

Proposed Changes to Disclosure Requirements Concerning Executive Compensation and Related Matters

On January 17, 2006, the Securities and Exchange Commission proposed to adopt new rules that would impact the way executive and director compensation is disclosed. The proposed disclosure requirements target three broad categories: compensation over the last three years; equity-based compensation; and retirement plans and other potential post-employment and change of control payments and benefits.

Executive and Director Compensation

Individuals For Whom Compensation Data Must be Disclosed

Under the proposed rules, a company would have to disclose compensation data for its CEO, CFO, and three next most highly-paid executive officers (together, the “named executive officers”). In addition, the company would be required to disclose information about up to three employees who are not executive officers, if the individual’s total compensation is higher than that of a named executive officer.

Compensation Discussion and Analysis Section

In lieu of the current Compensation Committee report and performance graph, there would be a “Compensation Discussion & Analysis” section that would provide an overview of compensation policies and decisions, focusing on the most important factors underlying those policies and decisions, such as a description of:

- The compensation program’s objectives (i.e., what does the company want to reward and not reward)
- The elements of compensation
- Why each element is paid
- How the amount of each element is determined
- How each element fits in with the compensation program’s objectives

This information would be deemed filed, rather than just furnished.

Summary Compensation Table

The proposed rules would reorganize and refine the current Summary Compensation Table to include the following for each of the last three fiscal years:

Total compensation (sum of the following columns)	Annual salary and bonus	Dollar value of all stock-based awards	Dollar value of cash incentive awards not tied to the performance of company stock	All other compensation
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- Stock-based awards column
 - Stock-based awards would be measured at grant date fair value and computed in accordance with SFAS 123R
 - The entire value of the stock-based award would have to be included for the year in which granted
 - If a company reprices stock options, the entire value of the new award would have to be included in the summary compensation table for the year in which repriced
- Cash incentive awards column
 - Would be disclosed in the year when the performance measure item is satisfied and the payment is earned
- All other compensation column would include the following:
 - the aggregate increase in actuarial value of defined benefit pension plans accrued during the year,
 - all earnings on non-qualified deferred compensation arrangements,
 - company contributions to contributory retirement plans, and
 - perquisites
 - disclosure threshold would be lowered to \$10,000
 - defined as benefits not “integrally and directly related” to executive duties
 - neither the staff nor the Commissioners discussed the method of valuation of perquisites
 - the current “Other Annual Compensation” column would be combined with this column

Additional Compensation Tables

- Grants of Performance Based Awards
- Grants of All Other Equity Based Awards
- Outstanding Equity Awards at Fiscal Year-End
 - Shows potential amounts that may be received in the future in respect of outstanding awards
- Option Exercises and Stock Vested Table
 - Shows amounts realized on equity compensation during the last year



Disclosure Regarding Retirement Plans and Post-Employment Payments

- Retirement Plan Potential Annual Payments and Benefits Table
 - Would show post-retirement annual benefits payable to each named executive officer
 - Would require disclosure of material assumptions involved in calculation
- Nonqualified Defined Contribution and Other Deferred Compensation Plans Table
 - Would show year-end balances and executive contributions, company contributions, earnings and withdrawals for the year
- Disclosure of all payments and benefits, including perquisites, payable on termination or change in control
 - Would require these potential payments and benefits to be quantified
 - Will have to disclose assumptions used to quantify the payments

Director Compensation Table

The proposed rules would require inclusion of a director compensation table similar to the revised Summary Compensation Table, but for only one fiscal year.

Form 8-K

Revised disclosure requirements in Form 8-K would capture employment arrangements and material amendments for named executive officers. This would potentially involve some arrangements that would not be considered agreements, such as executive salary arrangements.

Related Person Transactions

- Disclosure would be required of a company's policies and procedures for approving related party transactions
- Disclosure would become more principles-based, potentially condensing and simplifying the overlapping rules now governing this area
- The threshold for Item 404(a) disclosure would be raised from \$60,000 to \$120,000

Director Independence

The proposed rules would require:

- Disclosure as to whether each director and director nominee is independent
- A description of any relationships not otherwise disclosed that were considered in determining independence; and
- Disclosure of any audit, nominating and compensation committee members who are not independent

Plain English

Companies would be required to prepare most of this information using plain English principles.



Interpretive Positions

Although not discussed at the SEC's open meeting, we understand that the SEC will include in the proposing release some interpretive positions on the current rules that will apply during this proxy season.

Comment Period

Comments on the proposed rules are due within 60 days of publication in the Federal Register. The text of the proposed rules is not yet publicly available.

Contact Information

If you have questions or would like to learn more about the proposed rules, please contact your usual legal advisor at Ropes & Gray, or any of the attorneys listed below involved in the preparation of this SEC Alert.

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