

January 31, 2007

SEC Issues Interpretations Regarding Executive Compensation

On January 24, 2007, the Securities and Exchange Commission (the "Commission") issued interpretations regarding the new executive compensation rules. 28 of the interpretations deal with general issues under the new executive compensation rules and 18 of the interpretations deal with particular situations. These interpretations replace the Commission's Publicly Available Telephone Interpretations Manual regarding Item 402 of Regulation S-K. Summaries of certain of the interpretations are set forth below.

General Guidance

- A calendar year end registrant may file a Form S-3 prior to filing its Form 10-K for the year ended December 31, 2006 and incorporate its Form 10-K for the year ended December 31, 2005 which was filed under the old executive compensation rules.
- A registrant who is restating its financial statements for the year ended December 31, 2005 does not need to comply with the new executive compensation rules in the Form 10-K for the year ended December 31, 2005.

Compensation Discussion and Analysis

- The disclosure provisions regarding option grants also govern disclosure about restricted stock and other non-option equity awards.
- In order to omit disclosure of performance target levels or other factors or criteria under Instruction 4 to Item 402(b), a registrant must evaluate whether it could obtain confidential treatment for the information under Securities Act Rule 406 or Securities Exchange Act Rule 24b-2; however, no actual confidential treatment request is required. The registrant must make its determination based on the established standards for what constitutes confidential commercial or financial information, the disclosure of which would cause competitive harm to the registrant. If upon review of the registrant's exclusion of performance target levels or other factors or criteria the Commission does not agree with a registrant that it met the requirements for confidential treatment, the registrant will be required to disclose the previously omitted information.

Summary Compensation Table

- A bonus should be reported under the Non-equity Incentive Plan Compensation column if it is pursuant to a plan providing for compensation that is intended to serve as an incentive for performance to occur over a specified period that does not fall within the scope of Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004) "Share Based Payment," the outcome with respect to the relevant performance target must be substantially uncertain at the time the performance target is set and the target is communicated to the named executive officers ("NEOs"). If the plan meets the definition of non-equity incentive plan and permits the exercise of negative discretion in determining the amounts of bonuses, the amounts paid would be disclosed under the Non-equity Incentive Plan Compensation column. However, if, in the exercise of discretion, an amount is paid over and above the amounts earned by meeting the performance measure under the non-equity incentive plan, the excess amount should be reported in the Bonus column.

- The disclosure of valuation assumptions required under the Instruction to Item 402(c)(2)(v) and (vi) is required for any award reported in the Option Awards column or the Stock Award column even if the award was granted in an earlier fiscal year. The disclosure is to be made by reference to the valuation assumptions set forth in the registrant's financial statements, footnotes to the financial statements or Management's Discussion and Analysis.
- If an equity award is made after the end of the fiscal year but it relates to services performed in the completed fiscal year, the dollar amount should be reported in the Summary Compensation Table for the fiscal year in which the awards are recognized for the purposes of financial reporting and the information should be reported in the Grants of Plan-Based Awards Table in the fiscal year in which the awards were made. In connection with the Compensation Discussion and Analysis, registrants should consider Instruction 2 to Item 402(b) regarding awards granted after the end of the fiscal year that relate to service in the completed fiscal year.
- If a perquisite or other personal benefit has no aggregate incremental cost, it must still be separately identified by type; however, if an NEO fully reimburses the registrant for the registrant's total cost, then there is not a perquisite or other personal benefit.

Option Exercises and Stock Vested Table

- When reporting the exercise or settlement of a stock appreciation right, the registrant should report the gross number of shares underlying the exercised stock appreciation right rather than just the amount representing the increase of the stock price since the grant of the award.

Pension Benefits

- When a retirement plan has a normal retirement age and a younger age at which retirement benefits may be received without a reduction in benefits, the younger age should be used for determining pension benefits. The older age may be included as an additional column.
- When calculating the actuarial present value for the Pension Benefits Table, the registrant should assume that each NEO will live to and retire at the plan's normal retirement age or earlier retirement age if the NEO may retire with unreduced benefits. The registrant should not consider any pre-retirement decrements that actuaries may use.

Director Compensation Table

- If a director served part of a fiscal year but was not a director at the end of the fiscal year or is not standing for re-election, the person must be included in the Director Compensation Table.

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

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