



The SEC's New Disclosure Rules Shine A Brighter Light On Executive Compensation

Corporate and Securities Update
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Executive Summary and Recommendations

Approximately seven months after publishing a 370-page proposing release and following receipt of more than 20,000 comment letters, the Securities and Exchange Commission ("SEC") issued a 436-page adopting release approving amendments to the disclosure requirements for executive and director compensation and certain related matters. (See Release No. 33-8732, August 11, 2006, available at <http://www.sec.gov/rules/final/2006/33-8732.pdf>.)

The sheer size of the SEC's releases, as well as the attention generated by them, attest to the scope and significance of the changes contemplated by the new rules. The changes will affect significantly the disclosure in proxy statements, annual reports on Form 10-K, current reports on Form 8-K, and other disclosure documents under the Securities Exchange Act of 1934 as amended (the "1934 Act") and the Securities Act of 1933, as amended (the "1933 Act"). The changes will require public companies to re-think their disclosure practices and may even affect their compensation policies and decisions (particularly with respect to stock options) as they adapt to the more extensive disclosure required by the new rules regarding each item of cash and non-cash compensation earned by their executive officers and directors.

Significant changes under the new rules include:

- A narrative section, entitled Compensation Discussion and Analysis ("CD&A"), the purpose of which is to provide investors material information necessary for an understanding of a company's compensation policies and decisions regarding its named executive officers;
- A substantially revised Summary Compensation Table (i) covering the principal executive officer ("PEO"), the principal financial officer ("PFO"), the three other most highly compensated executive officers, and up to two additional individuals with respect to whom disclosure would have been required but for the fact that the individuals were not executive officers at fiscal year-end, and (ii) listing *all* compensation earned, whether or not actually paid, culminating in a "total compensation" column;
- Supplemental compensation tables, including three tables relating to stock awards and option awards: a Grants of Plan-Based Awards table, an Outstanding Equity Awards at Fiscal Year-End table, and an Option Exercises and Stock Vested table; a Pension Benefits table; a Nonqualified Deferred Compensation table; and a Director Compensation Table (for convenience, the forms of all compensation tables required under the new rules are set forth in Appendix A to this memorandum);
- New director compensation disclosures, principally via the director compensation table which requires compensation and perquisite disclosure comparable to that required for the named executive officers;
- Revised Form 8-K disclosure of executive compensation arrangements, which focuses on material employment arrangements for the named executive officers and material amendments to those arrangements, without resort to the Exhibit-based standards imposed under the current Form 8-K rules;
- Enhanced disclosures regarding related party transactions (at a new and higher \$120,000 threshold) and corporate governance disclosure (consolidated into new Item 407 of Regulation S-K); and
- A mandate to present all executive compensation, corporate governance, and other information prescribed by the new rules in "plain English."

As the new rules will be in place for the 2007 proxy season, public companies face certain immediate challenges: learning and applying the new rules; determining the individuals for whom compensation disclosure will now be required; generating the numbers to be slotted into the new and revised compensation tables, including "total

compensation" and "perquisites" (as newly interpreted by the SEC); working with the disclosure and compensation committees and outside auditors to confirm the accuracy of the compensation information, including the information in the new CD&A section; and addressing the Form 8-K, related party, and corporate governance disclosure issues presented under the new rules.*

While there is no substitute for a careful reading of the new rules and a considered analysis of their application to a company's individual facts and circumstances, this memorandum offers a summary of the key elements of the SEC's action and the following recommendations for transitioning toward compliance with the new rules:

- Start early and recognize that marking up last year's proxy statement will not work. The new disclosures may add a considerable number of pages to the proxy statement with the new CD&A, the revised Summary Compensation Table and other compensation tables, and the new narrative and footnote disclosures. Advance planning, including internal planning and coordination with outside counsel, compensation consultants and independent auditors will be more important than ever.
- Determine the availability and the reliability of all information required under the new rules. Consider a dry run with a single named executive officer (*e.g.*, the PEO) to collect and generate the information necessary for the compensation tables and the other executive compensation disclosures. It is equally important to determine whether this information will pass muster under the disclosure controls and procedures supporting the PEO and PFO certifications.
- Consider now who the named executive officers will be for 2006. This determination may be more fluid year-to-year as it is no longer based on just salary and bonus, but rather takes into account other compensation items, including stock awards, option awards, non-equity incentive plan compensation, and all other compensation, including severance and termination payments.
- Involve others in the education process. The board of directors (particularly the compensation committee), the disclosure committee, the human resources department, and others need to know and understand the new rules to ensure that the company applies them correctly.
- Review the D&O questionnaire, the Board committee charters and other corporate governance documents for possible revision in light of the new rules.

