

# Capital Markets and Securities

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A bulletin prepared by the Capital Markets Group at Vedder Price designed to keep corporate executives and investment banking professionals informed of major developments in the securities industry.

July 27, 2006

## SEC Adopts Amendments to Compensation Disclosure Rules— Companies Should Prepare Now for Upcoming Proxy Season

At an open meeting yesterday, the SEC unanimously adopted new rules relating to executive compensation and related party transaction disclosure. The new rules will be effective for the upcoming proxy season.

The actual text of the final rules is not yet available. Based on the statements made during the open meeting and the SEC's press release, it appears the SEC has adopted the rules substantially as proposed in January, with some notable exceptions:

- The comprehensive "Compensation Discussion and Analysis," which will be "filed," and therefore covered by the CEO and CFO certifications required under the Sarbanes-Oxley Act, has been retained. As proposed, the CD&A was to replace the compensation committee report. **The compensation committee will now be required to "furnish" a report indicating whether they have reviewed and discussed with management the CD&A, and whether they have recommended that it be included in the proxy statement.** This process is intended to provide further support for the CEO and CFO certifications.
- The Summary Compensation Table has been revised to **add a separate column for disclosing the change in actuarial present value of pension benefits (to be determined using the same assumptions and measurement period used for financial reporting purposes under GAAP) and above-market or preferential earnings on nonqualified deferred compensation,** and by **moving the total compensation column to the far right** of the table. As proposed, the change in pension value and all (not just above-market or preferential) earnings on deferred compensation were to be lumped into the "other compensation column" and the total compensation column was to be the first column. Attachment A is the SEC's model template of the new Summary Compensation Table.
- The table will include the chief executive officer and chief financial officer (although the table uses "**principal**" not "chief") and the three highest paid executive officers based on total compensation, **less the amount shown in the new pension benefits/deferred compensation column.** The proposed rules would have used the total compensation figure.
- The **performance graph will be retained,** but moved from the proxy statement to Form 10-K as part of the required disclosures relating to market price of common equity and related matters.
- **Interpretive guidance will be provided for determining what is a perquisite.** In the initial proposal, the SEC had expressly stated it was not going to provide any guidance. The SEC has retained the proposed \$10,000

aggregate threshold for reporting perquisites in the Other Compensation column in the Summary Compensation Table.

- The so-called “Katie Couric” provision, requiring a description by position, and reporting of the compensation of up to three employees whose total compensation exceeded the total compensation of anyone in the Summary Compensation Table will be **revised and repropose**d. The new proposal will **limit this disclosure to large accelerated filers** (generally companies with at least \$700 million of market capitalization) and **will exclude employees who have no responsibility for significant policy decisions**.
- In response to recent concerns regarding “backdating” and other practices relating to stock option grants, the rules will require **detailed narrative disclosure and discussion of the company’s current plans, programs and practices surrounding stock option granting**.
- The requirement to prepare all disclosures in “plain English” has been retained.
- The changes to Form 8-K reporting of actions relating to executive compensation matters appear to have been adopted as proposed, and will take effect 60 days after the rules are published. Changes relating to related party transaction disclosure, including an increase in the reporting threshold to \$120,000 from \$60,000, also appear to have been adopted as proposed.

We plan to provide a more comprehensive assessment of the rules once they are published in final form. In the interim, we believe it is important for companies to begin pulling together the working group needed to gather the data and prepare the required disclosures. We look forward to assisting you with this important task. If you have any questions, please contact your Vedder Price attorney or any one of our attorneys in the firm’s Capital Markets and Securities Group.

**ATTACHMENT A**

**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)
PEO <sup>1</sup>	_____ _____ _____								
PFO <sup>2</sup>	_____ _____ _____								
A	_____ _____ _____								
B	_____ _____ _____								
C	_____ _____ _____								

<sup>1</sup> "PEO" refers to principal executive officer.

<sup>2</sup> "PFO" refers to principal financial officer.

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If you have any questions regarding material in this issue of *Capital Markets and Securities*, or suggestions for a specific topic you would like addressed in a future issue, please contact the executive editor, Thomas P. Desmond, at 312/609-7647 or at [tdesmond@vedderprice.com](mailto:tdesmond@vedderprice.com).

Contributing Authors: Thomas P. Desmond and John T. Blatchford (Chicago) and Stewart Reifler (New York).

## VEDDER, PRICE, KAUFMAN & KAMMHOLZ, P.C.

### About Vedder Price

Vedder, Price, Kaufman & Kammholz, P.C. is a national full-service law firm with approximately 225 attorneys in Chicago, New York and Roseland, New Jersey. The attorneys in the firm's Capital Markets Group regularly represent corporations and investment bankers, both foreign and domestic, in a wide variety of matters, including:

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- corporate disclosure, periodic reporting, proxy solicitations, and insider trading and beneficial ownership compliance matters;
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- international offerings of securities and compliance by foreign issuers with U.S. securities laws;
- litigation and administrative and arbitration proceedings involving various securities fraud claims, disclosure issues, and regulatory enforcement matters; and
- municipal bond financings.

#### Chicago

222 North LaSalle Street  
Chicago, Illinois 60601  
312/609-7500  
Fax: 312/609-5005  
Contact: Robert J. Stucker

#### New York

805 Third Avenue  
New York, New York 10022  
212/407-7700  
Fax: 212/407-7799  
Contact: Neal I. Korval

#### New Jersey

Five Becker Farm Road  
Roseland, New Jersey 07068-1023  
973/597-1100  
Fax: 973/597-9607  
Contact: John E. Bradley

### Members of the Capital Markets Group:

Thomas P. Desmond ( <i>co-chair</i> ) .....	312/609-7647
John T. Blatchford ( <i>co-chair</i> ) .....	312/609-7605
Christopher G. Barrett .....	312/609-7557
Steven R. Berger ( <i>New York</i> ) .....	212/407-7714
Jennifer Durham King .....	312/609-7835
James W. Morrissey .....	312/609-7717
Stewart Reifler ( <i>New York</i> ) .....	212/407-7742
Ernest W. Torain, Jr. ....	312/609-7558
Richard L. Williams III .....	312/609-7588
Bridget A. Adaska .....	312/609-7515
Dana S. Armagno .....	312/609-7543
James A. Arpaia .....	312/609-7618
William J. Bettman .....	312/609-7776
Deborah B. Eades .....	312/609-7661
Karin Jagel Flynn .....	312/609-7805
Dean N. Gerber .....	312/609-7638
Dan L. Goldwasser ( <i>New York</i> ) .....	212/407-7710
Douglas M. Hambleton .....	312/609-7684
Paul R. Hoffman .....	312/609-7733
John T. McEnroe .....	312/609-7885
Daniel C. McKay II .....	312/609-7762
Maureen A. Miller .....	312/609-7699
Robert J. Moran .....	312/609-7517
Lane R. Moyer .....	312/609-7586
Michael A. Nemeroff .....	312/609-7858
Timothy W. O'Donnell .....	312/609-7683
Cathy G. O'Kelly .....	312/609-7657
Daniel O'Rourke .....	312/609-7669
John R. Obiala .....	312/609-7522
Ronald Scheinberg ( <i>New York</i> ) .....	212/407-7730
Thomas E. Schnur .....	312/609-7715
Daniel T. Sherlock .....	312/609-7551
Guy E. Snyder .....	312/609-7656
Robert J. Stucker .....	312/609-7606
David A. Sturms .....	312/609-7589
Dalius F. Vasys .....	312/609-7623
Donald A. Wassall ( <i>New York</i> ) .....	212/407-7707