

SEC Issues Final Rules to Executive Compensation Disclosure and Related Areas

On August 11, 2006, the Securities and Exchange Commission (the "Commission") released its final rules on the significant revisions to the executive compensation disclosure and related matters of public companies. The revisions represent the first major overhaul of executive compensation disclosure since 1992. The proposed revisions received a record 20,000 comment letters. Although the Commission adopted the proposed rules substantially as proposed, there were certain changes made in the final rules as a result of the comment letters. The Commission's goal is for the new rules to provide (i) clearer and more complete principles based compensation disclosure, (ii) better information about key financial relationships among companies and their executive officers, directors, significant shareholders and their respective immediate family members and (iii) better disclosure regarding related party transactions, director independence and board committee functions.

Effective Dates

- Form 8-K changes will be effective beginning November 7, 2006;
- Form 10-K changes will be effective for fiscal years ending on or after December 15, 2006; and
- Item 402 and 404 changes will be effective for proxy statements, information statements and Securities Act registration statements filed on or after December 15, 2006 that are required to include Item 402 and Item 404 disclosure for fiscal years ending on or after December 15, 2006.

Guidance Affecting Current Disclosure

Updated Guidance on Perquisites and Other Personal Benefits

Although the revised disclosure rules will not be effective until fiscal years ending on or after December 15, 2006, in the proposed rules the Commission provided updated guidance on the area of perquisites and other personal benefits which applies to disclosure under the current rules, and in the final rules, the Commission provided additional guidance.

- **Items that are not perquisites or other personal benefits.**

The Commission clarified that items are not perquisites or other personal benefits if the items are integrally and directly related to the performance of the duties of the named executive officer ("NEO"). The following items are not perquisites or other personal benefits:

- Office space at a company business location;
- Close reserved parking space;
- Additional clerical or secretarial services devoted to company matters;
- Travel to and from business meetings;
- Other business travel;
- Business entertainment;
- Security during business travel;
- Laptop computers and Blackberries if they are integral to the NEO's duties; and
- Itemized expense accounts, the use of which is limited to business purposes.

- **Items that are perquisites or other personal benefits.**

The Commission also clarified items that are perquisites or other personal benefits which, depending on the aggregate amount, are disclosable under both the current rules and the new rules. Items are perquisites or other personal items if (i) they are not integrally and directly related to the performance of the executive's duties and (ii) they confer a direct or indirect benefit that has a personal aspect regardless of whether the items provide a business reason or convenience to the



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company unless the items are generally available on a non-discriminatory basis to all employees. The following items are perquisites or other personal benefits:

- Company provided aircraft, yachts or other watercraft;
- Commuter transportation services;
- Additional clerical or secretarial services devoted to personal matters;
- Investment management services;
- Club memberships not exclusively used for business entertainment;
- Personal financial or tax advice;
- Personal travel using vehicles owned or leased by the company;
- Personal travel otherwise financed by the company;
- Personal use of other property owned or leased by the company;
- Housing and other living expenses (including, but not limited to, relocation assistance and payments for an executive to stay at his or her personal residence);
- Security provided at a personal residence or during personal travel; and
- Discounts on the company's products or services that are not generally available to employees on a non-discriminatory basis.

If an item is a perquisite or other personal benefit, it should be valued based on the aggregate incremental cost to the company, and the company must provide footnote disclosure of the methodology used for computing the aggregate incremental cost.

Highlights of Final Rules

Expanded Named Executive Officers

The final rules expand the list of NEOs to the following:

- Any Principal Executive Officer who served during the last fiscal year even if not serving at the end of the last fiscal year;
- Any Principal Financial Officer who served during the last fiscal year even if not serving at the end of the last fiscal year;
- The three most highly compensated executive officers other than the Principal Executive Officer or the Principal Financial Officer (based on total compensation for the year (other than resulting from the increase in pension values and nonqualified deferred compensation above-market or preferential earnings as reported in the Summary Compensation Table) and not just based on annual salary and bonus as is currently the case) serving as executive officers at the end of the last fiscal year with total compensation of at least \$100,000; and
- Up to two other persons who would have been among the three most highly compensated executive officers other than the Principal Executive Officer or the Principal Financial Officer had they remained executive officers at the end of the last fiscal year.