Description of the New Rules

1. Effective Date

The new compensation disclosure rules are generally effective for fiscal years ending after December 15, 2006 and thus will be in effect for the 2007 proxy season. The new rules applicable to Form 8-K filings of compensation arrangements will become effective 60 days after publication in the Federal Register.

Importantly, the new rules permit a phased-in implementation of the disclosure required under Item 402 of Regulation S-K in the Summary Compensation Table and the related party transaction disclosure under Item 404(a) of Regulation S-K. For example, in 2007, the first year of implementation, only 2006 compensation information will be required to be reflected in the Summary Compensation Table; information for fiscal years 2005 and 2004 will not have to be restated and may be omitted entirely from the Summary Compensation Table.

*This memorandum does not address the special rules relating to small business issuers or investment companies.

2. Named Executive Officers

Persons subject to the executive compensation disclosure rules are:

- All individuals serving as the company's PEO during the last fiscal year;
- All individuals serving as the company's PFO during the last fiscal year (a new requirement justified on the basis that, among other things, the PFO certifies the company's financial statements on a quarterly and annual basis);
- The company's three most highly compensated executive officers (other than the PEO and the PFO) who were serving as executive officers at the end of the last fiscal year; and
- Up to two additional individuals who would have been included in the immediately preceding category but for the fact that the individuals were not serving as executive officers at fiscal year-end (all of the foregoing are collectively referred to as "named executive officers").

In a switch from the prior rules which looked only to salary and bonus as the basis for determining which executive officers were most highly compensated, the new rules require the most highly compensated executive officers to be determined based on total compensation, reduced by the sum of the increase in pension value and above-market earnings on non-qualified deferred compensation, as described below under "Summary Compensation Table." The SEC is seeking additional comment on whether compensation disclosures should be required for up to three additional persons who are not executive officers but are among the company's most highly compensated employees.

3. Compensation Discussion and Analysis

A new CD&A section has been added to provide investors with material information that is necessary to an understanding of a company's compensation policies and decisions regarding its named executive officers. Intended as an overview and likened in some respects to an MD&A for executive compensation, the CD&A seeks to put into perspective for investors the information in the accompanying compensation tables by answering the following questions:

- What are the objectives of the company's compensation programs?
- What is each compensation program designed to reward?
- What is each element of compensation?
- Why does the company choose to pay each compensation element?
- How does the company determine the amount (and, where applicable, the formula) for each compensation element?
- How does each compensation element and the company's decisions regarding that element fit into the company's overall compensation objectives and affect decisions regarding other elements?

Touted by the SEC as a "principles-based approach" to disclosure, the CD&A requirement provides 13 illustrative but non-exclusive examples of potentially material information that should be considered for disclosure, depending on a company's particular facts and circumstances. These examples include: policies for allocating between long-term compensation and currently paid out compensation and between cash and non-cash compensation (and among different forms of non-cash compensation); the basis for allocating among different forms of long-term compensation; the determination as to when to grant awards; the specific items of corporate

performance considered in setting compensation policies and making compensation decisions; how specific forms of compensation are structured and implemented to reflect items of corporate performance and the named executive officers' individual performance; factors considered in decisions to increase or decrease compensation materially; the impact of the accounting and tax treatment (including but not limited to Section 162(m)) of particular forms of compensation; the use of benchmarking; and the role of executive officers in determining executive compensation.

