



August 17, 2006

SEC Adopts New Executive Compensation and Related Party Disclosure Rules

The SEC has adopted extensive revisions to the rules governing disclosure of executive compensation, director compensation, related party transactions, director independence and other corporate governance matters and current reporting of compensation arrangements. The amendments are intended to give investors a more complete picture of executive compensation and a better understanding of key financial relationships among companies and executive officers, directors and significant shareholders.

The adopting release also includes a revised proposal which, if approved, would require large accelerated filers (companies with market capitalizations in excess of \$700 million) to disclose the pay and job descriptions of up to three non-executive employees whose pay exceeds the pay of any of the named executive officers. Such disclosure would be limited, however, to individuals with policymaking responsibility for the company or a significant subsidiary or division of the company.

Executive Summary

In brief, the amendments:

- give effect to a longstanding view of the SEC Staff that all elements of executive compensation must be disclosed;
- change the definition of named executive officer (“NEO”), basing the new definition on an individual’s total compensation rather than just salary and bonus for the most recently completed fiscal year;
- require compensation disclosure of the principal executive officer as well as the principal financial officer (which is new), and the three other most highly compensated executive officers;
- require executive compensation disclosure to begin with a new Compensation Discussion and Analysis (“CD&A”) of material factors underlying compensation policies and decisions;

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- revise the Summary Compensation Table, which is being supplemented by an additional table with supporting information regarding awards granted to the NEOs, to clearly reflect “total compensation”;
- call for two new equity award tables (i) disclosing equity awards held at year-end, and (ii) detailing option and stock appreciation right exercises and stock award vesting during the past year;
- adopt new pension plan and nonqualified deferred compensation plan tables;
- call for narrative disclosure to supplement the Summary Compensation Table and other tables;
- require detailed narrative disclosure of termination-based and change in control-based payment arrangements;
- require a Director Compensation Table similar to the Summary Compensation Table;
- require that the Performance Graph be furnished with Form 10-K separate from any executive compensation disclosure;
- expand Form 8-K requirements to include retirements, resignations and terminations and enhanced disclosure and coverage of material compensation plans, contracts or arrangements;
- update, clarify and expand related party disclosure (Item 404 of Regulation S-K); and
- expand and consolidate in one place the disclosure related to corporate governance matters.

Forms of the new and revised tables as adopted are attached to this memorandum as an Appendix.

Effective Dates

Compliance with the newly adopted rules is required as follows:

- for Form 8-K, for triggering events that occur 60 days or more after publication of the new rules in the *Federal Register*;
- for Forms 10-K and 10-KSB, for fiscal years ending after December 14, 2006;
- for proxy and information statements covering companies other than registered investment companies, for any proxy or information statements filed after December 14, 2006 that are required to include Item 402 and 404 disclosures for fiscal years ending after December 14, 2006;
- for Securities Act registration statements covering companies other than registered investment companies and Exchange Act registration statements (including pre-effective and post-effective amendments, as applicable), compliance is required for registration statements filed with the SEC after December 14, 2006 that are required to include Item 402 and 404 disclosures for fiscal years ending after December 14, 2006;
- for initial registration statements and post-effective amendments that are filed on Forms N-1A, N-2 and N-3 (except those filed by business development companies), compliance is required for registration statements and post-effective amendments filed with the SEC after December 14, 2006; and
- for proxy and information statements covering registered investment companies, compliance is required for any new proxy or information statement filed after December 14, 2006.

Compensation previously reported in compensation tables and related party transaction disclosures does not need to be restated; the new rules apply beginning with the most recent fiscal year only and will be phased in over the next three years. The Summary Compensation Table appearing in a 2007 proxy or Form 10-K will therefore have only one year's compensation to disclose, not three.

The new rules require all executive compensation disclosures to be stated in plain English.

Executive Compensation Overview

The new rules organize executive compensation disclosure into three broad categories, including:

- compensation over the last three years;

- holdings of outstanding equity-related interests received as compensation in prior years; and
- retirement plans and other post-employment payments and benefits.