Note that large severance packages granted during the year to a departing executive officer who was not previously an NEO may cause that person to be listed as an NEO for the year in which the executive officer left the company.

It was also proposed that the total compensation for up to three non-executive officer employees (but not the names of the employees) be included in a narrative disclosure if the total compensation of any such non-executive officer for the last fiscal year exceeded the total compensation of any of the NEOs. Due to the numerous comment letters received on this issue, the Commission has requested further comments on this proposal.



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New Compensation Discussion and Analysis Section

The final rules add a Compensation Discussion and Analysis (“CD&A”) section where companies set forth the material principles underlying their executive compensation policies and the most important factors relevant to the analysis of these policies. The CD&A includes the following information:

- The objectives of the compensation programs;
- What the compensation programs are designed to reward and not reward;
- All elements of compensation;
- Why the company elects to pay each element of compensation;
- How the company determines the amount of each element; and
- How each element and the company’s decisions regarding that element fit the company’s overall compensation objectives and affect the decisions regarding other elements of compensation.

Examples of issues that may be appropriate to include in the CD&A are the following:

- Policies for allocating between long-term and currently paid out compensation;
- Policies for allocating between cash and non-cash compensation, and among different forms of non-cash compensation;
- The basis for allocating compensation to each different form of award for long-term compensation such as the relationship of the award to the achievement of the company’s long-term goals, management’s exposure to downside equity performance risk and the correlation between the cost to the company and expected benefits to the company;
- How the determination is made as to when awards are granted, including awards of equity-based compensation such as options;
- Subject to not disclosing information that meets the requirements for a confidential treatment request, what specific items of corporate performance are taken into account in setting compensation policies and making compensation decisions (if the specific requirements are confidential and meet the requirements for a confidential treatment request, the company instead must set forth how difficult it will be or how likely it will be for the performance criteria to be met);
- How specific elements of compensation are structured and implemented to reflect these items of the company’s performance and the executive’s individual performance, including whether discretion can be or has been exercised to award compensation when the performance goals have not been obtained or to reduce or increase the award or payout, when such discretion has been exercised and whether such discretion was applied to one or more of the NEOs or to all compensation subject to the performance goals;
- How specific forms of compensation are structured and implemented to reflect the NEO’s individual performance and/or contribution, describing the elements of individual performance or contribution that are considered;
- The company’s policies and decisions regarding the adjustment or recovery of awards or payments if the relevant performance measures are restated or adjusted such as to reduce the size of the award or payment;
- The factors considered in decisions to increase or decrease compensation materially;
- How compensation or amounts realizable from prior compensation are considered in setting other elements of compensation, such as how gains from prior option or stock awards are considered in setting retirement benefits;
- With regard to agreements providing for payments upon a termination or change-of-control, the basis for selecting the particular triggering events;
- The impact of accounting and tax treatments of a particular form of compensation;
- The company’s equity or other security ownership requirements or guidelines and any company policies regarding hedging the economic risk of such ownership;
- Whether the company engaged in any benchmarking of total compensation or any material element of compensation, identifying the benchmark and, if applicable, its components (including component companies); and
- The role of executive officers in the compensation process.

The Commission does not want the CD&A section to become boilerplate. Therefore, this list is not comprehensive or exhaustive. Companies may have other subject matters that should be discussed while certain of the above subject matters may not be applicable.



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CD&A should also include a discussion of the timing and pricing of stock options granted to NEOs. Companies should consider the following items regarding the timing of stock option grants and the relationship of such timing to the release or failure to release material non-public information:

- Describe any program, plan or practice to time stock option grants to executives in coordination with the release of material non-public information;
- If there is such a program, plan or practice, describe whether the program, plan or practice is applied to the grants of stock options to employees generally;
- Describe the role of the compensation committee in approving such program, plan or practice, how the compensation committee or board takes such information into account in making stock option grants and whether the compensation committee delegated any aspect of the administration of the program, plan or practice to other persons;
- Any role of executive officers in such program, plan or practice;
- Whether the company sets the grant date of its stock options to new executives in coordination with the release of material non-public information; and
- Whether the company times or plans to time its release of material non-public information for the purpose of affecting the value of executive compensation.

In addition, if companies have a program, plan or practice of awarding stock options and setting the exercise price based on a price other than the closing price of the grant date, companies should disclose this program, including any formulas used in setting the exercise price.