In the adopting release, the SEC singles out stock option disclosure for special treatment in the CD&A, noting that the CD&A should include a discussion of a company's programs, plans and practices regarding the timing and the pricing of stock options, such as:

- The methods for selecting the grant dates of awards, including in particular, the selection of option grant dates in coordination with the release of material non-public information (for instance, granting options just prior to the release of favorable information that is likely to increase the company's stock price, or delaying the granting of options until after the release of negative information that is likely to decrease its stock price);
- The timing of option grants to executive officers vis-à-vis option grants to employees generally;
- The role of the compensation committee and the executive officers in determining the timing of option grants, and any practices concerning the possession of material non-public information by the committee or officers at time of the grants; and
- The formula or methodology used to set the exercise price of an option grant.

The SEC's release states that disclosure with respect to the named executive officers as a group is appropriate where compensation policies or decisions are materially similar for all such persons; however, where the policies or decisions for individually named executive officers are materially different, the company's disclosure ought to be sufficiently precise to identify such material differences among the named executive officers. In addition, instructions to the CD&A rules permit companies to omit specific performance-related factors or other factors involving trade secrets or confidential information if disclosure would result in competitive harm to the company. In such event, however, the company must discuss how difficult it will be for the executive or for the company to achieve the undisclosed targets.

The instructions also make clear that the CD&A should focus on the material principles underlying the company's executive compensation policies and decisions and the most important factors relevant to analysis of those policies and decisions. The challenge for all companies will be to avoid boilerplate disclosure and to identify and articulate the compensation principles behind the information presented in the tables and otherwise disclosed in the proxy statement.

Significantly, the CD&A will be deemed "filed" rather than "furnished" disclosure, thus subjecting it to liability under Section 18 of the 1934 Act and to coverage by the CEO and CFO certifications required by the Sarbanes-Oxley Act of 2002 ("SOX"). In contrast, the SEC has adopted a new, streamlined Compensation Committee Report, which will continue to be deemed "furnished" rather than "filed" disclosure, as described below under "Corporate Governance Disclosure."

4. Summary Compensation Table (see p. A-1)

The new rules revamp the Summary Compensation Table in several important respects, the upshot of which is to cement the Summary Compensation Table's status as the most popular page in the proxy statement. The most talked-about change to the Summary Compensation Table is the inclusion of a "total compensation" column. Viewed by some as a concession to activists engaged in an ongoing war against excessive compensation, "total

compensation" is intended to provide a number that is comparable across companies and years, notwithstanding that it arguably combines apples (*e.g.*, earned compensation) and oranges (*e.g.*, contingent or unvested compensation).

The Summary Compensation Table requires the following three-year information*, all in dollar amounts, for each of the named executive officers:

- Salary
- Bonus
- Stock awards
- Option awards
- Non-equity incentive plan compensation
- Change in pension value and non-qualified deferred compensation earnings
- All other compensation (including perquisites at a new \$10,000 threshold).

a. Salary and Bonus. Little has changed under these columns, except that any amount deferred – regardless of whether the deferral was initiated by the company or the named executive officer – must be included in the appropriate column. In addition, the new rules eliminate the distinction between “annual bonuses” and “long-term compensation” and instead have two competing columns for incentive compensation: “Bonus” and “Non-Equity Incentive Plan Compensation.” The SEC’s adopting release provides that the “Bonus” column would apply only to cash awards that are based on satisfaction of a performance target that is not pre-established and communicated or the outcome of which was substantially certain at the time it was communicated (*e.g.*, “discretionary bonuses”). In contrast, a cash bonus based on performance targets for which the outcome is substantially uncertain at the time the targets are established would be reported in the “Non-Equity Incentive Plan Compensation” column.

b. Stock Awards and Option Awards. Under these two columns, stock awards and option awards are reportable using the grant date fair value determined under Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payments* (“FAS 123R”) for financial reporting purposes and would include awards that are not yet vested. Footnote disclosure referencing the discussion of the relevant assumptions in the notes to the company’s financial statements or MD&A is also required. In the case of option awards, the column must include the fair value of awards of all options, stock appreciation rights and other stock-based compensation having option-like features. Additionally, where an option or stock appreciation right is repriced or otherwise materially modified, the incremental fair value, calculated under FAS 123R, of the modified award must also be disclosed in this column.

