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SEC Proposes New Executive Compensation and Related Party Disclosure Rules

The SEC has proposed for public comment 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 proposed 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 proposing release also sets forth interpretive guidance with respect to perquisites. Although the proposed amendments would not be effective for this proxy season, the interpretive guidance should be considered for this proxy season's disclosure and in setting 2006 executive compensation, which would presumably be reported under the new rules.

Executive Summary

In brief, the proposed 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 (an "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 and the principal financial officer as well as the three other most highly compensated executive officers;

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- require limited compensation disclosure for up to three employees who are not executive officers and whose total compensation was greater than any of the NEOs;
- require executive compensation disclosure to begin with a new Compensation Discussion and Analysis ("CD&A") of material factors underlying compensation policies and decisions;
- eliminate the currently required Compensation Committee Report and Performance Graph;
- revise the Summary Compensation Table, which will be supplemented by two additional tables 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;
- propose new retirement benefit plan and deferred compensation plan tables;
- call for narrative disclosure to supplement the Summary Compensation Table and other tables;
- require detailed narrative disclosure of termination and change in control-based payment arrangements;
- require a director compensation table similar to the Summary Compensation Table;
- expand Form 8-K requirements to include events that are "unquestionably and presumptively material to investors," including the expansion of coverage and disclosure of 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 proposed are attached to this memorandum as an Appendix.

Proposed Transition Rules

The proposed rules, which have been published for public comment, will become effective following SEC approval of final rules and publication of the adopting release. It is anticipated that the rules would be effective (i) for Forms 10-K and 10-KSB, for fiscal years ending 60 days or more after publication; (ii) for Forms 8-K, for triggering events that occur 60 days or more after publication; (iii) for Securities Act and Investment Company Act registration statements (including post-effective amendments) and Exchange Act registration statements that become effective 120 days or more after publication; and (iv) for proxy statements that are filed 90 days or more after publication. Compensation previously reported in compensation tables and related party transaction disclosures would not need to be restated; the new rules would apply beginning with most recent fiscal year only and therefore be phased in over three years. As a result, the proposed rules are not expected to be in effect for this year's annual meeting proxy statements for companies whose fiscal years ended on or before December 31, 2005.

Executive Compensation Overview

The proposals 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 proposed rules would change the definition of NEOs. A company's principal executive officer and principal financial officer would always be NEOs. The three most highly compensated executive officers other than the principal executive officer and principal financial officer would also be NEOs. These three NEOs would be identified based on total compensation for the most recent fiscal year rather than just salary and bonus. The $100,000 compensation minimum would remain.

Compensation Discussion and Analysis

Under the proposed rules, a new CD&A would replace the current Compensation Committee Report and Performance Graph, providing an overview, in narrative form, of the material elements of the compensation objectives and policies for NEOs. This discussion would be placed at the beginning of the executive compensation disclosure. Unlike the Compensation Committee Report and the Performance Graph, the CD&A would be considered to be "filed" rather than "furnished" disclosure, and as such would be subject to the same securities law liabilities as other documents filed with the SEC.

As proposed, the CD&A disclosure would set forth a company's compensation philosophy and would cover post-termination as well as in-service arrangements. The SEC envisions that the disclosure would include examples that would illustrate the material principles underpinning a company's compensation policies and practices. As is currently the case, companies would not be required to disclose confidential information and target levels with respect to performance-related factors considered by the company.

The CD&A would include:

- the objectives of the company's compensation programs;
- what the programs are designed to reward;
- the elements of compensation;
- an explanation of why each compensation element is included;
- how the company arrived at the amount for each element;
- how each element and the company's decisions on such element fits into the company's overall compensation objectives; and
- how the analysis on each element affects decisions regarding other elements.

The SEC has provided a variety of 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;
- for equity-based compensation, how the company decides when to grant an award;
- what items of corporate performance are considered when setting compensation policies and making compensation decisions;
- how specific elements of compensation are structured to reflect these items of the company's performance and the executive officer's individual performance;
- the factors considered in decisions to materially increase or decrease compensation;
- how compensation or amounts realizable from prior compensation (e.g., gains from prior equity awards) are considered in setting other elements of compensation (e.g., how gains from prior equity awards are considered in setting retirement benefits);
- 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 process.

Compensation Tables

Summary Compensation Table

Under the proposed rules, the Summary Compensation Table would remain the principal executive compensation disclosure vehicle, and, as revised, the Summary Compensation Table would show the compensation of the NEOs for each of the last three years, whether or not paid. The table would also be supplemented by two new additional tables detailing performance-based awards and all non performance-based equity awards.