The final rules added a Compensation Committee Report to be “filed,” as opposed to “furnished,” with the Commission, and the report requires the compensation committee to state whether (i) it has reviewed and discussed the CD&A section with the company’s management and (ii) based on any review and discussion, it recommended to the board of directors that the CD&A be included in the Form 10-K and, as applicable, the company’s proxy statement or information statement.

The final rules also retained the performance graph, but moved it to “Market Price of and Dividends on the Registrant’s Common Equity and Related Stockholder Matters.”

Expanded 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 (\$)

The final rules expand and modify the Summary Compensation Table which include the following columns for the NEOs for the last three fiscal years:

- Salary Column, including earned but deferred salary;
- Bonus Column, including earned but deferred bonus;
- Stock Awards Column based on the issuance of equity securities, restricted stock, restricted stock units, phantom stock, phantom stock units and common stock equivalents using the grant date fair value of the awards under FAS 123R and including a footnote on any earnings during the year on outstanding stock awards if such earnings were not included in the grant date fair value;



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- Option Awards Column based on options and stock appreciation right grants using the grant date fair value of the awards under FAS 123R and including a footnote on any earnings during the year on outstanding option awards if such earnings were not included in the grant date fair value;
- Non-Equity Incentive Plan Compensation Column setting forth the dollar value of the compensation on the date earned for all amounts earned where the performance measure under an incentive plan is not based on the price of the company's equity securities or the award is not settled by the issuance of the company's equity securities and the column includes earnings on outstanding awards;
- Change in Pension Value and Nonqualified Deferred Compensation Earnings Column which was added in the final rules to cover the following:
 - All above market or preferential earnings on nonqualified deferred compensation (note that all earnings on nonqualified deferred compensation are required to be disclosed in the separate Nonqualified Deferred Compensation Table described below); and
 - The increase in actuarial value of defined benefit and actuarial plans accrued during the year due to an additional year of service, compensation increases and plan amendments as well as due to the increase or decrease in value attributable to interest; and
- All Other Compensation Column which includes all compensation not included under another column, including the following (a separate table setting forth the details of this column is not required, but may be advisable for the sake of clarity):
 - All items that are currently included under the "Other Annual Compensation" column;
 - Except for perquisites and other personal benefits described below, all items equal to or less than \$10,000 in value are to be included in the total amount of the column but are not to be specifically identified;
 - All items greater than \$10,000 in value are to be separately identified and the amount disclosed in a footnote;
 - All perquisites and other personal benefits are to be included and identified unless the aggregate of them is less than \$10,000, with additional disclosure of the value of all perquisites and other personal benefits valued at the greater of \$25,000 or 10% of all the perquisites and other personal benefits;
 - All amounts paid or accrued pursuant to a plan or arrangement in connection with any termination of employment or change of control;
 - Annual company contributions and all other allocations to vested and unvested defined contribution plans;
 - Any life insurance premiums paid by the company for life insurance on any NEO;
 - Gross ups or other reimbursement amounts paid for the payment of taxes; and
 - The compensation cost for any security of the company purchased from the company at a discount through the deferral of fees or otherwise unless the discount is available to all security holders or to all salaried employees of the company; and
- New Total Compensation Column which is the total of the other columns.

Grants of Plan-Based Awards Table

Name	Grant Date	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 (#)	All Other Option Awards: Number of Securities Underlying Options (#)	Exercise or Base Price of Option Awards (\$/Sh)
		Threshold (\$)	Target (\$)	Maximum (\$)	Thresh- old (#)	Target (#)	Maxi- mum (#)			

The proposed rules proposed two new supplemental tables to follow the Summary Compensation Table, but the final rules have merged them into the Grants of Plan-Based Awards Table which covers for the last fiscal year on a grant-by-grant basis all non-stock grants of incentive plan awards, stock-based incentive plan awards (including threshold, target and maximum payout information),



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awards of options and restricted stock under plans that are performance based, all equity compensation awards that are not performance based, such as stock grants and stock options where the payout or future value is tied to the company's stock price and not to other performance criteria and, if applicable, may require additional columns as set forth below:

- If the exercise price or base price of options, stock appreciation rights and similar option-like instruments is less than the closing price of the underlying security on the grant date, a separate column must be added showing the closing price on the grant date; and
- If the date on which the compensation committee takes action or is deemed to take action to grant equity-based awards is different from the date of grant, a column must be added to disclose the date of the action.