c. Non-Equity Incentive Plan Compensation. Non-equity incentive plan compensation, in contrast to stock awards and option awards, will be reported when earned rather than when granted or paid. As noted, this column reports awards where the relevant performance measure is not based on the value of the company’s securities and where the award is settled in cash. Earnings on non-equity incentive plan compensation also must be identified and quantified in a footnote to the Summary Compensation Table.

d. Change in Pension Value and Nonqualified Deferred Compensation Earnings. This column is new and combines two related items: (i) the aggregate increase in actuarial present value of the named executive officer’s

* Companies will not need to restate prior fiscal year information in the Summary Compensation Table during the phased-in implementation of the new rules. Accordingly, in 2007, companies will need only to present information for the 2006 fiscal year in the Summary Compensation Table (as opposed to three-year information for fiscal years 2006, 2005, and 2004).

accumulated benefit under all defined benefit and actuarial plans (including supplemental plans) accrued during the year and (ii) above-market or preferential earnings on nonqualified deferred compensation accrued during the year. The increase in pension value includes the increase in value due to an additional year of service, compensation increases and the increase (or decrease) in value attributable to interest. The sum of (i) and (ii) must be reported in this column, and each item must be separately quantified in a footnote; if the amount in (i) is negative, it would appear only in the footnote and not in the Summary Compensation Table. As noted, this column of the Summary Compensation Table does not factor into the calculation of total compensation for purposes of determining the named executive officers.

e. **All Other Compensation (including Perquisites).** This column is a catch-all intended to capture any item of compensation not otherwise reported in the Summary Compensation Table. It includes, among other things, amounts paid or accrued pursuant to a termination of employment or change in control, including benefits under defined benefit plans that accelerate as a result of a change in control; contributions to defined contribution plans; company-paid life insurance premiums; and tax gross-ups. Any item (other than perquisites) whose value exceeds \$10,000 must be identified and quantified in a footnote to the Summary Compensation Table.

The new rule lowers the perquisite disclosure threshold to \$10,000. If the total value of all perquisites exceeds \$10,000, each perquisite, regardless of its amount, must be identified by type. If the value of any perquisite exceeds the greater of \$25,000 or 10% of the total value of all perquisites, its value also must be disclosed. The new rules also retain the aggregate incremental cost to the company as the proper methodology for valuing perquisites.

The SEC's adopting release and its earlier proposing release provide important interpretive guidance on the meaning of "perquisites":

- An item is not a perquisite or personal benefit if it is "integrally and directly related to the performance of the executive's duties." An item meeting this standard is viewed narrowly by the SEC as one that the company provides because the executive needs it to do the job. Examples favorably cited by the SEC include a Blackberry and a laptop computer.
- An item is a perquisite if it confers a direct or indirect benefit that has a personal aspect, without regard to whether it may be provided for some business reason or for the convenience of the employer, *unless it is generally available on a non-discriminatory basis to all employees*. Examples cited by the SEC as perquisites requiring disclosure include: club memberships not used exclusively for business entertainment purposes; personal financial or tax advice; personal travel using vehicles owned or leased by the company; personal use of property owned or leased by the company; housing and other living expenses (including but not limited to relocation assistance and payments for the executive or director to stay at his or her personal residences); security provided at personal residences or during personal travel; commuting expenses; and discounts on the company's products and services not generally available to employees on a non-discriminatory basis.

5. Other Compensation Tables and Related Disclosure

The new rules supplement the Summary Compensation Table with six additional compensation tables as well as explanatory narrative and footnote disclosures.

a. **Grants of Plan-Based Awards Table (see p. A-2).** The first supplemental table is the Grants of Plan-Based Awards table, which calls for information about each award made under all non-equity incentive plans and under all equity incentive plans during the last fiscal year. This supplemental table shows the terms of each individual grant to a named executive officer including the grant date and the estimated future "threshold," "target" and "maximum payouts" upon satisfaction of the award's conditions. If the grant date of an equity-based award differs from the date that action was taken to grant the award, a separate column must disclose the date of such

action. Additionally, if the exercise price is less than the closing market price of the stock on the date of grant, a separate column must be added to the table showing the market price on the grant date and a footnote or narrative disclosure must explain the methodology for determining the exercise price.

