

T O O U R F R I E N D S A N D C L I E N T S
M e m o r a n d u m



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SEC Adopts New Executive Compensation and Related Party Transaction Disclosure Scheme

On Wednesday, July 26, 2006, the U.S. Securities and Exchange Commission (the "SEC") released final amendments to the executive compensation and related party disclosure rules (the "Final Rules"), which were first proposed by the SEC in January 2006 (the "Proposal"). The Final Rules affect nearly every facet of the current disclosure of executive and director compensation rules (the "Prior Rules") that have been in place for over ten years and also significantly change related party and corporate governance disclosure practices. This memorandum summarizes the key changes made by the Final Rules and outlines the format of the new disclosure requirements.¹

Executive Summary of Changes in Disclosure Requirements from Prior Rules

As adopted, the Final Rules require that companies disclose information with respect to named executive officers that has never before been required in public filings, including cash valuations of compensatory awards, the expected value of severance and termination payments (including change-in-control payments) and increased disclosure with respect to retirement benefits. Companies should begin to familiarize themselves with the Final Rules immediately and consider how the processes by which this information will be obtained can be implemented as soon as possible.

The Final Rules introduce many changes to existing reporting requirements, including:

- New "Compensation Discussion and Analysis" Section: This new "principles-based" disclosure is expected to describe the objectives underlying compensation policies and provide context for other compensation disclosures.
- Compensation Discussion and Analysis "Filed": The Compensation Discussion and Analysis will be considered filed with the SEC and is therefore subject to the liability provisions of the Securities Exchange Act of 1934, and when included or incorporated into a registration statement, the Securities Act of 1933.

¹ This Memoranda supersedes our prior memo dated February 7, 2006, which describes the new disclosure requirements as set forth in the Proposal.

- Revised Compensation Committee Report: The traditional compensation committee report has been eliminated, but a new compensation committee report, similar to the Audit Committee Report, has been adopted to verify the compensation committee's involvement in reviewing the Compensation Discussion and Analysis.
- Performance Graph Moved: The performance graph is moved from the executive compensation disclosure in Regulation S-K, Item 402 to the equity market price and related disclosure in Regulation S-K, Item 201; thus appearing in the annual report.
- Reorganized Summary Compensation Table: The revised table includes a new total compensation column that reflects not only annual salary and bonus but also the fair value of equity awards and other long-term incentives, perquisites, and the present value of pension benefits.
- Named Executive Officer Calculation Changed: The determination of which executive officers are deemed to be "named executive officers" is now based on total compensation (less disregarding certain deferred compensation earnings and the increase in pension values).
- Expansion of disclosures of perquisites and other personal benefits: The Final Rules reduce the aggregate threshold amount to \$10,000 for inclusion and expand requirements for the identification of perquisites and personal benefits.
- Disclosure of the fair value of all equity-based awards in the year of grant: The new equity compensation tables require disclosure of stock, restricted stock units, stock options and stock appreciation rights, among other instruments, valued in accordance with FAS 123R.
- Reorganized equity disclosure: The new equity compensation tables require disclosure of the value of each outstanding award and amounts realized through exercise during the year and segregates options from other share-based awards.
- Expanded disclosure of stock option timing and pricing practices: Throughout the required tabular and narrative disclosures, rules have been added to focus shareholders' attention on the company's policies regarding the timing of stock option grants and practices used to set option exercise prices.
- Expanded disclosure of post-employment compensation: The Final Rules include both tabular and narrative disclosures of severance benefits, change-in-control benefits, deferred compensation contributions (and earnings thereon) and increases in the actuarial present value of the executive's accumulated pension benefit.
- Enhanced disclosure of director compensation: The Final Rules require detailed disclosure of each director's compensation in a table similar to the Summary Compensation Table for named executive officers.
- Simplification of Form 8-K reporting obligations: The Final Rules narrow the compensation disclosures required on Form 8-K to material arrangements covering one or more named executive officers or directors.
- Clarified and updated reporting of related person transactions: The Final Rules broaden the types of transactions subject to disclosure, increase the threshold for disclosure from \$60,000 to \$120,000 and require new disclosure regarding corporate policies for the review, approval and ratification of related person transactions.
- Consolidated corporate governance disclosure: The Final Rules impose new disclosure requirements regarding director independence and compensation committee policies and procedures.

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Compensation Discussion and Analysis

The Final Rules require a narrative Compensation Discussion and Analysis (“CD&A”) disclosure. The SEC intends the CD&A to precede the new tables and narrative disclosures. Significantly, the Board Compensation Committee Report under the Prior Rules was required to be furnished over the names of the members of the Compensation Committee, while the CD&A will be a disclosure by the company. The CD&A is a comprehensive overview that supplements the tabular and narrative disclosures that follow it and generally provides the following information about material elements of compensation for named executive officers:

- Objectives of the company’s compensation programs;
- Conduct that each compensation program is designed to reward (but no longer what the program is designed *not* to reward, as was proposed);
- A description of each element of compensation and a statement of its underlying purpose;
- Conventions for determining the amount (and, where applicable, the formula) for each element of compensation; and
- The relationship between each element of compensation and the company’s overall compensation objectives and policies.

The CD&A is principles-based. The Final Rules identify broad concepts and the adopting release accompanying the Final Rules (the “Adopting Release”) provides illustrative examples of the type of disclosures to be made, which the SEC intends for companies to tailor to its circumstances. Boilerplate language, or the mere repetition of information set forth in the tables, will be insufficient. If necessary, the discussion will be required to identify the material differences in compensation policies and decisions for individual named executive officers; otherwise, the named executive officers may be discussed as a group. The CD&A discussion is focused on the last fiscal year, but is not limited to actions taken in the last fiscal year, and may require disclosure of actions taken after the end of the fiscal year or actions taken in prior fiscal years in order to provide meaningful disclosure of the compensation of current named executive officers. Examples of specific issues that are cited as appropriate for discussion include (among others):

- Policies for allocating between long-term and current compensation;
- Policies for allocating between cash and various forms of non-cash compensation;
- The factors considered in decisions to increase or decrease compensation materially;
- The impact of the accounting and tax treatments of particular forms of compensation, including tax consequences to individual named executive officers;

- Policies with respect to post-termination compensation, including the basis for the choice of triggering events;
- The role of executive officers in setting compensation;
- How the determination is made as to when awards, including equity-based awards such as options, are granted;
- How specific forms of performance-based compensation are structured and implemented, e.g., if discretion can be exercised in the granting of an award, as well as whether discretion was in fact exercised, and how it was exercised. In the Proposal, discussion of this particular example was to be included in the narrative disclosure following the Summary Compensation Table; however, pursuant to the Final Rules, it is now to be discussed in the CD&A. The disclosure's scope has been expanded beyond non-equity incentive plans, and should also include a discussion of subsequent adjustments to the performance goal criteria that affect the amount of the award.

