

RR DONNELLEY

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK:

A Practical Guide to the SEC's
Executive Compensation Disclosure Rules

Perkins Coie LLP
Danielle Benderly
Susan Daley
Iveth Durbin
Sue Morgan
Kelly Reinholdtsen

Executive Compensation Disclosure Handbook:

**A Practical Guide to the SEC's
Executive Compensation
Disclosure Rules**

REVISED MAY 2010

**Danielle Benderly
Susan Daley
Iveth Durbin
Sue Morgan
Kelly Reinholdtsen**

RR DONNELLEY

Copyright RR Donnelley, 2010

(No claim to original U.S. Government works)

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of the authors and publisher.

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a professional should be sought.

Printed in the United States of America.

RR DONNELLEY

About RR Donnelley Financial Services Group

As the world's largest provider of integrated communications, RR Donnelley successfully leverages our global platform, industry leading service organization and enduring financial stability to help our clients achieve their goals.

With over 145 years of experience, RR Donnelley works collaboratively with more than 60,000 clients worldwide to provide a range of solutions to address all of their business communications needs. Our unparalleled print capacity, innovative technologies and deep industry expertise make RR Donnelley the partner of choice for corporations and their advisers.

EDGAR Filings—By continuously monitoring evolving regulations, RR Donnelley's experienced EDGAR team quickly and accurately processes over 85,000 filings annually with the SEC. With unparalleled service, accuracy and expertise, RR Donnelley is the partner that companies rely on when they have only one opportunity to file correctly.

EZ Start XBRL—With EZ Start, our full-service XBRL solution, RR Donnelley leads the industry in tagging, validating and furnishing XBRL-formatted financial statements to the SEC.

Venue[®] Virtual Data Rooms—Our virtual data room offers a highly secure, globally accessible online platform for the exchange and storage of critical information inside and outside the enterprise to accelerate collaboration and workflow management.

Client Education Programs—An established leader in legal and financial regulatory education, RR Donnelley is proud to host programs that touch thousands of clients across hundreds of public and private companies. Ranging from one-hour webcasts to full-day CLE/CPE certified events, RR Donnelley's programs help issuers and their advisers understand the practical implications of new regulations and trends impacting financial disclosure.

Outsourcing Services—RR Donnelley delivers judgment-dependent outsourcing services for law firms, life sciences organizations, financial institutions, other professional services firms and the Fortune 1000. From legal and creative communication services to research & analytics and financial management services, RR Donnelley has the people, infrastructure and capital to assume core functions of our clients' business, ultimately reducing cost and improving business performance.

Translations and Multilingual Communications—RR Donnelley specializes in the delivery of top-tier translation and multilingual typesetting services to the worldwide business community. Our in-country linguists support more than 140 languages and have subject-matter expertise across all verticals. Leveraging proprietary processes and technology, our linguists work collaboratively with clients to deliver a final product that is accurate, cost-effective and timely.

About RR Donnelley Financial Services Group

RR Donnelley is a reliable single-source solution for all of your business communication needs. As a Fortune 250 company, we are eager to put our strength, scale and expertise at your disposal. To learn more, please visit www.financial.rrd.com.

Compliance and EDGAR filing EZ Proxy® Notice and Access solution* EZ Start XBRL translation and rendering services* Judgment-dependent outsourcing services* Global financial and commercial printing* NET.filer® Self-service filing solution* Single-source composition services* Translations and multilingual communications* Venue(SM) virtual data rooms* Enhanced digital output formats*

CO-AUTHORS

Danielle Benderly is a partner at Perkins Coie in Portland.

Susan Daley is a partner at Perkins Coie in Chicago.

Iveth Durbin is a partner at Perkins Coie in Seattle.

Sue Morgan is a partner at Perkins Coie in Seattle.

Kelly Reinholdtsen is an attorney at Perkins Coie in Seattle.

The co-authors welcome your comments and suggestions via e-mail:

Danielle Benderly dbenderly@perkinscoie.com

Susan Daley sdaley@perkinscoie.com

Iveth Durbin idurbin@perkinscoie.com

Sue Morgan smorgan@perkinscoie.com

Kelly Reinholdtsen kreinholdtsen@perkinscoie.com

Perkins Coie LLP

www.perkinscoie.com

Anchorage, AK

Phone: (907) 279-8561

Fax: (907) 276-3108

Phoenix, AZ

Phone: (602) 351-8000

Fax: (602) 648-7000

Los Angeles, CA

Phone: (310) 788-9900

Fax: (310) 788-3399

Menlo Park, CA

Phone: (650) 838-4300

Fax: (650) 838-4350

San Francisco, CA

Phone: (415) 344-7000

Fax: (415) 344-7050

Denver, CO

Phone: (303) 291-2300

Fax: (303) 291-2400

Washington, DC

Phone: (202) 628-6600

Fax: (202) 434-1690

Boise, ID

Phone: (208) 343-3434

Fax: (208) 343-3232

Chicago, IL

Phone: (312) 324-8400

Fax: (312) 324-9400

Portland, OR

Phone: (503) 727-2000

Fax: (503) 727-2222

Dallas, TX

Phone: (214) 965-7700

Fax: (214) 965-7799

Bellevue, WA

Phone: (425) 635-1400

Fax: (425) 635-2400

Seattle, WA

Phone: (206) 359-8000

Fax: (206) 359-9000

Madison, WI

Phone: (608) 663-7460

Fax: (608) 663-7499

Beijing, China

Phone: 86.10.6296.0888

Fax: 86.10.6296.1566

Shanghai, China

Phone: 86.21.5132.0757

Fax: 86.21.5132.0650

DISCLAIMERS

PLEASE READ THESE DISCLAIMERS: This book is intended to provide general information and is not intended to provide legal advice as to any particular situation. You should not and are not authorized to rely on this book as a source of legal advice. The views expressed in this book are those of the authors only and do not necessarily reflect the views of Perkins Coie LLP. This book does not create any attorney-client relationship between you and Perkins Coie LLP or any individual author.

IMPORTANT TAX INFORMATION: This communication is not intended or written by Perkins Coie LLP to be used, and cannot be used by the taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code of 1986, as amended, or to support the promotion or marketing of any entity, investment plan or arrangement.

TABLE OF CONTENTS

1.0 INTRODUCTION	1
2.0 COMPENSATION DISCUSSION AND ANALYSIS	3
2.1 Required CD&A Topics	4
2.2 Additional CD&A Topics	4
2.3 Benchmarking	6
2.4 Disclosure of Performance Targets	6
3.0 EXECUTIVE COMPENSATION TABLES AND RELATED NARRATIVE DISCLOSURES	10
3.1 Identification of Named Executive Officers	11
3.2 Summary Compensation Table	13
3.2.1 Salary and Bonus Columns	15
3.2.2 Stock Awards and Option Awards Columns	17
3.2.3 Non-Equity Incentive Plan Compensation Column	20
3.2.4 Change in Pension Value and Nonqualified Deferred Compensation Earnings Column	22
3.2.5 All Other Compensation Column	23
3.2.6 Total Column	28
3.3 Grants of Plan-Based Awards Table	29
3.4 Narrative Description of Additional Material Factors After Summary Compensation Table and Grants of Plan-Based Awards Table	33
3.5 Outstanding Equity Awards at Fiscal Year-End Table	34
3.6 Option Exercises and Stock Vested Table	37
3.7 Pension Benefits Table	39
3.8 Nonqualified Deferred Compensation Table	42
3.9 Other Potential Post-Employment Payments	44
4.0 DIRECTOR COMPENSATION DISCLOSURE	46
4.1 Director Compensation Table	47
4.2 Narrative Disclosure of Director Compensation	49
5.0 ANALYSIS OF RISKS RELATED TO COMPENSATION FOR ALL EMPLOYEES	49
6.0 COMPENSATION COMMITTEE ISSUES	51
6.1 Compensation Committee Report	51
6.2 Compensation Committee Practices and Procedures	52
6.3 Disclosure of Compensation Consultant Fees	53
6.4 Compensation Committee Issues Involving Related Person Transactions	54

7.0	REPORTING COMPENSATION ON FORM 8-K	55
7.1	Item 5.02 of Form 8-K	55
7.2	Companies Must Report Shareholder Voting Results on Form 8-K Within Four Business Days	57
8.0	BENEFICIAL OWNERSHIP TABLE	58
8.1	Management Shares Subject to Stock Pledges	58
8.2	Directors' Qualifying Shares	59
9.0	EFFECT OF NEW RULES ON FOREIGN PRIVATE ISSUERS AND SMALLER REPORTING COMPANIES	59
9.1	Foreign Private Issuers	59
9.2	Smaller Reporting Companies	59
10.0	PLAIN ENGLISH REQUIREMENTS	60
11.0	EFFECTIVE DATES FOR SEC'S DECEMBER 2009 AMENDMENTS	61
APPENDICES		
Appendix A:	Full Text of Regulation S-K Items 402, 403, 404 and 407 (as amended through December 2009)	
Appendix B:	Excerpts from the December 16, 2009 Adopting Release	
Appendix C:	Excerpts from the July 26, 2006 Adopting Release	
Appendix D:	Applicable SEC Compliance and Disclosure Interpretations (through March 12, 2010)	
Appendix E:	Executive and Director Compensation Tables (including samples of optional supplemental compensation tables)	
Appendix F:	Information Regarding Confidential Treatment	

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK: A PRACTICAL GUIDE TO THE SEC'S EXECUTIVE COMPENSATION DISCLOSURE RULES

Revised May 2010

1.0 INTRODUCTION

On December 16, 2009, the Securities and Exchange Commission adopted further amendments to its executive officer and director compensation disclosure rules, which the SEC had comprehensively amended in 2006. These changes require enhanced disclosure in proxy and information statements, annual and periodic reports, and registration statements.

These additional changes to the rules will likely continue the attention and scrutiny the SEC, investors and the public have been applying to proxy statements and annual reports during proxy and annual reporting seasons. This revised handbook provides an overview of the SEC's compensation disclosure rules, including the most significant changes and requirements through March 1, 2010 under the rules and guidance and offers practical advice to help companies understand, and comply with, the disclosure requirements. Please note that the SEC Staff has issued frequent Compliance and Disclosure Interpretations since the adoption of the rules. Readers should be alert for new Compliance and Disclosure Interpretations issued after March 1, 2010.

See **Appendix A** to this handbook for a copy of the full text of the rules, as amended through December 2009. See **Appendix B** for a copy of the relevant portions of the Adopting Release for the SEC's final rules adopted on December 16, 2009 and **Appendix C** for a copy of the relevant portions of the Adopting Release for the SEC's final rules adopted on July 26, 2006. See **Appendix D** for the Compliance and Disclosure Interpretations issued through March 1, 2010 in connection with these rules.

■ WHAT DID THE SEC'S DECEMBER 2009 AMENDMENTS CHANGE?

New Analysis of Risks Related to Compensation for All Employees. A company must discuss its policies and practices for compensating all employees (not just the named executive officers) as they relate to risk management practices and risk-taking incentives to the extent that risks arising from these policies and practices are reasonably likely to have a material adverse effect on the company.

Report Aggregate Grant Date Fair Value of Stock Options and Stock Awards in Summary Compensation Table and Director Compensation Table. In a change that may affect which executive officers (other than the always included CEO and CFO) appear in the Summary Compensation Table, companies must disclose in the Summary Compensation Table and Director Compensation Table the value of stock options and stock awards granted during the year based on the aggregate grant date fair value of awards, instead of the value recognized for financial statement reporting purposes of all awards outstanding during the year.

● **Transition: Report Grant Date Fair Value for Each Year Included in the Tables.** For each year included in the Summary Compensation Table and Director Compensation Table, including years that ended before the effective date of the SEC's December 2009 rule changes, companies must disclose the value of stock options and stock awards granted during the year based on their aggregate grant date value. This means that all companies that disclose information for years ended before December 20, 2009 must recalculate the amounts disclosed, rather than use the same amounts disclosed in their prior filings.

● **Report Value of Performance Awards Based on Probable Outcome.** Companies must disclose performance awards at grant date fair value in the Summary Compensation Table, the Grants of Plan-Based Awards Table and the Director Compensation Table based on the probable outcome of the performance conditions on the date of grant (typically at target) rather than at maximum value (although companies must report the maximum value in a footnote to the Summary Compensation Table and the Director Compensation Table).

■ **SEC MAY REQUIRE COMPANIES TO AMEND FILINGS IN RESPONSE TO STAFF COMMENTS**

Companies Should Be Prepared to Amend Filings to Correct Materially Noncompliant Disclosures. The SEC typically reviews a company's executive and director compensation disclosures in connection with its review of the company's periodic reporting disclosure, which the SEC must review at least once every three years pursuant to the Sarbanes-Oxley Act of 2002. The SEC Staff has stated that, starting in January 2010, they intend to require companies to amend filings to address SEC Staff comments with respect to disclosure that does not materially comply with applicable SEC rules where the SEC believes it has provided clear

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

guidance. With respect to executive and director compensation disclosure provided in a proxy statement, the SEC Staff will typically not require a company to amend the proxy statement to provide the required disclosure but will instead require the company to provide the required disclosure in an amendment to its annual report on Form 10-K (which typically would include executive and director compensation disclosure only by incorporation by reference to the proxy statement).

2.0 COMPENSATION DISCUSSION AND ANALYSIS

Companies begin their executive compensation disclosure with the Compensation Discussion and Analysis, which discusses the material information necessary to understand the objectives and policies of a company's compensation programs for its "named executive officers" (see Section 3.1 regarding the determination of named executive officers). The CD&A should explain and put into perspective the numbers in the compensation tables that follow it.

CD&A Is Principles-Based Disclosure. The CD&A is a principles-based report, which means that each company must determine in light of its particular facts and circumstances what elements of the company's compensation policies and decisions are material to investors. The CD&A's overview of executive compensation is intended to be similar in scope to the MD&A section of an annual report that discusses a company's results of operations and financial condition. Like the MD&A, the CD&A must not use "boilerplate" language or simply repeat the information provided in the executive compensation tables and related narrative to the tables.

Focus Must Be on Analysis. Companies must focus the CD&A on *analysis*, explaining *how* they arrived at the particular forms and levels of compensation that they chose to award and *why* they pay that compensation and made the compensation decisions they did (rather than simply describing *what* they decided or their process for making compensation decisions).

CD&A Is Company Disclosure. The CD&A is company disclosure, *not* compensation committee disclosure, and is *filed*, not furnished. The general disclosure and liability provisions of the Securities Act and the Exchange Act apply to the CD&A, including the CEO and CFO certifications required under the Sarbanes-Oxley Act of 2002.

CD&A Must Discuss All Named Executive Officers. The CD&A must discuss the company's executive compensation policies and decisions applicable to all its named executive officers, as well as any material differences in

compensation policies and decisions for any individual named executive officer. Executive officers for whom policies or decisions are materially similar can be grouped together. Where the policies or decisions for an individual named executive officer are materially different from the others (e.g., in the case of a principal executive officer), his or her compensation should be discussed separately.

May Need to Discuss Events That Occurred Before or After the Subject Fiscal Year-End. The CD&A should discuss policies and decisions made in prior fiscal years as necessary to present a fair and complete understanding of the company's executive compensation policies and decisions for the fiscal year covered by the CD&A and the tabular compensation disclosure. The CD&A should likewise discuss policies and decisions made after fiscal year-end but before the company files the CD&A (such as the adoption or implementation of new or modified programs and policies).

2.1 Required CD&A Topics

The CD&A must answer the following questions about the company's compensation for its named executive officers.

- What are the objectives of the company's compensation programs?
- What is the compensation program designed to reward?
- What is each element of compensation?
- Why does the company choose to pay each element?
- How does the company determine the amount (and, where applicable, the formula) for each element?
- How do each element and the company's decisions regarding that element fit into the company's overall compensation objectives and affect decisions regarding other elements?

2.2 Additional CD&A Topics

The SEC also provides a nonexclusive list of topics that a company should discuss in the CD&A if material and relevant to an understanding of its compensation policies and procedures for its named executive officers. The CD&A must be comprehensive and must discuss the compensation policies and practices that the company actually applies, even if they do not fall within one of the examples below.

- Policies for allocating between current and long-term compensation and, for long-term compensation, the basis for allocating compensation to each different form of award.

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

- Policies for allocating between cash and noncash compensation, and among different forms of noncash compensation.
- How the company determines when to grant awards, including equity-based compensation such as options (discussed further below).
- Specific items of corporate performance used to set compensation policies and make compensation decisions.
- How the company structures and implements specific forms of compensation to reflect company performance and/or individual performance.
- Whether the company can exercise discretion to pay compensation even if performance does not meet established performance goals or whether the company can otherwise reduce or increase the size of any award or payout—if so, the company must describe each particular exercise of this discretion and whether it applied to one or more specified named executive officers or to all compensation subject to the relevant performance goal(s).
- How the company structures and implements specific forms of compensation to reflect the named executive officer's individual performance and/or individual contribution to these items of the company's performance, describing the elements of individual performance and/or contributions that are taken into account.
- The company's policies and decisions on adjusting or recovering awards or payments if the company restates or otherwise adjusts the relevant company performance measures in a manner that would reduce the size of an award or payment.
- Factors the company considers to increase or decrease compensation.
- How the company considers prior compensation in setting other elements of compensation (e.g., gains from prior stock or option awards).
- The company's basis for selecting particular events as triggering events under any contract, agreement, plan or arrangement that provides for payments at, following or in connection with a termination of the executive or a change in control of the company (e.g., the company's rationale for providing a single trigger for change-in-control payments).
- The effect of accounting and tax treatment on the company's compensation decisions.
- Any stock ownership guidelines, stating the amount and form of ownership required, and any policies regarding hedging the economic risk of such ownership.

RR DONNELLEY

- Whether the company engaged in any benchmarking of total compensation or any element of compensation, identifying the benchmark and, if applicable, its components, including component companies (discussed further below).
- The role the company's executive officers play in executive compensation decisions.

In addition, if a compensation consultant plays a material role in the company's compensation-setting practices and decisions, then the company should discuss the role of that consultant in the CD&A. To the extent material to compensation decisions, companies should also explain how certain tools were used in making compensation decisions, such as tally sheets, wealth accumulation surveys, internal pay equity surveys and walk-away numbers.

2.3 Benchmarking

The SEC has clarified that benchmarking generally means using compensation data about other companies as a reference point on which, either wholly or in part, to base, justify or provide a framework for a compensation decision (e.g., when a compensation committee intends to set total compensation at the median level of a comparator group). Benchmarking does not include a situation where a company reviews or considers a broad-based third-party survey for a more general purpose, such as to obtain a general understanding of current compensation practices (e.g., as a "market" check after determining compensation on some other basis).

If a company is in fact benchmarking its executive compensation against a peer group or survey, the SEC requires companies to identify all of the companies in the peer group or survey. The disclosure must include the names of the individual companies and, with respect to peer groups, why the comparator companies were selected for the peer group. In addition, when specific elements of compensation are tied to a benchmark, companies must disclose where actual payments and awards fall within the targeted range and, if applicable, the reason for any compensation amounts that fall outside the targeted range.

2.4 Disclosure of Performance Targets

Companies must disclose company and individual performance targets for incentive compensation and the actual achievement level against the targets if they are material elements of the company's compensation policies and decisions, unless the disclosure would result in competitive harm to the company.

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Since adoption of the rules, the SEC has consistently focused on this disclosure requirement and to date has issued more comment letters to companies on this item of disclosure than any other. The SEC has also clarified that although the general rules regarding disclosure of non-GAAP financial measures (Regulation G) do not apply to disclosure regarding performance-related target levels, a company must disclose how the target levels are calculated from its audited financial statements.

- **Threshold Question Is Materiality.** A company must first determine whether performance targets are a material element of the company's compensation policies and decisions. If performance targets are not material, then the company is not required to disclose them. Whether performance targets are material is a facts-and-circumstances test, which a company must evaluate in good faith. The SEC has indicated that the fact that a target was not met is not dispositive as to materiality but rather is only one factor to consider. For example, even if the performance target does not result in an actual payout, it still may be material if it plays an important role in how the company incentivizes its named executive officers.
- **Qualitative vs. Quantitative Performance Goals.** A company may distinguish between *qualitative/subjective* individual performance goals (e.g., effective leadership and communication) and *quantitative/objective* performance goals (e.g., specific revenue or earnings targets). A company is not required to provide quantitative targets for what are inherently subjective or qualitative assessments.
- **Competitive Harm Exception.** If performance targets are material in the context of a company's executive compensation policies or decisions, companies are not required to disclose target levels or other factors or criteria involving confidential and sensitive information only if disclosure will result in competitive harm to the company. This relief is not available if companies have publicly disclosed the target levels elsewhere.
- **If Performance Goal Omitted, Must Discuss Likelihood of Achieving Goal.** If a company omits performance targets, the CD&A must discuss with meaningful specificity *how difficult* it will be for the executive, or *how likely* it will be for the company, to achieve the undisclosed target levels or other undisclosed factors or criteria. A company must provide support for this level-of-difficulty statement, and not just generally state that the targets are "challenging" or are "stretch goals" (for example, the

correlation between past achievement and anticipated future achievement of the performance target).

- **SEC Imposes Stringent Standard of Review on Omitted Performance Goals.** The SEC rarely accepts competitive harm arguments for company-level performance targets where disclosure of the performance target will occur after the fiscal year has ended and actual company results have been disclosed. The SEC also rarely accepts competitive harm arguments for corporate-level financial performance targets, such as earnings per share, earnings per share growth or revenue growth. Competitive harm arguments are more likely to be accepted in the context of operating or business unit performance targets.
-

■ **COMPETITIVE HARM STANDARD FOR CONFIDENTIAL TREATMENT OF OMITTED PERFORMANCE GOALS**

The standard for determining whether CD&A disclosure of specific performance-related factors will result in competitive harm to the company is the same standard companies apply in requesting confidential treatment of confidential trade secrets or confidential commercial or financial information that is otherwise required to be disclosed in documents filed with the SEC, though companies are not required to actually submit a confidential treatment request to the SEC to omit this information from the CD&A. Under this standard, the “confidential” information must fall within one of nine exemptions outlined in the Freedom of Information Act. Most companies rely on the exemption that covers trade secrets and commercial or financial information. See **Appendix F** to this handbook for additional information regarding confidential treatment and the bases for asserting competitive harm.