b. Narrative Disclosure Under the Summary Compensation Table and the Plan-Based Awards Table. The new rules require narrative disclosure of any additional material factors necessary to an understanding of the information contained in the Summary Compensation Table and the Grants of Plan-Based Awards Table. In contrast to the CD&A, which focuses on broader topics regarding the objectives and implementation of policies, these narrative disclosures should provide specific context to the quantitative disclosure in the tables. The required disclosures will vary depending on the facts and circumstances of each particular company. However, a non-exhaustive list of such additional material factors provided by the SEC in the adopting release and in the rules includes:

- An explanation of the material aspects of a plan that are not evident from the quantitative tabular disclosure and are not addressed in the CD&A;
- A description of the material terms in the named executive officers' employment agreements;
- Repricing, extension of exercise periods, change of vesting or forfeiture conditions, change or elimination of applicable performance criteria, change of the bases upon which returns are determined, or any other material modifications to awards; and
- A general description of the formula or criteria to be applied in determining the amounts payable, the vesting schedule, a description of the performance-based conditions and any other material conditions applicable to the award, whether dividends or other amounts would be paid, the applicable rate and whether that rate is preferential.

c. Exercises and Holdings of Previously Awarded Equity. The rules provide two new tables intended to better disclose equity compensation that has previously been awarded and remains outstanding, as well as the amounts realized upon exercise of options or vesting of other stock awards.

- Outstanding Equity Awards at Fiscal Year-End Table (see p. A-3). This table sets out options and other stock awards separately. The company must disclose, for each individual option grant that is outstanding at the end of the year for each named executive officer, (i) the number of shares issuable pursuant to exercisable options and unexercisable options that are not performance-based, (ii) the number of shares issuable pursuant to options awarded under incentive equity (*i.e.*, performance-based) plans that are not yet earned, (iii) the option exercise price, and (iv) the option expiration date. The company also must disclose for outstanding equity awards other than options, (v) the aggregate number of unvested shares or units that are not performance-based and their market value, and (vi) the aggregate number of the unvested shares or units that were awarded under incentive equity plans and their market value. The number of shares to be reported under equity incentive plans shall be based on achievement of threshold performance goals, except if the prior fiscal year's performance exceeded the threshold, then the next higher performance measure (target or maximum) that exceeds the prior year performance should be used.
- Option Exercises and Stock Vested Table (see p. A-4). This table reports, for each named executive officer, the aggregate dollar amounts received upon exercise of stock options or upon vesting of other stock awards during the last fiscal year, and the aggregate number of shares received upon such exercise or vesting.

d. Pension Benefits Table (see p. A-5). This new supplemental table replaces the prior pension plan table and requires detailed information about each named executive officer's benefits. The new table requires disclosure for each named executive officer of his or her years of credited service and the actuarial lump sum present value of accumulated benefits under each tax-qualified and non-qualified defined benefit pension plan as of the end of the fiscal year, determined as of normal retirement age as specified in the plan and based on current compensation. The accumulated benefits under each plan must be disclosed separately in the table. The table must be followed by narrative disclosure of the material facts necessary to understand the benefit calculation, such as the benefit formula, the specific elements of compensation included in applying the benefit formula, and any policy regarding granting extra years of credited service.

e. Nonqualified Deferred Compensation Table (see p. A-5). This new supplemental table requires disclosure, for each named executive officer, and for the last completed fiscal year, of the executive's and company's contributions made under each nonqualified deferred contribution plan, the earnings on the account balance, any withdrawals, and the account balance. To avoid double counting, there should be footnote disclosure of the extent to which amounts in the contributions and earnings columns are also reported in the Summary Compensation Table. The table must be followed by narrative disclosure of the material terms of the plan, including the types and amounts of compensation that can be deferred, how earnings are calculated, and the material terms affecting withdrawals and distributions.