The Final Rules exclude discussion of certain information from the CD&A, such as:

- Confidential performance targets or information that is confidential for business purposes, applying the same standard as for confidential treatment requests under Securities Act Rule 406 and Exchange Act Rule 24-b (although formal confidentiality requests will not be needed for this information); and
- Deliberations of the Compensation Committee.

The CD&A disclosure will be considered “filed” with the SEC (not “furnished”) and therefore will be subject to Regulations 14A and 14C and the liability provisions of Section 18 of the Securities Exchange Act of 1934. In addition, to the extent that the CD&A and any of the other disclosures regarding named executive officer and director compensation are included in or incorporated by reference into a periodic report, the disclosure would be covered by the CEO and CFO certifications under the Sarbanes-Oxley Act of 2002. The CD&A will also be subject to Section 11 liability under the Securities Act of 1933 to the extent it is incorporated by reference into a registration statement. Further, the CD&A will be required disclosure in initial public offering prospectuses (that go effective after the Final Rules’ effective date).

Compensation Committee Report and Performance Graph

Compensation Committee Report

A new Compensation Committee Report (“CCR”), similar to the current Audit Committee report, is required by the Final Rules, and the current compensation committee report has been eliminated.

Instead of describing the considerations and process undertaken by the company's compensation committee in determining executive compensation programs, as was the case under the Prior Rules, the new CCR will simply state whether the company's compensation committee has discussed the CD&A with management and whether, based on this review, it has recommended that the CD&A disclosure be included in the company's annual report and proxy statement filings. The new CCR, like its predecessor, is "furnished," rather than "filed," with the SEC. The Adopting Release states that the CEO and CFO will be able to look to the CCR in providing their certifications.

Performance Graph

The Proposal provided that the performance graph would be eliminated altogether given the widespread availability of stock price and company performance information from other sources such as the internet. However, in light of comments received, the SEC decided to retain the performance graph but concluded that it should not be presented as part of the executive compensation disclosure. Therefore, the performance graph will now be required under Regulation S-K, Item 201, "Market Price of and Dividends on the Registrants' Common Equity and Related Stockholder Matters."

Compensation Tables

Summary Compensation Table

Under the Final Rules, the Summary Compensation Table remains the principal source of executive compensation disclosure, providing a snapshot of the compensation paid to the company's named executive officers. The form of the table is set forth below. The Final Rules and instructions significantly alter the format and types of information disclosed from the Prior Rules. In addition, the Summary Compensation Table in the Final Rules differs in a number of ways from what was presented in the Proposal. The intention of the revisions to the Summary Compensation Table is to require the disclosure of all elements of executive compensation.

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	____ ____ ____								
PFO	____ ____ ____								
A	____ ____ ____								
B	____ ____ ____								
C	____ ____ ____								

Important changes from the Summary Compensation Table disclosure under the Prior Rules include:

- A new “Total” column has been added, reflecting not only salary and bonus but also the fair value of equity awards (computed in accordance with FAS 123R), long-term incentives, above-market earnings on nonqualified deferred compensation, increase in actuarial value of accumulated pension benefits, perquisites and post-employment benefits;
- Amounts included in the table are required to be expressed in U.S. dollars with a footnote describing any applicable currency conversions;
- Current equity grants are described in a supplemental table that immediately follows the Summary Compensation Table, a departure from the practice of footnoting such information under the Prior Rules;
- Footnote disclosure of all compensation that is earned but not paid currently is required (and triggers an additional disclosure regarding deferred compensation, as described below);
- The Other Annual Compensation and All Other Compensation columns required under the Prior Rules are combined into one “All Other Compensation” column;

- Amounts for above-market earnings on non-qualified deferred compensation and the change in the actuarial present value of the executive's accumulated pension benefit are separated in their own column so that such amounts can be identified independently from other amounts included in the "All Other Compensation" column; and
- The dollar threshold for disclosure of perquisites and other personal benefits is reduced.

Highlights of the information required in each column are discussed below.

Named Executive Officers (column (a))

The Final Rules modify the group of persons whose compensation information is disclosed in the Summary Compensation Table. Under the Prior Rules, the Summary Compensation Table included information about the chief executive officer and, subject to a \$100,000 threshold, the next four most highly compensated executive officers. The Final Rules provide that both the "principal executive officer" ("PEO") and the "principal financial officer" ("PFO") (or persons acting in similar capacities) must be included regardless of income level, along with the three other most highly compensated executive officers (subject to a \$100,000 threshold). Consistent with the Prior Rules, the Final Rules also require disclosure regarding up to two additional executive officers who are not serving as executive officers on the last day of the year but would be among the three highest paid if they were serving as executive officers on the last day of the fiscal year. In addition:

- The determination of the executives who are among the most highly compensated will no longer be based only on salary and bonus, but instead will be based on an amount which equals the executive's total compensation, reduced by the amounts reported for the executive's above-market earnings on non-qualified deferred compensation and the change in the actuarial present value of the executive's accumulated pension benefit (thus, Column (j) reduced by Column (h)); and
- As has been the case with respect to the chief executive officer, any individual who served in the principal executive officer or principal financial officer position during the last fiscal year is required to be listed in the table, even if not serving in that position at the end of the company's fiscal year.

Year (column (b))

Under the Final Rules, as under the Prior Rules, the Summary Compensation Table contains information for the three most recently completed fiscal years. However, as a transition matter, disclosure will only be required for one fiscal year during the first year after the Final Rules become effective, two years during the second year, and three years thereafter.

Salary and Bonus (columns (c) & (d))

As under the Prior Rules, these columns set forth the dollar value of base salary (cash and non-cash) and bonus (cash and non-cash) earned by each named executive officer during the applicable fiscal year.

A new instruction requires that, if the salary or bonus amount is not calculable through the latest practicable date, a footnote should disclose that fact and provide the date that the amount is expected to be determined. When they become determinable, these amounts would be subject to disclosure in a Form 8-K filing.

Compensation earned in the fiscal year but deferred (whether or not pursuant to an election of the named executive officer) would be included in the Salary, Bonus or other applicable column, as appropriate.