To reach a conclusion that the disclosure would result in competitive harm, a company must analyze, in the context of its industry and competitive environment, whether a competitor could extract information from the targets about the company’s business or business strategy that could be used by a competitor to the company’s detriment. A company must have a reasoned basis for concluding, based on its specific facts and circumstances, that the disclosure of the targets would cause it competitive harm.

Since the CD&A is subject to SEC review, if a company does not disclose performance target levels or other performance factors or criteria, the SEC

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

may request by comment letter that the company demonstrate that the omitted information meets both the competitive harm and confidentiality tests. In the event of SEC review, companies must be prepared to explain exactly how disclosure of material performance targets would result in competitive harm to the company, including the precise competitive harm that the company would potentially suffer from disclosure of the information. Companies typically make these arguments in a nonpublic submission to the SEC pursuant to the SEC's confidential treatment procedures under Rule 83. If the SEC determines that the omitted information does not meet the competitive harm and confidentiality tests, the company will be required to publicly disclose the information, and will likely be required to do so in an amendment to its current year SEC filings.

■ EQUITY COMPENSATION PRACTICES DISCLOSURE IN CD&A

CD&A Must Address Certain Material Matters Relating to Equity Compensation. Responding to investor concerns and civil and criminal actions involving companies' stock option granting practices, the SEC requires companies to address in the CD&A matters relating to equity compensation programs, plans and practices, in particular, practices relating to the timing of equity compensation grants and the selection of stock option exercise prices.

Timing Equity Compensation Grants. For equity compensation grant timing issues, companies should address the following questions in the CD&A, to the extent applicable:

- Does the company have any program, plan or practice to time equity compensation grants to its executives in coordination with the release of material nonpublic information?
- How does any such program, plan or practice fit in the context of the company's program, plan or practice, if any, with regard to equity compensation grants to employees more generally?
- What was the role of the compensation committee in approving and administering such a program, plan or practice, including how the board of directors or compensation committee took such information into account when determining whether and in what amount to grant equity compensation and whether the compensation committee delegated to any other person any aspect of the actual administration of a program, plan or practice?

RR DONNELLEY

- What was the role of executive officers in such a program, plan or practice?
- Does the company set the grant date of its equity compensation grants to new executives in coordination with the release of material nonpublic information?
- Does the company plan to time, or has it timed, the release of material nonpublic information for the purpose of affecting the value of executive compensation?

Selecting Stock Prices. Each company must also discuss in the CD&A any program, plan or practice related to setting stock option exercise prices, or stock prices used for other equity compensation, based on the value of the company's stock on a date other than the actual grant date of the stock option or other equity compensation. In addition, a company must discuss in the CD&A any practice of determining the value of its stock based on a value other than the market price of its stock on the equity compensation grant date (which could include using a formula based on average prices, or lowest prices, of the company's stock over a period preceding, surrounding or following the grant date).

Companies Should Establish or Review Formal Equity Compensation Granting Policies and Procedures. Companies that have not established formal equity compensation granting policies and procedures should consider doing so. Companies that have established formal equity compensation granting policies and procedures should review them periodically and update them in light of actual practices. Companies with formal equity compensation granting policies and procedures that they follow consistently will more easily comply with the disclosure requirements and may reduce their exposure to future allegations of impropriety concerning equity compensation grants.

3.0 EXECUTIVE COMPENSATION TABLES AND RELATED NARRATIVE DISCLOSURES

The compensation tables and related narrative disclosures required by Item 402 of Regulation S-K fall into three broad categories:

- **Current Compensation Earned.** Companies must disclose compensation earned by the named executive officers during the most recently completed fiscal year and the preceding two fiscal years, as applicable, in the Summary Compensation Table and provide supplemental information

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

on plan-based awards granted during the last completed fiscal year in the Grants of Plan-Based Awards Table, with accompanying narrative disclosure for both tables, under Item 402(c) through (e) of Regulation S-K.

- **Current Equity Holdings and Realizations on Equity Holdings.** Companies must disclose outstanding equity holdings as of fiscal year-end in the Outstanding Equity Awards at Fiscal Year-End Table and realizations on such holdings during the most recent fiscal year in the Option Exercises and Stock Vested Table under Item 402(f) through (g) of Regulation S-K.
- **Post-Employment Compensation.** Companies must disclose retirement and other post-employment compensation, including pension plans, in the Pension Benefits Table, deferred compensation plans in the Non-qualified Deferred Compensation Table and, in a separate section, other post-employment plans and benefits, including payments relating to resignation, severance, retirement and change in control, under Item 402(h) through (j) of Regulation S-K.

See **Appendix E** to this handbook for copies of the tables required by the compensation rules as well as for samples of supplemental compensation tables companies may want to include to more fully describe certain compensatory items. One or more columns in the required tables and entire tables (other than the Summary Compensation Table) may be omitted if there is no applicable information required for any of the named executive officers. Companies must specify the applicable fiscal year in the title to each required table that calls for disclosure as of or for a completed fiscal year.

3.1 Identification of Named Executive Officers

Companies must disclose in the CD&A and related tables and narrative the compensation of their “named executive officers.” Item 402(a) of Regulation S-K identifies the named executive officers as:

- **The CEO and CFO.** All individuals who served as the principal executive officer or the principal financial officer of the company *at any time* during the most recent fiscal year
 - regardless of compensation level and
 - regardless of whether they were serving as CEO or CFO on the last day of the most recent fiscal year.

RR DONNELLEY

- **The Three Most Highly Compensated Executives.** The three most highly compensated executive officers (other than the CEO and CFO)
 - who were serving as executive officers at the end of the last completed fiscal year and
 - whose *total compensation* was \$100,000 or more for the last completed fiscal year. For purposes of determining whether an individual is a named executive officer, total compensation includes all elements of compensation reportable in the Total column of the Summary Compensation Table, excluding any amount reportable in the Change in Pension Value and Nonqualified Deferred Compensation Earnings column of the Summary Compensation Table.
- **Up to Two Former Executives.** Up to two additional individuals who served as executive officers during any part of the last completed fiscal year but who were not serving as executive officers at the end of the last completed fiscal year, provided such individuals' *total compensation* for the portion of the year served would have made the individual one of the three most highly compensated executives for the last completed fiscal year. If a former executive officer became a non-executive officer employee during the last completed fiscal year, the compensation the person earned during the entire fiscal year is considered when determining if the person is a named executive officer for that year. For purposes of determining whether a former executive officer qualifies as a named executive officer, total compensation includes all elements of compensation reportable in the Total column of the Summary Compensation Table, excluding any amount reportable in the Change in Pension Value and Nonqualified Deferred Compensation Earnings column of the Summary Compensation Table.

Definition of “Executive Officer.” The SEC defines “executive officer” to include any president, vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function or any other person (including any employee of a subsidiary) who performs similar policy-making functions for the company.

Compensation Related to Overseas Assignments May Be Excluded. In determining the named executive officers (other than the CEO and CFO), companies may generally exclude cash compensation relating to

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

overseas assignments that is attributed primarily to such assignments. However, companies must include other cash compensation that was not part of a recurring arrangement and that was unlikely to continue.

■ EXPECT YEAR-TO-YEAR CHANGES IN WHICH EXECUTIVE OFFICERS ARE “NAMED”

Since the pay rankings in the Summary Compensation Table are based on total compensation (calculated as described above), the rankings of the named executive officers (other than the CEO and CFO) may be affected in any given year by an unusual, one-time payment, such as the grant of a large stock option, a signing bonus or a severance payment. As a result of severance payments being included in the calculation of total compensation, companies also frequently may find that they are required to disclose compensation information for former executive officers who departed during the last completed recent fiscal year.

3.2 Summary Compensation Table

The Summary Compensation Table is the principal source of specific executive compensation disclosure, and the CD&A and other compensation tables are intended to explain and supplement the numbers reported in the Summary Compensation Table. The Summary Compensation Table requires, to the extent applicable, information for each of the named executive officers under each of the column headings shown below.

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 (\$)
-----------------------------	------	----------------	---------------	-------------------------	--------------------------	--	---	-----------------------------------	---------------

Three Years of Compensation Information Required. Companies must disclose information for each of the last three completed fiscal years, with the following exceptions:

- **Newly Appointed Executive Officer.** If an individual became a named executive officer for the first time during the last completed fiscal year, information is required only for that year and not for either of the prior two fiscal years during which the individual was not a named executive officer. However, if an executive officer was a named executive officer during the last completed fiscal year and was also a named executive officer two years prior, compensation information for the executive officer must be

RR DONNELLEY

disclosed for all three fiscal years, even though the individual was not a named executive officer during the intervening year.

- **Newly Reporting Companies.** A company may exclude information for fiscal years prior to the last completed fiscal year if the company was not an Exchange Act Section 13(a) or (15)(d) reporting company at any time during that year, unless the information was required to be disclosed in a prior SEC filing.

All Compensation Earned by Named Executive Officers Must Be Included. A company must include *all* compensation earned or awarded to a named executive officer for services to the company during the last completed fiscal year without regard to whether that compensation is paid directly by the company or indirectly, for example by a parent or subsidiary company.

- **Service for a Partial Fiscal Year.** If a named executive officer (including the CEO and CFO) served as an executive officer for only a portion of the last completed fiscal year, *all* compensation earned by the named executive officer during that fiscal year for services to the company in any capacity must be disclosed. For example, if an individual qualifies as a named executive officer due to a promotion during the last completed fiscal year, compensation earned during that fiscal year prior to the promotion must be disclosed. Amounts earned for service during a portion of a fiscal year should not be annualized (e.g., for a new CEO or those who terminated during the year).

After a Merger, May Exclude “Predecessor” Compensation. Because the SEC does not consider the resulting company in a merger as a successor for compensation purposes, after a merger, the resulting or successor company should exclude all compensation paid by the predecessor company that disappeared in the merger to a named executive officer both for disclosure purposes and when calculating total compensation for purposes of determining the identity of the successor company’s named executive officers. A different result may apply in situations involving an amalgamation or combination of companies.

All Deferred Compensation Must Be Included. A company must include in the appropriate column of the table *all* compensation earned by the named executive officer for services to the company during the last completed fiscal year, including any deferred amounts. Because the aggregate amounts deferred may also be disclosed in the Nonqualified Deferred Compensation

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Table (described below), to avoid double counting, companies must disclose by footnote to the Nonqualified Deferred Compensation Table any amounts also reported in the Summary Compensation Table.

Summary Compensation Table Must Report Value of Compensatory Related Person Transactions. The value of all transactions between the company and a third party where the primary purpose is to compensate a named executive officer must be disclosed, even if the transaction is also reported as a related person transaction.

All Compensation Must Be Reported in U.S. Dollars. Compensation amounts must be reported in U.S. dollars, rounded to the nearest whole dollar. Any compensation paid in a non-U.S. currency must be identified in a footnote to the applicable column that identifies the currency and describes the rate and methodology used to convert the amount to U.S. dollars.

3.2.1 Salary and Bonus Columns. Companies must disclose in the Salary and Bonus columns the dollar value of base salary and bonus (cash and noncash) earned by the named executive officers during the applicable fiscal years.

- **Salary.** While not expressly defined in Item 402, “salary” includes items such as sales commissions, accrued but unused vacation time and any director fees paid to a named executive officer.
- **Bonuses.** Companies must report in the Bonus column the value of cash-based guaranteed or discretionary bonuses, retention bonuses, hiring bonuses and relocation bonuses that are not based on any pre-established performance criteria. Bonus amounts are disclosed for the fiscal year *earned*, not paid. For example, a retention bonus payable upon service through the end of the fiscal year is reportable for that fiscal year, even if actually paid by the company in the following fiscal year. Cash amounts earned under a “non-equity incentive plan” are not reported in the Bonus column but under the Non-Equity Incentive Plan Compensation column when earned.
- **When Is a “Bonus” a Non-Equity Incentive Plan Award?** An award is generally not a “bonus” for purposes of the Summary Compensation Table if the award is intended to serve as incentive for performance to occur over a specified period of any duration, even less than a year, and (1) the outcome of a performance target upon which payment of the award is conditioned is substantially uncertain at the time the target is established and (2) the target is communicated to the

executive. A non-equity incentive award is reported in the Non-Equity Incentive Plan Compensation column of the Summary Compensation Table when and to the extent earned, and not in the Bonus column. However, if the company, in its discretion, pays an amount in excess of the amount earned for achievement of the performance target established for the non-equity incentive compensation, the company reports the value of the excess amount in the Bonus column.

- **If Noncash Compensation Received in Lieu of Salary or Bonus, Generally Must Report as Salary or Bonus.** Subject to the exceptions described below, any salary or bonus that the named executive officer elects to receive in the form of stock or stock-based or other forms of noncash compensation generally must be disclosed in the appropriate column of the Summary Compensation Table (e.g., in the Salary or Bonus column). In addition, companies must footnote the applicable Salary or Bonus column to disclose the receipt of any forms of noncash compensation and, if applicable, that the award is also reported in the Grants of Plan-Based Awards Table. Two exceptions apply:
 - **Noncash Compensation Subject to FASB ASC Topic 718 (Formerly SFAS 123R).** If the noncash compensation is within the scope of FASB ASC Topic 718 (e.g., pursuant to an agreement whereby the named executive officer can elect settlement in stock or equity-based compensation within the scope of FASB ASC Topic 718), then the company must report the award as a stock award or option award, as applicable, instead of including the value in the Salary or Bonus column. The company should also report the awards, as applicable, in the Grants of Plan-Based Awards Table, Outstanding Equity Awards at Fiscal Year-End Table and Option Exercises and Stock Vested Table and explain in a footnote to the applicable tables that the named executive officer received the award in lieu of salary or bonus.
 - **Noncash Compensation Not Subject to FASB ASC Topic 718 That Exceeds Value of Salary or Bonus Foregone.** If the noncash compensation received in lieu of salary or bonus is not within the scope of FASB ASC Topic 718, but its value exceeds the value of the amount of salary or bonus foregone, the company must report the incremental value in the appropriate column of the Summary Compensation Table (e.g., Stock Awards or Option Awards column), based on the grant date fair value of such award and provide footnote disclosure about the circumstances of the award. If the value of the stock, equity-based or other

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

form of noncash compensation is the same as the amount of salary or bonus foregone at the election of the named executive officer, the amounts are reported only in the Salary or Bonus column. The company should also report the award, as applicable, in the Grants of Plan-Based Awards Table, Outstanding Equity Awards at Fiscal Year-End Table and Option Exercises and Stock Vested Table and explain in a footnote to the applicable tables that the named executive officer received the award in lieu of salary or bonus.

- **Bonus Clawback.** If, during the last completed fiscal year, a company recovers all or a portion of a bonus that was paid to a named executive officer during a year included in the table that precedes the last completed fiscal year, the Summary Compensation Table should adjust the Bonus amount previously reported for that fiscal year to reflect the “clawback” with footnote disclosure of the amount recovered. The CD&A should discuss the reasons for the “clawback” and how the amount recovered was determined if necessary to understand the company’s compensation policies and decisions regarding the named executive officers.
- **Generally No Disclosure Required if Discretionary Bonus Declined.** No disclosure is required if an executive officer declines a discretionary bonus before it is granted.
- **Report on Form 8-K Any Salary or Bonus Amounts That Cannot Be Timely Determined.** If a company cannot determine the amount of salary or bonus earned in the last completed fiscal year before it files the proxy statement or annual report that includes executive compensation disclosure, the company must disclose in a footnote to the applicable column(s) that the amount of salary or bonus is not yet calculable and the date on which it is expected to be calculated. When the amount is calculable, the company must disclose on Form 8-K both the amount *and* a new total compensation figure that includes the amount.

3.2.2 Stock Awards and Option Awards Columns. Companies must report the aggregate grant date fair value of all stock awards and option awards granted during the reported fiscal year, computed in accordance with FASB ASC Topic 718, excluding the effect of estimated forfeitures.

- **What Are Stock Awards?** “Stock awards” are equity awards whose value is derived from the company’s equity securities or that may be settled by issuance of the company’s equity securities and are within the scope of FASB ASC Topic 718. 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 are all stock awards.

- **Option Awards Include Stock Appreciation Rights.** “Option awards” are other equity awards that are similarly within the scope of FASB ASC Topic 718. Option awards include stock options, stock appreciation rights (whether granted in tandem with a stock option or freestanding and whether they can be settled in stock or cash, either at the election of the company or a named executive officer) and other similar instruments with option-like features.
- **Stock Awards and Option Awards Include Parent or Subsidiary Stock.** A company should report awards of stock of a parent or subsidiary company and options or other rights to purchase stock of a parent or subsidiary company that are awarded to the company’s named executive officers for services to the company in the same manner as the company would report such awards if they related to the company’s own shares, rather than shares of its parent or subsidiary company.
- **When to Include Value of an Award?** Amounts for stock awards and option awards are reported for the year of grant (even if for services rendered prior to the fiscal year in which the actual grant occurs). In contrast, awards in the Non-Equity Incentive Plan Compensation column are reported for the year earned, even if paid in a subsequent year.
- **How to Report Awards With a Performance Condition?** Awards subject to performance conditions are reported based on the probable outcome of the performance condition (typically the “target” award value) as of the award’s grant date. This amount should be consistent with the estimate of aggregate compensation cost to be recognized over the service period determined as of the grant date under FASB ASC Topic 718, excluding the effect of estimated forfeitures. Companies must disclose in a footnote to the table the aggregate grant date fair value for the award, assuming the highest level of achievement under the award if this amount is greater than that reported in the table.
 - **Performance Condition.** A performance condition is a condition affecting the vesting, exercisability, exercise price or other pertinent factors used in determining the grant date fair value of an award that relates to both:
 - > the executive rendering services for an explicitly or implicitly specified period of time and

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

- > achieving a specified performance target that is defined solely by reference to the company's own operations or activities or those of another company or group of companies (e.g., attaining a specified growth rate in return on assets, obtaining regulatory approval to market a specified product, selling shares in an initial public offering or other financial event or attaining a growth rate in earnings per share that exceeds the average growth rate in earnings per share of other entities in the same industry).
- **Disclose FASB ASC Topic 718 Valuation Assumptions.** Companies must disclose in a footnote to the applicable column the valuation assumptions used for the grant date fair value computation. Companies may do so by cross-reference to the discussion of the relevant valuation assumptions in their financial statements, footnotes to the financial statements or MD&A (or by a hyperlink if the proxy materials are made available on the Internet). A company may also provide the assumption information for the last completed fiscal year by reference to the Grants of Plan-Based Awards Table if the company reports the information in that table.
- **Disclose Equity Awards Even if Forfeited During the Year of Grant.** Companies must disclose the grant date fair value of all equity awards granted during the last completed fiscal year, even if they are subsequently forfeited during that same year.
- **Special Rules Govern Reporting of Equity Incentive Plan Awards Where Compensation Committee Retains Negative Discretion to Reduce Awards.** Generally, equity incentive plan awards are reported in the year of grant, even if the compensation committee retains negative discretion to reduce awards. However, special rules may govern the deemed year of grant in certain circumstances.
- **Disclose Incremental Expense of Option Awards Repriced or Equity Awards Materially Modified During Fiscal Year.** If the company repriced any options or stock appreciation rights or materially modified any equity awards held by a named executive officer during the last completed fiscal year, the company must disclose any incremental increase in fair value calculated as of the repricing or modification date in accordance with FASB ASC Topic 718 with respect to the repriced or modified award. If an award is modified in the year of grant, companies report both the original grant date fair value and the incremental fair value resulting from the modification in the appropriate equity award column of the Summary Compensation Table

(and both values are counted for purposes of identifying the named executive officers for a given year).

- **Value of Earnings on Stock Awards and Option Awards Generally Not Reportable.** The value of earnings on equity awards (e.g., dividends or dividend equivalents) will generally not need to be reported, because the value of the earnings is already reflected in the calculation of the grant date fair value of the award. However, if a company paid dividends or other earnings on awards that did not include such “dividend protection” in the initial grant date fair value calculation of the awards, then the company must include the value of those earnings in the All Other Compensation column.

3.2.3 Non-Equity Incentive Plan Compensation Column. Companies must report in the Non-Equity Incentive Plan Compensation column the dollar value of all amounts earned during the applicable fiscal year under non-equity incentive plans. Non-equity incentive plans are incentive plans that are not covered by FASB ASC Topic 718 for financial reporting purposes (e.g., cash-based plans). As described above, incentive plans are generally defined as plans, contracts, authorizations or arrangements, even if not set in a formal document, providing compensation intended to serve as incentive for performance to occur over a specified period.

- **Report Amounts Only When *Earned*.** Unlike stock awards and option awards, which are reported in the year granted, a company reports non-equity incentive plan awards *only* for the fiscal year when the specified performance criteria under the plan are satisfied and the compensation is earned. If a relevant performance measure is satisfied during a fiscal year (including during a single year in a plan with a multi-year performance period), companies must disclose the amount earned as compensation for that year, even if not payable until a later date (but then companies are not required to subsequently report the actual payment). The SEC justifies the inconsistency between the treatment of equity and non-equity awards (disclosure in the year of grant as opposed to disclosure in the year earned) on the grounds that there is no clearly required or accepted method (like FASB ASC Topic 718) for establishing a grant date fair value for non-equity based incentive awards that reflects the performance contingencies.
- **Report Amount of Declined Award.** If a non-equity incentive plan award is granted but payment of the award is declined by an executive officer, companies must disclose the amount earned pursuant to the award, even though declined, in the Non-Equity Incentive Plan Compensation

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

tion column (and should include the amount in the Total column for purposes of determining whether the individual is a named executive officer). Companies should disclose the executive officer's decision to decline payment of the award, either by adding a column to the Summary Compensation Table next to the Non-Equity Incentive Plan Compensation column, reporting the amount of non-equity incentive plan compensation declined, or by providing footnote disclosure to the Summary Compensation Table. Moreover, in the CD&A, companies should consider discussing the effect, if any, of the executive officer's decision on how the company structures and implements compensation to reflect performance.