f. Other Potential Post-Employment Payments. This information can be provided through narrative rather than tabular disclosure. For any arrangement providing for payments to a named executive officer following a termination of employment, change in job responsibilities or change in control of the company, there must be disclosed the specific circumstances that would trigger payments under the arrangements, and the estimated payout and benefits that would be provided, including health care benefits and perquisites, assuming the triggering event occurred at the end of the last fiscal year (and using a stock price as of such date). There must be disclosure of other material facts, including each triggering event, a description of the types and duration of the payments and benefits, how the payment and benefit levels are determined in each circumstance, and any conditions on payment, such as non-compete, non-solicitation or confidentiality provisions. If there is any uncertainty as to the amounts payable, the company is required to make a reasonable estimate and disclose the material underlying assumptions.

6. Director Compensation (see p. A-6)

The new rules require both tabular and narrative disclosure for director compensation. The "Director Compensation" table presents one-year information only, but is otherwise largely based on the Summary Compensation Table, including a column for "Change in Pension Value and Nonqualified Deferred Compensation Earnings" and a "total compensation" column. It provides for separate disclosure of cash fees and fees paid in stock. The catch-all "All Other Compensation" column includes, among other things, perquisites (if the total is greater than \$10,000), consulting fees, and awards under director legacy or charitable awards programs.

Narrative disclosure is required of any material factors necessary to an understanding of the director compensation disclosed in the table. Examples may include a description of standard compensation arrangements (such as retainer fees, committee service fees, meeting attendance fees) and any individual director compensation arrangements, identifying the director and the terms of the arrangement.

7. Related Party Disclosure

The SEC adopted significant revisions to Item 404 of Regulation S-K in an attempt to make these disclosure requirements more "principles-based" and "clearer and easier to follow." While the SEC has streamlined the rules in certain respects, it has also broadened the scope of companies' disclosure requirements regarding related party transactions. The most noteworthy changes include:

- Requiring disclosure (subject to certain exceptions) of any transaction or currently proposed transaction, including indebtedness, formerly covered under Item 404(c), since the beginning of the last fiscal year in which:
 - The company is a “participant” rather than a “party” (as is required under the current rules) – this change is intended to require disclosure of a transaction in which a company benefits from the transaction but is not technically a “party” to the transaction;
 - The amount involved exceeds \$120,000 (an increase from \$60,000 under the current rules);
 - A “related person” (*i.e.*, directors, director nominees, executive officers, greater than 5% shareholders, and their respective immediate family members) had or will have a direct or indirect material interest; and
- Requiring disclosure of a company’s policies and procedures for review, approval or ratification of related party transactions, including:
 - The material features of the policies and procedures (*e.g.*, the types of transactions that are covered, the persons who are responsible for applying them, and whether they are in writing and, if not, how they are evidenced);
 - Instances in which the policies and procedures did not require review, approval or ratification for specific related party transactions; and
 - Instances in which the policies and procedures were not followed.

8. Corporate Governance Disclosure

The SEC added a new Item 407 to Regulation S-K to consolidate under one item the current SEC and applicable listing standards disclosure requirements regarding director independence and related corporate governance. As a result of these changes, companies must now, among other things, disclose:

- Its independent directors and which members of its compensation, nominating and audit committees are not independent;
- Whether any standards it has adopted for independence are posted on its website or, alternatively, attach such standards as an appendix to its proxy statement at least once every three years or in any year in which the standards are revised;
- Any related party transactions, relationships or arrangements not otherwise disclosed under new Item 404(a) that were considered by the board of directors in its determination that a director was independent;
- The board of directors’ independence determination for any director who served *at any time* during the previous fiscal year;
- Whether its compensation committee acts under a written charter and whether the charter is posted on the company’s website (or, alternatively, the company may attach the charter as an appendix to its proxy statement at least once every three years or in any year in which the charter was revised);
- Its processes and procedures for the consideration and determination of executive and director compensation, including the compensation committee’s scope and authority, as well as its ability to delegate authority; and

- Any role of executive officers and compensation consultants in determining or recommending the amount or form of executive and director compensation.