Plan-Based Awards – Stock Awards, Option Awards and Non-Equity Incentive Plan Compensation (columns (e), (f) & (g))

The Final Rules require disclosure of the fair value of awards, instead of the number of underlying shares. The items that would be subject to disclosure in each column are as follows:

- *Stock Awards.* Disclosure includes the fair value in the year of grant of awards, the value of which is based on the company's equity securities or which may be settled in the company's equity securities, and are within the scope of FAS123R for financial reporting, including restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units and other similar instruments that do not have option-like features, as well as stock awards granted pursuant to an equity incentive plan. The value of these awards should be calculated pursuant to FAS 123R and disclosed in full in the fiscal year granted.
- *Option Awards.* Disclosure would include the fair value in the year of the grant of option awards, stock appreciation rights and similar stock-based compensation awards with option-like features that are within the scope of FAS 123R. These awards should also be calculated under FAS 123R and disclosed in full in the fiscal year granted.

If a company does not believe that reporting the full grant date fair value of the stock or option award accurately reflects compensation earned, awarded, or paid in that fiscal year, it may explain the amounts further in the narrative section accompanying the Summary Compensation Table. For both stock and option awards, new footnote disclosure is required to provide a cross-reference to an explanation of the assumptions used by the company in valuing the awards in either the financial statements or MD&A sections of the company's annual report, and this information will be deemed to be part of the required executive compensation disclosure. Further details of the awards disclosed in these columns, including the number of underlying shares and

relevant terms, is provided in the narrative discussion and supplemental table following the Summary Compensation Table (see below).

The incremental fair value for any repriced or materially modified award must also be reported. Grants of reload or restorative options (i.e. grants of new options that are granted automatically when old options are exercised) would be treated as a new grant, reportable based on the total grant date fair value.

- *Non-Stock Incentive Plan Compensation.* Disclosure includes the value of amounts earned (rather than granted) under company non-equity incentive plans, reported in the year in which the performance criteria have been met and compensation earned, whether or not the amounts are currently paid. Amounts reported in this column will have been reported in a prior year as part of the Grants of Plan-Based Awards Table (discussed below). Earnings on non-equity incentive plan compensation are also reportable in this column. The Adopting Release notes that this column may include amounts that companies would have previously reported under the “Bonus” column; however, the Adopting Release clarifies that all awards pursuant to an “incentive plan” (defined as “any plan providing compensation intended to serve as incentive for performance to occur over a specified period”) would be reported under Non-Stock Incentive Plan Compensation. Alternatively, a “bonus,” reported in column (d), includes cash awards based on satisfaction of a performance target that is not pre-established and communicated, or the outcome of which is not substantially uncertain.

Change in Pension Value and Nonqualified Deferred Compensation Earnings (column (h))

The information required in this new column includes:

- The aggregate increase in actuarial value to the executive of all defined benefit and actuarial plans accrued during the year (including tax-qualified defined benefit and all supplemental executive retirement plans, but excluding defined contribution plans); and
- Above-market earnings on nonqualified deferred compensation (including non-tax qualified contribution retirement plans).

A footnote is also required to identify and quantify the amounts included. Any negative amount that is attributable to either the defined benefit or supplemental benefit plans should also be explained in the footnote, but not included in the reported amount in the column. As proposed, these elements would have been included in the “All Other Compensation” column, discussed below. However, in response to comments received regarding what compensation elements should be included in determining the named executive officers, the SEC has decided that these two amounts should not be considered for the purpose of this determination. In order for shareholders to easily disseminate the amounts that have been segregated, these two elements have been placed in a separate column.

All Other Compensation (column (i))

The Final Rules include a new “catch-all” column, “All Other Compensation,” which includes the value of any item of compensation not included in the other columns. The Final Rules emphasize that this disclosure would not be limited to the items specifically discussed in the rules and should generally include *all* forms of compensation not properly allocated to another column. Examples of compensation that would be disclosed in this column include:

- The dollar value of earnings, such as dividends, on stock and option awards, to the extent the earnings are not included in the grant date fair value computation under FAS 123R, when the earnings are paid. This is a change from the proposed rules which would have included the full amount of earnings on stock and option awards in the column reporting the award;
- Perquisites and other personal benefits;
- Amounts paid or accrued with respect to termination of employment or a change in control;
- Company contributions to defined contribution plans;
- The dollar value of insurance premiums paid by the company for life insurance for the benefit of the named executive officer;
- Tax “gross-ups” or other amounts paid to reimburse the named executive officer for tax payments;
- Compensation cost, calculated pursuant to FAS 123R, with respect to any discount the named executive officer receives in purchasing company stock from the company, unless the same discount is available to all stockholders or all salaried employees; and
- Pension benefits paid to the executive due to the acceleration of these benefits as a result of a change in control.

In addition to the aggregate amount of all other compensation for each named executive officer, explanations of the various forms of compensation that are included would be required as follows:

- Items under \$10,000 would be included in the column total (except perquisites and personal benefits of less than \$10,000 in the aggregate, as discussed below) but would not be required to be separately listed in a footnote.
- A footnote would itemize and quantify each item of compensation included in this column that exceeds \$10,000.

- Tax gross-ups and reimbursements would have to be quantified and identified, including any gross-up paid in connection with perquisites or other personal benefits, even if such perquisites or benefits would not otherwise have to be specifically disclosed.

Perquisites and Other Personal Benefits (part of column (i))

Perquisites are subject to significantly expanded disclosure requirements under the Final Rules. With respect to each named executive officer, disclosure of perquisites and other personal benefits are included in the All Other Compensation column, unless the aggregate amount of all perquisites and personal benefits is less than \$10,000, in which case no amount for this type of compensation is required to be disclosed. Unless the aggregate amount of perquisites and personal benefits is beneath the \$10,000 threshold, (i) all perquisites or personal benefits must be identified in a footnote and (ii) the specific value must also be disclosed for any particular perquisite or personal benefit which is valued at the greater of \$25,000 or ten percent of the executive's total perquisites and personal benefits. The disclosure of perquisites should be specific enough to identify the particular nature of the benefit received, such as clothing, theater tickets and housekeeping services. The value of perquisites and personal benefits is determined based on the aggregate incremental cost to the company and its subsidiaries, as under the Prior Rules.