- **Exercise of Discretion in Determining Non-Equity Incentive Plan Amounts.** If, in the exercise of negative discretion, a company pays an amount less than that earned by meeting the performance measure in the non-equity incentive plan, such amounts generally are still reportable in the Non-Equity Incentive Plan Compensation column. If, in the exercise of discretion, a company pays an amount over and above the amount earned by meeting the performance measure, the excess amount should be reported in the Bonus column. To the extent material, companies should discuss in the CD&A the basis for the use of discretion in determining amounts payable under a non-equity incentive plan.
- **Reporting an Annual Incentive Plan Award With an Embedded Stock Settlement Feature.** If an incentive plan by its terms allows executive officers to elect payment of an annual incentive award in either equity or cash, companies report the payouts as follows:
 - Companies report payments settled in shares in the Stock Awards column of the Summary Compensation Table (and also as an equity incentive plan award in the Grants of Plan-Based Awards Table) (even if the amount of the award is not determined until the next fiscal year).
 - Companies report cash payments in the Non-Equity Incentive Plan Compensation column of the Summary Compensation Table (and also as a non-equity incentive plan award in the Grants of Plan-Based Awards Table).
- **Reporting an Annual Incentive Plan Award Settled in Stock With No Embedded Stock Settlement Feature.** If no right to stock settlement is embedded in the terms of an annual incentive plan award, the award is not within the scope of FASB ASC Topic 718 and, therefore, is a non-equity incentive plan award. Companies report any payments settled in shares in the Non-Equity Incentive Plan Compensation column of the

Summary Compensation Table, with footnote disclosure of the stock settlement. Companies also report the award as a non-equity incentive plan award in the Grants of Plan-Based Awards Table. Companies do not report any stock received upon settlement of the annual incentive plan award in the Grants of Plan-Based Awards Table since that would double count the award.

- **No Exception for Delayed Payment.** Once the performance criteria are satisfied, a company must report the award even if the award is subject to forfeiture conditions (such as a continued service requirement) that could delay or prevent payment. The company may discuss any forfeiture conditions in the related narrative disclosure.
- **Disclose *Grants* in Grants of Plan-Based Awards Table.** Even though non-equity incentive plan awards are reported in the Summary Compensation Table only when earned, the grant of a non-equity incentive plan award must be disclosed in the Grants of Plan-Based Awards Table in the year of grant.
- **Include All Earnings on Outstanding Awards.** Companies must report in the Non-Equity Incentive Plan Compensation column all earnings with respect to outstanding non-equity incentive plan awards and quantify these amounts in a footnote, regardless of when the earnings are actually paid.

3.2.4 Change in Pension Value and Nonqualified Deferred Compensation Earnings Column. A company must disclose in the Change in Pension Value and Nonqualified Deferred Compensation Earnings column an amount equal to the sum of:

- the change in pension value under the company's pension plans and
- the value of any above-market or preferential earnings under the company's nonqualified deferred compensation plans.

The company must separately identify and quantify each component, as applicable, in a footnote.

- **Change in Pension Value.** Change in pension value reflects the aggregate annual change in the actuarial present value of accumulated pension benefits under all of the company's defined benefit and actuarial plans. These plans include nonqualified and tax-qualified defined benefit plans, cash balance plans and supplemental executive retirement plans. The change in pension value does not include changes under any of the company's defined contribution plans, such as 401(k) plans.
 - **No Negative Amounts.** Where a named executive officer participates in more than one pension plan, a company may subtract negative values

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

from decreases in value of one or more plans in calculating the aggregate change in actuarial present value of the named executive officer's accumulated pension benefit. However, a company may not report a negative amount (i.e., less than zero) for the aggregate change in pension value reported in the Summary Compensation Table, but may disclose any negative amount in a footnote to the Change in Pension Value and Non-qualified Deferred Compensation Earnings column.

- **Compute Change in Value Using Financial Statement Assumptions.** A company computes the aggregate annual change in pension value using the same assumptions and measurement periods that it used for its audited financial statements for the applicable fiscal year. Basically, the annual change equals the difference between the accumulated benefit amount disclosed in the Pension Benefits Table (discussed below) for the subject fiscal year and the accumulated benefit amount that was or would have been disclosed for the prior fiscal year.
- **Include Value of Any Distributions.** If a named executive officer received a distribution, in-service or otherwise, under any company pension plan during the fiscal year, the company should include the value of the distribution in determining the increase in pension value.
- **Earnings on Nonqualified Deferred Compensation.** Amounts reported include only above-market or preferential earnings under any of the company's nonqualified deferred compensation plans during the most recent fiscal year, including under nonqualified defined contribution plans. A company may disclose its criteria for determining above-market or preferential earnings in a footnote or as part of the narrative disclosure.

3.2.5 All Other Compensation Column. A company must use the All Other Compensation column to disclose the aggregate amount of all compensation that the company could not properly report in any other column of the Summary Compensation Table (with a limited exception for perquisites), reflecting the SEC's requirement that *all* compensation earned by the named executive officers must be disclosed in the Summary Compensation Table.

- **Companies Must Identify and Quantify in a Footnote Each Element of All Other Compensation That Exceeds \$10,000 in Value.** Except for certain perquisites, companies must include in the All Other Compensation column the aggregate value of all elements of All Other Compensation, regardless of amount, and must identify and quantify in a footnote to the column the value of any item that exceeds \$10,000 (in a manner that identi-

RR DONNELLEY

fies the particular nature of the benefit received). Special rules apply to perquisites and other personal benefits (described below).

- **Elements of All Other Compensation.** Examples of the elements of compensation required to be included in the All Other Compensation column include:
 - **Value of Securities Purchased at a Discount.** A company must include in the All Other Compensation column the value of all securities purchased from the company or its subsidiaries for below fair market value (measured under FASB ASC Topic 718) *unless* the discount is generally available to all security holders or salaried employees (e.g., under a tax-qualified employee stock purchase plan under Section 423 of the Internal Revenue Code).
 - **Post-Employment Payments.** A company must include in the All Other Compensation column the value of amounts paid or accrued in connection with a named executive officer's termination of employment (or constructive termination) or in connection with a change in control of the company. This would include distributions under a defined benefit or actuarial plan if the distributions are accelerated in connection with a change in control. An amount is considered accrued if a named executive officer's performance necessary to earn the amount is complete. For example, if the named executive officer has completed all performance required to earn an amount, but the payment is subject to a six-month deferral to comply with Section 409A of the Internal Revenue Code, the amount would be considered an accrued amount. However, if the executive officer's receipt of a payment is subject to a covenant not to compete for a certain period, the amount is not reportable because performance is still required for the payment to become due.
 - **Company Contributions to Defined Contribution Plans.** A company must include in the All Other Compensation column the value of annual company contributions or other allocations to vested and unvested qualified defined contribution plans (e.g., 401(k) plans) and nonqualified defined contribution plans.
 - **Value of Life Insurance Premiums Paid by the Company.** A company must include in the All Other Compensation column the value of any life insurance premiums paid by, or on behalf of, the company for the benefit of a named executive officer (other than nondiscriminatory group life insurance available generally to all salaried employees).

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

- **Certain Dividends.** A company must include in the All Other Compensation column the value of any dividends or other earnings paid on stock awards or option awards if the dividends or earnings were not factored into the grant date fair value of the awards in accordance with FASB ASC Topic 718.
- **Value of All Tax Reimbursements.** A company must include in the All Other Compensation column the value of all tax gross-ups or other amounts reimbursed by the company for the payment of taxes (even if in connection with perquisites and other personal benefits that do not meet the \$10,000 disclosure threshold described below). Even if the tax gross-up is not payable by the company to the named executive officer until the year following receipt of the compensation for which the gross-up is payable, the tax gross-up should be reported in the same year that the related compensation was paid to provide a clear view of all costs to the company associated with providing the compensation.
- **Value of Perquisites and Other Personal Benefits With Aggregate Value of at Least \$10,000.** A company must include in the All Other Compensation column the value of perquisites and other personal benefits or property paid to a named executive officer *only if* the aggregate value is equal to or greater than \$10,000.
 - > **If Perquisites Included in All Other Compensation Column, Must Identify Each by Footnote.** If a company is required to include the value of perquisites or personal benefits in the amount reported in the All Other Compensation column (i.e., because the aggregate value is equal to or greater than \$10,000), the company must separately identify the particular type or nature of each perquisite or personal benefit received in a footnote to the All Other Compensation column, including those benefits with zero or nominal aggregate incremental cost to the company (for example, travel and entertainment is too broad if the personal benefit consisted of clothing, jewelry, artwork, theater tickets and housekeeping services). If the named executive officer fully reimbursed the company for the actual total cost of an item, the company should not treat the item as a perquisite or other personal benefit and should not include the value of the item or identify it by type.
 - > **Each Perquisite That Exceeds \$25,000 or 10% of Total Perquisites' Value Must Be Quantified by Footnote.** A company must separately quantify in a footnote the value (aggregate

incremental cost to the company) of any perquisite or personal benefit paid to a named executive officer that exceeds the greater of \$25,000 and 10% of the aggregate value of all perquisites and personal benefits received by that named executive officer. For example, if the total value of a named executive officer's perquisites is \$200,000, a company must separately identify each perquisite received in the footnote, but need only quantify each perquisite valued at \$25,000 or more. However, if the individual's total perquisites are valued at more than \$350,000, the company must separately identify and quantify each perquisite worth 10% or more of the total perquisite value (\$35,000 or more).

- **For Each Quantified Perquisite, Must Describe How Value Calculated.** If the company is required to quantify the value of a perquisite, the company must also describe in the footnote its methodology for calculating aggregate incremental cost. If a perquisite or other personal benefit has no aggregate incremental cost, it must still be separately identified by type.
-

■ **WHAT IS A PERQUISITE OR OTHER PERSONAL BENEFIT?**

The SEC provides interpretive guidance on what constitutes a perquisite or personal benefit, but does not provide a bright-line definition. The SEC suggests a two-pronged analysis:

Prong 1: Is the Item “Integrally and Directly Related to the Performance of the Executive’s Duties”? This prong is intended to be interpreted narrowly and should be limited to items that a company provides because the executive needs them to perform the job.

- **If “Yes,” It Is Not a Perquisite.**

- **If “No,” Go to Prong 2.**

Prong 2: Does the Item “Confer a Direct or Indirect Benefit That Has a Personal Aspect”? A company should apply this prong without regard to whether it provides the item for a business reason or for the company's convenience.

- **If “No,” It Is Not a Perquisite.**

- **If “Yes,” It Is a Perquisite—Unless Broad-Based.** If the item confers any personal benefit, the item is a perquisite or personal benefit *unless* the item is generally available to all employees on a nondiscriminatory basis (such as group life, health, hospitalization or medical reimburse-

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

ment plans that do not discriminate in scope, terms or operation in favor of executive officers of the company and that are generally available to all salaried employees with the exception for relocation benefits below).

Companies should keep in mind that even if an expense is ordinary or necessary for tax purposes, this tax treatment has no bearing on whether an item is or is not a perquisite or personal benefit for compensation disclosure purposes.

Relocation Benefits Are Perquisites. Due to the SEC's concern that even broad-based relocation plans may operate in a discriminatory manner that favors executives, relocation assistance is a perquisite.

SEC Examples of Items That Are Perquisites or Personal Benefits:

- personal use of a company plane;
- security provided at a personal residence or during personal travel;
- commuting expenses (whether or not provided for the company's convenience or benefit);
- personal travel using vehicles owned or leased by the company;
- housing and other living expenses (including relocation assistance);
- clerical or secretarial services for personal matters;
- club memberships not exclusively used for business entertainment;
- personal financial or tax advice or investment management services;
- discounts on company products or services not generally available to all employees; and
- relocation benefits.

SEC Examples of Items That Are *Not* Perquisites or Personal Benefits:

- BlackBerry or laptop computer;
- business travel;
- business entertainment;
- security during business travel; and
- itemized expense accounts used solely for business.

How to Value Perquisites. A company must value all perquisites and other personal benefits on the basis of the aggregate incremental cost to the company or its subsidiaries. This value may differ from the value the com-

pany uses for tax purposes. For example, for personal use of company aircraft, the SEC confirmed that the company cannot use the amount it attributes to an executive for federal income tax purposes (e.g., under the Standard Industry Fare Level, or SIFL, rules) or the cost of first-class airfare to compute the aggregate incremental cost of personal use of company aircraft. For each perquisite included in the All Other Compensation column for which a company must disclose the separate value in a footnote, the company must also describe in the footnote its methodology for calculating aggregate incremental cost.

Companies May Include a Separate Table for Perquisites or for All Items of “All Other Compensation.” Some companies may find it helpful to include a separate perquisites table to supplement the All Other Compensation column of the Summary Compensation Table to more clearly present the required disclosures. Companies may also find it helpful to include a separate table to identify and quantify the items in the All Other Compensation column. See **Appendix E** to this handbook for examples of what these tables could look like.

3.2.6 Total Column. The number in the Total column is the sum of the dollar amounts reported in each of the other columns in the table for the covered fiscal year, including the Change in Pension Value and Nonqualified Deferred Compensation Earnings column (as noted above, the values disclosed in the Change in Pension Value and Nonqualified Deferred Compensation Earnings column are excluded from the calculation of total compensation for purposes of determining who the named executive officers are for a fiscal year).

Companies do not disclose in the Summary Compensation Table nonqualified deferred compensation payouts (though they are disclosed in the Aggregate Withdrawals/Distributions column of the Nonqualified Deferred Compensation Table), 401(k) distributions (as 401(k) contributions and any company matching contributions were already disclosed in the Summary Compensation Table), and earnings on 401(k) plans (because the requirement to disclose earnings only extends to above-market or preferential earnings on nonqualified deferred compensation).

Footnote Disclosure Requirements. If an instruction requires footnote disclosure to the Summary Compensation Table but does not specifically limit disclosure to compensation for the company’s last completed fiscal year, companies need only provide footnote disclosure for the other years reported

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

in the Summary Compensation Table if such disclosure is material to an investor’s understanding of the compensation reported in the Summary Compensation Table for the company’s *last completed fiscal year*.

3.3 Grants of Plan-Based Awards Table

The Grants of Plan-Based Awards Table follows and supplements the Summary Compensation Table by providing additional information about plan-based compensation (both equity and non-equity) granted during the last completed fiscal year. The Grants of Plan-Based Awards Table requires, to the extent applicable, information for each of the column headings shown below. Non-equity incentive plan awards granted in the last completed fiscal year, even if they were not reported in the Summary Compensation Table because the relevant performance criteria have not yet been satisfied, are disclosed in this table. Companies also may need to include up to three supplemental columns to the Grants of Plan-Based Awards Table (indicated below by dashes), depending on their particular circumstances, and may voluntarily include a column to disclose the type of award (also indicated below by dashes). Companies also should discuss the material terms of all awards included in the Grants of Plan-Based Awards Table in the narrative that follows the table.

Name	Type of Award	Grant Date	Approval Date	Number of Non-Equity Incentive Plan Units Granted (#)	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares or Units (#)	All Other Option Awards: Number of Securities Underlying Options (#)	Exercise or Base Price of Awards (\$/Sh)	Closing Price on Grant Date (\$/Sh)	Grant Date Fair Value of Stock and Option Awards (\$)
					Threshold (\$)	Target (\$)	Maximum (\$)	Threshold (#)	Target (#)	Maximum (#)					

Disclose Each Award Separately. A company must disclose *each* award granted during the last completed fiscal year on a separate row in the Grants of Plan-Based Awards Table even if the award is subsequently declined or forfeited. If awards were granted under more than one plan, the company must indicate the plan under which each award was made. For purposes of the Grants of Plan-Based Awards Table, companies should treat any reload grants as new grants. If multiple types of awards are granted to the named executive officers, a company may want to add a column titled “Type of Award” for clarity.

Disclose Only Plan Awards Granted During the Last Completed Fiscal Year. Companies disclose awards granted *during* the last completed fiscal year only, even if the award is for services or performance in prior fiscal years. Awards granted after the last completed fiscal year for services or performance in that prior year similarly are not disclosed in the Grants of Plan-Based Awards Table yet but should be discussed in the CD&A.

Include Grant Date and Grant Date Fair Value for Equity-Based Awards Only. A company is required to include a date in the Grant Date column and a value in the Grant Date Fair Value of Stock and Option Awards column for equity-based awards only. For other types of awards, the company may leave these columns blank. Just as in the Summary Compensation Table, companies disclose the aggregate grant date fair value for each stock and option award in accordance with FASB ASC Topic 718. The sum of the grant date fair values for each equity award disclosed in the Grants of Plan-Based Awards Table should equal the sum of the amounts disclosed in the Stock Awards and Option Awards columns in the Summary Compensation Table.

Disclose Threshold, Target and Maximum Payouts for Non-Equity and Equity Incentive Plan Awards. With respect to incentive plan awards, both non-equity and equity-based, “threshold” refers to the minimum amount payable for a certain level of performance under a plan; “target” refers to the amount payable if the specified performance target(s) are reached; and “maximum” refers to the maximum payout possible under a plan. For non-equity incentive plans, estimated future payouts are expressed in dollars and for equity incentive plans, as a number of shares.

- **What if an Award Does Not Provide for Threshold, Target and Maximum Payouts?** If an award provides for only a single estimated payout, the company should report that amount in the Target column. If an incentive plan award does not provide for threshold or maximum payouts, the company should leave those columns blank. A footnote should explain that there are no threshold or maximum levels for the award. If an equity incentive plan award is denominated in dollars but payable only in shares, a company should describe the payment terms in a footnote. If all the awards included in the column are similarly denominated in cash but payable only in shares, the company may choose to change the “(#)” caption to “(\$)” and report the value of the awards instead of the number of shares.
- **If Target Amount Not Determinable, Provide Estimate.** If a target amount is not determinable, companies must provide a representative amount based on the company’s performance during the last completed fiscal year.
- **Disclose Threshold, Target and Maximum Amounts, Even if Actual Amount Already Determined.** A company must disclose threshold, target and maximum amounts, including for an award that the company

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

already paid or settled, even though the company also discloses the actual amount of the award earned in the Summary Compensation Table. If a company makes all non-equity incentive plan awards under an annual plan and these awards are earned in the same year that the company granted the award, the company may change the caption for this column to “Estimated Possible Payouts Under Non-Equity Incentive Plan Awards.”

- **Disclose Grant Date Fair Value of Equity Incentive Plan Awards Based on Probable Outcome of Performance Conditions.** Companies disclose the grant date fair value of equity awards subject to performance conditions based on the probable outcome of such conditions (typically at “target”). This amount should be consistent with the estimate of aggregate compensation cost to be recognized over the service period determined as of the grant date under FASB ASC Topic 718, excluding the effect of estimated forfeitures.
- **Special Rules Govern Reporting of Equity Incentive Plan Awards Where Compensation Committee Retains Negative Discretion to Reduce Awards.** Generally, equity incentive plan awards are reported in the year of grant, even if the compensation committee retains negative discretion to reduce awards. However special rules may govern the deemed year of grant in certain circumstances.

All Other Stock Awards and All Other Option Awards. Companies must disclose the number of shares of stock or shares subject to options that were granted during the last completed fiscal year that did not qualify as incentive plan awards. This would include equity awards that vest solely based on continued service to the company.

Grant Date and Grant Date Fair Value of a Multi-Year Incentive Award. If an award granted during the last completed fiscal year has multiple single-year performance periods for which annual performance targets are set at the beginning of the entire multi-year performance period, the entire grant date fair value for the award is disclosed. However, if each annual performance target is not set until the beginning of each single-year performance period, each of those dates is a separate grant date for purposes of the table and only the grant date fair value for the last completed fiscal year is disclosed in the table.

Disclose Repriced Options or Equity Awards Materially Modified During Fiscal Year. If the company repriced any options or stock appreciation rights or otherwise materially modified any equity awards held by a named

RR DONNELLEY

executive officer during the last completed fiscal year, the company must disclose as a separate grant the incremental increase in fair value calculated as of the repricing or modification date under FASB ASC Topic 718. Any new equity grants made during the last completed fiscal year pursuant to a repricing would also be disclosed in the table. The company must discuss any repricing or modification transactions in the CD&A and in the narrative disclosure that follows the Summary Compensation Table and Grants of Plan-Based Awards Table. This requirement does not apply to any repricing pursuant to an anti-dilution provision specified in the plan or award, or any repricing that occurs automatically through a pre-existing formula or mechanism specified in the plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options.

Consideration Paid for an Award. If a named executive officer paid cash consideration for any award in the Grants of Plan-Based Awards Table, the company must disclose, by footnote to the appropriate column, the amount of consideration paid.

Up to Three Additional Columns May Be Required. Companies must add one or more additional columns to the Grants of Plan-Based Awards Table in the following situations:

- **If Stock Option Exercise Price Is Less Than Closing Market Price on Grant Date.** If the per share exercise price, or base price, of options, stock appreciation rights or similar option-like instruments is less than the per share closing market price reported for the underlying security on the grant date, a company must add a column at the far right side of the Grants of Plan-Based Awards Table that reports the closing market price on the grant date. For example, this may occur if a company determines option exercise prices based on the average of the high and low stock prices on the grant date, an average closing price for the 30 days preceding the grant date or the closing market price on the day preceding the grant date.
 - **Describe How Company Determined Exercise Prices.** The company must also describe its methodology for determining any exercise or base prices that differ from the closing market prices on the awards' respective grant dates in a footnote to the Grants of Plan-Based Awards Table or in the accompanying narrative disclosure.
- **If Compensation Committee Action Did Not Occur on Grant Date.** If a company's compensation committee (or other similar committee) or the full board of directors took action to grant, or was deemed to

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

take action to grant, equity-based awards on a date other than the FASB ASC Topic 718 grant date for such awards, the company must disclose the date of the actual committee or board action in a new column immediately to the right of the Grant Date column.