Narrative disclosure is required following the Summary Compensation Table and the Grants of Plan-Based Awards Table in order to give context to the disclosure in the tables such as material aspects of a plan that are not clear from the tables or CD&A, the material terms of NEOs' employment agreements, repricings and other modifications of outstanding options and other equity-based awards, other award terms or an explanation of salary and bonus in proportion to total compensation.

Outstanding Equity Awards at Fiscal Year End Table

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 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 Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (\$)

The Outstanding Equity Awards at Fiscal Year-End Table requires at the fiscal year-end information regarding and the market based values on an award-by-award basis under stock option plans, stock appreciation right plans, restricted stock plans and equity incentive plans.

Option Exercises and Stock Vested Table

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 (\$)

The Options Exercises and Stock Vested Table includes the amounts received upon exercise of options or the vesting of stock during the last fiscal year.



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Pension Benefits Table

Name	Plan Name	Number of Years Credited Service (#)	Present Value of Accumulated Benefit (\$)	Payments During Last Fiscal Year (\$)
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The Pension Benefits Table replaces the current pension plan table, alternative plan disclosure and certain other narrative description and provides the present value of the current accrued benefit computed as of the end of the last completed fiscal year, the number of years of credited service and payments made during the last fiscal year under pension plans with a narrative disclosure regarding the following:

- The material terms and conditions of benefits available under the plan, including the plan’s benefit formula and eligibility standards, and early retirement arrangements;
- The specific elements of compensation, such as salary and various forms of bonus, included in applying the benefit formula, identifying each such element;
- The different purposes of each plan if there are multiple plans; and
- Policies with regard to such matters as granting extra years of credited service.

Nonqualified Deferred Compensation Table

Name	Executive Contributions in Last FY (\$)	Registrant Contributions in Last FY (\$)	Aggregate Earnings In Last FY (\$)	Aggregate Withdrawals/ Distributions (\$)	Aggregate Balance at Last FYE (\$)
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Nonqualified Deferred Compensation Table discloses the contributions, earnings and balances under defined contribution and other deferred compensation plans with a narrative regarding the following:

- The types of compensation permitted to be deferred and any limitations (by percentage of compensation or otherwise) on the extent to which deferral is permitted;
- The measures of calculating interest or other plan earnings (including whether such measures are selected by the NEO or the company and the frequency and manner in which such selection may be changed), quantifying interest rates and other earnings measures applicable during the company’s last fiscal year;
- Material terms with respect to payouts, withdrawals and other distributions; and
- Footnote disclosure of the amounts in the contributions and earnings columns that are reported as compensation in the year in question and other amounts reported in the aggregate balance column that were reported previously in the Summary Compensation Table in prior years.

A narrative disclosure is required after the Nonqualified Deferred Compensation Table to help understand the table, including the following:

- The types of compensation that are permitted to be deferred and any limitations on the amount of deferral;
- The measures of calculating interest or other plan earnings, quantifying interest rates and other earnings measures; and
- Material terms with respect to payouts, withdrawals and other distributions.



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Disclosure of Potential Post-Employment Payments

There is to be a narrative description of any arrangements for payments at, following or in connection with the resignation, severance, retirement or other termination of NEOs, changes in the responsibilities of NEOs or a change in control that are not generally available to all salaried employees, including the following:

- The specific circumstances that would trigger payments or the provision of other benefits (benefits include perquisites and health care benefits);
- The estimated payments and benefits that would be provided in each covered circumstance, and whether they would or could be lump sum or annual, disclosing the duration and by whom they would be provided;
- How the appropriate payment and benefit levels are determined under the various circumstances that would trigger payments or provision of benefits;
- Any material conditions or obligations applicable to the receipt of payments or benefits, including, but not limited to, non-compete, non-solicitation, non-disparagement or confidentiality covenants; and
- Any other material factors regarding each such contract, agreement, plan or arrangement, such as whether an NEO can double dip by receiving both severance and retirement benefits.

A table setting forth certain of this information may help clarify the disclosure.