The SEC has declined to provide a bright-line test for defining what constitutes a perquisite or a personal benefit, but the Adopting Release includes interpretive guidance (which was also included in the Proposal) that sets forth a general framework. The guidance provides that among the factors to consider in determining whether an item is a perquisite or personal benefit are the following:

- An item is not a perquisite or personal benefit if it is integrally and directly related to the performance of the executive's duties, such as a Blackberry. The concept of "integrally and directly related" is to be interpreted narrowly and includes office space at a business location but does not include items that only "facilitate job performance" such as use of company aircraft or commuter transportation services. For example, allowing an executive to use the company jet "for security purposes" would be deemed a reportable perquisite.
- An item that is not integrally and directly related to the performance of duties is a perquisite or personal benefit if it confers a direct or indirect benefit that has a personal aspect, without regard to whether 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.

Whether a particular item is an “ordinary” or “necessary” expense for tax purposes, or whether the expense is for the benefit of the company, should not be considered in determining whether the item is a perquisite or personal benefit for purposes of the proposed Item 402 disclosure.

Total Compensation (column (j))

In an effort to offer shareholders a clearer picture of each named executive officer’s compensation package, the Final Rules require the addition of a new “Total” column. This column would be calculated by adding together the values set forth in the table’s preceding columns. In the Proposal, this column appeared as the first column of figures in the Summary Compensation Table; however, it has been repositioned to the far right based on comments received.

Supplemental Grants of Plan-Based Awards Table

A new supplemental table, the Grants of Plan-Based Awards Table, follows the Summary Compensation Table to provide further detail regarding the information provided in the Summary Compensation Table with respect to awards made during the company’s last fiscal year. This table combines two proposed tables which would have separated performance-based awards from other equity awards. The Grants of Plan-Based Awards table sets forth details of each equity and non-equity grant made during the last fiscal year pursuant to an incentive plan (itemized individually by grant and plan, rather than in the aggregate as had been proposed), as well as estimated future payout amounts.

GRANTS OF PLAN-BASED AWARDS

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares of Stock or Units (#)	All Other Option Awards: Number Securities Underlying Options (#)	Exercise or Base Price of Option Awards (\$/Sh)
		Threshold (\$)	Target (\$)	Maximum (\$)	Threshold (#)	Target (#)	Maximum (#)			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)
PEO										
PFO										
A										
B										
C										

Generally, threshold, target, and maximum payout information is required for each grant, but if there is only a single payout for a particular award, then this amount is reportable as the “target” amount. Repriced options are not reportable in this table, since only the incremental value (and not the full value of a “new” award) is reportable in the Summary Compensation Table. In the Proposal, certain information

such as the vesting date and performance period would have been included in the table; however this information is now exclusively included in the narrative (discussed below) following the table.

Up to three additional columns may be required to be added to the table in certain circumstances, as follows:

- If the date the company's compensation committee took action with respect to that award is different than the grant date (as determined in accordance with FAS 123R) reported in column (b), a separate column must be added between column (b) and (c) reporting the "action" date;
- If the exercise price reported in column (k) is less than the closing market price of the underlying security on the date of grant, a separate column must be added after column (k) reporting the closing market price on the date of grant and narrative must be included describing the methodology used to determine the exercise price; and
- If non-equity incentive plan awards are denominated in units or other rights, a column should be added between columns (b) and (c) to report the dollar value of such units or rights.

The following disclosures with respect to stock grants, currently required in the Option/SAR Grants in Last Fiscal Year Table, are eliminated:

- Potential realizable value at assumed five percent and ten percent annual rates of return; and
- Percent of total options and stock appreciation rights granted to all employees during the fiscal year.

Narrative Disclosure

The Final Rules require narrative disclosure following the Summary Compensation Table and the Grants of Plan-Based Awards Table of any material factors necessary to an understanding of the information disclosed therein. This disclosure focuses on and provides context for quantitative disclosures in the two tables and may include:

- Material terms in the named executive officers' employment agreements, whether written or unwritten, that provide information necessary to interpret the tabular disclosures (therefore, generally, severance terms would not need to be described here, since they are disclosed in the post-employment compensation section, discussed below);
- Each repricing or other material modification of any outstanding option or other stock-based award during the last fiscal year;

- Descriptions of award terms for grants disclosed in the Grants of Plan-Based Awards Table;
- Any material waiver or modification of a specified performance target, goal or condition to payout under any reported incentive plan; and
- An explanation of the level of salary and bonus in relation to an executive's total compensation.

Request for Additional Comments on Compensation Disclosure for up to Three Additional Employees

As proposed, as part of the narrative following the compensation tables, the disclosure requirements would have included disclosure for up to three non-executive employees whose total compensation exceeds that of any named executive officer, including compensation amounts and job descriptions for such individuals, but not their names or job titles. The SEC received a significant amount of feedback on this proposed requirement (dubbed the “Katie Couric Clause” by the media) and, in light of these comments, has submitted a revised requirement concerning the disclosure of additional employees for an additional public comment period. The revised proposal would still require the disclosure of up to three additional employees whose total compensation exceeds that of any named executive officer; however, two significant changes have been proposed by the SEC:

- The requirement would apply only to large accelerated filers;
- The pool of employees to be considered for this disclosure would be limited to those who “exert significant policy influence at the company, at a significant subsidiary of the company or at a principal business unit, division, or function of the company” (e.g. even if the employee is not an executive officer because the employee does not have policy-making functions for the overall company, the employee would be reportable under this proposal if the employee has policy making functions at a significant subsidiary or principal business unit).

These changes were intended to specifically exclude a salesperson, entertainment personality, actor, singer, professional athlete, or an investment professional, such as a trader or portfolio manager, who does not have a policy making role in the company or a subsidiary. However, if such a person also has broader duties that include policy making functions, then that person may be includible in the pool of employees for whom disclosure may be required.

Exercises and Holdings of Previously Awarded Equity

The Outstanding Equity Awards at Fiscal Year-End Table and the Option Exercises and Stock Vesting Table will provide investors with an understanding of stock-based compensation that has previously been awarded and remains outstanding, whether it is unexercised or unvested, and amounts realized on this type of compensation during the most recently ended fiscal year.

Outstanding Equity Awards At Fiscal Year-End

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

	Option Awards					Stock Awards			
Name	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									

The Outstanding Equity Awards at Fiscal Year-End Table provides for tabular disclosure for holdings of outstanding stock options and stock appreciation rights, as under the Prior Rule, as well as outstanding restricted stock or units, as applicable. The SEC views information related to in-the-money and out-of-the-money options as material to investors and therefore requires key terms of unexercised options and other similar option-like instruments to be disclosed. These include the number of securities underlying unexercised options (separated into those that are exercisable and those that are not), the exercise or base price and the expiration date on an award-by-award basis. Disclosures of nonvested stock and equity incentive awards, however, may be tabulated on an aggregate basis. To facilitate disclosure of all

outstanding equity awards, companies are also required to disclose the number of securities underlying unexercised options awarded under equity incentive plans.