- **If Non-Equity Incentive Plan Award Is Denominated in Units or Other Rights.** If a non-equity incentive plan award is denominated in units or other rights, a company must disclose the units or other rights awarded in a separate column immediately to the left of the columns in which incentive plan awards are disclosed.

3.4 Narrative Description of Additional Material Factors After Summary Compensation Table and Grants of Plan-Based Awards Table

Following the Summary Compensation Table and the Grants of Plan-Based Awards Table, companies must describe by narrative any additional material factors necessary to understand and give context to the information in the two preceding tables, which may include (depending on a company's specific circumstances):

- **Material Terms of Plans That Govern Awards Included in Summary Compensation Table or Grants of Plan-Based Awards Table.** Companies should discuss the material terms of any plan that governs awards included in the Summary Compensation Table or the Grants of Plan-Based Awards Table if the terms are not evident from the tabular disclosure and are not addressed in the CD&A.
- **Material Terms of Employment Agreements.** Companies should discuss the material terms of each named executive officer's employment agreement or arrangement, whether written or unwritten, that are necessary to understand the information in the tables.
- **Terms of Any Repricing or Material Modification.** Companies should discuss (here and in the CD&A) the material terms of any repricing or material modification to outstanding awards, including changing or eliminating performance criteria, extending the exercise period, changing the bases on which returns are determined or changing vesting or forfeiture conditions.
- **Material Terms of Awards in Grants of Plan-Based Awards Table.** Companies should include a general description of the formula or criteria to be applied in determining the amounts payable, the vesting schedule(s), whether dividends or other amounts will be paid on the awards, and a description of the performance-based conditions and any

other material conditions applicable to the awards. (See discussion above regarding disclosing confidential information related to specific performance targets.)

- **Relationship of Salary and Bonus to Total Compensation.** Companies should explain the level of each named executive officer's salary and bonus in proportion to total compensation.
 - **Post-Employment Payments Included in Summary Compensation Table.** Companies are required to discuss post-employment compensation here only to the extent the Summary Compensation Table requires disclosure of that compensation. Otherwise, companies may provide this disclosure in a later narrative discussion that specifically addresses post-employment compensation (discussed below).
-

■ **NARRATIVE DISCLOSURE VS. CD&A**

How Is Narrative Following Grants of Plan-Based Awards Table Different From CD&A? The CD&A generally focuses on broader topics regarding executive compensation policy objectives and how the company implements these policies. In contrast, the narrative that follows the Summary Compensation Table and the Grants of Plan-Based Awards Table focuses on, and provides context to, the specific disclosures in those two tables.

Where Should Companies Discuss Named Executive Officer Employment Agreements? Companies may need to discuss the terms and conditions of named executive officer employment agreements in up to three different locations in the compensation disclosure:

- in the CD&A;
 - in the narrative following the Summary Compensation Table and the Grants of Plan-Based Awards Table (described above); and
 - in the narrative that describes potential post-employment payments to named executive officers (described below).
-

3.5 Outstanding Equity Awards at Fiscal Year-End Table

Companies must disclose all outstanding option awards and unvested stock awards held by the named executive officers as of the most recent fiscal year-end in the Outstanding Equity Awards at Fiscal Year-End Table. Companies must also disclose option exercise prices and, for unvested stock awards (including restricted stock, restricted stock units and similar instruments) and

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

unearned awards granted under equity incentive plans, the fiscal year-end market or payout value of the awards. Companies may voluntarily include up to two supplemental columns in the table to disclose the grant date of an award and the fiscal year-end intrinsic value of outstanding options (indicated below by dashes), depending on their particular circumstances.

The Outstanding Equity Awards at Fiscal Year-End Table requires, to the extent applicable, information for each of the column headings shown below, other than the columns captioned “Grant Date” and “Value of Unexercised In-the-Money Options/SARs at Fiscal Year-End (\$),” which are optional.

Name	Grant Date	Option Awards					Stock Awards				
		Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Options (#)	Option Exercise Price (\$)	Option Expiration Date	Value of Unexercised In-the-Money Options/SARs at Fiscal Year-End (\$)	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 (\$)

Option Awards. A company must generally disclose each individual outstanding option award, along with its exercise price and expiration date, as a separate line item and not on an aggregated basis. However, the company may disclose information regarding outstanding stock options on an aggregated basis if the stock options share an identical exercise price and expiration date. A single award consisting of a combination of options, stock appreciation rights and/or similar option-like instruments must be reported as separate awards with respect to each tranche that has a different exercise price or expiration date.

The company must disclose the vesting dates for each option award in a footnote. In providing this disclosure, companies may add a supplemental column titled “Grant Date” to the table, which can simplify disclosure for option grants that all vest according to a standard vesting schedule from the grant date. If any different vesting schedule applies to an option, then the footnote to the table would also need to include disclosure about this vesting schedule.

Stock Awards. A company must disclose in the Outstanding Equity Awards at Fiscal Year-End Table the total number and market value of all unvested equity plan stock awards and unearned shares of stock under equity incentive plan awards. Unlike for outstanding stock options, a company may disclose this information on an aggregated basis in the applicable column. A

company must disclose the vesting dates for each stock award in a footnote. The company must include as stock awards any outstanding in-kind earnings on stock awards that have earned share dividends or share dividend equivalents, unless these in-kind earnings were vested when declared or vested during the fiscal year, in which case they are reported in the Option Exercises and Stock Vested Table.

- **What Is “Market Value”?** The “market value” for shares of unvested stock and unearned equity-based incentive plan holdings is equal to the product of the closing market price of the company’s stock at the most recent fiscal year-end and the number of unvested shares or units or the number of unearned equity-based incentive plan awards, as applicable.

Disclose Equity Incentive Awards in Applicable Option Awards or Stock Awards Column. A company must report unearned option awards or stock awards granted under equity incentive plans under the applicable Equity Incentive Plan Awards column until the relevant performance condition is satisfied. After the performance condition is satisfied, if the option awards or stock awards remain subject to forfeiture conditions (such as a time-based vesting requirement), a company must report option awards in the Number of Securities Underlying Unexercised Options/Unexercisable column and unvested stock awards in the Number of Shares or Units of Stock That Have Not Vested column. A company should report all outstanding vested option awards in the Number of Securities Underlying Unexercised Options/Exercisable column (until exercised or no longer outstanding).

- **Generally Report Number of Shares Based on Threshold Level of Performance Achieved.** A company generally reports the number of shares or units reported in either Equity Incentive Plan Awards column, and the market or payout value for Equity Incentive Plan Awards, based on the threshold performance goals. However, if the last completed fiscal year’s performance (or, if the payout is based on performance over more than one year, the last completed fiscal years over which such performance is measured) exceeded the threshold performance goal, the company must use the next higher performance measure (target or maximum) that exceeds the last completed fiscal year’s performance (or, if the payout is based on performance to occur over more than one year, the last completed fiscal years over which performance is measured). If an award provides for a single estimated payout, the company should report that amount. If the company cannot determine the target amount, the company

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

must provide a representative amount based on performance during the last completed fiscal year.

Supplemental Intrinsic Value Column. In addition to adding a Grant Date column, companies may also add a column to the table titled “Value of Unexercised In-the-Money Options/SARS at Fiscal Year-End (\$)” to report the fiscal year-end intrinsic value (the difference between the exercise or base price of the award and the fair market value at fiscal year-end) of outstanding stock options and stock appreciation rights.

Include Awards Transferred Other Than for Value. A company must disclose any awards that a named executive officer transferred other than for value (such as for family estate planning purposes), and must include by footnote the nature of the transfer.

■ AVOID DOUBLE COUNTING EQUITY AWARDS

The Same Equity Award May Trigger Disclosure in Several Tables. In addition to disclosure in the Outstanding Equity Awards at Fiscal Year-End Table, a company also may be required to disclose the same equity award granted during the last completed fiscal year in the Summary Compensation Table (based on aggregate grant date fair value) and in the Grants of Plan-Based Awards Table. To avoid double counting, the company should use narrative disclosure, in addition to any required footnotes or columns, to explain where compensation reported in one location has also been disclosed in another location and does not constitute additional compensation.

3.6 Option Exercises and Stock Vested Table

A company must report in the Option Exercises and Stock Vested Table the number of shares acquired and the dollar amounts realized by named executive officers during the last completed fiscal year on the exercise of stock options, stock appreciation rights and similar instruments and on the vesting of shares of stock, including restricted stock, restricted stock units and similar instruments. The company may present the data on an aggregated basis for option awards and stock awards, respectively.

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 (\$)

Include Value of Amounts Deferred and Awards Transferred for Value. If a named executive officer deferred receipt of any amount on exercise or vesting of an award, a company must disclose by footnote to the Option Exercises and Stock Vested Table the amount and terms of the deferral. If a named executive officer transferred an award for value, the company must include in the Option Exercises and Stock Vested Table the amount realized on transfer.

Include Value of Vested In-Kind Earnings on Stock Awards. A company should include in the amount disclosed in the Stock Awards column the value of any in-kind earnings on stock awards that have earned share dividends or dividend equivalents that were vested when declared or that vested during the last completed fiscal year.

Include Total Shares Subject to Exercise of an Option or Stock Appreciation Right. A company should include in the Option Awards column the total number of shares subject to an option or stock appreciation right that was exercised or settled during the last completed fiscal year, not the net number of shares that may have actually been received upon exercise. The company may explain that the named executive officer actually received a smaller “net” number of shares in a footnote or in the narrative disclosure.

■ POST-EMPLOYMENT COMPENSATION

Executive retirement packages and other post-termination compensation can represent a significant commitment of corporate resources and a significant portion of overall compensation to a named executive officer. The rules require that companies provide disclosure, to the extent applicable, about the following three sources of potential post-employment compensation to the named executive officers:

- pension plans;
- nonqualified deferred compensation plans; and
- severance, retirement, termination, constructive termination or change-in-control arrangements.

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

3.7 Pension Benefits Table

A company must disclose in the Pension Benefits Table information about the named executive officers' participation in certain retirement plans of a company during the last completed fiscal year. To the extent applicable, companies must provide information for each of the column headings shown below.

Name	Plan Name	Number of Years Credited Service (#)	Present Value of Accumulated Benefit (\$)	Payments During Last Fiscal Year (\$)
------	-----------	--------------------------------------	---	---------------------------------------

Pension Plans Covered. Pension plans for which disclosure is required include defined benefit plans, cash balance plans and supplemental executive retirement plans, but exclude defined contribution plans, both nonqualified and qualified, such as 401(k) plans.

Disclose Information on a Plan-by-Plan Basis. A company must identify in a separate row each pension plan in which a named executive officer participates and provide the required disclosure for each plan. If any named executive officer participates in more than one plan, the company must describe the different purposes for each plan in the narrative following the table if necessary for an understanding of the plan.

- **Number of Years of Credited Service.** The number of credited years of service is computed as of the same pension plan measurement date used for financial statement reporting purposes with respect to the company's audited financial statements for the last completed fiscal year.
 - If the number of years of credited service for a named executive officer under any plan is different from the number of actual years of service with the company, the company must provide footnote disclosure quantifying any difference and any resulting increase in benefits.
 - The company must also describe in the narrative following the Pension Benefits Table its policies regarding granting extra years of credited service if necessary for an understanding of the plan.
- **Present Value of Accumulated Benefit.** The actuarial present value of a named executive officer's accumulated benefit is computed as of the same pension plan measurement date used for financial statement reporting purposes with respect to the company's audited financial statements for the last completed fiscal year.

RR DONNELLEY

- In calculating the actuarial present value, the company must use the same assumptions, such as interest rate assumptions and mortality rate assumptions, that it uses to derive the amounts disclosed in conformity with generally accepted accounting principles, except with regard to the retirement age assumption. The company must assume that retirement age is the earliest time at which a participant may retire under the plan without any benefit reduction due to age and that the named executive officer will continue to work at the company until such time. If applicable, the company may choose to include information for a later “normal” retirement age in an additional column (e.g., if a plan has both a “normal” retirement age and also a younger age at which an individual may receive retirement benefits without any reduction in benefits). The estimated present value is calculated based on each named executive officer’s compensation as of the pension plan measurement date. The assumptions used for financial statement reporting purposes that the company should use for calculating the actuarial present value are the discount rate, the lump sum interest rate (if applicable), post-retirement mortality and payment distribution assumptions. The company should ignore pre-retirement decrements for purposes of these calculations, such as due to withdrawal, disability, early retirement and death.
- If a company has a cash balance plan pursuant to which a named executive officer is only entitled to the amount credited to the cash balance account as of any date, the company must still report the actuarial present value of the named executive officer’s accumulated benefit as is done for other defined benefit plans. In such case, the amount reported in the table generally will differ from the named executive officer’s accrued benefit under the cash balance plan.
- The valuation method and all material assumptions applied in quantifying the present value of the accumulated benefit must be disclosed in a narrative that accompanies the Pension Benefits Table. A company may satisfy this disclosure requirement by cross-reference to a discussion of those assumptions in the company’s financial statements, footnotes to the financial statements or MD&A.
- **Allocating Between Tax-Qualified Defined Benefit Plans and Related Supplemental Plans.** For purposes of allocating the current accumulated benefit between tax-qualified defined benefit plans and related supplemental plans, companies must apply the applicable Internal

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Revenue Code limitations in effect as of the pension plan measurement date.

- **Contingent Benefits.** Any contingent benefits that may be payable under a plan by reason of death, early retirement or other termination of employment should not be disclosed in the table but should be disclosed in the narrative disclosure of potential post-termination payments.

Narrative Disclosure to Accompany Pension Benefits Table. Companies must provide additional narrative disclosure of material factors necessary to understand each plan disclosed in the Pension Benefits Table. Material factors necessary to understand each plan may include, depending on the specific circumstances of a company:

- **Material Terms and Conditions of Payments and Benefits Under Plan.** A company must describe the material terms and conditions of payments and benefits available under a plan, which would generally include the plan's normal retirement payment, benefit formula and eligibility standards and the effect of the form of benefit elected on the amount of annual benefits. "Normal retirement" means retirement at the normal retirement age defined in the plan or, if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age.
- **Elements of Compensation Applied in Benefit Formula.** A company must generally describe and identify each specific element of compensation (such as salary and various forms of bonus) applied in each plan's benefit formula.

As described above, a company may also be required to make the following disclosures in the narrative:

- **Purposes for Multiple Plans.** If a named executive officer is eligible to participate in more than one plan, the company must describe the different purposes for each plan if necessary for an understanding of the plan.
- **Policies Regarding Credit for Years of Service.** If the company credits a named executive officer with years of service that exceed that number of years of actual service with the company, the company must also describe its policies regarding granting extra years of credited service if necessary for an understanding of the plan.

■ ADDITIONAL PENSION BENEFITS DISCLOSURES

Identify Any Named Executive Officer Currently Eligible for Early Retirement. If any named executive officer is currently eligible for early retirement under any plan, the company must generally disclose the executive officer’s identity, identify the plan, and describe the plan’s early retirement payment, benefit formula and eligibility standards. “Early retirement” means retirement at the early retirement age defined in the plan or otherwise available to the executive officer under the plan.

Disclose Pension Benefits Accelerated During the Last Fiscal Year in Connection With a Termination of Employment or a Change in Control in Summary Compensation Table. A company must disclose pension benefits paid to named executive officers during the most recent fiscal year in the Pension Benefits Table; however, if the payment of the pension benefits is *accelerated* in connection with a termination of employment or a change in control, the amounts must *also* be disclosed in the All Other Compensation column of the Summary Compensation Table.

3.8 Nonqualified Deferred Compensation Table

In the Nonqualified Deferred Compensation Table, companies must disclose information for each of the column headings below for each named executive officer for all nonqualified deferred compensation plans.

Name	Executive Contributions in Last Fiscal Year (\$)	Registrant Contributions in Last Fiscal Year (\$)	Aggregate Earnings in Last Fiscal Year (\$)	Aggregate Withdrawals/ Distributions (\$)	Aggregate Balance at Last Fiscal Year-End (\$)
------	--	---	---	---	--

Disclose Information on a Plan-by-Plan Basis. Companies must disclose the required information for each named executive officer on a plan-by-plan basis for nonqualified deferred compensation plans in which a named executive officer participated during the last completed fiscal year.

Do Not Include Tax-Qualified Defined Contribution Plan Disclosure. Companies should not provide information about tax-qualified defined contribution plans in the Nonqualified Deferred Compensation Table, such as contributions to 401(k) plans and 401(a) profit sharing plans. Company contributions to such plans are disclosed in the All Other Compensation column of the Summary Compensation Table.

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

How Are Earnings Calculated and Disclosed? “Earnings” include dividends, stock price appreciation (or depreciation) and other similar terms. “Earnings” should encompass any increase or decrease in the account balance during the last completed fiscal year that is not attributable to contributions, withdrawals or distributions during the year. If plan earnings are calculated by reference to actual earnings of mutual funds or other securities, such as company stock, companies may identify the referenced security and quantify its return, which disclosure may be aggregated if the same measure applies to more than one named executive officer.

For an excess plan related to a qualified plan, if contributions earned in the last completed fiscal year were not credited by the company until the next fiscal year, they are still considered company contributions during the last completed fiscal year and are included in the Nonqualified Deferred Compensation Table as well as in the All Other Compensation column of the Summary Compensation Table.

Deferrals of Vested Equity Awards. If an equity award has vested and is subsequently deferred, whether pursuant to the election of the named executive officer or the terms of the equity award or plan, the deferred receipt of the vested equity award is reported in the table.

Reconciliation of Numbers Reported in Summary Compensation Table. To reconcile the Nonqualified Deferred Compensation Table with the Summary Compensation Table and avoid double counting, companies must disclose by footnote:

- the amount of any contributions or earnings that also were reported as compensation in the Summary Compensation Table for the last completed fiscal year and
- the amount in the aggregate deferred compensation balance column that was included as compensation to the named executive officer in the Summary Compensation Table for prior years.

Amounts need only be disclosed by footnote to the extent they were actually previously reported in the Summary Compensation Table for the named executive officer.

Additional Narrative Disclosure Describing Material Factors. Following the Nonqualified Deferred Compensation Table, companies must provide narrative disclosure of the material factors necessary to understand the tabular disclosure. This discussion may address, depending on the specific circumstances of the company:

- the types of compensation that may be deferred and any limits on deferrals (e.g., percentage of compensation limit);
- material terms about payouts, withdrawals and other distributions; and
- the measures for calculating interest or other plan earnings (including who selects the measures and the frequency and manner in which selections can be changed), quantifying interest rates and other earnings measures.

3.9 Other Potential Post-Employment Payments

Companies must provide narrative disclosure about written or unwritten contracts, agreements, plans or arrangements that provide for potential payments to the named executive officers at, following or in connection with:

- termination of employment, including termination in connection with resignation, severance, retirement, constructive termination or other termination;
- a change in control of the company; or
- a change in the named executive officer's responsibilities (that may not result in termination of employment).

Narrative Disclosure Requirements for Potential Post-Employment Payments. To the extent required and not disclosed elsewhere, for each named executive officer, companies must describe and explain:

- the specific events triggering payments or the provision of other benefits, including health care benefits and perquisites;
- for each triggering event, the estimated payments and benefits due, even if the payment amounts are uncertain (in which case a reasonable estimate or range of payments and benefits may be provided), including:
 - a description of the types and estimated amounts of payments and benefits payable—applying the same thresholds for perquisites used for the All Other Compensation column of the Summary Compensation Table and applying the assumptions used for financial reporting purposes under generally accepted accounting principles for quantifying health care benefits;

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

- whether these payments would or could be annual or lump sum;
 - the duration of these payments if not lump sum;
 - who provides the payments;
 - that the triggering event is assumed to have taken place on the last business day of the company's last completed fiscal year and that the company's stock price is the closing market price per share of the stock on that date;
 - if uncertainties exist as to the provision of payments and benefits or the amounts involved, a description of the material assumptions underlying the estimates (or the reasonable estimated ranges of amounts)—this disclosure falls within the safe harbor for forward-looking information; and
 - a description and explanation of how the company determines the appropriate payment and benefit levels under the various triggering events;
 - any material conditions or obligations that apply to the receipt of payments or benefits (e.g., the obligation to abide by noncompete, nonsolicitation, nondisparagement or confidentiality agreements, including the duration of such agreements and any provisions regarding waiver of breach of these agreements);
 - for accelerated stock options, the difference between the per share exercise price and the closing market price per share as of fiscal year end;
 - any tax gross-up payments, including golden parachute excise tax payments; and
 - any other material features of the contracts, agreements, plans or arrangements necessary to understand the foregoing.
-

■ KEEP IN MIND...

Are All Potential Post-Termination Payments Disclosed in This Narrative? If any payment or benefit that would be provided in connection with a triggering event is fully disclosed in the Pension Benefits Table or the Nonqualified Deferred Compensation Table and related narrative, a company may satisfy these disclosure requirements by cross-referencing to the applicable portion of that disclosure. If the form or amount of any such payment would be increased, or vesting or any other provision accelerated upon a triggering event, companies must disclose

such increase or acceleration in this narrative. In addition, companies are not required to describe payments or benefits in this narrative if they do not discriminate in scope, terms or operation in favor of executive officers and are available generally to all salaried employees. Option awards to executive officers in amounts greater than those provided to all salaried employees are not considered within the “scope” of nondiscriminatory arrangements.