Named Executive Officers

The SEC has changed the definition of “NEOs.” A company’s principal executive officer and principal financial officer will always be NEOs. The three most highly compensated executive officers other than the principal executive officer and principal financial officer will also be NEOs. These latter three NEOs are identified by total compensation for the most recent fiscal year. Increases in an NEO’s pension benefit, and any above-market or preferential earnings on nonqualified deferred compensation, are not taken into account for purposes of determining who is an NEO. However, any unusually large amounts of cash compensation, even if not likely to be repeated, are taken into account for such purpose. The \$100,000 compensation minimum for NEO status remains.

Compensation Discussion and Analysis

The new rules will require a “Compensation Discussion and Analysis,” (or “CD&A”) which is intended to provide an overview, in narrative form, of the material elements of the compensation objectives and policies for NEOs. This discussion is to appear at the beginning of the executive compensation disclosure. Unlike the current Compensation Committee Report, the CD&A will be considered to be “filed” rather than “furnished” disclosure. It will be subject to the rules governing the solicitation of proxies and the same securities law liabilities as other documents filed with the SEC. The principal executive officer and principal financial officer certifications will apply to the CD&A.

The CD&A disclosure is meant to articulate a company’s compensation philosophy for NEOs. It should address post-termination and in-service arrangements. The CD&A should provide context for the compensation being disclosed. It should be specifically tailored to the compensation policies of the company and it should not include stock language or boilerplate. As with all other executive compensation disclosures, it needs to be written in plain English. The SEC expects that the disclosure will include examples illustrating the material principles underpinning a company’s compensation policies and practices. Companies are not required to disclose confidential information and target levels with respect to performance-related factors considered by the company.

The CD&A must address:

- the objectives of the company’s compensation programs;
- what the programs are designed to reward;
- each compensation element;
- why the company pays each compensation element;

- how the company arrived at the amount (and, where applicable, the formula) for each element;
- how each element, and the company's decisions regarding such element, fit into the company's overall compensation objectives; and
- how the analysis of each element affects decisions regarding other elements.

The SEC has provided examples of issues that may be appropriate for a company to address in its CD&A, including:

- policies for allocating between long-term and currently paid compensation;
- policies for allocating between cash and non-cash compensation, and among different forms of non-cash compensation;
- for long-term compensation, the basis for allocating compensation to each different form of award;
- how the company decides when to grant an award, including equity compensation such as stock options;
- what items of corporate performance are considered when setting compensation policies and making compensation decisions;
- how specific elements of compensation are structured to reflect items of the company's performance and the executive officer's individual performance;
- whether discretion can be or has been exercised to award or to change the amount of compensation;
- any particular exercise of discretion in setting an NEO's compensation;
- company policies and decisions regarding changes to awards and recovery of payments if relevant performance measures are restated or otherwise adjusted in a way that would reduce a payment or award;
- the factors considered in decisions to materially increase or decrease compensation;
- how compensation or amounts realizable from prior compensation are considered in setting other elements of compensation (e.g., how gains from prior equity awards are considered in setting retirement benefits);
- for change in control or termination payments, the basis for selecting the specific payment triggers;
- the impact of accounting and tax treatments of a particular form of compensation;
- the company's equity or other security ownership requirements or guidelines (specifying applicable amounts and forms of ownership) 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 determination process.

The CD&A will need to specifically address the timing and pricing of stock option grants. The discussion should cover any provision or program under which stock option exercise prices are based on anything other than grant date closing price. Companies that have coordinated or intend to coordinate option grants to executive officers with the release of material non-public information should discuss any coordination program in the CD&A. Companies should consider discussing in the CD&A how they take material non-public

information into account when determining the amounts and the timing of option grants. Any discussion of a coordinated timing program should explain the role of the compensation committee and the role of management in the oversight, operation, and administration of the program.

Compensation Committee Report

The new rules include a revised Compensation Committee Report requirement. The new version of the report will make it similar to the currently required Audit Committee Report. The Compensation Committee Report will be required once each fiscal year. The compensation committee will be required to indicate whether the compensation committee has reviewed and discussed the CD&A with management, and that based on such conversation, the compensation committee has recommended to the board of directors that the CD&A be included in the Form 10-K and proxy statement. The Compensation Committee Report will be required to be included or incorporated by reference into the Form 10-K.