Director Compensation Table

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 (\$)

The Director Compensation Table covers the total compensation of directors for the last fiscal year which includes the following columns:

- Fees Earned or Paid in Cash Column;
- Stock Awards Column;
- Option Awards Column;
- Non-Stock Incentive Plan Compensation Column;
- Change in Pension Value and Nonqualified Deferred Compensation Earnings;
- All Other Compensation Column, including the following:
 - All perquisites and other personal benefits if the total is \$10,000 or greater;
 - All tax reimbursements;
 - For any security of the company or its subsidiaries purchased from the company or its subsidiaries (through deferral of fees or otherwise) at a discount from the market price on the date of purchase, unless the discount is generally available to all security holders or to all salaried employees of the company, the compensation cost, if any, computed in accordance with FAS 123R;
 - Amounts paid or accrued to any director pursuant to a plan or arrangement in connection with the resignation, retirement or any other termination of such director or a change of control of the company;
 - Annual company contributions to vested and unvested defined contribution plans;
 - All consulting fees;
 - Awards under director legacy or charitable awards programs;



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- The dollar value of any insurance premiums paid by, or on behalf of, the company for life insurance for the director's benefit; and
- The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported in the stock award or option award column; and
- Total Compensation Column which is the total of the other columns.

Footnotes are required to disclose the aggregate number of stock awards and options awards outstanding for each director at the end of the year. The instructions to the Summary Compensation Table for NEOs apply to the Director Compensation Table where applicable. If all the directors have the same amounts under each column, then only one row need be completed for all the directors.

A narrative disclosure is to follow the table describing any material factors such as the breakdown of director fees and any required disclosure regarding the timing of option grants which disclosure may be similar to the disclosure described above regarding the timing of option grants to executive officers.

Revised Form 8-K

The final rules add two sections (e-f) to Item 5.02 of Form 8-K and move employment compensation arrangements from Item 1.01 to Item 5.02 as follows:

- Expanding the information regarding retirement, resignation or termination to include NEOs for the previous fiscal year;
- Expanding the disclosure to require a description of any material plan, contract or arrangement to which a covered officer or director is a party or in which he or she participates that is entered into or materially amended in connection with any of the triggering events specified in Item 5.02(c-d), or any grant or award to any such covered person, or modification thereto, under any such plan, contract or arrangement in connection with any such event;
- With respect to the principal executive officer, the principal financial officer or NEOs for the previous fiscal year, expanding the disclosure items to include a brief description of any material new compensatory plan, contract or arrangement, or new grant or award thereunder (whether or not written), and any material amendment to any compensatory plan, contract or arrangement (or any modification to a grant or award thereunder), whether or not such occurrence is in connection with a triggering event specified in Item 5.02; provided, however, that grants or awards or modifications thereto will not be required to be disclosed if they are consistent with the terms of previously disclosed plans or arrangements and they are disclosed the next time the company is required to provide new disclosure under Item 402; and
- The disclosure of salary or bonus for the most recent fiscal year that was not available at the latest practicable date in connection with disclosure under Item 402.

The safe harbor for Item 1.01 applies for Section 10(b) and Rule 10b-5 liability and Form S-3 eligibility for the late filing of the new Item 5.02(e) information. In addition, Item 1.01 does not need to be included in a Form 8-K disclosure if the substantive disclosure that would be included in Item 1.01 is included under other items in the Form 8-K. However, the opposite is not true as Item 1.01 disclosure does not excuse disclosure under other applicable Form 8-K items.

Revised Item 404 of Regulation S-K

Item 404 has been revised as follows:

- Item 404(a) covers all related party transactions in which the company is a participant, including loans, with the new threshold amount being \$120,000 rather than \$60,000 and includes all related persons that have a direct or indirect material interest in the transactions:
 - The company may be a participant in a transaction even if it is not a party to the transaction if the company benefits from the transaction;
 - A transaction includes, but is not limited to, any financial transaction, arrangement or relationship or any series of similar transactions, arrangements or relationships, including indebtedness and guarantees;

- Related persons include any director (or nominee if the disclosure is in a proxy statement or information statement) or executive officer or his or her immediate family members or, at the time the transaction occurred, any known 5% or more beneficial owner or his or her immediate family members;
- Immediate family members include any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and any person (other than a tenant or employee) sharing the household of any director, nominee for director, executive officer or significant shareholder;
- Item 404(a) will not include compensation of NEOs and will not include compensation of non-named executive officers if such non-named executive officers are not immediate family members of another related person, the compensation would have been reported under Item 402 if the executive officer were an NEO and such compensation was approved or recommended to the board for approval by the compensation committee;
- Item 404(b) discloses the policies and procedures for the review, approval or ratification of related party transactions covered by Item 404(a) and requires disclosure of any related party transactions where the company's policies and procedures for the review, approval or ratification of related party transactions did not require a review or where such policies and procedures required a review and such procedures were not followed; and
- Item 404(c) requires the identification of promoters and the disclosure of transactions with such promoters during the last five years in filings on Form S-1, Form SB-2, Form 10 and Form 10-SB.