Former Named Executive Officers. For any named executive officer who is not serving in that capacity at the end of the most recent fiscal year, companies must provide the above information only to the extent a triggering event actually occurred and should describe the actual triggering event and payments. However, if following the end of the last completed fiscal year but prior to filing the Form 10-K or proxy statement for such prior fiscal year, a named executive officer leaves the company, SEC guidance provides that if the named executive officer is not the CEO or CFO of the company or otherwise a named executive officer for the year of termination and any severance is provided under its original terms (not newly negotiated), disclosure may be provided only for the actual triggering event and payments and not for additional scenarios that can no longer occur.

Provide Definitions of any Defined Terms for Triggering Events. Companies should provide specific definitions or explanations of any defined terms for triggering events, such as change in control, cause or good reason.

Tabular Disclosure for Post-Termination Payments. Companies typically provide tabular disclosure in addition to the required narrative disclosure as appropriate to help clarify and explain the information about post-termination payments. See **Appendix E** to this handbook for an example of this supplemental tabular disclosure.

4.0 DIRECTOR COMPENSATION DISCLOSURE

Similar to the Summary Compensation Table for named executive officers, companies must disclose in the Director Compensation Table all director compensation earned or paid to its directors in the last completed fiscal year. Narrative disclosure of any material factors necessary to understand the director compensation accompanies the table.

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

4.1 Director Compensation Table

Companies must disclose the information shown in the column headings below for each director for the last completed fiscal year. A company can omit any column for which it has no required disclosure.

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 (\$)
------	----------------------------------	-------------------	--------------------	---	--	-----------------------------	------------

Must Include All Individuals Who Served as Directors During Fiscal Year. Companies must include in the table each person who served as a director during any part of the last completed fiscal year, even if that person was no longer serving as a director at the end of the fiscal year or is not up for re-election.

No Disclosure Required for Directors Who Are Also Executive Officers. Companies can omit information for any director who also serves as a named executive officer if they disclose in a footnote to the Summary Compensation Table any amounts received by the named executive officer for services as a director. Companies can also omit from the Director Compensation Table compensation information for any director who serves as an executive officer but is not a named executive officer and does not receive any additional compensation for director services if they disclose in a footnote to the Director Compensation Table or in the accompanying narrative that the executive officer did not receive any additional compensation for services as a director.

Companies May Aggregate Disclosure. Companies may aggregate compensation disclosure in a single row for two or more directors if all elements and amounts of compensation are the same (and as long as the names of the directors for whom disclosure is presented on a group basis are clear from the table).

Amounts in Director Compensation Table Calculated the Same Way as in Summary Compensation Table. The rules for calculating the amounts reportable in the columns of the Summary Compensation Table apply to identical column headings in the Director Compensation Table (e.g., the Stock Awards, Option Awards, Non-Equity Incentive Plan Compensation, Change in Pension Value and Nonqualified Deferred Compensation Earnings and All Other Compensation columns). With respect to the Fees Earned or Paid in Cash

RR DONNELLEY

column, companies must disclose the dollar amount of all fees earned or paid in cash for services as a director during the last completed fiscal year, including annual retainer fees, committee and/or chairmanship fees.

Disclose Additional Specific Information in All Other Compensation Column. The All Other Compensation column of the Director Compensation Table generally follows the instructions for the same column of the Summary Compensation Table. Companies must include in this column all compensation not reported in the other columns of the Director Compensation Table other than perquisites and other personal benefits with an aggregate value for a director of less than \$10,000 (this means that companies do not have to include the value of *any* perquisites for a director if the aggregate value is less than \$10,000). Companies must separately identify and quantify in a footnote to this column any item of compensation, other than perquisites or personal benefits, that exceeds \$10,000 in value. In the case of perquisites or personal benefits, companies must separately identify these items to the extent the aggregate value of all perquisites or personal benefits to a director equals or exceeds \$10,000 and must separately quantify each perquisite or personal benefit with a value greater than \$25,000 or 10% of the value of total perquisites and personal benefits for a director.

Disclose Consulting Fees and Legacy or Charitable Awards Programs. Companies must include in the All Other Compensation column to the Director Compensation Table, if applicable:

- the dollar amounts of consulting fees paid to directors (including pursuant to joint ventures or for non-director services) and
- the annual costs of payments and promises of payments under director legacy or charitable awards programs. Companies must disclose in the table the annual amount of the cost of a director legacy or charitable awards program with footnote disclosure of the total dollar amount payable under each such program and other material terms of each such program. Disclosure is required even if the charitable matching program is available to all company employees.

No Supplemental Tabular Disclosure Is Required; Must Disclose Certain Additional Information by Footnote to the Director Compensation Table. No supplemental tables are required to the Director Compensation Table, but companies must disclose by footnote to the table the aggregate number of shares subject to outstanding unvested stock awards and

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

unexercised option awards held by the director at the end of the last completed fiscal year. If a company repriced or otherwise materially modified any stock or option awards held by a director during the last completed fiscal year, the company must also include in the table and disclose as a separate grant in the footnote the incremental increase in fair value computed as of the repricing or modification date under FASB ASC Topic 718.

4.2 Narrative Disclosure of Director Compensation

Accompanying the Director Compensation Table, companies must disclose in a narrative format any additional material factors necessary to understand the tabular disclosures. While each company must determine which factors are material to understanding its director compensation arrangements based on its specific circumstances, disclosure may address these factors:

- **Standard Compensation Arrangements.** Companies should provide a description of standard compensation arrangements for directors, such as retainer fees and fees paid for committee service, service as a chairman or committee and meeting attendance, including how such fees are paid (e.g., in cash, stock options or stock).
- **Nonstandard Compensation Arrangements.** Companies must disclose if any director has a different compensation arrangement, identifying that director and the terms of the arrangement.
- **Equity Compensation Practices.** Disclosure is required regarding any equity compensation timing or pricing practices, analogous to the disclosure required for named executive officers in the CD&A.

■ REVIEW COMMITTEE PROCESSES AND PROCEDURES

Companies should review with their compensation committees (or governance committees if they determine director compensation) and, if necessary, update the compensation processes and procedures used to set and implement director compensation.

5.0 ANALYSIS OF RISKS RELATED TO COMPENSATION FOR ALL EMPLOYEES

A company must discuss the company's policies and practices for compensating all employees (not just the named executive officers) as they relate to risk management practices and risk-taking incentives to the extent that risks arising from these policies and practices are reasonably likely to have a material adverse effect on the company.

Companies Must Disclose Relationship Between Risk Management and Compensation Policies and Practices for All Employees. Item 402 of Regulation S-K requires a company to discuss its policies and practices for compensating all employees, including non-executive officers, if the compensation policies and practices create risks that are reasonably likely to have a material adverse effect on the company. This narrative disclosure will be separately disclosed under a new Item 402(s), and not as part of the CD&A. However, the SEC notes that, to the extent that risk considerations are a material aspect of a company's compensation policies or decisions for named executive officers, the company must discuss them in its CD&A.

- **Disclosure Standard Similar to MD&A.** In the adopting release for the December 16, 2009 amendments (see **Appendix B**), the SEC points out that the “reasonably likely” disclosure threshold is the same threshold used in the MD&A rules, and that the approach for risk disclosure “would parallel the MD&A requirement, which requires risk-oriented disclosure of known trends and uncertainties that are material to the business.” Item 402(s) of Regulation S-K also provides that, in assessing whether disclosure is required, a company could consider policies and practices that mitigate or balance incentives, such as clawback policies or stock ownership/holding requirements. The SEC notes that, by focusing on risks that are reasonably likely to have a material adverse effect on the company, the new rules are intended to elicit disclosure that would be most relevant to investors and avoid voluminous disclosure of potentially insignificant and unnecessarily speculative information.
- **Item 4.02(s) of Regulation S-K.** Item 402(s) includes a nonexclusive list of situations that may trigger disclosure, such as different compensation policies and practices for different business units, and issues that companies may need to address related to the business units or employees discussed when disclosure is required. Although all companies will have to perform some analysis of whether disclosure under the new rule is required, Item 402(s) does not require a company to make an affirmative statement that it has determined that the risks arising from its compensation policies and practices are not reasonably likely to have a material adverse effect on the company.

■ **CONSIDER VOLUNTARILY DISCLOSING PROCESS AND CONCLUSIONS IN ANY EVENT**

The SEC specifically noted that Item 402(s) of Regulation S-K does not require a company to make the negative disclosure that it has determined that the risks arising from its compensation policies and practices are not reasonably likely to have a material adverse effect on the company. However, companies may want to consider discussing the process they went through to arrive at the conclusion that no disclosure is required, as well as the conclusion. The SEC Staff has said informally that if no disclosure is made in the proxy statement, it might, in the comment letter process, ask companies to demonstrate that they have adequate disclosure controls and procedures in place to review compensation and risks, and that they have “contemporaneous” documentation to show they performed the analysis.

6.0 COMPENSATION COMMITTEE ISSUES

There are several issues relating to compensation committees that fall outside Item 402 of Regulation S-K, but affect or relate to the disclosure required under that item.

6.1 Compensation Committee Report

The Compensation Committee Report is “furnished” and not filed but is designed to accompany the CD&A (and is incorporated by reference into the annual report on Form 10-K). The Compensation Committee Report must state whether:

- the compensation committee has reviewed and discussed the CD&A with management and
- based on the review and discussions, it has recommended to the board of directors that the CD&A be included in the company’s annual report on Form 10-K and proxy statement.

The Compensation Committee Report must be over the names of the compensation committee members (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors). The SEC has stated that the CEO and CFO will be able to look to this report in making their required certifications regarding disclosure controls and procedures and internal control over financial reporting, which cover the CD&A. The SEC has indicated that new directors who did not participate in the review, discussions and recommendation with respect to the CD&A need not be named in the Compensation Committee Report. Former directors also are not

required to be named. However, directors who resigned from the compensation committee during the last completed fiscal year but who remain directors still need to be named in the Compensation Committee Report.

6.2 Compensation Committee Practices and Procedures

Each company must disclose specific information about its compensation committee.

- **Committee Charter and Web Site Posting.** A company must disclose whether its compensation committee has a charter and, if so, whether the charter is available on the company's Web site (and provide the Web site address).
- **Must File Charter With Proxy Statement if Not Posted on Web Site.** If the charter is not posted on the company's Web site, the company must append a copy of the charter to its proxy statement at least once every three years (or earlier if the charter was materially amended since the beginning of the past fiscal year) and, for years in which the company does not append its compensation committee charter to its proxy statement, the proxy statement must identify the most recent prior proxy statement that included the charter.
- **Narrative Disclosure.** A company must describe (in narrative format) its processes and procedures for considering and determining executive officer and director compensation, including:
 - the compensation committee's scope of authority;
 - the extent to which the compensation committee may delegate its authority to other persons, including which authority and to whom the compensation committee may delegate;
 - the role of executive officers in determining or recommending the amount or form of executive officer and director compensation; and
 - the role compensation consultants play in determining or recommending executive officer and director compensation, identifying the consultants, whether they were engaged directly by the compensation committee (or persons performing the equivalent functions) or by any other person, the nature and scope of their assignment, and the material elements of the instructions or directions given to the consultants.

A company without a compensation committee (or a committee performing similar functions) must explain why it does not have such a committee and identify directors who participate in executive officer and director compensation decisions.

■ **HOW DOES COMPENSATION COMMITTEE DISCLOSURE DIFFER FROM CD&A?**

While both the compensation committee disclosure and the CD&A address executive officer compensation, each has a different focus. The compensation committee disclosure focuses on the company's corporate governance structure for considering and determining executive officer and director compensation. In contrast, the CD&A focuses on material information about the company's named executive officer compensation policies and objectives to put into perspective the accompanying quantitative disclosure.

6.3 Disclosure of Compensation Consultant Fees

To help investors better assess the role of compensation consultants and potential conflicts of interest, Item 407 of Regulation S-K requires companies to disclose fees paid to certain compensation consultants who provide advice to the board of directors or the compensation committee on executive or director compensation if the consultants also provide other services to the company.

Must Disclose Fees and Reasoning if Fees Exceed \$120,000 for Other Services. If a compensation consultant engaged by the board of directors or compensation committee provides other services to the company (e.g., benefits administration, human resources consulting or product sales), in addition to its services related to determining or recommending the amount or form of executive or director compensation, and the fees for those additional services exceed \$120,000 during the company's fiscal year, the company must report the following information:

- the aggregate fees paid for (i) work related to determining or recommending the amount or form of executive and director compensation and (ii) the additional services;
- whether management was involved in the decision to engage the compensation consultant for the non-executive compensation services; and
- whether the board of directors or the compensation committee approved the additional services.

If the board of directors or compensation committee has not engaged its own compensation consultant but management or the company has, the company must disclose the aggregate fees paid to the consultant for advice on executive or director compensation and for the other services if the consultant was

engaged to provide advice on executive or director compensation and other services and it received more than \$120,000 in fees for the other services during the company's fiscal year.

Disclosure Not Required if Board and Management Have Their Own Consultants. If both the board of directors (or the compensation committee) and management have engaged different compensation consultants to provide advice on executive or director compensation, fee disclosure is not required, even if management's consultant provides additional services to the company.

Disclosure Not Required for Consulting Limited to Broad-Based Plans and General Survey Information. The rules do not require fee disclosures where the consultant's only role is consulting on broad-based plans available generally to all salaried employees that do not discriminate in scope, terms or operation in favor of executive officers or directors (e.g., 401(k) plans or health insurance plans) or providing survey information that either is not customized for a particular company or is customized based on parameters that are not developed by the consultant.

6.4 Compensation Committee Issues Involving Related Person Transactions

Item 404(a) of Regulation S-K requires companies to provide disclosure about all "related person transactions." See **Appendix A** to this handbook for the text of Item 404(a) of Regulation S-K, which includes the definition of a "related person transaction."

Compensation Committee or Board of Directors Should Approve Non-Named Executive Officer Compensation. Under the exception for disclosing executive compensation as a related person transaction pursuant to Item 404(a), companies must disclose as a related person transaction compensation paid to a non-named executive officer *unless* the compensation committee (or independent directors performing a similar function) or the board of directors approved the compensation.

Compensation for an Employee Who Is an Immediate Family Member of a Related Person May Require Disclosure as a Related Person Transaction. If a company pays compensation to an immediate family member of an executive officer or director where the employee is not a named executive officer, executive officer or director of the company and the compensation exceeds \$120,000, the company must disclose the situation under Item 404(a).

Related Person Transaction Rules May Affect Which Directors Qualify as “Non-Employee Directors” Under Section 16(b) of the Exchange Act. Section 16(b) of the Exchange Act exempts certain acquisitions and dispositions of company stock from the provisions of Section 16(b) if, among other things, the grants are approved by a committee of at least two non-employee directors. A director’s “non-employee” status requires that the director not possess any interest in a transaction that requires disclosure as a related person transaction. Companies should exercise care in verifying which transactions require disclosure and the potential effect on which directors qualify as non-employee directors. The related person transaction rules do not affect which directors qualify as “outside” directors under Internal Revenue Code Section 162(m).

7.0 REPORTING COMPENSATION ON FORM 8-K

Form 8-K requires companies to report specified events within four business days after their occurrence. To focus disclosure on “unquestionably and presumptively material” compensatory arrangements, the SEC consolidated under Item 5.02 all disclosure regarding compensation issues.

7.1 Item 5.02 of Form 8-K

Under Item 5.02 of Form 8-K, companies must file a Form 8-K to report the departure or election of any director and the departure or appointment of any specified officer, including any named executive officer. A company must also report on Form 8-K if it enters into or materially amends any material compensatory arrangement for a named executive officer.

Companies Must Report Departure of Any Specified Executive Officer, Including Any Named Executive Officer. Item 5.02 of Form 8-K requires a company to disclose the retirement, resignation or other termination of

- any of these specified officers: principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or any person performing similar functions or
- any named executive officer.

Determine “Named Executive Officers” for Item 5.02 Based on Most Recent Annual Filing. For Item 5.02 disclosure, “named executive officers” means the executive officers for whom a company disclosed required compensation information in its most recent SEC filing that was required to include a Summary Compensation Table.

Companies Must Disclose Compensatory Arrangements With New Directors and New Specified Officers. A company reports on Form 8-K when it elects a new director (other than at an annual or special meeting of shareholders) and when it appoints any of the specified executive officers. For a newly appointed director or specified officer, the company must also include a brief description of:

- any material plan, contract or arrangement (whether or not written) entered into in connection with the election or appointment;
- a material amendment to a material plan, contract or arrangement in connection with the election or appointment; or
- a grant or award to a new director or specified officer, or a modification to an existing grant or award, in connection with the election or appointment.

Companies Must Report on Form 8-K When They Enter Into or Materially Amend Material Compensatory Arrangements With Named Executive Officers. Item 5.02(e) requires a company to report on Form 8-K and briefly describe the material compensatory plan, contract, arrangement, grant or award, or the material amendment, whenever the company:

- enters into, adopts, commences or materially amends a material compensatory plan, contract or arrangement (whether or not written) in which any of the named executive officers participates or is a party or
- approves or materially amends any material grant or award under any plan, contract or arrangement (whether involving cash or equity), unless
 - the grants or awards (or modifications) made pursuant to a plan, contract or arrangement are materially consistent with the terms of the plan, contract or arrangement *and*
 - the grants or awards (or modifications) are disclosed in the next proxy statement or when Item 402 of Regulation S-K otherwise requires disclosure.

Item 5.02 Excludes Broad-Based Compensation Arrangements. Any compensation plan, contract or arrangement that does not discriminate in favor of executive officers and that is available generally to all salaried employees is not “material” for purposes of Item 5.02 of Form 8-K.

7.2 Companies Must Report Shareholder Voting Results on Form 8-K Within Four Business Days

Form 8-K requires a company to disclose the results of a shareholder vote, including a shareholder vote on a compensation proposal, within four business days after the date on which the vote occurs. In situations where a company may not have definitive results within four business days after the meeting date, the company must report the preliminary voting results on Form 8-K within four business days after the preliminary voting results are determined. Once the company certifies the final voting results, the company must then file an amended report on Form 8-K within four business days to disclose those final results.

■ FORM 8-K COMPENSATION DISCLOSURE FOR EXECUTIVES AND DIRECTORS

Form 8-K Not Required for Compensation Changes for Continuing Directors. Companies are not required to report director compensation on Form 8-K unless the director is elected other than by a vote of shareholders at a meeting convened for that purpose (e.g., if the board of directors appoints the director to fill a vacancy).

Companies Must Disclose Compensatory Arrangements for New Directors and Specified Officers. Companies must disclose material compensatory arrangements or material amendments to those arrangements entered into in connection with a director's election or a specified officer's appointment. Companies will also disclose *all* grants or awards, irrespective of size or materiality, under a material compensatory arrangement or amendments to grants or awards made in connection with a director's election or a specified officer's appointment.

Shareholder Approval of a New Compensatory Plan Triggers Form 8-K Filing. When a company adopts a new material compensatory plan or arrangement, or a material amendment to an existing material compensatory plan or arrangement, that includes named executive officers and becomes effective on receipt of shareholder approval, the date of the shareholder approval is the trigger date for the obligation to report the plan under Item 5.02(e) of Form 8-K.

Companies Must Also File Form 8-K to Disclose Omitted Salary or Bonus Amounts. A company may omit from the Summary Compensation Table the value of the salary or bonus earned by a named executive officer if it cannot calculate the value prior to filing its annual report or

proxy statement. If a company omits this information, new Item 5.02(f) requires the company to file a Form 8-K to report this information as soon as the amounts are calculable in whole or in part. In addition, the company must also include a new total compensation amount that reflects the new salary or bonus information.

Limited Safe Harbor Covers Item 5.02(e). The limited safe harbor from liability under Rule 10b-5 and Section 10(b) of the Exchange Act applies to a company's failure to timely file reports required by Item 5.02(e) of Form 8-K. This safe harbor extends only until the due date of the next periodic report for the relevant period in which the Form 8-K was not timely filed. Companies that fail to timely file reports on Form 8-K required solely by Item 5.02(e) will not lose their eligibility to use Form S-3 registration statements as a result of those failures to file timely, so long as the company filed the disclosure required by Item 5.02(e) of Form 8-K on or before the date on which it files a Form S-3.

8.0 BENEFICIAL OWNERSHIP TABLE

The Beneficial Ownership Table requires companies to disclose the number and percentage of the company's shares beneficially owned by each named executive officer, director and nominee and by the company's executive officers and directors as a group. Under these rules, companies must also disclose information regarding stock pledges and directors' qualifying shares.

8.1 Management Shares Subject to Stock Pledges

Companies must disclose in footnotes to the Beneficial Ownership Table the number of shares of company stock pledged as security by each named executive officer, each director and director nominee, and all the named executive officers, directors and director nominees as a group "as of the most recent practicable date."

The more limited disclosure required under the prior rules, which required disclosure of pledges only if they might result in a change in control of the company, still applies to more than 5% security holders.

The required beneficial ownership disclosure does not include hedging arrangements that alter the executive's economic interest in the executive's beneficially owned shares, although many of these arrangements also involve pledges of the underlying shares, which must be disclosed. Hedging transactions frequently involve the purchase or sale of a derivative security that the executive must report within two business days under Section 16(a) of the

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Exchange Act. Also, companies must discuss in the CD&A any company policies regarding some hedging arrangements.

8.2 Directors' Qualifying Shares

Companies must now also disclose in the Beneficial Ownership Table directors' qualifying shares, which are shares held by directors pursuant to minimum shareholding requirements mandated by applicable law or a company's charter.

9.0 EFFECT OF NEW RULES ON FOREIGN PRIVATE ISSUERS AND SMALLER REPORTING COMPANIES

9.1 Foreign Private Issuers

The SEC has continued to generally exclude foreign private issuers from these requirements. Companies that qualify for treatment as foreign private issuers may comply with executive compensation and related person transaction disclosure requirements by providing the information required under Form 20-F. However, a foreign private issuer must also disclose any more detailed information that it makes publicly available or that the company's home jurisdiction or a market in which its securities are listed or traded requires the company to disclose. In addition, a foreign private issuer must file as an exhibit each compensatory plan, contract or arrangement (or a portion of the plan) with management or directors *only* if the company otherwise publicly disclosed the plan or the company's home country requires the company to publicly file the plan.