The Compensation Committee Report will be treated as being “furnished” rather than filed. Its contents are generally not subject to securities law liabilities. The principal executive officer and the principal financial officer do not need to certify the contents of the Compensation Committee Report.

Compensation Tables

Summary Compensation Table

The Summary Compensation Table will continue to be the principal executive compensation disclosure vehicle, and, as revised, the Summary Compensation Table should include the compensation of the NEOs for each of the last three years, whether or not paid. As noted above, the new rules apply beginning with the most recent fiscal year only and will be phased in over the next three years.

The revised table includes the following columns:

- A new “Total Compensation” column will reflect the total dollar amounts presented in the preceding columns for each NEO for the corresponding year.
- The “Salary” and “Bonus” columns will remain virtually the same. If salary or bonus cannot be determined before a report or statement containing executive compensation disclosures must be filed, the company will have to indicate this in a footnote to the filing. **In such event, the amounts must be disclosed with a revised Total Compensation number in a Current Report under Item 5.02 of Form 8-K when determined.**
- The “Stock Awards” and “Option Awards” columns will disclose the grant date fair value of the stock or options awarded, computed according to Statement of

Financial Accounting Standards No. 123 (revised 2004), Share-Based Payment (“FAS 123R”). The Stock Awards column will be used to disclose all stock-related awards (awards either based on or which may be settled in the company’s equity securities). Restricted stock, restricted stock units, stock equivalent units, and other types of awards with no option-type features should be disclosed in the Stock Awards column. Options, stock appreciation rights and other awards which behave like options should be disclosed in the Option Awards column. Disclosure should reflect the FAS 123R grant date fair value whether the award itself is in the form of stock, options or similar instruments or the award is settled in cash but the amount of payment is tied to performance of the company’s stock. A footnote should cross-reference the relevant assumptions in the financial statements or the Management Discussion and Analysis (“MD&A”) which were used to determine the values of the equity awards. Earnings and dividends paid on an outstanding award not taken into account when the FAS 123R fair value of the award is determined should be disclosed in the “All Other Compensation” column, described below. The Option Awards column should also include the incremental fair value of previous awards that are repriced or materially modified.

- The “Non-Equity Incentive Plan Compensation” column will disclose the dollar amounts of performance awards outside the scope of FAS 123R, generally awards that may not be settled in stock. Compensation should be disclosed for the year the performance criteria are met and the compensation is earned, whether or not payment is made. The non-equity grant should be detailed in the Grants of Plan-Based Awards Table (discussed below), supplementing the Summary Compensation Table.
- The “Change in Pension Value and Nonqualified Deferred Compensation Earnings” column will capture the aggregate increase in the actuarial value of all defined benefit and actuarial plans accrued during the year. The column is also to be used to report above-market or preferential earnings on nonqualified deferred compensation.
- The “All Other Compensation” column will include all compensation not required in any other column, and each item in the “All Other Compensation” column that is not a perquisite or personal benefit and exceeds \$10,000 for the last fiscal year must be separately identified and quantified in a footnote. The “All Other Compensation” column includes, among other things, (i) perquisites and personal benefits, unless the aggregate amount of personal benefits is less than \$10,000, (ii) contributions or other allocations to defined contribution plans, (iii) the dollar value of any insurance premiums paid by, or on behalf of, the company with respect to life insurance for the benefit of an NEO, (iv) termination of employment and change of control payments, (v) tax gross-ups, (vi) discount stock purchases, and (vii) the dollar value of earnings or dividends

on equity awards, if they were not factored into the grant date fair value of the awards.

Any form of compensation that is earned but whose payment is deferred must be disclosed in the appropriate column. This applies to all forms of compensation – salary, bonus, perquisites, equity awards, etc.

Perquisites

The rules present new disclosure requirements for perquisites under the “All Other Compensation” column. The aggregate threshold for perquisite disclosure is \$10,000. Companies must separately identify all perquisites in a footnote once the \$10,000 threshold is met and, if the value of any perquisite exceeds the greater of \$25,000 and 10% of the total amount of perquisites for the individual, then the company must disclose the value of each such perquisite.

