

**SEC RELEASES FINAL DISCLOSURE RULES FOR 2010 PROXY SEASON**

The Securities and Exchange Commission (SEC) adopted and released final disclosure rules last week regarding executive compensation and certain corporate governance matters. These rules are effective February 28, 2010. Presumably, any proxy statement filed on or after that date will need to comply with the new rules. However, companies that file their proxy statements prior to February 28, 2010 should consider complying with these new rules to be good “corporate citizens.” In addition, changes to the disclosure of equity compensation in the Summary Compensation Table (see 2nd bullet below) are effective for companies with fiscal years ending after December 20, 2009. Finally, disclosure of the vote results from a meeting of shareholders is now required on Form 8-K within 4 business days of the meeting (rather than the next Form 10-Q or 10-K filing).

Below is a brief summary of the new executive compensation/corporate governance disclosure rules:

- **DISCLOSURE OF RISK TAKING AND RISK MANAGEMENT AND BOARD’S OVERSIGHT OF RISK:** To the extent that risks arising from a company’s compensation policies and practices for employees are reasonably likely to have a material adverse effect on the company, the final rules require a discussion (but not in the Compensation Discussion & Analysis section of the proxy statement) of the company’s compensation policies or practices as they relate to management of those compensation-related risks. In addition, the company must now discuss the board’s role in the oversight of risk.
- **DISCLOSURE OF EQUITY GRANT-DATE VALUES, NOT ANNUAL EXPENSING VALUES:** The aggregate grant-date fair value of stock awards and option awards granted in the fiscal year will now be reported in the Summary Compensation Table and the Director Compensation Table. The fair value is to be computed in accordance with FASB ASC Topic 718 (the new “name” for FAS 123R), rather than the dollar amount of compensation expense recognized for financial statement purposes for the fiscal year. Awards subject to performance conditions will generally be reported based on “probable outcome.” In addition, 2010 proxy statements will need to recalculate and restate prior years’ equity compensation amounts, but only for 2010 Named Executive Officers.
- **DISCLOSURE OF QUALIFICATIONS AND DIRECTORSHIPS OF DIRECTOR NOMINEES:** The final rules require disclosure of the qualifications of each director and nominee for director, and the reasons why each such person should serve as a director of the company (thus, this includes directors who are not up for election). In addition, disclosure of any directorships held by each director and nominee at any time during the past 5 years at any public company or registered management investment company is now required.
- **DISCLOSURE OF DIRECTOR DIVERSITY:** A company must now disclose whether – and if so how – the nominating committee (or the board) considers diversity in identifying nominees for director. If the nominating committee (or the board) has a director nominee diversity policy, then the company must describe how this policy is implemented as well as how the nominating committee (or the board) assesses the effectiveness of its policy.
- **DISCLOSURE OF LEGAL ACTIONS AGAINST EXECUTIVES, DIRECTORS AND NOMINEES:** The final rules require expanded disclosure of certain legal actions (such as mail/wire fraud, violation of any securities or commodities law or regulation, and violation of any law or regulation respecting financial institutions or insurance companies) involving a company’s executive officers, directors, and nominees for director for the past 10 (no longer 5) years.
- **DISCLOSURE OF BOARD LEADERSHIP STRUCTURE:** The company must now discuss its board leadership structure and whether and why the board has separated or combined the positions of CEO and board chair.
- **DISCLOSURE OF FEES PAID TO COMPENSATION CONSULTANTS:** Fee disclosure is required if the board’s (or its compensation committee’s) own compensation consultant (or its affiliates) provided other nonexecutive compensation consulting services to the company if such fees exceeded \$120,000 during the company’s fiscal year. If the board or compensation committee has not engaged a consultant, but the company has received executive compensation consulting services from a consultant, then similar disclosure is required for that consultant. Generally, if the board and the company have both engaged compensation consultants, the disclosure rule applies to only the board’s consultant. Finally, disclosure is required whether the decision to engage the consultant (or its affiliates) for nonexecutive compensation consulting services was made or recommended by management, and whether the board has approved these nonexecutive compensation consulting services provided by the compensation consultant (or its affiliate).

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