9.2 Smaller Reporting Companies

The disclosure rules provide some relief for smaller reporting companies. For example, smaller reporting companies are not required to file a CD&A or provide certain compensation tables otherwise required for other companies.

Smaller reporting companies must provide the disclosure required by the tables identified below, along with related narrative (and may voluntarily provide supplemental disclosure):

- the Summary Compensation Table, *but* may
 - disclose compensation only for the two most recent fiscal years (not three),
 - provide disclosure only for the CEO and the *two* other most highly compensated officers (not three),
 - omit disclosure of changes in pension value, and

RR DONNELLEY

- identify material items in the All Other Compensation column by narrative discussion (rather than using tabular or footnote disclosure);
 - the Outstanding Equity Awards at Fiscal Year-End Table;
 - the Director Compensation Table; and
 - related person disclosures, *but* may
 - apply a different disclosure threshold for related person transactions (the lesser of \$120,000 and 1% of the average of the company's total assets at the fiscal year-end for the last three fiscal years),
 - omit disclosure of the company's policies and procedures for reviewing related person transactions, and
 - omit disclosure regarding compensation committee interlocks and insider participation in compensation decisions.
-

10.0 PLAIN ENGLISH REQUIREMENTS

Companies must disclose in “plain English” all information regarding executive officer and director compensation, beneficial ownership, related person transactions and corporate governance disclosures included in current or periodic reports or proxy statements in response to Items 402, 403, 404 and 407 of Regulation S-K.

Plain English Standards. To comply with the plain English rules, companies must apply the following standards:

- present information in clear, concise sections, paragraphs and sentences;
- use short sentences;
- use definite, concrete, everyday words;
- use the active voice;
- avoid multiple negatives;
- use descriptive headings and subheadings;
- use a tabular presentation or bullet lists for complex material, wherever possible;
- avoid technical and legal jargon;
- avoid frequent reliance on glossaries or defined terms as the primary means of explaining information;

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

- define terms in the glossary or other section of the document only if the meaning is unclear from the context;
 - use a glossary only if it facilitates understanding of the disclosure; and
 - include pictures, logos, charts, graphs, tables or other design elements so long as they are not misleading and the required information is clear, understandable and consistent with applicable disclosure requirements and any other included information.
-

■ ONLY SOME DISCLOSURES REQUIRE PLAIN ENGLISH

The SEC's plain English disclosure requirements include all disclosures required under Item 402 of Regulation S-K (executive and director compensation), Item 403 of Regulation S-K (beneficial ownership of management and significant shareholders), Item 404 of Regulation S-K (related person transactions) and Item 407 of Regulation S-K (corporate governance). Exchange Act Rules 13a-20 and 15d-20 do not require plain English for any other disclosure in the proxy statement. However, the general principle that all disclosures should be meaningful, clear and concise applies to all of a company's disclosure.

11.0 EFFECTIVE DATES FOR SEC'S DECEMBER 2009 AMENDMENTS

December 2009 Rule Changes Effective for Most 2010 Proxy Statements. The enhanced disclosure rules apply to annual reports on Form 10-K and proxy statements filed on or after February 28, 2010 for companies with fiscal years ending on or after December 20, 2009. A company with a fiscal year that ends before December 20, 2009 does not have to comply with these new requirements for its annual report on Form 10-K and related proxy statement, even if it files one or both of them on or after February 28, 2010. The SEC released additional guidance that clarifies some transition issues.

- **May Apply to Preliminary Proxy Statements Filed Before February 28, 2010.** If a company is required to file a preliminary proxy statement and expects to file its definitive proxy statement on or after February 28, 2010, then the preliminary proxy statement must comply with these new requirements even if filed before February 28, 2010.
- **Applies to Registration Statements Filed After Form 10-K.** A company with a fiscal year that ended before December 20, 2009 will not be required to comply with the Regulation S-K amendments until it files its 2010 annual report on Form 10-K for its fiscal year ending on or after December 20, 2009. This means that any registration statement the

RR DONNELLEY

company files under the Securities Act or Exchange Act before its 2010 annual report on Form 10-K is required to be filed would not be subject to the Regulation S-K amendments.

- **Applies to Initial Public Offerings Filed on or After December 20, 2009.** If a company first files the registration statement for its initial public offering on or after December 20, 2009, the registration statement must comply with the Regulation S-K amendments for the SEC to declare it effective on or after February 28, 2010.
- **Accelerated Reporting of Shareholder Voting Results on Form 8-K Effective for Meetings Held on or After February 28, 2010.** The new Form 8-K Item 5.07 reporting requirement applies to any shareholder meeting that takes place on or after February 28, 2010. If the shareholder meeting occurs before February 28, 2010, the new Item 5.07 Form 8-K requirement does not apply.

Appendix A

Full Text of Regulation S-K Items 402, 403, 404 and 407 (as amended through December 2009)¹

§ 229.402 (Item 402) Executive compensation.

(a) *General*—(1) *Treatment of foreign private issuers.* A foreign private issuer will be deemed to comply with this Item if it provides the information required by Items 6.B and 6.E.2 of Form 20-F (17 CFR 249.220f), with more detailed information provided if otherwise made publicly available or required to be disclosed by the issuer's home jurisdiction or a market in which its securities are listed or traded.

(2) *All compensation covered.* This Item requires clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (a)(3) of this Item, and directors covered by paragraph (k) of this Item, by any person for all services rendered in all capacities to the registrant and its subsidiaries, unless otherwise specifically excluded from disclosure in this Item. All such compensation shall be reported pursuant to this Item, even if also called for by another requirement, including transactions between the registrant and a third party where a purpose of the transaction is to furnish compensation to any such named executive officer or director. No amount reported as compensation for one fiscal year need be reported in the same manner as compensation for a subsequent fiscal year; amounts reported as compensation for one fiscal year may be required to be reported in a different manner pursuant to this Item.

¹ **Author's Note:** *This excerpt from Regulation S-K is reprinted from the version posted on the Electronic Code of Federal Regulations (e-CFR) at <http://ecfr.gpoaccess.gov/>. The Electronic Code of Federal Regulations (e-CFR) is a currently updated version of the Code of Federal Regulations (CFR). It is not an official legal edition of the CFR. The e-CFR is an editorial compilation of CFR material and Federal Register amendments produced by the National Archives and Records Administration's Office of the Federal Register (OFR) and the Government Printing Office. The OFR updates the material in the e-CFR on a daily basis.*

RR DONNELLEY

(3) *Persons covered.* Disclosure shall be provided pursuant to this Item for each of the following (the “named executive officers”):

(i) All individuals serving as the registrant’s principal executive officer or acting in a similar capacity during the last completed fiscal year (“PEO”), regardless of compensation level;

(ii) All individuals serving as the registrant’s principal financial officer or acting in a similar capacity during the last completed fiscal year (“PFO”), regardless of compensation level;

(iii) The registrant’s three most highly compensated executive officers other than the PEO and PFO who were serving as executive officers at the end of the last completed fiscal year; and

(iv) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (a)(3)(iii) of this Item but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year.

Instructions to Item 402(a)(3). 1. *Determination of most highly compensated executive officers.* The determination as to which executive officers are most highly compensated shall be made by reference to total compensation for the last completed fiscal year (as required to be disclosed pursuant to paragraph (c)(2)(x) of this Item) reduced by the amount required to be disclosed pursuant to paragraph (c)(2)(viii) of this Item, *provided, however*, that no disclosure need be provided for any executive officer, other than the PEO and PFO, whose total compensation, as so reduced, does not exceed \$100,000.

2. *Inclusion of executive officer of subsidiary.* It may be appropriate for a registrant to include as named executive officers one or more executive officers or other employees of subsidiaries in the disclosure required by this Item. See Rule 3b–7 under the Exchange Act (17 CFR 240.3b–7).

3. *Exclusion of executive officer due to overseas compensation.* It may be appropriate in limited circumstances for a registrant not to include in the disclosure required by this Item an individual, other than its PEO or PFO, who is one of the registrant’s most highly compensated executive officers due to the payment of amounts of cash compensation relating to overseas assignments attributed predominantly to such assignments.

(4) *Information for full fiscal year.* If the PEO or PFO served in that capacity during any part of a fiscal year with respect to which information is

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

required, information should be provided as to all of his or her compensation for the full fiscal year. If a named executive officer (other than the PEO or PFO) served as an executive officer of the registrant (whether or not in the same position) during any part of the fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(5) *Omission of table or column.* A table or column may be omitted if there has been no compensation awarded to, earned by, or paid to any of the named executive officers or directors required to be reported in that table or column in any fiscal year covered by that table.

(6) *Definitions.* For purposes of this Item:

(i) The term *stock* means instruments such as common stock, restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or any similar instruments that do not have option-like features, and the term *option* means instruments such as stock options, stock appreciation rights and similar instruments with option-like features. The term *stock appreciation rights* (“SARs”) refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the registrant or a named executive officer. The term *equity* is used to refer generally to stock and/or options.

(ii) The term *plan* includes, but is not limited to, the following: Any plan, contract, authorization or arrangement, whether or not set forth in any formal document, pursuant to which cash, securities, similar instruments, or any other property may be received. A plan may be applicable to one person. Registrants may omit information regarding group life, health, hospitalization, or medical reimbursement plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees.

(iii) The term *incentive plan* means any plan providing compensation intended to serve as incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the registrant or an affiliate, the registrant’s stock price, or any other performance measure. An *equity incentive plan* is an incentive plan or portion of an incentive plan under which awards are granted that fall within the scope of Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment*, as modified or

RR DONNELLEY

supplemented (“FAS 123R”). A *non-equity incentive plan* is an incentive plan or portion of an incentive plan that is not an equity incentive plan. The term *incentive plan award* means an award provided under an incentive plan.

(iv) The terms *date of grant* or *grant date* refer to the grant date determined for financial statement reporting purposes pursuant to FAS 123R.

(v) *Closing market price* is defined as the price at which the registrant’s security was last sold in the principal United States market for such security as of the date for which the closing market price is determined.

(b) *Compensation discussion and analysis.* (1) Discuss the compensation awarded to, earned by, or paid to the named executive officers. The discussion shall explain all material elements of the registrant’s compensation of the named executive officers. The discussion shall describe the following:

- (i) The objectives of the registrant’s compensation programs;
- (ii) What the compensation program is designed to reward;
- (iii) Each element of compensation;
- (iv) Why the registrant chooses to pay each element;
- (v) How the registrant determines the amount (and, where applicable, the formula) for each element to pay; and
- (vi) How each compensation element and the registrant’s decisions regarding that element fit into the registrant’s overall compensation objectives and affect decisions regarding other elements.

(2) While the material information to be disclosed under Compensation Discussion and Analysis will vary depending upon the facts and circumstances, examples of such information may include, in a given case, among other things, the following:

- (i) The policies for allocating between long-term and currently paid out compensation;
- (ii) The policies for allocating between cash and non-cash compensation, and among different forms of non-cash compensation;
- (iii) For long-term compensation, the basis for allocating compensation to each different form of award (such as relationship of the award to the achievement of the registrant’s long-term goals, management’s exposure to downside equity performance risk, correlation between cost to registrant and expected benefits to the registrant);

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

(iv) How the determination is made as to when awards are granted, including awards of equity-based compensation such as options;

(v) What specific items of corporate performance are taken into account in setting compensation policies and making compensation decisions;

(vi) How specific forms of compensation are structured and implemented to reflect these items of the registrant's performance, including whether discretion can be or has been exercised (either to award compensation absent attainment of the relevant performance goal(s) or to reduce or increase the size of any award or payout), identifying any particular exercise of discretion, and stating whether it applied to one or more specified named executive officers or to all compensation subject to the relevant performance goal(s);

(vii) How specific forms of compensation are structured and implemented to reflect the named executive officer's individual performance and/or individual contribution to these items of the registrant's performance, describing the elements of individual performance and/or contribution that are taken into account;

(viii) Registrant policies and decisions regarding the adjustment or recovery of awards or payments if the relevant registrant performance measures upon which they are based are restated or otherwise adjusted in a manner that would reduce the size of an award or payment;

(ix) The factors considered in decisions to increase or decrease compensation materially;

(x) How compensation or amounts realizable from prior compensation are considered in setting other elements of compensation (e.g., how gains from prior option or stock awards are considered in setting retirement benefits);

(xi) With respect to any contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) at, following, or in connection with any termination or change-in-control, the basis for selecting particular events as triggering payment (e.g., the rationale for providing a single trigger for payment in the event of a change-in-control);

(xii) The impact of the accounting and tax treatments of the particular form of compensation;

(xiii) The registrant's equity or other security ownership requirements or guidelines (specifying applicable amounts and forms of ownership), and any registrant policies regarding hedging the economic risk of such ownership;

RR DONNELLEY

(xiv) Whether the registrant 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

(xv) The role of executive officers in determining executive compensation.

Instructions to Item 402(b). 1. The purpose of the Compensation Discussion and Analysis is to provide to investors material information that is necessary to an understanding of the registrant's compensation policies and decisions regarding the named executive officers.

2. The Compensation Discussion and Analysis should be of the information contained in the tables and otherwise disclosed pursuant to this Item. The Compensation Discussion and Analysis should also cover actions regarding executive compensation that were taken after the registrant's last fiscal year's end. Actions that should be addressed might include, as examples only, the adoption or implementation of new or modified programs and policies or specific decisions that were made or steps that were taken that could affect a fair understanding of the named executive officer's compensation for the last fiscal year. Moreover, in some situations it may be necessary to discuss prior years in order to give context to the disclosure provided.

3. The Compensation Discussion and Analysis should focus on the material principles underlying the registrant's executive compensation policies and decisions and the most important factors relevant to analysis of those policies and decisions. The Compensation Discussion and Analysis shall reflect the individual circumstances of the registrant and shall avoid boilerplate language and repetition of the more detailed information set forth in the tables and narrative disclosures that follow.

4. Registrants are not required to disclose target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm for the registrant. The standard to use when determining whether disclosure would cause competitive harm for the registrant is the same standard that would apply when a registrant requests confidential treatment of confidential trade secrets or confidential commercial or financial information pursuant to Securities Act Rule 406 (17 CFR 230.406) and Exchange Act Rule 24b-2 (17 CFR 240.24b-2), each of which incorporates the criteria for non-disclosure when relying upon Exemption

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and Rule 80(b)(4) (17 CFR 200.80(b)(4)) thereunder. A registrant is not required to seek confidential treatment under the procedures in Securities Act Rule 406 and Exchange Act Rule 24b-2 if it determines that the disclosure would cause competitive harm in reliance on this instruction; however, in that case, the registrant must discuss how difficult it will be for the executive or how likely it will be for the registrant to achieve the undisclosed target levels or other factors.

5. Disclosure of target levels that are non-GAAP financial measures will not be subject to Regulation G (17 CFR 244.100—102) and Item 10(e) (§229.10(e)); however, disclosure must be provided as to how the number is calculated from the registrant’s audited financial statements.

(c) *Summary compensation table*—(1) *General*. Provide the information specified in paragraph (c)(2) of this Item, concerning the compensation of the named executive officers for each of the registrant’s last three completed fiscal years, in a Summary Compensation Table in the tabular format specified below.

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 (\$)
PEO									
PFO									
A									
B									
C									

(2) The Table shall include:

- (i) The name and principal position of the named executive officer (column (a));
- (ii) The fiscal year covered (column (b));
- (iii) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (c));
- (iv) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d));

RR DONNELLEY

Instructions to Item 402(c)(2)(iii) and (iv). 1. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, a footnote shall be included disclosing that the amount of salary or bonus is not calculable through the latest practicable date and providing the date that the amount of salary or bonus is expected to be determined, and such amount must then be disclosed in a filing under Item 5.02(f) of Form 8-K (17 CFR 249.308).

2. Registrants shall include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer under which stock, equity-based or other forms of non-cash compensation instead have been received by the named executive officer. However, the receipt of any such form of non-cash compensation instead of salary or bonus must be disclosed in a footnote added to the salary or bonus column and, where applicable, referring to the Grants of Plan-Based Awards Table (required by paragraph (d) of this Item) where the stock, option or non-equity incentive plan award elected by the named executive officer is reported.

(v) For awards of stock, the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (e));

(vi) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (f));

Instruction 1 to Item 402(c)(2)(v) and (vi). For awards reported in columns (e) and (f), include a footnote disclosing all assumptions made in the valuation by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

Instruction 2 to Item 402(c)(2)(v) and (vi). If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise price of options or SARs previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), or otherwise has materially modified such awards, the registrant shall include, as awards required to be reported in column (f), the incremental fair value, computed as of the repricing or modification date in accordance with FASB ASC Topic 718, with respect to that repriced or modified award.

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Instruction 3 to Item 402(c)(2)(v) and (vi). For any awards that are subject to performance conditions, report the value at the grant date based upon the probable outcome of such conditions. This amount should be consistent with the estimate of aggregate compensation cost to be recognized over the service period determined as of the grant date under FASB ASC Topic 718, excluding the effect of estimated forfeitures. In a footnote to the table, disclose the value of the award at the grant date assuming that the highest level of performance conditions will be achieved if an amount less than the maximum was included in the table.

(vii) The dollar value of all earnings for services performed during the fiscal year pursuant to awards under non-equity incentive plans as defined in paragraph (a)(6)(iii) of this Item, and all earnings on any outstanding awards (column (g));

Instructions to Item 402(c)(2)(vii). 1. If the relevant performance measure is satisfied during the fiscal year (including for a single year in a plan with a multi-year performance measure), the earnings are reportable for that fiscal year, even if not payable until a later date, and are not reportable again in the fiscal year when amounts are paid to the named executive officer.

2. All earnings on non-equity incentive plan compensation must be identified and quantified in a footnote to column (g), whether the earnings were paid during the fiscal year, payable during the period but deferred at the election of the named executive officer, or payable by their terms at a later date.

(viii) The sum of the amounts specified in paragraphs (c)(2)(viii)(A) and (B) of this Item (column (h)) as follows:

(A) The aggregate change in the actuarial present value of the named executive officer's accumulated benefit under all defined benefit and actuarial pension plans (including supplemental plans) from the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the prior completed fiscal year to the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the covered fiscal year; and

(B) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans;

RR DONNELLEY

Instructions to Item 402(c)(2)(viii). 1. The disclosure required pursuant to paragraph (c)(2)(viii)(A) of this Item applies to each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans and supplemental executive retirement plans, but excluding tax-qualified defined contribution plans and nonqualified defined contribution plans. For purposes of this disclosure, the registrant should use the same amounts required to be disclosed pursuant to paragraph (h)(2)(iv) of this Item for the covered fiscal year and the amounts that were or would have been required to be reported for the executive officer pursuant to paragraph (h)(2)(iv) of this Item for the prior completed fiscal year.

2. Regarding paragraph (c)(2)(viii)(B) of this Item, interest on deferred compensation is above-market only if the rate of interest exceeds 120% of the applicable federal long-term rate, with compounding (as prescribed under section 1274(d) of the Internal Revenue Code, (26 U.S.C. 1274(d))) at the rate that corresponds most closely to the rate under the registrant's plan at the time the interest rate or formula is set. In the event of a discretionary reset of the interest rate, the requisite calculation must be made on the basis of the interest rate at the time of such reset, rather than when originally established. Only the above-market portion of the interest must be included. If the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate. Dividends (and dividend equivalents) on deferred compensation denominated in the registrant's stock ("deferred stock") are preferential only if earned at a rate higher than dividends on the registrant's common stock. Only the preferential portion of the dividends or equivalents must be included. Footnote or narrative disclosure may be provided explaining the registrant's criteria for determining any portion considered to be above-market.

3. The registrant shall identify and quantify by footnote the separate amounts attributable to each of paragraphs (c)(2)(viii)(A) and (B) of this Item. Where such amount pursuant to paragraph (c)(2)(viii)(A) is negative, it should be disclosed by footnote but should not be reflected in the sum reported in column (h).

(ix) All other compensation for the covered fiscal year that the registrant could not properly report in any other column of the Summary Compensation Table (column (i)). Each compensation item that is not properly reportable in

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

columns (c)–(h), regardless of the amount of the compensation item, must be included in column (i). Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than \$10,000;

(B) All “gross-ups” or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the registrant or its subsidiaries purchased from the registrant or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the registrant, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(1) Any termination, including without limitation through retirement, resignation, severance or constructive termination (including a change in responsibilities) of such executive officer’s employment with the registrant and its subsidiaries; or

(2) A change in control of the registrant;

(E) Registrant contributions or other allocations to vested and unvested defined contribution plans;

(F) The dollar value of any insurance premiums paid by, or on behalf of, the registrant during the covered fiscal year with respect to life insurance for the benefit of a named executive officer; and

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (e) or (f); and

Instructions to Item 402(c)(2)(ix). 1. Non-equity incentive plan awards and earnings and earnings on stock and options, except as specified in paragraph (c)(2)(ix)(G) of this Item, are required to be reported elsewhere as provided in this Item and are not reportable as All Other Compensation in column (i).

2. Benefits paid pursuant to defined benefit and actuarial plans are not reportable as All Other Compensation in column (i) unless accelerated pursuant to a change in control; information concerning these plans is reportable pursuant to paragraphs (c)(2)(viii)(A) and (h) of this Item.

RR DONNELLEY

3. Any item reported for a named executive officer pursuant to paragraph (c)(2)(ix) of this Item that is not a perquisite or personal benefit and whose value exceeds \$10,000 must be identified and quantified in a footnote to column (i). This requirement applies only to compensation for the last fiscal year. All items of compensation are required to be included in the Summary Compensation Table without regard to whether such items are required to be identified other than as specifically noted in this Item.