In adopting the new rules, the SEC provided further guidance as to what is, and what is not, a perquisite, without giving a bright line rule. The SEC has indicated that:

- an item is not a perquisite or personal benefit if it is integrally and directly related to the performance of the NEO's duties;
- an item is a perquisite or personal benefit if it provides a direct or indirect benefit that has a personal aspect, even if it may be provided for some business reason or for the convenience of the company, unless it is generally available on a non-discriminatory basis to all employees; and
- business purpose or convenience does not affect the characterization of an item as a perquisite or personal benefit where it is not integrally and directly related to the performance by the executive officer of his or her job. For example, a company's decision to provide an item of personal benefit for security purposes does not affect its characterization as a perquisite or personal benefit.

The SEC has advised that the concept of benefits “integrally and directly related” to job performance is narrow. A larger office at a business location, additional secretarial or clerical support for company matters or travel to and from business meetings are limited examples of items that are not perquisites.

The SEC has identified the following as perquisites:

- 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 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 the executive or director to stay at his or her personal residence);
- security provided at a personal residence or during personal travel;
- commuting expenses (whether or not for the company's convenience or benefit); and
- discounts on the company's products or services not generally available to employees on a non-discriminatory basis.

Aggregate incremental cost to the company is the proper measure of value of perquisites and other personal benefits. Footnotes disclosing perquisite values must disclose the methods for determining the aggregate incremental cost of the perquisites. The SEC has indicated that the amount attributed to such benefits for federal income tax purposes is not the incremental cost for purposes of the disclosure rules unless, independent of the tax characterization, such amount is the actual incremental cost.

Grants of Plan-Based Awards Table

A new table detailing Grants of Plan-Based Awards supplements the Summary Compensation Table. This new table is designed to provide key information about each grant to an NEO made under a plan. The table must include each equity award's grant date as determined under FAS 123R. If the grant date of an award determined under FAS 123R differs from the date the compensation committee or the board of directors acted to grant the award, a separate column will reflect the date corporate action was taken. The Grant of Plan-Based Awards Table should disclose the number of shares or units of an equity award, and the terms of any awards made under a performance-based plan in the last fiscal year. Both non stock-based incentive plan awards made during the most recent fiscal year and performance-based stock, options and other similar awards must be disclosed.

In addition, the estimated future payments under each non-equity incentive plan award must be disclosed. The disclosure needs to include threshold, target, and maximum payments, if applicable. The disclosure must also set forth the number of shares of stock or shares underlying options to be paid or vested under equity incentive plan awards with threshold, target, and maximum payments, as applicable. Equity awards not granted under an incentive plan, such as stock options and restricted stock with only service-based vesting, need to be disclosed separately in the table.

The exercise price of options granted must be disclosed. 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 show the closing market price on the date of grant. A footnote or narrative will need to explain the method for determining exercise price if the closing market price on the grant date is not used. Many stock option plans base the exercise price of options on the stock price the day before, or an average stock price for a period of days before, the date of grant. Awards made under such plans will require this new disclosure.

Narrative Supplement to the Summary Compensation Table and Grants of Plan-Based Awards Table

The new rules require narrative disclosure to give context to the tabular presentation. The narrative should describe plan features not clear from the tables, including any additional material factors needed to understand the tables. Examples of such factors include:

- material terms of an NEO's employment agreement;
- repricing or other material modification of any outstanding option or other stock-based award during the last fiscal year;
- material terms of plan-based awards, such as payment formulas, vesting schedules and performance conditions, and dividend rates, if applicable; and
- an explanation of the level of salary and bonus in relation to total compensation.

Additional Tables

The rules also provide for an Outstanding Equity Awards at Fiscal Year-End Table and an Option Exercises and Stock Vested Table. These tables will disclose holdings and exercises of existing equity awards.

The Outstanding Equity Awards at Fiscal Year-End Table calls for key information about option-type awards and stock awards. For each distinct option-type award, the table must detail:

- the number of exercisable shares underlying options;
- the number of unexercisable shares underlying options;
- the number of shares underlying unearned equity incentive plan awards;
- the exercise price; and
- the expiration date.

In contrast, stock award values are aggregated. The table calls for disclosure of the total number of shares and the market value of unvested stock awards, breaking out incentive plan awards and non-incentive plan awards.

Share numbers and payout amounts for performance awards are determined assuming threshold performance goals are met. If the Company's previous fiscal year performance exceeded the threshold, the numbers and payouts are determined based on the next incremental performance measure (target or maximum).