Consistent with treatment in the Summary Compensation Table, options or similar awards, even if transferred by a named executive officer, would be required to be included in the Outstanding Equity Awards at Fiscal Year-End Table. A new instruction explains that awards that have been transferred other than for value must be included in the disclosures and separately identified in a footnote. In addition, a footnote will be required, in conjunction with applicable disclosures, to provide the vesting dates of options, shares of stock and equity incentive plan awards held at fiscal year-end.

Option Exercises and Stock Vested

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				

The Option Exercises and Stock Vested Table is similar to a portion of the Aggregate Options/SAR Exercises in Last Fiscal Year and Fiscal Year-End Options/SAR Values Tables in the Prior Rules, except that it also includes the vesting of restricted stock and similar instruments. The inclusion of the grant date fair value of these instruments, as originally proposed, will not be required in this tabular disclosure. The Final Rules specify that the transfer of an option or stock award for value constitutes a realization event and must be included in columns (c) and (e) whenever applicable. Deferred receipt of any amount realized must be disclosed in a footnote detailing both the amount and the terms of such deferral. The Option Exercises and Stock Vested Table has been reformatted from what was presented in the Proposal to clearly identify which data pertains to the option awards and which data is relevant to the other stock awards.

Post-Employment Compensation

The Final Rules significantly expand current disclosure of post-employment compensation, in response to recent shareholder proposals and to concerns about the lack of clarity with respect to post-retirement benefits. The current Pension Plan Table, alternative plan disclosure and other narrative descriptions is replaced by a table describing defined benefit plans and by enhanced narrative disclosure. A second table discloses information regarding non-qualified defined contribution plans and other deferred compensation. A narrative section discloses the details of potential change-in-control or termination payments.

Pension Benefits

While current disclosure for defined benefit and actuarial plans consists only of a general table showing estimated annual benefits under the plan payable upon retirement, the new Pension Benefits Table specifically discloses the actuarial present value of each named executive officer's accumulated benefit under the plan and the number of years of service which is credited to the executive's account. These amounts are calculated based on the same methods used for financial reporting purposes, but must assume (i) the normal retirement age (as defined in the plan); and (ii) the executive's current compensation level. The disclosure does not require, as proposed, setting forth the estimated annual retirement payments under defined benefit plans for each named executive officer both at normal retirement age, and, if available, at early retirement. These changes were made to more closely tie the disclosure to financial reporting figures and increase comparability between companies. The table must include a separate line for each defined benefit plan in which the named executive officer is a participant. If the number of years of credited service reported in column (c) with respect to any plan is different from the named executive officer's actual years of service with the company, a footnote must be included quantifying the difference in the number of years and the increased benefit that results from the difference.

PENSION BENEFITS

Name	Plan name	Number of Years Credited Service (#)	Present Value of Accumulated Benefit (\$)	Payments During Last Fiscal Year (\$)
(a)	(b)	(c)	(d)	(e)
PEO				
PFO				
A				
B				
C				

This table is followed by a narrative description of material factors necessary to understand the tabular information, potentially including the following factors (if applicable), among others, which are provided as examples in the Final Rules' adopting release:

- Material terms and conditions of benefits available under each plan, including the plan's retirement benefit formula and eligibility standards and early retirement arrangements;
- Specific elements of compensation, such as salary or bonus, included in applying the benefit formula;
- The reasons for each plan; and
- Company policies with regard to such matters as granting extra years of credited service.

Nonqualified Deferred Compensation

The Nonqualified Deferred Compensation Table discloses contributions, earnings and balances under nonqualified defined contribution and other deferred compensation plans, replacing the current requirement that only company contributions and above-market earnings on nonqualified deferred compensation need be reported. This table and a related narrative supplement the disclosures of above-market earnings on nonqualified deferred compensation in the Summary Compensation Table. In order to avoid double counting, footnotes to the table would quantify the extent to which amounts in the contributions and earnings columns (columns (c) and (d) respectively) are reported as compensation in the current year and the extent to which amounts reported in the aggregate balance column (column (f)) were reported as compensation for prior years.

NONQUALIFIED DEFERRED COMPENSATION

Name	Executive Contributions in Last FY (\$)	Registrant Contributions in Last FY (\$)	Aggregate Earnings in Last FY (\$)	Aggregate Withdrawals/ Distributions (\$)	Aggregate Balance at Last FYE (\$)
(a)	(b)	(c)	(d)	(e)	(f)
PEO					
PFO					
A					
B					
C					

A narrative description of material factors underlying the tabular information complements this table, including information such as the following examples provided in the Final Rules' adopting release:

- Types of compensation permitted to be deferred and any limitations on the extent to which deferral is permitted;
- Measures of calculating interest or other earnings, quantifying interest rates and other earnings measures applicable during the company's last year; and
- Material terms with respect to payouts, withdrawals and other distributions.

Change-in-Control and Termination Payments

Under the Prior Rules, companies had to disclose any compensatory plan or arrangement with a named executive officer if it resulted or would have resulted from the resignation, retirement or other termination of the executive officers employment or from a change in control of the company, in each case if the amount involved exceeded \$100,000. The Final Rules will require enhanced disclosure in most cases. The Final Rules require narrative disclosure of specific aspects of any written or unwritten arrangement that provides for payments at, following or in connection with the resignation, severance, retirement or other termination (including constructive termination) of a named executive officer, a change in his or her responsibilities or a change in control of the company. The current \$100,000 disclosure threshold for this type of disclosure is eliminated. Companies must provide quantitative disclosure even where uncertainties exist as to amounts payable under these arrangements, in which event such disclosures would be considered forward-looking and within the safe harbor for such information. To make these disclosures, companies must make a "reasonable" estimate of the payments (or range of amounts) and disclose the material assumptions used to calculate the estimates. The Final Rules provide that in making this calculation, companies should assume that the triggering event occurred on the last business day of the company's last completed fiscal year, and that the price per share of company securities is the closing market price on that date. Payments made pursuant to plans or arrangements generally available to all

salaried employees, and which do not discriminate in favor of executive officers, do not need to be disclosed.