4. Perquisites and personal benefits may be excluded as long as the total value of all perquisites and personal benefits for a named executive officer is less than \$10,000. If the total value of all perquisites and personal benefits is \$10,000 or more for any named executive officer, then each perquisite or personal benefit, regardless of its amount, must be identified by type. If perquisites and personal benefits are required to be reported for a named executive officer pursuant to this rule, then each perquisite or personal benefit that exceeds the greater of \$25,000 or 10% of the total amount of perquisites and personal benefits for that officer must be quantified and disclosed in a footnote. The requirements for identification and quantification apply only to compensation for the last fiscal year. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the registrant. With respect to the perquisite or other personal benefit for which footnote quantification is required, the registrant shall describe in the footnote its methodology for computing the aggregate incremental cost. Reimbursements of taxes owed with respect to perquisites or other personal benefits must be included in column (i) and are subject to separate quantification and identification as tax reimbursements (paragraph (c)(2)(ix)(B) of this Item) even if the associated perquisites or other personal benefits are not required to be included because the total amount of all perquisites or personal benefits for an individual named executive officer is less than \$10,000 or are required to be identified but are not required to be separately quantified.

5. For purposes of paragraph (c)(2)(ix)(D) of this Item, an accrued amount is an amount for which payment has become due.

(x) The dollar value of total compensation for the covered fiscal year (column (j)). With respect to each named executive officer, disclose the sum of all amounts reported in columns (c) through (i).

Instructions to Item 402(c). 1. Information with respect to fiscal years prior to the last completed fiscal year will not be required if the registrant was not a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

(15 U.S.C. 78m(a) or 78o(d)) at any time during that year, except that the registrant will be required to provide information for any such year if that information previously was required to be provided in response to a Commission filing requirement.

2. All compensation values reported in the Summary Compensation Table must be reported in dollars and rounded to the nearest dollar. Reported compensation values must be reported numerically, providing a single numerical value for each grid in the table. Where compensation was paid to or received by a named executive officer in a different currency, a footnote must be provided to identify that currency and describe the rate and methodology used to convert the payment amounts to dollars.

3. If a named executive officer is also a director who receives compensation for his or her services as a director, reflect that compensation in the Summary Compensation Table and provide a footnote identifying and itemizing such compensation and amounts. Use the categories in the Director Compensation Table required pursuant to paragraph (k) of this Item.

4. Any amounts deferred, whether pursuant to a plan established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), or otherwise, shall be included in the appropriate column for the fiscal year in which earned.

RR DONNELLEY

(d) *Grants of plan-based awards table.* (1) Provide the information specified in paragraph (d)(2) of this Item, concerning each grant of an award made to a named executive officer in the last completed fiscal year under any plan, including awards that subsequently have been transferred, in the following tabular format:

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 or units	All other option awards: Number of securities underlying options	Exercise or base price of option awards (\$/Sh)	Grant date fair value of stock and option awards
		Thres- hold (\$)	Target (\$)	Maxi- mum (\$)	Thres- hold (#)	Target (#)	Maxi- mum (#)	(#)	(#)	(k)	(l)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
PEO											
PFO											
A											
B											
C											

(2) The Table shall include:

(i) The name of the named executive officer (column (a));

(ii) The grant date for equity-based awards reported in the table (column (b)). If such grant date is different than the date on which the compensation committee (or a committee of the board of directors performing a similar function or the full board of directors) takes action or is deemed to take action to grant such awards, a separate, adjoining column shall be added between columns (b) and (c) showing such date;

(iii) The dollar value of the estimated future payout upon satisfaction of the conditions in question under non-equity incentive plan awards granted in the fiscal year, or the applicable range of estimated payouts denominated in dollars (threshold, target and maximum amount) (columns (c) through (e));

(iv) The number of shares of stock, or the number of shares underlying options to be paid out or vested upon satisfaction of the conditions in question under equity incentive plan awards granted in the fiscal year, or the applicable range of estimated payouts denominated in the number of shares of stock, or the number of shares underlying options under the award (threshold, target and maximum amount) (columns (f) through (h));

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

(v) The number of shares of stock granted in the fiscal year that are not required to be disclosed in columns (f) through (h) (column (i));

(vi) The number of securities underlying options granted in the fiscal year that are not required to be disclosed in columns (f) through (h) (column (j));

(vii) The per-share exercise or base price of the options granted in the fiscal year (column (k)). If such exercise or base price is less than the closing market price of the underlying security on the date of the grant, a separate, adjoining column showing the closing market price on the date of the grant shall be added after column (k) and

(viii) The grant date fair value of each equity award computed in accordance with FAS 123R (column (l)). If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise or base price of options, SARs or similar option-like instruments previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means (“repriced”), or otherwise has materially modified such awards, the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R, with respect to that repriced or modified award, shall be reported.

Instructions to Item 402(d). 1. Disclosure on a separate line shall be provided in the Table for each grant of an award made to a named executive officer during the fiscal year. If grants of awards were made to a named executive officer during the fiscal year under more than one plan, identify the particular plan under which each such grant was made.

2. For grants of incentive plan awards, provide the information called for by columns (c), (d) and (e), or (f), (g) and (h), as applicable. For columns (c) and (f), threshold refers to the minimum amount payable for a certain level of performance under the plan. For columns (d) and (g), *target* refers to the amount payable if the specified performance target(s) are reached. For columns (e) and (h), *maximum* refers to the maximum payout possible under the plan. If the award provides only for a single estimated payout, that amount must be reported as the *target* in columns (d) and (g). In columns (d) and (g), registrants must provide a representative amount based on the previous fiscal year’s performance if the target amount is not determinable.

3. In determining if the exercise or base price of an option is less than the closing market price of the underlying security on the date of the grant, the registrant may use either the closing market price as specified in paragraph

RR DONNELLEY

(a)(6)(v) of this Item, or if no market exists, any other formula prescribed for the security. Whenever the exercise or base price reported in column (k) is not the closing market price, describe the methodology for determining the exercise or base price either by a footnote or accompanying textual narrative.

4. A tandem grant of two instruments, only one of which is granted under an incentive plan, such as an option granted in tandem with a performance share, need be reported only in column (i) or (j), as applicable. For example, an option granted in tandem with a performance share would be reported only as an option grant in column (j), with the tandem feature noted either by a footnote or accompanying textual narrative.

5. Disclose the dollar amount of consideration, if any, paid by the executive officer for the award in a footnote to the appropriate column.

6. If non-equity incentive plan awards are denominated in units or other rights, a separate, adjoining column between columns (b) and (c) shall be added quantifying the units or other rights awarded.

7. Options, SARs and similar option-like instruments granted in connection with a repricing transaction or other material modification shall be reported in this Table. However, the disclosure required by this Table does not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

8. For any equity awards that are subject to performance conditions, report in column (l) the value at the grant date based upon the probable outcome of such conditions. This amount should be consistent with the estimate of aggregate compensation cost to be recognized over the service period determined as of the grant date under FASB ASC Topic 718, excluding the effect of estimated forfeitures.

(e) *Narrative disclosure to summary compensation table and grants of plan-based awards table.* (1) Provide a narrative description of any material factors necessary to an understanding of the information disclosed in the tables required by paragraphs (c) and (d) of this Item. Examples of such factors may include, in given cases, among other things:

(i) The material terms of each named executive officer's employment agreement or arrangement, whether written or unwritten;

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

(ii) If at any time during the last fiscal year, any outstanding option or other equity-based award was repriced or otherwise materially modified (such as by extension of exercise periods, the change of vesting or forfeiture conditions, the change or elimination of applicable performance criteria, or the change of the bases upon which returns are determined), a description of each such repricing or other material modification;

(iii) The material terms of any award reported in response to paragraph (d) of this Item, including a general description of the formula or criteria to be applied in determining the amounts payable, and the vesting schedule. For example, state where applicable that dividends will be paid on stock, and if so, the applicable dividend rate and whether that rate is preferential. Describe any performance-based conditions, and any other material conditions, that are applicable to the award. For purposes of the Table required by paragraph (d) of this Item and the narrative disclosure required by paragraph (e) of this Item, performance-based conditions include both performance conditions and market conditions, as those terms are defined in FAS 123R; and

(iv) An explanation of the amount of salary and bonus in proportion to total compensation.

Instructions to Item 402(e)(1). 1. The disclosure required by paragraph (e)(1)(ii) of this Item would not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

2. Instructions 4 and 5 to Item 402(b) apply regarding disclosure pursuant to paragraph (e)(1) of this Item of target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm for the registrant.

(2) [Reserved]

RR DONNELLEY

(f) *Outstanding equity awards at fiscal year-end table.* (1) Provide the information specified in paragraph (f)(2) of this Item, concerning unexercised options; stock that has not vested; and equity incentive plan awards for each named executive officer outstanding as of the end of the registrant’s last completed fiscal year in the following tabular format:

Outstanding Equity Awards at Fiscal Year-End

Name	Option awards					Stock awards			
	Number of securities underlying unexercised options (#) exercisable	Number of securities underlying unexercised options (#) unexercisable	Equity incentive plan awards: number of securities underlying unexercised unearned options (#)	Option exercise price (\$)	Option expiration date	Number of shares or units of stock that have not vested (#)	Market value of shares or stock that have not vested (#)	Equity incentive awards: number of units or rights that have not vested (#)	Equity incentive plan awards: market or payout value of unearned shares, other rights that have not vested (\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
PFO									
A									
B									
C									

(2) The Table shall include:

- (i) The name of the named executive officer (column (a));
- (ii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are exercisable and that are not reported in column (d) (column (b));
- (iii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are unexercisable and that are not reported in column (d) (column (c));
- (iv) On an award-by-award basis, the total number of shares underlying unexercised options awarded under any equity incentive plan that have not been earned (column (d));
- (v) For each instrument reported in columns (b), (c) and (d), as applicable, the exercise or base price (column (e));

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

(vi) For each instrument reported in columns (b), (c) and (d), as applicable, the expiration date (column (f));

(vii) The total number of shares of stock that have not vested and that are not reported in column (i) (column (g));

(viii) The aggregate market value of shares of stock that have not vested and that are not reported in column (j) (column (h));

(ix) The total number of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned, and, if applicable the number of shares underlying any such unit or right (column (i)); and

(x) The aggregate market or payout value of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned (column (j)).

Instructions to Item 402(f)(2). 1. Identify by footnote any award that has been transferred other than for value, disclosing the nature of the transfer.

2. The vesting dates of options, shares of stock and equity incentive plan awards held at fiscal-year end must be disclosed by footnote to the applicable column where the outstanding award is reported.

3. Compute the market value of stock reported in column (h) and equity incentive plan awards of stock reported in column (j) by multiplying the closing market price of the registrant's stock at the end of the last completed fiscal year by the number of shares or units of stock or the amount of equity incentive plan awards, respectively. The number of shares or units reported in columns (d) or (i), and the payout value reported in column (j), shall be based on achieving threshold performance goals, except that if the previous fiscal year's performance has exceeded the threshold, the disclosure shall be based on the next higher performance measure (target or maximum) that exceeds the previous fiscal year's performance. If the award provides only for a single estimated payout, that amount should be reported. If the target amount is not determinable, registrants must provide a representative amount based on the previous fiscal year's performance.

4. Multiple awards may be aggregated where the expiration date and the exercise and/or base price of the instruments is identical. A single award consisting of a combination of options, SARs and/or similar option-like instruments shall be reported as separate awards with respect to each tranche with a different exercise and/or base price or expiration date.

RR DONNELLEY

5. Options or stock awarded under an equity incentive plan are reported in columns (d) or (i) and (j), respectively, until the relevant performance condition has been satisfied. Once the relevant performance condition has been satisfied, even if the option or stock award is subject to forfeiture conditions, options are reported in column (b) or (c), as appropriate, until they are exercised or expire, or stock is reported in columns (g) and (h) until it vests.

(g) *Option exercises and stock vested table.* (1) Provide the information specified in paragraph (g)(2) of this Item, concerning each exercise of stock options, SARs and similar instruments, and each vesting of stock, including restricted stock, restricted stock units and similar instruments, during the last completed fiscal year for each of the named executive officers on an aggregated basis in the following tabular format:

Option Exercises and Stock Vested

<u>Name</u> (a)	Option awards		Stock awards	
	Number of shares acquired on exercise (#) (b)	Value realized on exercise (\$) (c)	Number of shares acquired on vesting (#) (d)	Value realized on vesting (\$) (e)
PEO				
PFO				
A				
B				
C				

(2) The Table shall include:

- (i) The name of the executive officer (column (a));
- (ii) The number of securities for which the options were exercised (column (b));
- (iii) The aggregate dollar value realized upon exercise of options, or upon the transfer of an award for value (column (c));
- (iv) The number of shares of stock that have vested (column (d)); and
- (v) The aggregate dollar value realized upon vesting of stock, or upon the transfer of an award for value (column (e)).

Instruction to Item 402(g)(2). Report in column (c) the aggregate dollar amount realized by the named executive officer upon exercise of the options or upon the transfer of such instruments for value. Compute the dollar amount realized upon exercise by determining the difference between the market price

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

of the underlying securities at exercise and the exercise or base price of the options. Do not include the value of any related payment or other consideration provided (or to be provided) by the registrant to or on behalf of a named executive officer, whether in payment of the exercise price or related taxes. (Any such payment or other consideration provided by the registrant is required to be disclosed in accordance with paragraph (c)(2)(ix) of this Item.) Report in column (e) the aggregate dollar amount realized by the named executive officer upon the vesting of stock or the transfer of such instruments for value. Compute the aggregate dollar amount realized upon vesting by multiplying the number of shares of stock or units by the market value of the underlying shares on the vesting date. For any amount realized upon exercise or vesting for which receipt has been deferred, provide a footnote quantifying the amount and disclosing the terms of the deferral.

(h) *Pension benefits.* (1) Provide the information specified in paragraph (h)(2) of this Item with respect to each plan that provides for payments or other benefits at, following, or in connection with retirement, in the following tabular format:

Pension Benefits

<u>Name</u> (a)	<u>Plan name</u> (b)	<u>Number of years credited service (#)</u> (c)	<u>Present value of accumulated benefit (\$)</u> (d)	<u>Payments during last fiscal year (\$)</u> (e)
PEO				
PFO				
A				
B				
C				

(2) The Table shall include:

- (i) The name of the executive officer (column (a));
- (ii) The name of the plan (column (b));

(iii) The number of years of service credited to the named executive officer under the plan, computed as of the same pension plan measurement date used for financial statement reporting purposes with respect to the registrant’s audited financial statements for the last completed fiscal year (column (c));

(iv) The actuarial present value of the named executive officer’s accumulated benefit under the plan, computed as of the same pension plan measurement date used for financial statement reporting purposes with respect to the

RR DONNELLEY

registrant's audited financial statements for the last completed fiscal year (column (d)); and

(v) The dollar amount of any payments and benefits paid to the named executive officer during the registrant's last completed fiscal year (column (e)).

Instructions to Item 402(h)(2). 1. The disclosure required pursuant to this Table applies to each plan that provides for specified retirement payments and benefits, or payments and benefits that will be provided primarily following retirement, including but not limited to tax-qualified defined benefit plans and supplemental executive retirement plans, but excluding tax-qualified defined contribution plans and nonqualified defined contribution plans. Provide a separate row for each such plan in which the named executive officer participates.

2. For purposes of the amount(s) reported in column (d), the registrant must use the same assumptions used for financial reporting purposes under generally accepted accounting principles, except that retirement age shall be assumed to be the normal retirement age as defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age. The registrant must disclose in the accompanying textual narrative the valuation method and all material assumptions applied in quantifying the present value of the current accrued benefit. A benefit specified in the plan document or the executive's contract itself is not an assumption. Registrants may satisfy all or part of this disclosure by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

3. For purposes of allocating the current accrued benefit between tax qualified defined benefit plans and related supplemental plans, apply the limitations applicable to tax qualified defined benefit plans established by the Internal Revenue Code and the regulations thereunder that applied as of the pension plan measurement date.

4. If a named executive officer's number of years of credited service with respect to any plan is different from the named executive officer's number of actual years of service with the registrant, provide footnote disclosure quantifying the difference and any resulting benefit augmentation.

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

(3) Provide a succinct narrative description of any material factors necessary to an understanding of each plan covered by the tabular disclosure required by this paragraph. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) The material terms and conditions of payments and benefits available under the plan, including the plan's normal retirement payment and benefit formula and eligibility standards, and the effect of the form of benefit elected on the amount of annual benefits. For this purpose, normal retirement means retirement at the normal retirement age as defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age;

(ii) If any named executive officer is currently eligible for early retirement under any plan, identify that named executive officer and the plan, and describe the plan's early retirement payment and benefit formula and eligibility standards. For this purpose, early retirement means retirement at the early retirement age as defined in the plan, or otherwise available to the executive under the plan;

(iii) The specific elements of compensation (e.g., salary, bonus, etc.) included in applying the payment and benefit formula, identifying each such element;

(iv) With respect to named executive officers' participation in multiple plans, the different purposes for each plan; and

(v) Registrant policies with regard to such matters as granting extra years of credited service.

RR DONNELLEY

(i) *Nonqualified defined contribution and other nonqualified deferred compensation plans.* (1) Provide the information specified in paragraph (i)(2) of this Item with respect to each defined contribution or other plan that provides for the deferral of compensation on a basis that is not tax-qualified in the following tabular format:

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					

(2) The Table shall include:

- (i) The name of the executive officer (column (a));
- (ii) The dollar amount of aggregate executive contributions during the registrant’s last fiscal year (column (b));
- (iii) The dollar amount of aggregate registrant contributions during the registrant’s last fiscal year (column (c));
- (iv) The dollar amount of aggregate interest or other earnings accrued during the registrant’s last fiscal year (column (d));
- (v) The aggregate dollar amount of all withdrawals by and distributions to the executive during the registrant’s last fiscal year (column (e)); and
- (vi) The dollar amount of total balance of the executive’s account as of the end of the registrant’s last fiscal year (column (f)).

Instruction to Item 402(i)(2). Provide a footnote quantifying the extent to which amounts reported in the contributions and earnings columns are reported as compensation in the last completed fiscal year in the registrant’s Summary Compensation Table and amounts reported in the aggregate balance at last fiscal year end (column (f)) previously were reported as compensation to the named executive officer in the registrant’s Summary Compensation Table for previous years.

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

(3) Provide a succinct narrative description of any material factors necessary to an understanding of each plan covered by tabular disclosure required by this paragraph. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) The type(s) of compensation permitted to be deferred, and any limitations (by percentage of compensation or otherwise) on the extent to which deferral is permitted;

(ii) The measures for calculating interest or other plan earnings (including whether such measure(s) are selected by the executive or the registrant and the frequency and manner in which selections may be changed), quantifying interest rates and other earnings measures applicable during the registrant's last fiscal year; and

(iii) Material terms with respect to payouts, withdrawals and other distributions.

(j) *Potential payments upon termination or change-in-control.* Regarding each contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) to a named executive officer at, following, or in connection with any termination, including without limitation resignation, severance, retirement or a constructive termination of a named executive officer, or a change in control of the registrant or a change in the named executive officer's responsibilities, with respect to each named executive officer:

(1) Describe and explain the specific circumstances that would trigger payment(s) or the provision of other benefits, including perquisites and health care benefits;

(2) Describe and quantify the estimated payments and benefits that would be provided in each covered circumstance, whether they would or could be lump sum, or annual, disclosing the duration, and by whom they would be provided;

(3) Describe and explain how the appropriate payment and benefit levels are determined under the various circumstances that trigger payments or provision of benefits;

(4) Describe and explain any material conditions or obligations applicable to the receipt of payments or benefits, including but not limited to non-compete, non-solicitation, non-disparagement or confidentiality agreements, including the duration of such agreements and provisions regarding waiver of breach of such agreements; and

RR DONNELLEY

(5) Describe any other material factors regarding each such contract, agreement, plan or arrangement.

Instructions to Item 402(j). 1. The registrant must provide quantitative disclosure under these requirements, applying the assumptions that the triggering event took place on the last business day of the registrant's last completed fiscal year, and the price per share of the registrant's securities is the closing market price as of that date. In the event that uncertainties exist as to the provision of payments and benefits or the amounts involved, the registrant is required to make a reasonable estimate (or a reasonable estimated range of amounts) applicable to the payment or benefit and disclose material assumptions underlying such estimates or estimated ranges in its disclosure. In such event, the disclosure would require forward-looking information as appropriate.

2. Perquisites and other personal benefits or property may be excluded only if the aggregate amount of such compensation will be less than \$10,000. Individual perquisites and personal benefits shall be identified and quantified as required by Instruction 4 to paragraph (c)(2)(ix) of this Item. For purposes of quantifying health care benefits, the registrant must use the assumptions used for financial reporting purposes under generally accepted accounting principles.

3. To the extent that the form and amount of any payment or benefit that would be provided in connection with any triggering event is fully disclosed pursuant to paragraph (h) or (i) of this Item, reference may be made to that disclosure. However, to the extent that the form or amount of any such payment or benefit would be enhanced or its vesting or other provisions accelerated in connection with any triggering event, such enhancement or acceleration must be disclosed pursuant to this paragraph.

4. Where a triggering event has actually occurred for a named executive officer and that individual was not serving as a named executive officer of the registrant at the end of the last completed fiscal year, the disclosure required by this paragraph for that named executive officer shall apply only to that triggering event.

5. The registrant need not provide information with respect to contracts, agreements, plans or arrangements to the extent they do not discriminate in scope, terms or operation, in favor of executive officers of the registrant and that are available generally to all salaried employees.

