Swiss Voters Approve "Against the Rip-Off" Referendum Restricting Corporate Compensation

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On March 3, 2013, voters in Switzerland approved a referendum providing one of the world's most onerous restrictions regarding executive compensation. The referendum entitled, "Eidgenössische Volksinitiative 'gegen die Abzockerei'" or, in English, "Federal popular initiative 'against the rip-off'" (the "Referendum") was approved by 67.9% of those who voted in all of the country's 26 cantons (Switzerland's member states). The voters' overwhelming passage of the Referendum is considered to be related to a number of executive compensation and banking issues that have arisen in the past several years in Switzerland.

The Referendum amends Switzerland's Federal Constitution of April 18, 1999, to include a new Paragraph 3 of Article 95 which sets forth numerous procedures for shareholders of publicly-traded companies to veto compensation and payouts for both incoming and departing executives. The stated goal of the new law is to protect "the economy, private property and the shareholders" with "the purpose of sustainable management." The law requires Swiss public companies listed on the stock exchanges in Switzerland or internationally to follow a number of principles, including:

- The Annual General Meeting of covered companies each year will: 1) vote the total compensation, whether cash or other value, for a company's Board, Executive Board and the Advisory Board; 2) elect the President or Chairman of the Board, and, one by one, the Board and Compensation Committee members and the independent proxy voter or independent representative; and 3) allow shareholders to vote electronically. Further, pension funds must vote in the interest of their policyholders, who are required to disclose how they voted, and corporate or depository proxy voting is forbidden.

- Board members may not receive any compensation, or compensation upon their departure, or in advance, or any acquisition or divestiture premiums. Board members will also not be allowed to have additional consultancy or employment by another company in the group, and company management cannot be delegated by a legal entity.

- Company rules must cover the amount of loans, credits and annuities allowed for Board members, the bonus and sharing plans of Board members, the number of mandates outside of the group and the duration of management members' employment contracts.

Violation of these rules will be considered a criminal offense punishable by imprisonment of up to three years and a fine of up to six years' compensation. The Swiss legislature is required under new Section 8 of Article 197 of its Federal Constitution to prepare a law reflecting the Referendum's provisions within one year of its adoption by the people and the cantons.

However, since the March 3, 2013, Referendum vote, the Swiss Parliament voted against recommending another proposal that would further limit executive compensation. On March 21, 2013, the Swiss Parliament's Council of States voted 26 to 10 against what is entitled, "The Fair Pay" proposal, which would limit an executive's pay to twelve times the compensation of the lowest-paid employee in a given company. Switzerland is holding a national vote on the Fair Pay proposal later this year.