New Item 407 of Regulation S-K

A new Item 407 has been added regarding corporate governance as follows:

- Naming all independent directors and independent director nominees;
- Naming all compensation, nominating and audit committee members that are not independent;
- For each independent director or independent director nominee, describing the category or type of any transactions, relationships or arrangements that are not disclosed under Item 404(a) that were considered by the board in determining independence;
- Revising audit and nominating committee disclosure to eliminate duplication and update the disclosure regarding the audit committee charter;
- Adding disclosure for the compensation committee members that is similar to the disclosure for the audit and nominating committee members; and
- Describing the processes and procedures for consideration and determination of executive and director compensation, including:
 - The scope of authority of the compensation committee;
 - The extent to which the compensation committee may delegate any of its authority to other persons, specifying what authority may be so delegated and to whom;
 - Any role of executive officers in determining or recommending the amount or form of executive and director compensation; and
 - Any role of compensation consultants in determining or recommending the amount or form of executive or director compensation.

Miscellaneous

Other items included in the final rules are the following:

- Item 402 vs. Item 404 – Item 402 rather than Item 404 includes all disclosure of transactions in which the primary purpose is to furnish compensation to the NEO;
- Pledged Shares – Item 403(b) of Regulation S-K requires the disclosure of the number of shares of company stock pledged by the NEOs, the directors and the director nominees and requires the inclusion of any director qualifying shares in the aggregate share ownership of each director;
- Plain English – The Plain English rules apply to most of the subjects covered by the final rules; and

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- Other Issuers – There are certain variations and limitations regarding the application of the final rules to Small Business Issuers, Foreign Private Issuers and Business Development Companies.

Transition Rules

Companies will not have to restate compensation or related person transaction disclosure for fiscal years for which the previous rules were in effect. Therefore, for the first year, only the most recent fiscal year will be required to be reflected in the Summary Compensation Table. For the second year, the Summary Compensation Table will have two years of data. For the third year and all future years, the Summary Compensation Table will have three years of data. This phase-in approach also applies to Item 404(a) disclosure.

Recommended Actions

Involvement of Directors

Since the new disclosure is different in certain respects from the prior disclosure, especially in CD&A, companies should get their directors involved now in considering the required disclosure. Companies may want to begin drafting CD&A in order for it to be reviewed by the necessary officers, employees and directors.

Update Director and Officer Questionnaires

Director and Officer Questionnaires should be updated to include the following modifications and additions:

- The modifications to Item 404;
- The addition of pledged share information in Item 403(b); and
- Perquisites information;

Possible Updates to Compensation Committee Charter

Based on the expanded disclosure regarding the compensation committee, the compensation committee charter should be reviewed and, if necessary, modified.

Impact on Section 162(m)

The limitations on deductibility under Section 162(m) of the Internal Revenue Code apply to a company's CEO and next four most-highly compensated executive officers as determined under the Commission's rules based on total compensation (other than compensation resulting from the increase in pension values and nonqualified deferred compensation above-market or preferential earnings as reported in the Summary Compensation Table). Under the new rules, the covered employees under Section 162(m) may be different from the covered employees last year. As a result, companies may want to expand the executive officers who are examined in determining the covered employees.

Termination and Change-of-Control Information

The calculations of the estimated payments and benefits to NEOs upon termination or a change-in-control will take extra time and may require consulting with accountants and actuaries. This process should be started sooner rather than later.

Stock Option Grants

Based on the new disclosure regarding the timing and pricing of stock option grants, companies will need to review their current stock options to determine if the compensation committee approved the stock options on different dates than the dates of grant and whether the exercise prices were different from the closing price on the date of the stock option grant.

If you should have any questions regarding these proposed rules, please contact any of the following members of the Public Companies Practice Group.

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