The revised table would include seven columns:

- A new first "Total Compensation" column would disclose the sum of the dollar amounts presented in the remaining columns for each named executive officer for the corresponding year.

- The "Salary" and "Bonus" columns would remain virtually the same, with compensation that is earned but deferred included in salary or bonus, as appropriate. New instructions would require footnoted disclosure of salary deferrals and amounts that cannot be calculated as of the date of the disclosure document. Amounts for the most recent fiscal year that cannot be calculated in time to be included in the proxy will need to be disclosed in a Current Report under Item 5.02 of Form 8-K when the amount is determined.

- The "Stock Awards" and "Option Awards" columns would disclose the dollar value of the stock or option awarded, which would be measured based on grant date fair value and computed according to Statement of Financial Accounting Standards No. 123R. The FAS 123R valuation would be used 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. Footnote disclosure would also be required to cross-reference the relevant assumptions in the notes to the financial statements or MD&A. Earnings on outstanding awards would also be disclosed, whether paid during the year or payable during the period but deferred or payable at a later date.

- The "Non-Stock Incentive Compensation" column would disclose the dollar amounts of awards whose performance measure is not based on the stock price (e.g., return on assets, return on equity, performance of an operating unit) or which may not be settled in stock. Compensation would be disclosed for the year the performance criteria are met and the compensation is earned, whether or not payment is made. The grant would be detailed in one of the two grant tables supplementing the Summary Compensation Table, with earnings on awards reported as well.

- The "All Other Compensation" column would include all compensation not required in any other column, and each item in the "All Other Compensation" column that exceeds $10,000 would be separately identified and quantified in a footnote. The "All Other Compensation" column would include, among other things, (i) earnings on compensation deferred outside a tax-qualified plan, (ii) the aggregate increase in actuarial value of pension benefits accrued during the year, (iii) contributions or other allocations to defined contribution plans, (iv) the dollar value of any insurance premiums paid by, or on behalf of, the registrant with respect to life insurance for the benefit of an NEO, (v) termination of employment and change of control payments, (vi) tax gross-ups and (vii) discount stock purchases.

Perquisites

The release proposes new disclosure requirements for perquisites under the "All Other Compensation" column. The threshold for perquisite disclosure would be reduced from the lesser of $50,000 or 10% of the total of annual salary and bonus to $10,000. Aggregate perquisites having a value of less than $10,000 are the only elements of compensation not required to be disclosed. All perquisites must be separately identified 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 value of such perquisite must be disclosed.

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

- an item is not a perquisite or personal benefit if it is integrally and directly related to the performance of the executive officer'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 advises that the concept of benefits "integrally and directly related" to job performance is narrow. A spacious office at a business location, additional secretarial or clerical support for company matters or preferential parking spaces 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, aircraft or watercraft 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.

The proposal indicates that aggregate incremental cost to the company and its subsidiaries is the proper measure of value of perquisites and other personal benefits. The release notes that the amount attributed to such benefits for federal income tax purposes is not the incremental cost for purposes of the disclosure rules unless, independently of the tax characterization, such amount is the actual incremental cost.

Supplemental Tables

The proposing release contemplates two important supplements to the Summary Compensation Table, a table detailing the Grant of Performance Based Awards and a separate table detailing the Grant of All Other Equity Awards. The Grant of Performance Based Awards table would disclose 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 would be disclosed. The Grant of All Other Equity Awards would disclose equity-based compensation awards granted in the last fiscal year that are not performance based. These include stock, options or similar awards whose payout or future value is tied to the company's stock price, but not other performance criteria.

Narrative Disclosure

The proposals require a plain English narrative to give context to the tabular disclosures. Any additional material factors needed to understand the tables would need to be described. In contrast to the CD&A, which focuses on objectives and implementation of compensation policies, the narrative disclosure following the tables would address: (i) material terms of an NEO's employment agreement, (ii) repricing or other material modification of any outstanding option or other stock-based award during the last fiscal year, (iii) material terms of performance based awards, such as vesting schedules and performance conditions, (iv) waiver or modification of any performance condition, (v) material underlying assumptions used in determining increases in the actuarial value of pensions under defined benefit plans and (vi) the method of calculating earnings on deferred compensation.

The narrative disclosure would also set forth the job description of and total compensation for up to three employees who earn more than any of the NEOs. These individuals would not need to be named.