The narrative disclosure must describe the following information in connection change in control or termination provisions:

- Specific circumstances that would trigger payment(s) under termination or change-in-control arrangements or the provision of other benefits, including perquisites and health care benefits;
- Estimated payments and benefits that would be provided in each termination circumstance and whether they would be lump-sum or periodic, disclosing the duration and by whom they are provided;
- Specific factors used to determine the appropriate payment and benefit levels under the various circumstances that would trigger payments or provision of benefits;
- Material conditions or obligations applicable to the receipt of payments or benefits, including non-compete, non-solicitation, non-disparagement or confidentiality agreements, as well as the duration of such agreements;
- Tax gross-ups, including golden parachute excise tax payments; and
- Any other material features necessary for an understanding of the provisions.

Director Compensation

The Final Rules impose a substantial and significant new disclosure regime with respect to director compensation. The Prior Rules required only narrative disclosure of “standard arrangements, stating amounts” as well as “other arrangements” pursuant to which directors were compensated. The Prior Rules did not require disclosure of director-by-director compensation, nor mandate the use of tabular presentation. Under the Final Rules, the following table must now be included with respect to the company’s most recently completed fiscal year:

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							

As with the Summary Compensation Table, the “All Other Compensation” column of the Director Compensation Table will generally include all elements of director compensation not disclosed in the preceding columns. This would include, for example, the value of perquisites and other personal benefits (disclosable under the same parameters used for the Summary Compensation Table), contributions to defined contributions plans, tax reimbursements, amounts paid or accrued with respect to termination of employment or a change in control, and director legacy programs. Earnings on nonqualified deferred compensation plans and the change in value of any benefits under all defined benefit and actuarial pension plans will be included in a separate column in conformity with the Summary Compensation Table. A footnote to the table is required to disclose the aggregate number of stock awards and option awards outstanding at the end of the fiscal year.

Directors whose elements of compensation are identical may be grouped on a single row of the chart. However, if the components of a director’s compensation differ from other directors’ compensation, then that director’s compensation would be disclosed on a separate row. Compensation for a named executive officer who also serves as a director does not need to be included in the Director Compensation Table to the extent it is disclosed and footnoted as director compensation in the Summary Compensation Table.

Unlike the Summary Compensation Table, no supplemental tables will be required to accompany the Director Compensation Table. However, narrative disclosure is required to explain any material factors necessary to understand the disclosures in the Director Compensation Table, including any issues similar to those discussed in the CD&A regarding timing and pricing of options.

Special Emphasis on Option Disclosure

The SEC stresses in the Adopting Release that, while the Commission does not seek to encourage or discourage the use of stock options (or any other form of compensation), it is requiring additional disclosures related to programs, plans or practices concerning the selection of stock option grant dates

and exercise prices in order to provide shareholders with increased information with respect to stock options granted by a company to its employees. Throughout the Final Rules, the SEC has added disclosures under which companies must clarify the noteworthy terms regarding option grants. Disclosures in various tables, including the Summary Compensation Table and the Grants of Plan-Based Awards Table, will state the full fair value on the date of grant, the actual date of grant, the timing of the company's actions related to the grant, the closing price of the company's stock on the date of grant, the exercise price and relevant methodology for each stock option award. (See the discussion above in *Summary Compensation Table: Plan-Based Awards* and *Supplemental Grants of Plan-Based Awards Table*). Furthermore, option compensation will be considered material information that will be disclosed in the CD&A, with special focus on practices related to the timing and pricing of stock options. Any company programs or policies dictating the timing of option grants, especially if the grants are linked to the release of material non-public information, and any formulas or policies that set the options' exercise prices, especially if they are likely to lead to the grant of in-the-money options, should be considered material information and disclosed. (See discussion above in *Compensation Discussion and Analysis*). These new disclosures are intended to provide investors with a more comprehensive picture of a company's compensation practices. The Adopting Release includes a non-exclusive list of the types of disclosures a company may consider including in its discussion of option policies and practices including, generally:

- Does the company have any program plan or practice to time option grants to its executives in coordination with the release of material non-public information and, if so, how does this program, plan or practice fit in the context of the company's option grants to employees generally?
- If there is such a timing program, what was the role of the compensation committee in approving and administering the option program and what was the role of the executive officer?
- Does the company set the grant date of option grants to new executives in coordination with the release of material non-public information?
- Does a company plan to time, or has it timed, the release of material non-public information for the purpose of affecting the value of an executive's compensation?

Form 8-K Disclosures

The Final Rules revise significantly the treatment of compensatory matters under Form 8-K. Currently, Item 1.01 of Form 8-K incorporates the materiality concepts as to officer and director compensation from Item 601 of Regulation S-K. As a result, compensatory arrangements covering named executive officers and directors are deemed material and generally must be disclosed on Form 8-K, and compensatory arrangements covering other executive officers generally must be disclosed unless immaterial in amount

or significance. The Final Rules express the SEC's view that this treatment has resulted in excessive disclosure of immaterial matters more appropriate for annual proxy statements or Form 10-Q or 10-K filings.

Accordingly, the Final Rules modify the Form 8-K requirements in the following manner:

- Item 1.01 of Form 8-K no longer incorporates the compensation-related provisions of Item 601 of Regulation S-K. Rather, compensation-related disclosures are to be made under Item 5.02.
- Item 5.02 of Form 8-K, which currently requires disclosure of the appointment and departure of directors and certain officers, has been expanded. New disclosures are required for (1) the departure of named executive officers; (2) material compensatory arrangements entered into or amended in connection with any appointment or departure required to be disclosed; (3) material compensatory arrangements entered into or materially modified (whether or not in connection with an appointment or departure) by the issuer and that cover a principal executive officer, principal financial officer or another named executive officer; and (4) material grants under an issuer's compensatory arrangements. As is currently the case, disclosure of grants under these arrangements are not required if the terms of the grants are consistent with previously disclosed arrangements. The Final Rules confirm that the named executive group for purposes of these rules are those individuals named in the issuer's most recent disclosure under Item 402.
- In a significant change to the current treatment, compensation-related disclosures for named executive officers are no longer presumed material. Rather, issuers are required to undertake a materiality analysis in deciding whether disclosure is required. In addition, no disclosures are required with respect to any executive officer who is not the principal executive officer, principal financial officer or another named executive officer.
- Item 5.02 of Form 8-K now requires disclosure of salary and bonus information for the most recent fiscal year that was not available at the latest practicable date in connection with executive compensation disclosure under Item 402 of Regulation S-K.

The SEC intends that the foregoing disclosures be a "brief description" that informs investors of the occurrence of one or more of the covered events. However, the disclosure is not intended to provide the same narrative as is required under Item 402.