The Option Exercises and Stock Vested Table will show amounts realized on the exercise of options and stock appreciation rights and the vesting of restricted stock and

similar instruments in the last fiscal year. Any resulting payments which have been deferred need to be detailed in a footnote.

Post-Employment Compensation

Pension Benefits Table

The new rules require a new table which will show each NEO's retirement benefits under any plan or arrangement that is not a defined contribution-type plan. For each retirement plan in which an NEO participates, whether tax-qualified or not, the table must disclose the name of the plan, years of service credited as of the measurement date used to determine the pension liability for the Company's audited financial statements for the last completed fiscal year, the actuarial present value of the accrued benefit, and any payments made in the last fiscal year. Actuarial present value should be determined using the same assumptions used to prepare company financial statements, assuming a benefit payable at normal retirement age under the plan (or earliest age at which an unreduced benefit may be paid, if earlier). Narrative disclosure accompanying the table should explain how the benefit under each plan is determined and the assumptions used to calculate the present values for the table. Any material factors needed to understand each plan must be described. Examples include:

- material terms and conditions of payments and benefits;
- the plan's normal retirement payment and benefit formula and eligibility rules, and the effect of the form of benefit on the amount of annual benefits;
- the plan's early retirement payment and benefit formula and eligibility rules, if any NEO is currently eligible for early retirement;
- the compensation elements used to determine the retirement benefits;
- the different purposes for each distinct plan; and
- policies regarding granting additional service under the plans.

Nonqualified Deferred Compensation Table

A new Nonqualified Deferred Compensation Table and narrative description of nonqualified deferred compensation are required under the rules. The table should disclose contributions by the executive and the company, and set forth earnings, withdrawals and distributions, and the total dollar balance at the end of the last fiscal year. Disclosure should reflect all earnings on compensation deferred outside of a tax-qualified plan. (A tax-qualified plan, such as a 401(k) plan, is a plan that satisfies elaborate and complex non-discrimination rules.)

Footnote disclosure is required to show which amounts have been reported in the Summary Compensation Table for the same or an earlier fiscal year. The accompanying narrative should explain any material factors needed to understand the disclosure, including types of pay deferred under the arrangement, limits on deferrals, methods for determining earnings, payouts, withdrawal and distribution rules.

Other Potential Post-Employment Compensation

The rules require detailed disclosure of any potential termination or change in control-related payments to an NEO with a narrative disclosure of the conditions triggering any such payments or other benefits. The disclosure should include an estimate of the payments and benefits that would be provided in each triggering event (excluding perquisites only if their aggregate value is less than \$10,000) and describe the timing and form of any such payments.

The specific factors used to determine payment and benefit levels under any payment triggers must be disclosed. A description of the material conditions or obligations connected to the payments or benefits (including but not limited to non-competition, non-solicitation, non-disparagement or confidentiality covenants) and any other material features necessary for an understanding of the provisions is also required.

Disclosures must include a dollar figure for each potential payment arrangement. If it is not clear what the payment amount would be, a dollar amount should be computed assuming a triggering event occurred on the last day of the last completed fiscal year, and the price per share of the company stock is the closing price on that date. For NEOs who are entitled to a “gross-up” payment to make up for any so-called golden parachute excise tax, triggered by unusually large payments made in connection with a change in control, the dollar figure will reflect the value of the potential gross-up payment.

Director Compensation

The new rules require a Director Compensation Table similar to the Summary Compensation Table. Companies need to disclose information only for the last completed fiscal year. Companies are permitted to group directors on a single row of the table if all compensation elements and amounts are identical. Directors who are NEOs do not have to be included in the Director Compensation Table if all their director compensation is reflected in the Summary Compensation Table. The table must include all fees earned or paid in cash for services as a director. The FAS 123R grant date values of stock and option-type awards are each separately aggregated and reported in the “Stock Awards” and “Option Awards” columns as appropriate, and corresponding footnotes will reflect the aggregate number of stock awards and option awards outstanding at year end. The “Non-Equity Incentive Plan” column should include amounts earned under non-equity incentive plans, together with any earnings on such awards. The “Change in Pension Value and Nonqualified Deferred Compensation Earnings” column will include the aggregate increase in the actuarial value of

all defined benefits and actuarial plans accrued during the year. The same column is used to report above-market or preferential earnings on nonqualified deferred compensation.