Additional Tables

The proposing release also contemplates an Outstanding Equity Awards at Fiscal Year-End table and an Option Exercises and Stock Vesting table. These tables are intended to disclose holdings and exercises of existing equity awards.

The Outstanding Equity Awards at Fiscal Year-End table would show the fiscal year-end number of securities underlying equity awards for each NEO and their market value. The Option Exercises and Stock Vesting table would 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.

Post-Employment Compensation

Retirement Plan Potential and Benefits Table

Under the proposals, the currently used pension plan disclosure would be replaced with a new table detailing potential defined benefit pension plan payments and benefits for NEOs. An estimate of retirement benefits payable at normal retirement and early retirement age would be required. A narrative following the table would set forth the facts needed to understand the material features of each plan covered by the table. The form of benefit currently elected by the NEO and the dollar amount of annual benefits which an NEO would receive upon becoming eligible for payment would be disclosed. The dollar amount of the benefit reported would be determined assuming that the NEO continues to earn the same compensation as reported for the company's last fiscal year. If an NEO left during the year, the dollar amounts of annual benefits to which he or she is entitled would need to be disclosed.

Nonqualified Defined Contribution and Other Deferred Compensation Plans Table

A new nonqualified deferred compensation table and narrative description of nonqualified deferred compensation would be required. The table would disclose contributions by the executive and the company, and would set forth earnings, withdrawals and distributions, and total dollar balance at the end of the last fiscal year. The proposal would require disclosure in the Summary Compensation Table of all earnings on compensation deferred outside of a tax-qualified plan (such as a 401(k) plan).

Other Potential Post-Employment Compensation

The proposed rules would 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. A company would be required to estimate the payments and benefits that would be provided in each termination circumstance and describe the timing and form of any such payments.

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

Director Compensation

The SEC has proposed a Director Compensation Table similar to the Summary Compensation Table. Only information for a company's last completed fiscal year would be required. The Summary Compensation Table instructions would govern analogous matters in the Director Compensation Table. Companies would be permitted to group directors on a single row of the table if all compensation elements and amounts are identical. Directors who are NEOs are not required to be included in the Director Compensation Table if all their director compensation is reflected in the Summary Compensation Table. Supplemental tables to the Director Compensation Table are not required but companies must provide a narrative describing any material factors needed to understand the table.

Form 8-K

The SEC has noted in the proposing release that the 2004 expansion of Form 8-K disclosure requirements to include material definitive agreements using the standards set forth under Item 601(b)(10) of Regulation S-K has 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 proposed amending Item 1.01 of Form 8-K to eliminate employment compensation arrangements and to cover such arrangements under Item 5.02:

- 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, 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 there under (whether or not written), and any material amendment to any compensatory plan, contract or arrangement (or any modification to a grant or award there under), 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 of Regulation S-K; 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 of Regulation S-K.

The SEC has emphasized that the above disclosure would require only a brief description of the matter and is not intended to mirror Item 402 disclosure.

The proposed rules would also expand Item 5.02 of Form 8-K to require disclosure regarding retirement, resignation or termination of any NEO for the company's most recent fiscal year. Currently, companies are only required to provide this information for directors, the principal executive officer, president, principal financial officer, principal accounting officer, principal financial officer or any person performing similar functions.

The release proposes to extend Section 10(b) and Rule 10b-5 and Form S-3 eligibility safe harbors in the event that a company fails to timely file reports required by Item 5.02(e) of Form 8-K, which addresses the adoption of material compensatory plans for a company's principal executive officer, principal financial officer, or an NEO. The proposal does 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 proposed amending 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, the proposals do not require disclosure of pledged shares, other than pledges that may result in a change of control as is currently required to be disclosed.

Certain Relationships and Related Transactions Disclosure

The proposing release contemplates a move to a more principles-based and streamlined system of disclosure of related party transactions. Accordingly, Item 404 of Regulation S-K would retain the principles for disclosure of related person transactions, but would be revised to eliminate certain instructions, which currently set forth a bright-line list of transactions which are reportable or excludable, which the SEC believes can be a departure from a more appropriate materiality analysis. The proposed amendments 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.

Proposed Item 404(a), for example, would require disclosure of any *transaction* in which the company is a *participant*, rather than a *party*, which amount exceeds $120,000, instead of the current $60,000 threshold, and would require disclosure of indebtedness, eliminating the current indebtedness disclosure requirement under Item 404(c). As a result of the integration of Item 404(c) with Item 404(a), disclosure of direct or indirect indebtedness transactions of significant shareholders meeting the threshold amounts would be required, and all material indirect interests in indebtedness transactions of related parties would be required to be disclosed. In addition, the current Item 404(b) would be 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. The new Item 404(b) would also require disclosure of all related party transactions reported under Item 404(a) that were not subject to the approval policies and procedures.

