Putnam Amendment

Postponed Amendment Votes (debated on Wednesday):

- Session Amendment
- Garrett Amendment
- Campbell Amendment
- McHenry Amendment

Vote Recommendations on Amendments Offered to HR 1257, the Shareholder Vote on Executive Compensation Act

During partial House consideration of HR 1257 on Wednesday, April 18, roll calls were requested on the following four amendments on which the House will vote today:

- **Sessions (002):** Prohibits issuers from counting votes of shareholders that spend more than a de minimis amount of money "on activities to influence a vote of other shareholders unless the shareholder discloses to the SEC (1) the identity of all persons or entities engaged in the campaign; (2) the activities engaged in to influence the vote; and (3) the amount of money spent on the campaign."

  The amendment runs counter to the spirit of the First Amendment in that it would limit what shareholders can say or do with their own money. The point of the nonbinding advisory vote is to facilitate dialogue among shareholders and management over compensation practices. The amendment would have a chilling effect on dialogue.

  The Financial Services Committee Recommends a "NO" Vote.

- **Campbell (001F):** Carves out from the advisory vote requirements companies that require their board to be elected by a majority of the votes cast. **Defeated in Committee on a vote of 29 yeas, 37 nays. VOTE NO.**

  This amendment creates a standard that could unfortunately be satisfied far too easily to be effective. In many cases board members can get a majority of the votes cast – but without any requirement that anyone else be permitted to run against them. The requirement that an unopposed director receive a 50 percent +1 vote in an unopposed election is not sufficient standard to justify eliminating any shareholder say on the compensation disclosures.

  The Financial Services Committee Recommends a "NO" Vote.

- **Garrett (002F):** Shareholder votes only apply if the compensation disclosed exceeds by 10 percent or more the average compensation of comparable positions (A) in companies within the issuer's industry and (B) among companies with comparable market capitalization (as determined by SEC). **Defeated in Committee on a vote of 28 yeas, 39 nays, 1 present**.

  The amendment would be much more costly for companies and the SEC than the current bill, as everyone would need to determine "average" compensation for "comparable" positions in "comparable industry." How would companies know that their executives are paid in the average (how often would averages be tabulated)? The amendment would also allow the highest paid executives to skew the "average" permitting other companies to pay their executives more without a shareholder vote. Also gives companies the perverse

incentive to pay all executives "the same" high rates regardless of performance.

<u>The Financial Services Committee Recommends a "NO" Vote</u>.

- **<u>McHenry (010)</u>:** Requires that shareholders who cast votes on behalf of pension fund beneficiaries disclose to beneficiaries whether the vote was cast to approve or disapprove the compensation. **Defeated in Committee on a vote of 26 yeas, 39 nays, 1 present.**

  The amendment goes beyond scope of the bill (which only requires that issuers add the votes to their proxy forms – the bill does not apply to shareholders who cast votes). In addition, the amendment would unnecessarily single out pension funds. The Financial Services Committee will consider legislation this Congress on whether *all fiduciaries* should make their proxy votes public, but pension funds should not be singled out on this issue and only this vote. <u>The Financial Services Committee Recommends a "NO" Vote</u>.

The following amendments pre-printed under the rule for H.R. 1257 have not been considered in the House and may be offered on Friday, April 20. Assuming the following amendments are offered, the Financial Services Committee has made the following recommendations:

- **<u>Price (001)</u>:** Strike bill and replace with finding that SEC disclosures are sufficient. **Defeated in Committee on a vote of 26 yeas, 35 nays.**

  The amendment would eliminate nonbinding shareholder votes on compensation and rely entirely on existing law. This is a way for the opposition to kill the bill without voting against it.

  <u>The Financial Services Committee Recommends a "NO" Vote</u>.

- **<u>Price (008)</u>:** Would make the effective date of the bill conditional on the SEC performing a study to determine the effect of Shareholder vote requirements on the ability of issuers to recruit and retain executives. Bill will NOT take effect if SEC finds that vote would "significantly hinder issuers' recruitment and retention of executives." **Defeated in Committee on a vote of 27 yeas, 32 nays, 1 present.**

  The amendment would make nonbinding shareholder votes on compensation subject to SEC study and SEC findings. Congress does not generally make laws that apply only if Agencies make certain findings.

  <u>The Financial Services Committee Recommends a "NO" Vote</u>.

- **<u>Price (011)</u>:** Would prohibit shareholders from offering proxies proposals related to compensation. **Defeated in Committee on a vote of 20 yeas, 42 nays, 1 present.**

The amendment would use the *nonbinding advisory vote* to undermine shareholders' ability (under already existing law) to offer proxies on compensation – this would put shareholders in a weaker position than they are now.

The Financial Services Committee Recommends a "NO" Vote.

- **Putnam (001F):** No Shareholder votes apply if disclosures indicate that the issuer provides the majority of the issuer's compensation in the form of non-qualified deferred compensation. **Defeated in Committee on a vote of 28 yeas, 39 nays, 1 present.**

  The amendment is very intrusive on compensation – as it would give preference to one type of compensation over another (if you pay one way you have a vote, if you pay another you do not). The bill is designed NOT to affect the merits of any particular compensation schemes – and leaves those decisions to the company's board of directors. Particularly, this amendment goes more deeply involved with the specifics of a company's compensation than the original bill.

  The Financial Services Committee Recommends a "NO" Vote.

Quote of the Day

"Always do right; this will gratify some people and astonish the rest."
-**Mark Twain**

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