The “All Other Compensation” column will include all earnings not required to be included in any other column, and each item in the “All Other Compensation” column that exceeds \$10,000 must be separately identified and quantified in a footnote. The “All Other Compensation” column includes, among other things, (i) perquisites and personal benefits, unless the aggregate amount of personal benefits is less than \$10,000, (ii) contributions or other allocations to defined contribution plans, (iii) the dollar value of any insurance premiums paid by, or on behalf of, the company with respect to life insurance for the benefit of a director, (iv) director termination or change of control payments, (v) tax gross-ups, (vi) discount stock purchases, (vii) the dollar value of earnings or dividends on equity awards, if they were not factored into the grant date fair value of the awards, (viii) consulting fees from the company and/or its subsidiaries (including joint ventures), and (ix) annual costs of payments and promises of payments made under director legacy and similar charitable award programs.

Supplemental tables to the Director Compensation Table are not required, but a narrative describing any material factors needed to understand the table must be provided. Examples of such factors include a description of standard director compensation arrangements, and a description of any specific director’s arrangement which is different from other directors’ arrangements.

Form 8-K

When it first proposed the new rules, the SEC noted that the expansion of Form 8-K requirements in 2004 to include material definitive agreements using the standards set forth under Item 601(b)(10) of Regulation S-K, particularly Item 601(b)(10)(iii), resulted in an increase in executive compensation disclosure that may not be “unquestionably or presumptively material.” The expanded Form 8-K requirements have resulted in executive compensation disclosure that is much more frequent and contemporaneous than the disclosure included in a company’s proxy statement. Concerns have thus been raised that the current Form 8-K requirements have produced current disclosure that is more appropriate in a company’s proxy statement, or as an exhibit to a company’s next periodic report.

In response to these concerns, the SEC has amended Item 1.01 of Form 8-K to uncouple the disclosure requirements of Item 601(b)(10)(iii) of Regulation S-K from the disclosure requirements of Form 8-K. Material, rather than all, employment compensation arrangements with NEOs will now be covered under Item 5.02. The SEC has further clarified that the NEOs contemplated under Item 5.02 are those NEOs for whom disclosure was required in the most recent filing under Item 402(c) of Regulation S-K, typically a company’s proxy statement.

The following disclosure is now required under Item 5.02 of Form 8-K:

- A brief 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) or (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 persons falling within the definition of NEO for the company's previous fiscal year, 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. 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
- Disclosure of salary and bonus for the most recent fiscal year not available at the latest practicable date in connection with disclosure under Item 402. This disclosure also must include a revised calculation of total compensation that effectively updates the prior Summary Compensation Table that did not include the salary or bonus amounts.

In adopting the new rules, the SEC emphasized that the Form 8-K disclosure requires only a brief description of the matter and is not intended to mirror Item 402 disclosure.

Item 5.02 of Form 8-K has also been amended to require disclosure regarding retirement, resignation or termination of any NEO for the company's most recent fiscal year. Previously, companies were only required to provide this information for directors, the principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer or any person performing similar functions.

The rules extend the safe harbors from liability under Section 10(b) of the Exchange Act and Rule 10b-5 and the safe harbor for Form S-3 eligibility in the event that a company fails to timely file reports required by Form 8-K regarding the adoption of material compensatory plans for a company's principal executive officer, principal financial officer, or an NEO. They do not extend the safe harbor for a company's failure to timely file disclosure under the other provisions of Item 5.02, including the expanded disclosure requirements relating to the retirement, resignation or termination of NEOs.

Beneficial Ownership Disclosure

The SEC has amended Item 403(b) of Regulation S-K by requiring footnote disclosure of the number of shares pledged as security by NEOs, directors and director nominees. With respect to significant shareholders who are not members of management, only pledges that may result in a change of control must be disclosed.