The proposals revise the definitions of "transaction," "related person" and "amount involved" under Item 404 in order to streamline disclosure requirements and clarify the broad scope of financial transactions in relationships covered by related party disclosure rules. The definition of "immediate family member" would be 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 also proposed to consolidate disclosure on director independence and related corporate governance issues currently contained in numerous items under Regulation S-K and elsewhere under a single disclosure item, proposed Regulation S-K, Item 407. The proposed item would require 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 require 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. Such disclosure would be 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. The SEC also proposes that compensation committees provide disclosure similar to that of audit and nominating committees.

The most significant of proposed corporate governance disclosures is the addition of a description 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. Conceivably, any transaction, relationship or arrangement brought before the board of directors, whether by D&O Questionnaire or otherwise, could be disclosable. In a web cast on February 1, 2006, SEC staffers and others involved in drafting the proposing release indicated that they expected numerous comments on this issue.

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. 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.

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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) and Paul Koppel ((212) 373-3040) in our Executive Compensation Group:

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APPENDIX

SUMMARY COMPENSATION TABLE

Name and Principal Position (a)	Year (b)	Total ($) (c)	Salary ($) (d)	Bonus ($) (e)	Stock Awards ($) (f)	Option Awards ($) (g)	Non-Stock Incentive Plan Compen-sation ($) (h)	All other Compen-sation ($) (i)
PEO	______ ______ ______							
PFO	______ ______ ______							
A	______ ______ ______							
B	______ ______ ______							
C	______ ______ ______							

GRANTS OF PERFORMANCE-BASED AWARDS

Name	Performance-Based Stock and Stock-based Incentive Plans: number of shares, units or other rights (#)	Performance-Based Options: number of securities underlying Options (#)	Non-Stock Incentive Plan Awards: number of units or other rights (#)	Dollar amount of consid-eration paid for award, if any ($)	Grant Date for Stock or Option Awards	Performance or other period until vesting or payout and Option Expiration Date	Estimated future payouts		
							Thres hold ($) or (#)	Target ($) or (#)	Maxi-mum ($) or (#)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
PFO									
A									
B									
C									

GRANTS OF ALL OTHER EQUITY AWARDS

Name (a)	Number of Securities Underlying Options Granted (#) (b)	Exercise or Base Price ($/Sh) (c)	Expiration Date (d)	Number of Shares of Stock or Units Granted (#) (e)	Vesting Date (f)	Grant Date (g)
PEO						
PFO						
A						
B						
C						

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

Name (a)	Number of securities underlying unexercised Options (#) Exercisable/ Unexercisable (b)	In-the-money amount of unexercised Options ($) Exercisable/ Unexercisable (c)	Number of shares or units of Stock held that have not vested (#) (d)	Market value of nonvested shares or units of Stock held that have not vested ($) (e)	Incentive Plans: Number of nonvested shares, units or other rights held (#) (f)	Incentive Plans: Market or payout value of nonvested shares, units or other rights held ($) (g)
PEO						
PFO						
A						
B						
C						

OPTION EXERCISES AND STOCK VESTED

Name of Executive Officer (a)	Number of Shares Acquired on Exercise or Vesting (#) (b)	Value Realized Upon Exercise or Vesting ($) (c)	Grant Date Fair Value Previously Reported in Summary Compensation Table ($) (d)
PEO – Options			
Stock			
PFO – Option			
Stock			
A – Options			
Stock			
B – Options			
Stock			
C – Options			
Stock			

RETIREMENT PLAN POTENTIAL ANNUAL PAYMENTS AND BENEFITS

Name (a)	Plan name (b)	Number of years credited service (#) (c)	Normal retirement age (#) (d)	Estimated normal retirement annual benefit ($) (e)	Early retirement age (#) (f)	Estimated early retirement annual benefit ($) (g)
PEO						
PFO						
A						
B						
C						

NONQUALIFIED DEFINED CONTRIBUTION AND OTHER DEFERRED COMPENSATION PLANS

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 (a)	Total ($) (b)	Fees earned or paid in cash ($) (c)	Stock Awards ($) (d)	Option Awards ($) (e)	Non-Stock Incentive Plan Compensation ($) (f)	All Other Compensation ($) (g)
A						
B						
C						
D						
E						