Currently, the failure to make timely disclosure under Item 5.02 will cause an issuer to be ineligible to use Form S-3, while a failure to make timely disclosure under Item 1.01 will not result in such a loss of eligibility. The Final Rules continue this distinction by providing for a loss of Form S-3 eligibility for untimely appointment- and departure-related disclosures but not for the other compensatory disclosures required under the new rules. In addition, the Final Rules provide a safe harbor from liability under

Section 10(b) of the Exchange Act and Rule 10b-5 thereunder for those compensation-related disclosures the untimely filing of which would not trigger Form S-3 ineligibility.

Related Transactions Disclosure

The Final Rules adopt significant revisions to Item 404 of Regulation S-K, streamlining and modernizing the disclosure requirement while making it more principles based. The amendments adopted in the Final Rules have four sections:

- Revised Item 404(a) which contains a general disclosure requirement for related person transactions, including those involving indebtedness;
- Revised Item 404(b) which requires disclosure regarding the company's policies and procedures for the review, approval or ratification of related person transactions;
- Revised Item 404 (c) which provides for disclosure regarding promoters of a company; and
- New Item 407 which consolidates current corporate governance disclosure requirements and requires disclosure regarding independence of directors and compensation policies and procedures.

General Disclosure Requirement

Item 404(a) of Regulation S-K remains the primary rule governing related party transactions. Revised Item 404(a) requires disclosure if:

- the company is a "participant" (rather than a "party"),
- in a "transaction" (now a defined term) or a proposed transaction,
- since the beginning of the last fiscal year,
- the amount involved exceeds \$120,000 (increased from \$60,000) and
- any "related person" (now a defined term) had, or will have, a direct or indirect material interest in the transaction.

Requiring the company to be a "participant" rather than a "party" is intended to broaden the type of transactions which require disclosure. The Adopting Release states that disclosure would be required if a company benefits from a transaction with a related person that the company has arranged and in which it participates. Thus, much less formal arrangements in which the company and the related person both take part may be subject to disclosure under Item 404(a).

The term “transaction” has a broad scope under the new Item 404(a). The term includes, but is not limited to, “any financial arrangement or relationship (including any indebtedness or guarantee of indebtedness) or any series of similar transactions, arrangements or relationships.” By including indebtedness in this definition, the SEC has eliminated the distinction between indebtedness and other types of related person transactions. In response to comments, the Final Rules do not require disclosure of indebtedness transactions of significant shareholders or their immediate family members unless they are otherwise a “related person.”

“Related persons” are defined to include directors, executive officers, nominees for the board (if information is being presented in a proxy statement), beneficial owners of 5% or more of any class of the company’s voting securities, and their immediate family members. Immediate family members include children, stepchildren, parents, stepparents, spouses, siblings, parents in-law and siblings in-law, and any person sharing the household of the director, executive, nominee, or shareholder, other than tenants and employees. The definition of immediate family in the Prior Rules members did not include stepparents, stepchildren and persons sharing the household.

As was the case in the Prior Rules, disclosure is required for three years in registration statements filed pursuant to the Securities Act or the Exchange Act, except for disclosure incorporated into a registration statement on Form S-4 in which case disclosure is required for only one year.

Because of the changes to Item 404 of Regulation S-K, the SEC has added a conforming Note to Exchange Act Rule 16b-3, with regard to the definition of Non-Employee Director. Whether or not a director is a Non-Employee Director is impacted by whether or not the director has related party transactions with the Company pursuant to Item 404. Rule 16b-3 exempts certain transactions involving equity securities between issuers of securities and their officers and directors from short-swing profit recovery by the issuer. One of the requirements for the exemption is the approval of the transaction by Non-Employee Directors, as defined in the Rule. The Note to Rule 16b-3 states that a company can rely on the Item 404(a) disclosure for the most recent fiscal year for which Item 404(a) disclosure is presented. An issuer must believe in good faith that any current or contemplated transaction in which the director participates will not be required to be disclosed under 404(a) at the time such director proposes to act as a Non-Employee Director; at such time as the issuer believes in good faith that a current or contemplated transaction with a director will be required to be disclosed in a future filing, the director will no longer be eligible to serve as a Non-Employee Director--but transactions previously approved by such Non-Employee Director will not lose their Rule 16b-3 exemption.

Describing the Transaction

Under the Final Rules, a company will have to provide the following disclosure with respect to each related person transaction:

- the person's name and relationship to the company;
- the person's interest in the transaction with the company, including the related person's relationship to or ownership interest in the other party to, or which has an interest in, the transaction; and
- the dollar value of the amount involved, and of the related person's interest in the transaction.

Exceptions to Disclosure

The new Item 404(a) provides several limited exceptions to the requirement of disclosure including:

- Disclosure of compensation to an executive officer if: (1) it is disclosed under Item 402 or (2) the executive is not an immediate family member, the compensation would have been reported under Item 402 if the executive were a named executive officer, and the compensation has been approved or recommended for approval by the compensation committee.
- Indebtedness for amounts related to certain purchases of goods and services subject to usual trade terms, for ordinary business travel and expense payments and other transactions in the ordinary course of business.
- Loans by banks, savings and loan associations and broker-dealers, other than problem loans, so long as the loans were made in the ordinary course, on substantially the same terms as prevailing terms available to unrelated parties, and do not involve abnormal risks of collectability.
- Liabilities arising under Section 16(b) of the Exchange Act, for short-swing profit recovery (required disclosure under the current Item 404).
- Indirect interests arising only as a result of serving as a director of another entity or as a holder of a less than 10% equity interest in such entity.
- Transactions where rates are determined by competitive bidding.
- Transactions involving services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture or similar services.
- Benefits received pro rata by all holders of a class of equity securities (such as dividends in excess of \$120,000 paid uniformly to all shareholders).

Procedures for Approval of Related Person Transactions

Item 404(b) under the Final Rules requires disclosure of the company's policies and procedures for the review, approval or ratification of related person transactions. This is a new requirement. The disclosure requires a description of the material features of these policies and procedures, which may include the

types of covered transactions, the standards to be applied, the persons responsible for applying the policies and procedures, and whether such policies and procedures are in writing or otherwise evidenced. Disclosure also is required of any transactions required to be reported under Item 404(a) but not covered by the company's policies or procedures or where the policies and procedures were not followed.

Promoters

The Final Rules require a company to provide disclosure in Securities Act registration statements on Form S-1 and Exchange Act registration statements on Form 10 regarding the identity of promoters and its transactions with those promoters if the company had a promoter at any time during the last five fiscal years. Under the Prior Rules no disclosure was required if the company was organized more than five years ago, even if it had a promoter within the last five years.