The new rules also reduce or streamline certain current disclosure requirements, as they:

- Permit a company to disclose that its audit committee charter is posted on its website rather than attaching the charter once every three years or in any year in which the charter was amended;
- Eliminate the requirement to disclose any directors who resigned or declined to stand for re-election; and
- Consolidate with the compensation committee disclosure the current required disclosure regarding compensation committee interlocks and insider participation in compensation decisions.

The new rules retain the Compensation Committee Report, albeit in a shortened fashion resembling the Audit Committee Report. The compensation committee must state whether it has reviewed the CD&A with management and based on that review whether it recommended to the board of directors that the CD&A be included in the company's annual report on Form 10-K, proxy statement or information statement. This disclosure must still be made over the names of the compensation committee members, although as "furnished" disclosure, it will not be subject to the liability provisions of Section 18 of the 1934 Act and will not be covered by the CEO and CFO certifications under SOX.

9. [Form 8-K](#)

As part of its effort to revise executive and director compensation disclosure requirements, the SEC has revised Item 1.01 and 5.02 of Form 8-K. The SEC's stated goal in the revisions is to slow the volume of filings on Form 8-K with respect to executive officer and director compensation events that do not appear to meet the SEC's standard of "unquestionably or presumptively material events" requiring disclosure on a real time basis.

Current Item 1.01 of Form 8-K requires a reporting company to disclose, within four business days, the entry into a material definitive agreement not made in the ordinary course of business, or any amendment of such agreement that is material to the company. Current Item 1.01 specifically requires a filing with respect to compensatory plans, contracts or arrangements identified in Item 601(b)(10)(iii) of Regulation S-K. Under that standard, all plans, contracts and arrangements are presumptively material if entered into with a director or a named executive officer and a Form 8-K must be filed. A Form 8-K with respect to plans, contracts and arrangements with other executive officers shall be filed "unless [such plan is] immaterial in amount and significance." Pursuant to the revisions of Form 8-K, the arrangements identified in Item 601(b)(10)(iii) will no longer be required to be disclosed under Item 1.01.

In lieu of Item 1.01 disclosures with respect to executive officers and directors, a new paragraph (e) has been added to Item 5.02 to require the current filing of a brief description of the terms and conditions and amounts payable under any material new compensatory plan, contract or arrangement (whether or not written), or a material amendment thereto, with respect to the principal executive officer, principal financial officer or any other named executive officer (but not directors). Disclosure is also required with respect to a material grant or award to a covered officer under such a plan, contract or arrangement, or a material modification of a grant or award. The instructions to Item 5.02(e) note that a grant or award or a material modification thereto that is materially consistent with previously disclosed terms of a plan, contract or arrangement need not be disclosed on Form 8-K, provided the grant, award or modification is disclosed when Item 402 of Regulation S-K requires such disclosure, typically in the company's next proxy statement. For instance, as is the case under current practice under Item 1.01, if a company has an equity compensation plan and form of award letter on file as exhibits to its periodic reports, a grant made pursuant to that plan need not be disclosed.

By not incorporating the Regulation S-K 601(b)(10)(iii) standard, new Item 5.02(e) appears to do away with the idea of presumptive materiality for plans, contracts or arrangements involving named executive officers. Disclosure need only be made for plans and grants which are material; presumably the reference to materiality refers to materiality to the issuer.

The instructions to Item 5.02 clarify that the term “named executive officer” only refers to those executive officers for whom compensation disclosure was required in the company’s most recent filing with the SEC that requires disclosure pursuant to Item 402 of Regulation S-K (most typically the proxy statement). This clarification was made to allay concerns that companies could not necessarily determine who would be a named executive officer in the next proxy statement at the time a Form 8-K filing would be required.

The limited safe harbor currently available for failure to timely file reports required by Item 1.01 of Form 8-K has been extended to new Item 5.02(e). Events not timely reported must be reported by the due date of the quarterly or annual report for the period in which the event occurs.