Certain Relationships and Related Transactions Disclosure

The SEC has also adopted amendments to Item 404 of Regulation S-K in order to move to a more principles-based and streamlined system of disclosure of related party transactions. As adopted, the amendments to Item 404 retain the pre-amendment principles for disclosure of related person transactions, but eliminate certain instructions, which previously set forth a bright-line list of transactions that are reportable or excludable, in favor of a materiality analysis. The new rules widen the scope of disclosure by broadening definitions and creating new categories of disclosure, including disclosure by companies of the policies and procedures established regarding related party transactions.

Item 404(a), as amended, requires disclosure of any *transaction* in which the company is a *participant*, rather than a *party*, which exceeds \$120,000 in amount, instead of the current \$60,000 threshold, and requires disclosure of indebtedness, thus integrating the current indebtedness disclosure requirement under Item 404(c). As originally proposed, all material indirect interests of related parties in indebtedness transactions would have been required to be disclosed. An effect of integrating Item 404(c) into 404(a) was the requirement to disclose the direct and indirect indebtedness of all related persons, including significant shareholders, meeting the \$120,000 threshold. However, in response to comments, the final amendments do not require disclosure of indebtedness regarding significant shareholders (or their immediate family members).

Old Item 404(b) has been eliminated and replaced with a requirement to disclose the policies and procedures established by the company for the review, approval and ratification of related party transactions. New Item 404(b) also requires disclosure of all related party transactions reported under Item 404(a) that are not subject to the approval policies and procedures.

The definitions of “transaction,” “related person” and “amount involved” under Item 404 have been revised in order to streamline the disclosure requirements and clarify the broad scope of financial transactions and relationships covered by related party disclosure rules. The definition of “immediate family member” has been amended to include any stepchild, stepparent or any other person other than a tenant or employee who shares the household of a related person.

Corporate Governance Disclosure

The SEC has consolidated its requirements for disclosure regarding director independence and related corporate governance issues currently contained in numerous items under Regulation S-K and elsewhere under a new single disclosure item, Item 407. Item 407 requires identification of the independent directors of the company using a definition of independence that is in compliance with relevant requirements under applicable listing standards, if appropriate, as well as requires companies to indicate where such definitions are contained, whether on the company's website or in a proxy filing made at least once every three years. Listed issuers may continue to rely on exemptions from independence requirements, such as exemptions for controlled companies or foreign private issuers, but the exemptions and the basis for reliance must be disclosed. Disclosure of director independence is required even if the person no longer serves as director at the time of filing of the registration statement or report, or, if the information is in a proxy statement, if the director's term of office as a director will not continue after the meeting. Item 407 also requires disclosure for compensation committees similar to the current requirement for audit and nominating committees.

The most significant of the new corporate governance disclosures is the addition of a description, by specific category or type, of any transactions, relationships or arrangements *not* disclosed under Item 404(a) that were considered by the board of directors in determining whether the applicable independence standards were met. In their proposing release, the SEC had suggested the inclusion of disclosure of any transactions, relationships or arrangements considered by the company's board of directors in making independence determinations, but not disclosed under Item 404(a). After several commentators pointed out that such requirements would lead to extensive detail about these types of transactions, relationships or arrangements, the SEC scaled back the required disclosure to specific categories and types of transactions, so long as such categories and types are described in sufficient detail so that the nature of the transactions are readily apparent.

Treatment of Foreign Private Issuers

Foreign private issuers will continue to be deemed to comply with Item 402 by providing the information required by Items 6.B and 6.E.2 of Form 20-F and with Item 404 by providing the information required by Item 7.B of Form 20-F. These items were not changed by the new rules. If, however, more detailed information is required by the company's home jurisdiction or listing or trading market, the same information must be disclosed under Item 404.

Canadian issuers who file Form 40-F are not required to comply with Items 402 and 404.

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This memorandum is not intended to provide legal advice with respect to any particular situation and no legal or business decision should be based solely on its content. Questions concerning issues addressed in this memorandum should be directed to any member of the Paul Weiss Securities Group listed below, as well as Robert Fleder ((212) 373-3107), Michael Segal ((212) 373-3364), Lawrence Witdorhich ((212) 373-3237) and Paul Koppel ((212) 373-3040) in our Executive Compensation Group:

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PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

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)
PEO									
PFO									
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)
PEO				
PFO				
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)
PEO				
PFO				
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)
PEO					
PFO					
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							