Corporate Governance Disclosure

Disclosure Regarding Independent Directors

New Item 407 of Regulation S-K requires companies to disclose which directors are independent and which members of key committees are not independent. Companies with securities listed on any of the national security exchanges (e.g., NYSE, ASE or Nasdaq) are subject to the independence standards applicable under such exchange. Companies which are not listed will need to choose which independence standards they intend to use for purposes of this disclosure.

Companies are also required to disclose, for every director identified as independent, "by specific category or type," any transactions, relationship or arrangements not disclosed pursuant to Item 404(a) of Regulation S-K that were considered by the board of directors in determining that the director was independent. An instruction indicates that the description of the "category or type" must be sufficiently detailed so that the nature of the transactions, relationships or arrangements is readily apparent. This disclosure requirement will put pressure on boards of directors to authorize disclosure of additional related party transactions even if not technically required by Item 404(a) (or, alternatively, will make it harder to conclude that directors are independent).

Under the Final Rules, if a company uses its own definitions for determining whether its directors and members of specific board committees are independent, the company should disclose whether these definitions are available on the company's website. If so, the disclosure should provide the company's web site address. If not, a copy of the policies should be included in an appendix to the company's proxy statement at least once every three fiscal years or if the policies have been materially amended since the beginning of the company's last fiscal year. If a current copy of the policies is not available on the web site, and is not included as an appendix to the proxy statement, the company's disclosure should disclose the most recent fiscal year in which the policies were so included in satisfaction of this requirement.

Enhanced Compensation Committee and Compensation Disclosure

A new section of the annual meeting proxy statement will require enhanced disclosures regarding the compensation committee and the compensation determination process. The new transparency and mandatory disclosures about, among other things, compensation consultants and delegation of authority regarding compensation matters may lead companies to modify their processes of determining executive compensation.

The new required disclosures include the following:

- If the company does not have a compensation committee or committee performing similar functions, the company must state the basis for the view of the board that it is appropriate not to have such a committee and identify each director who participates in the consideration of executive officer and director compensation.
- The disclosure must provide a narrative description of the company's processes and procedures for the consideration and determination of executive and director compensation.
- The disclosure must describe the scope of authority of the compensation committee (or persons performing equivalent functions).
- The company must describe the extent to which the compensation committee may delegate any of its authority to other persons, specifying what authority may be delegated and to whom.
- The company must describe any role of executive officers in determining or recommending the amount or form of executive and director compensation.
- The company must describe any role of compensation consultants in determining or recommending the amount or form of executive and director compensation, identify such consultants, state whether they are engaged directly by the compensation committee or any other person, describe the nature and scope of their assignment, and describe the material elements of the instructions or directions given to the consultants with respect to the performance of their duties. The Final Rules did not adopt the proposal which would have required disclosure of the executive officers contacted by the consultant to carry out the assignment.

Foreign Private Issuers

Disclosure rules governing foreign private issuers remain fundamentally unchanged. Such issuers will continue to be in compliance with the disclosure rules so long as they comply with the disclosure requirements of Form 20-F. These rules require compensation disclosure for executives in the aggregate

only, unless disclosure of each individual's compensation is required by the issuer's home jurisdiction or a market in which its securities are listed or traded (or if the issuer otherwise discloses the information).

The Final Rules amend the exhibit instructions to Form 20-F (and amend Form S-K similarly) to conform with the disclosure rules under Form 20-F, by requiring a foreign private issuer to file employment or compensatory plans with management or directors only when the issuer either would be required to publicly file the plan in its home country or if it otherwise discloses the information. Currently, an issuer that provides any individualized compensation disclosure is required to file management employment agreements that potentially relate to matters that have not otherwise been disclosed.

In addition, the related person transaction rules remain substantially unchanged for foreign private issuers. Foreign private issuers will be deemed in compliance with Item 404 of Regulation S-K as long as they provide the information required by Item 7.B. of Form 20-F. The Final Rules add an instruction to Item 404 providing that, if more detailed information is required to be disclosed by the issuer's home jurisdiction or a market in which its securities are listed or traded, that same information must also be disclosed pursuant to Item 404.

Beneficial Ownership of Securities By Officers and Directors

The amendments to Item 403(b) of Regulation S-K require disclosure of the number of shares pledged as security for indebtedness by named executive officers, directors and nominees. The amendments also require the inclusion of directors' qualifying shares in the total amount of securities owned.

Effectiveness and Transition

The Final Rules generally are effective for the 2007 proxy season. Specifically, effective dates are as follows:

- Annual Reports: for fiscal years ending on or after December 15, 2006.
- Current Reports on Form 8-K: for triggering events that occur 60 days or more after publication of the Final Rules in the Federal Register.
- Proxy statements: for statements filed on or after December 15, 2006 that are required to include executive compensation and related party transaction disclosure for fiscal years ending on or after December 15, 2006.
- Registration statements (including pre-effective and post-effective amendments): for those filed on or after December 15, 2006 (in effect requiring a company filing its IPO registration statement before such date and going effective after such date to comply with both the old and new requirements in the course of one registration process).

* * *

If you have any questions about the Final Rules, please call your regular Fried Frank contact or any of the attorneys listed below.

New York

Donald P. Carleen 212.859.8202
Jonathan F. Lewis 212.859.8044
Uri Horowitz 212.859.8778

Michael A. Levitt 212.859.8735
Loryn Zerner 212.859.8087

New York

Laraine S. Rothenberg 212.859.8745
Amy L. Blackman 212.859.8620
Danielle Motelow 212.859.8291

Washington

Richard Steinwurtzel 202.639.7120

Fried, Frank, Harris, Shriver & Jacobson LLP

New York
One New York Plaza
New York, NY 10004
Tel: +212.859.8000
Fax: +212.859.4000

Washington, DC
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: +202.639.7000
Fax: +202.639.7003

Frankfurt
Taunusanlage 18
60325 Frankfurt am Main
Tel: +49.69.870.030.00
Fax: +49.69.870.030.555

**Fried, Frank, Harris, Shriver
& Jacobson (London) LLP**
99 City Road
London EC1Y 1AX
Tel: +44.20.7972.9600
Fax: +44.20.7972.9602

**Fried, Frank, Harris, Shriver
& Jacobson (Europe)**
5, boulevard de La Tour-Maubourg
75007 Paris
Tel: +33.140.62.22.00
Fax: +33.140.62.22.29