Other changes have been made to Item 5.02. Current Item 5.02 generally requires disclosure within four business days of the appointment or departure of directors and the principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer or any person performing similar functions. Revised Item 5.02 will require information with respect to the retirement, resignation and termination of *all* named executive officers, in addition to principal officers and directors. In connection with the appointment of a principal officer, current Item 5.02 requires disclosure of a brief description of the material terms of any employment agreement between the company and such officer. Revised Item 5.02 expands the disclosure to require a brief description of any material plan, contract or arrangement (whether or not written) to which any such newly appointed principal officer, as well as any newly appointed director (other than one elected at a shareholders meeting), is a party that is entered into or materially amended in connection with the appointment. Disclosure is also required with respect to any grant or award to any such person or modification thereto (without reference to materiality) under any such plan, contract or agreement in connection with such appointment.

10. Miscellaneous

a. Performance Graph. The SEC retained the performance graph but moved it from the proxy statement to the annual report to shareholders pursuant to new Item 201(e) of Regulation S-K, where it will continue to be “furnished” rather than “filed” information.

b. Beneficial Ownership Disclosure. The beneficial ownership table now requires footnote disclosure of the number of shares pledged as security by named executive officers, directors, director nominees and directors and officers as a group (but not shares pledged by greater than 5% beneficial owners).

c. Plain English. The SEC added Rules 13a-20 and 15d-20 to the 1934 Act to require that companies use plain English in connection with their disclosure of executive and director compensation, related person transactions, beneficial ownership and corporate governance matters under Items 402, 403, 404 and 407 of Regulation S-K.

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APPENDIX A

**COMPENSATION TABLES UNDER
THE SEC'S NEW EXECUTIVE COMPENSATION RULES**

Summary Compensation Table

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)	Option Awards (\$)	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation (\$)	Total (\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Principal Executive Officer	_____ _____ _____								
Principal Financial Officer	_____ _____ _____								
A	_____ _____ _____								
B	_____ _____ _____								
C	_____ _____ _____								

Grants of Plan-Based Awards

Name	Grant Date (b)	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Stock Awards: Number Of Shares Of Stock Or Units (#) (i)	All Other Option Awards: Number Of Securities Underlying Options (#) (j)	Exercise Or Base Price of Option Awards (\$/sh) (k)
		Threshold (\$) (c)	Target (\$) (d)	Maximum (\$) (e)	Threshold (#) (f)	Target (#) (g)	Maximum (#) (h)			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)
Principal Executive Officer										
Principal Financial Officer										
A										
B										
C										

Outstanding Equity Awards at Fiscal Year-End

Name	Option Awards					Stock Awards			
	Number Of Securities Underlying Unexercised Options (#) Exercisable	Number Of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number Of Securities Underlying Unexercised Unearned Options (#)	Option Exercise Price (\$)	Option Expiration Date	Number Of Shares Or Units Of Stock That Have Not Vested (#)	Market Value Of Shares Or Units Of Stock That Have Not Vested (\$)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested	Equity Incentive Plan Awards: Market Or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Principal Executive Officer									
Principal Financial Officer									
A									
B									
C									

Option Exercises and Stock Vested

Name	Option Awards		Stock Awards	
	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise (\$)	Number of Shares Acquired On Vesting (#)	Value Realized On Vesting (\$)
(a)	(b)	(c)	(d)	(e)
Principal Executive Officer				
Principal Financial Officer				
A				
B				
C				

Pension Benefits

Name (a)	Plan Name (b)	Number of Years Credited Service (#) (c)	Present Value Of Accumulated Benefit (\$) (d)	Payments During Last Fiscal Year (\$) (e)
Principal Executive Officer				
Principal Financial Officer				
A				
B				
C				

Nonqualified Deferred Compensation

Name (a)	Executive Contributions In last FY (\$) (b)	Registrant Contributions in Last FY (\$) (c)	Aggregate Earnings in Last FY (\$) (d)	Aggregate Withdrawals/ Distributions (\$) (e)	Aggregate Balance at Last FYE (\$) (f)
Principal Executive Officer					
Principal Financial Officer					
A					
B					
C					

Director Compensation

Name	Fees Earned Or Paid in Cash (\$)	Stock Awards (\$)	Option Awards (\$)	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value And Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation (\$)	Total (\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A							
B							
C							
D							
E							