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

(k) *Compensation of directors.* (1) Provide the information specified in paragraph (k)(2) of this Item, concerning the compensation of the directors for the registrant’s last completed fiscal year, in the following tabular format:

Director Compensation

<u>Name</u>	<u>Fees earned or paid in cash (\$)</u>	<u>Stock awards (\$)</u>	<u>Option awards (\$)</u>	<u>Non-equity incentive plan compensation (\$)</u>	<u>Change in pension value and nonqualified deferred compensation earnings</u>	<u>All other compensation (\$)</u>	<u>Total (\$)</u>
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A							
B							
C							
D							
E							

(2) The Table shall include:

(i) The name of each director unless such director is also a named executive officer under paragraph (a) of this Item and his or her compensation for service as a director is fully reflected in the Summary Compensation Table pursuant to paragraph (c) of this Item and otherwise as required pursuant to paragraphs (d) through (j) of this Item (column (a));

(ii) The aggregate dollar amount of all fees earned or paid in cash for services as a director, including annual retainer fees, committee and/or chairmanship fees, and meeting fees (column (b));

(iii) For awards of stock, the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (c));

(iv) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (d));

Instruction to Item 402(k)(2)(iii) and (iv). For each director, disclose by footnote to the appropriate column: the grant date fair value of each equity award computed in accordance with FAS 123R; for each option, SAR or similar option like instrument for which the registrant has adjusted or amended the exercise or base price during the last completed fiscal year, whether through amendment, cancellation or replacement grants, or any other means (“repriced”), or otherwise has materially modified such awards, the incremental fair value, computed as of the repricing or modification date in accordance with

RR DONNELLEY

FAS 123R; and the aggregate number of stock awards and the aggregate number of option awards outstanding at fiscal year end. However, the disclosure required by this Instruction does not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

(v) The dollar value of all earnings for services performed during the fiscal year pursuant to non-equity incentive plans as defined in paragraph (a)(6)(iii) of this Item, and all earnings on any outstanding awards (column (e));

(vi) The sum of the amounts specified in paragraphs (k)(2)(vi)(A) and (B) of this Item (column (f)) as follows:

(A) The aggregate change in the actuarial present value of the director's accumulated benefit under all defined benefit and actuarial pension plans (including supplemental plans) from the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the prior completed fiscal year to the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the covered fiscal year; and

(B) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans;

(vii) All other compensation for the covered fiscal year that the registrant could not properly report in any other column of the Director Compensation Table (column (g)). Each compensation item that is not properly reportable in columns (b)—(f), regardless of the amount of the compensation item, must be included in column (g). Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than \$10,000;

(B) All "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the registrant or its subsidiaries purchased from the registrant or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

salaried employees of the registrant, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any director pursuant to a plan or arrangement in connection with:

- (1) The resignation, retirement or any other termination of such director; or
- (2) A change in control of the registrant;

(E) Registrant contributions or other allocations to vested and unvested defined contribution plans;

(F) Consulting fees earned from, or paid or payable by the registrant and/or its subsidiaries (including joint ventures);

(G) The annual costs of payments and promises of payments pursuant to director legacy programs and similar charitable award programs;

(H) The dollar value of any insurance premiums paid by, or on behalf of, the registrant during the covered fiscal year with respect to life insurance for the benefit of a director; and

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (c) or (d); and

Instructions to Item 402(k)(2)(vii). 1. Programs in which registrants agree to make donations to one or more charitable institutions in a director's name, payable by the registrant currently or upon a designated event, such as the retirement or death of the director, are charitable awards programs or director legacy programs for purposes of the disclosure required by paragraph (k)(2)(vii)(G) of this Item. Provide footnote disclosure of the total dollar amount payable under the program and other material terms of each such program for which tabular disclosure is provided.

2. Any item reported for a director pursuant to paragraph (k)(2)(vii) of this Item that is not a perquisite or personal benefit and whose value exceeds \$10,000 must be identified and quantified in a footnote to column (g). All items of compensation are required to be included in the Director Compensation Table without regard to whether such items are required to be identified other than as specifically noted in this Item.

3. Perquisites and personal benefits may be excluded as long as the total value of all perquisites and personal benefits for a director is less than \$10,000.

RR DONNELLEY

If the total value of all perquisites and personal benefits is \$10,000 or more for any director, then each perquisite or personal benefit, regardless of its amount, must be identified by type. If perquisites and personal benefits are required to be reported for a director pursuant to this rule, then each perquisite or personal benefit that exceeds the greater of \$25,000 or 10% of the total amount of perquisites and personal benefits for that director must be quantified and disclosed in a footnote. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the registrant. With respect to the perquisite or other personal benefit for which footnote quantification is required, the registrant shall describe in the footnote its methodology for computing the aggregate incremental cost. Reimbursements of taxes owed with respect to perquisites or other personal benefits must be included in column (g) and are subject to separate quantification and identification as tax reimbursements (paragraph (k)(2)(vii)(B) of this Item) even if the associated perquisites or other personal benefits are not required to be included because the total amount of all perquisites or personal benefits for an individual director is less than \$10,000 or are required to be identified but are not required to be separately quantified.

(viii) The dollar value of total compensation for the covered fiscal year (column (h)). With respect to each director, disclose the sum of all amounts reported in columns (b) through (g).

Instruction to Item 402(k)(2). Two or more directors may be grouped in a single row in the Table if all elements of their compensation are identical. The names of the directors for whom disclosure is presented on a group basis should be clear from the Table.

(3) *Narrative to director compensation table.* Provide a narrative description of any material factors necessary to an understanding of the director compensation disclosed in this Table. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) A description of standard compensation arrangements (such as fees for retainer, committee service, service as chairman of the board or a committee, and meeting attendance); and

(ii) Whether any director has a different compensation arrangement, identifying that director and describing the terms of that arrangement.

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Instruction to Item 402(k). In addition to the Instruction to paragraphs (k)(2)(iii) and (iv) and the Instructions to paragraph (k)(2)(vii) of this Item, the following apply equally to paragraph (k) of this Item: Instructions 2 and 4 to paragraph (c) of this Item; Instructions to paragraphs (c)(2)(iii) and (iv) of this Item; Instructions to paragraphs (c)(2)(v) and (vi) of this Item; Instructions to paragraph (c)(2)(vii) of this Item; Instructions to paragraph (c)(2)(viii) of this Item; and Instructions 1 and 5 to paragraph (c)(2)(ix) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (k) of this Item that correspond to analogous disclosures provided for in paragraph (c) of this Item to which they refer.

(l) *Smaller reporting companies.* A registrant that qualifies as a “smaller reporting company,” as defined by Item 10(f) (§229.10(f)(1)), may provide the scaled disclosure in paragraphs (m) through (r) instead of paragraphs (a) through (k) and (s) of this Item.

(m) *Smaller reporting companies—General—(1) All compensation covered.* This Item requires clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (m)(2) of this Item, and directors covered by paragraph (r) of this Item, by any person for all services rendered in all capacities to the smaller reporting company and its subsidiaries, unless otherwise specifically excluded from disclosure in this Item. All such compensation shall be reported pursuant to this Item, even if also called for by another requirement, including transactions between the smaller reporting company and a third party where a purpose of the transaction is to furnish compensation to any such named executive officer or director. No amount reported as compensation for one fiscal year need be reported in the same manner as compensation for a subsequent fiscal year; amounts reported as compensation for one fiscal year may be required to be reported in a different manner pursuant to this Item.

(2) *Persons covered.* Disclosure shall be provided pursuant to this Item for each of the following (the “named executive officers”):

(i) All individuals serving as the smaller reporting company’s principal executive officer or acting in a similar capacity during the last completed fiscal year (“PEO”), regardless of compensation level;

RR DONNELLEY

(ii) The smaller reporting company's two most highly compensated executive officers other than the PEO who were serving as executive officers at the end of the last completed fiscal year; and

(iii) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (m)(2)(ii) of this Item but for the fact that the individual was not serving as an executive officer of the smaller reporting company at the end of the last completed fiscal year.

Instructions to Item 402(m)(2). 1. *Determination of most highly compensated executive officers.* The determination as to which executive officers are most highly compensated shall be made by reference to total compensation for the last completed fiscal year (as required to be disclosed pursuant to paragraph (n)(2)(x) of this Item) reduced by the amount required to be disclosed pursuant to paragraph (n)(2)(viii) of this Item, *provided, however*, that no disclosure need be provided for any executive officer, other than the PEO, whose total compensation, as so reduced, does not exceed \$100,000.

2. *Inclusion of executive officer of a subsidiary.* It may be appropriate for a smaller reporting company to include as named executive officers one or more executive officers or other employees of subsidiaries in the disclosure required by this Item. See Rule 3b-7 under the Exchange Act (17 CFR 240.3b-7).

3. *Exclusion of executive officer due to overseas compensation.* It may be appropriate in limited circumstances for a smaller reporting company not to include in the disclosure required by this Item an individual, other than its PEO, who is one of the smaller reporting company's most highly compensated executive officers due to the payment of amounts of cash compensation relating to overseas assignments attributed predominantly to such assignments.

(3) *Information for full fiscal year.* If the PEO served in that capacity during any part of a fiscal year with respect to which information is required, information should be provided as to all of his or her compensation for the full fiscal year. If a named executive officer (other than the PEO) served as an executive officer of the smaller reporting company (whether or not in the same position) during any part of the fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(4) *Omission of table or column.* A table or column may be omitted if there has been no compensation awarded to, earned by, or paid to any of the

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

named executive officers or directors required to be reported in that table or column in any fiscal year covered by that table.

(5) *Definitions.* For purposes of this Item:

(i) The term *stock* means instruments such as common stock, restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or any similar instruments that do not have option-like features, and the term *option* means instruments such as stock options, stock appreciation rights and similar instruments with option-like features. The term *stock appreciation rights* (“SARs”) refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the smaller reporting company or a named executive officer. The term *equity* is used to refer generally to stock and/or options.

(ii) The term *plan* includes, but is not limited to, the following: Any plan, contract, authorization or arrangement, whether or not set forth in any formal document, pursuant to which cash, securities, similar instruments, or any other property may be received. A plan may be applicable to one person. Smaller reporting companies may omit information regarding group life, health, hospitalization, or medical reimbursement plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the smaller reporting company and that are available generally to all salaried employees.

(iii) The term *incentive plan* means any plan providing compensation intended to serve as incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the smaller reporting company or an affiliate, the smaller reporting company’s stock price, or any other performance measure. An equity incentive plan is an incentive plan or portion of an incentive plan under which awards are granted that fall within the scope of Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment*, as modified or supplemented (“FAS 123R”). A *non-equity incentive plan* is an incentive plan or portion of an incentive plan that is not an equity incentive plan. The term *incentive plan award* means an award provided under an incentive plan.

(iv) The terms *date of grant* or *grant date* refer to the grant date determined for financial statement reporting purposes pursuant to FAS 123R.

RR DONNELLEY

(v) *Closing market price* is defined as the price at which the smaller reporting company's security was last sold in the principal United States market for such security as of the date for which the closing market price is determined.

(n) *Smaller reporting companies—Summary compensation table—(1) General.* Provide the information specified in paragraph (n)(2) of this Item, concerning the compensation of the named executive officers for each of the smaller reporting company's last two completed fiscal years, in a Summary Compensation Table in the tabular format specified below.

Summary Compensation Table

Name and principal position	Year	Salary (\$)	Bonus (\$)	Stock awards (\$)	Option awards (\$)	Nonequity incentive plan compensation (\$)	Nonqualified deferred compensation earnings (\$)	All other compensation (\$)	Total (\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
A									
B									

(2) The Table shall include:

- (i) The name and principal position of the named executive officer (column (a));
- (ii) The fiscal year covered (column (b));
- (iii) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (c));
- (iv) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d));

Instructions to Item 402(n)(2)(iii) and (iv).

1. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, a footnote shall be included disclosing that the amount of salary or bonus is not calculable through the latest practicable date and providing the date that the amount of salary or bonus is expected to be determined, and such amount must then be disclosed in a filing under Item 5.02(f) of Form 8-K (17 CFR 249.308).

2. Smaller reporting companies shall include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer under which stock, equity-based or

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

other forms of non-cash compensation instead have been received by the named executive officer. However, the receipt of any such form of non-cash compensation instead of salary or bonus must be disclosed in a footnote added to the salary or bonus column and, where applicable, referring to the narrative disclosure to the Summary Compensation Table (required by paragraph (o) of this Item) where the material terms of the stock, option or non-equity incentive plan award elected by the named executive officer are reported.

(v) For awards of stock, the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (e));

(vi) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (f));

Instruction 1 to Item 402(n)(2)(v) and (n)(2)(vi). For awards reported in columns (e) and (f), include a footnote disclosing all assumptions made in the valuation by reference to a discussion of those assumptions in the smaller reporting company's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

Instruction 2 to Item 402(n)(2)(v) and (n)(2)(vi). If at any time during the last completed fiscal year, the smaller reporting company has adjusted or amended the exercise price of options or SARs previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), or otherwise has materially modified such awards, the smaller reporting company shall include, as awards required to be reported in column (f), the incremental fair value, computed as of the repricing or modification date in accordance with FASB ASC Topic 718, with respect to that repriced or modified award.

Instruction 3 to Item 402(n)(2)(v) and (vi). For any awards that are subject to performance conditions, report the value at the grant date based upon the probable outcome of such conditions. This amount should be consistent with the estimate of aggregate compensation cost to be recognized over the service period determined as of the grant date under FASB ASC Topic 718, excluding the effect of estimated forfeitures. In a footnote to the table, disclose the value of the award at the grant date assuming that the highest level of performance conditions will be achieved if an amount less than the maximum was included in the table.

RR DONNELLEY

(vii) The dollar value of all earnings for services performed during the fiscal year pursuant to awards under non-equity incentive plans as defined in paragraph (m)(5)(iii) of this Item, and all earnings on any outstanding awards (column (g));

Instructions to Item 402(n)(2)(vii). 1. If the relevant performance measure is satisfied during the fiscal year (including for a single year in a plan with a multi-year performance measure), the earnings are reportable for that fiscal year, even if not payable until a later date, and are not reportable again in the fiscal year when amounts are paid to the named executive officer.

2. All earnings on non-equity incentive plan compensation must be identified and quantified in a footnote to column (g), whether the earnings were paid during the fiscal year, payable during the period but deferred at the election of the named executive officer, or payable by their terms at a later date.

(viii) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on non-qualified defined contribution plans (column (h));

Instruction to Item 402(n)(2)(viii). Interest on deferred compensation is above-market only if the rate of interest exceeds 120% of the applicable federal long-term rate, with compounding (as prescribed under section 1274(d) of the Internal Revenue Code, (26 U.S.C. 1274(d))) at the rate that corresponds most closely to the rate under the smaller reporting company's plan at the time the interest rate or formula is set. In the event of a discretionary reset of the interest rate, the requisite calculation must be made on the basis of the interest rate at the time of such reset, rather than when originally established. Only the above-market portion of the interest must be included. If the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate. Dividends (and dividend equivalents) on deferred compensation denominated in the smaller reporting company's stock ("deferred stock") are preferential only if earned at a rate higher than dividends on the smaller reporting company's common stock. Only the preferential portion of the dividends or equivalents must be included. Footnote or narrative disclosure may be provided explaining the smaller reporting company's criteria for determining any portion considered to be above-market.

(ix) All other compensation for the covered fiscal year that the smaller reporting company could not properly report in any other column of the Sum-

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

mary Compensation Table (column (i)). Each compensation item that is not properly reportable in columns (c) through (h), regardless of the amount of the compensation item, must be included in column (i). Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than \$10,000;

(B) All “gross-ups” or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the smaller reporting company or its subsidiaries purchased from the smaller reporting company or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the smaller reporting company, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(1) Any termination, including without limitation through retirement, resignation, severance or constructive termination (including a change in responsibilities) of such executive officer’s employment with the smaller reporting company and its subsidiaries; or

(2) A change in control of the smaller reporting company;

(E) Smaller reporting company contributions or other allocations to vested and unvested defined contribution plans;

(F) The dollar value of any insurance premiums paid by, or on behalf of, the smaller reporting company during the covered fiscal year with respect to life insurance for the benefit of a named executive officer; and

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (e) or (f); and

Instructions to Item 402(n)(2)(ix).

1. Non-equity incentive plan awards and earnings and earnings on stock or options, except as specified in paragraph (n)(2)(ix)(G) of this Item, are required

RR DONNELLEY

to be reported elsewhere as provided in this Item and are not reportable as All Other Compensation in column (i).

2. Benefits paid pursuant to defined benefit and actuarial plans are not reportable as All Other Compensation in column (i) unless accelerated pursuant to a change in control; information concerning these plans is reportable pursuant to paragraph (q)(1) of this Item.

3. Reimbursements of taxes owed with respect to perquisites or other personal benefits must be included in the columns as tax reimbursements (paragraph (n)(2)(ix)(B) of this Item) even if the associated perquisites or other personal benefits are not required to be included because the aggregate amount of such compensation is less than \$10,000.

4. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the smaller reporting company.

5. For purposes of paragraph (n)(2)(ix)(D) of this Item, an accrued amount is an amount for which payment has become due.

(x) The dollar value of total compensation for the covered fiscal year (column (j)). With respect to each named executive officer, disclose the sum of all amounts reported in columns (c) through (i).

Instructions to Item 402(n).

1. Information with respect to the fiscal year prior to the last completed fiscal year will not be required if the smaller reporting company was not a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) at any time during that year, except that the smaller reporting company will be required to provide information for any such year if that information previously was required to be provided in response to a Commission filing requirement.

2. All compensation values reported in the Summary Compensation Table must be reported in dollars and rounded to the nearest dollar. Reported compensation values must be reported numerically, providing a single numerical value for each grid in the table. Where compensation was paid to or received by a named executive officer in a different currency, a footnote must be provided to identify that currency and describe the rate and methodology used to convert the payment amounts to dollars.

3. If a named executive officer is also a director who receives compensation for his or her services as a director, reflect that compensation in the Summary

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Compensation Table and provide a footnote identifying and itemizing such compensation and amounts. Use the categories in the Director Compensation Table required pursuant to paragraph (r) of this Item.

4. Any amounts deferred, whether pursuant to a plan established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), or otherwise, shall be included in the appropriate column for the fiscal year in which earned.

(o) *Smaller reporting companies—Narrative disclosure to summary compensation table.* Provide a narrative description of any material factors necessary to an understanding of the information disclosed in the Table required by paragraph (n) of this Item. Examples of such factors may include, in given cases, among other things:

(1) The material terms of each named executive officer's employment agreement or arrangement, whether written or unwritten;

(2) If at any time during the last fiscal year, any outstanding option or other equity-based award was repriced or otherwise materially modified (such as by extension of exercise periods, the change of vesting or forfeiture conditions, the change or elimination of applicable performance criteria, or the change of the bases upon which returns are determined), a description of each such repricing or other material modification;

(3) The waiver or modification of any specified performance target, goal or condition to payout with respect to any amount included in non-stock incentive plan compensation or payouts reported in column (g) to the Summary Compensation Table required by paragraph (n) of this Item, stating whether the waiver or modification applied to one or more specified named executive officers or to all compensation subject to the target, goal or condition;

(4) The material terms of each grant, including but not limited to the date of exercisability, any conditions to exercisability, any tandem feature, any reload feature, any tax-reimbursement feature, and any provision that could cause the exercise price to be lowered;

(5) The material terms of any non-equity incentive plan award made to a named executive officer during the last completed fiscal year, including a general description of the formula or criteria to be applied in determining the amounts payable and vesting schedule;

(6) The method of calculating earnings on nonqualified deferred compensation plans including nonqualified defined contribution plans; and

RR DONNELLEY

(7) An identification to the extent material of any item included under All Other Compensation (column (i)) in the Summary Compensation Table. Identification of an item shall not be considered material if it does not exceed the greater of \$25,000 or 10% of all items included in the specified category in question set forth in paragraph (n)(2)(ix) of this Item. All items of compensation are required to be included in the Summary Compensation Table without regard to whether such items are required to be identified.

Instruction to Item 402(o). The disclosure required by paragraph (o)(2) of this Item would not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

(p) *Smaller reporting companies—Outstanding equity awards at fiscal year-end table.* (1) Provide the information specified in paragraph (p)(2) of this Item, concerning unexercised options; stock that has not vested; and equity incentive plan awards for each named executive officer outstanding as of the end of the smaller reporting company’s last completed fiscal year in the following tabular format:

Outstanding Equity Awards at Fiscal Year-End

Name	Option awards					Stock awards			
	Number of securities underlying unexercised options (#) exercisable	Number of securities underlying unexercised options (#) unexercisable	Equity incentive plan awards: Number of securities underlying unexercised unearned options (#)	Option exercise price (\$)	Option expiration date	Number of shares or units of stock that have not vested (#)	Market value of 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 ...
A
B

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

(2) The Table shall include:

(i) The name of the named executive officer (column (a));

(ii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are exercisable and that are not reported in column (d) (column (b));

(iii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are unexercisable and that are not reported in column (d) (column (c));

(iv) On an award-by-award basis, the total number of shares underlying unexercised options awarded under any equity incentive plan that have not been earned (column (d));

(v) For each instrument reported in columns (b), (c) and (d), as applicable, the exercise or base price (column (e));

(vi) For each instrument reported in columns (b), (c) and (d), as applicable, the expiration date (column (f));

(vii) The total number of shares of stock that have not vested and that are not reported in column (i) (column (g));

(viii) The aggregate market value of shares of stock that have not vested and that are not reported in column (j) (column (h));

(ix) The total number of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned, and, if applicable the number of shares underlying any such unit or right (column (i)); and

(x) The aggregate market or payout value of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned (column (j)).

Instructions to Item 402(p)(2).

1. Identify by footnote any award that has been transferred other than for value, disclosing the nature of the transfer.

2. The vesting dates of options, shares of stock and equity incentive plan awards held at fiscal-year end must be disclosed by footnote to the applicable column where the outstanding award is reported.

RR DONNELLEY

3. Compute the market value of stock reported in column (h) and equity incentive plan awards of stock reported in column (j) by multiplying the closing market price of the smaller reporting company's stock at the end of the last completed fiscal year by the number of shares or units of stock or the amount of equity incentive plan awards, respectively. The number of shares or units reported in column (d) or (i), and the payout value reported in column (j), shall be based on achieving threshold performance goals, except that if the previous fiscal year's performance has exceeded the threshold, the disclosure shall be based on the next higher performance measure (target or maximum) that exceeds the previous fiscal year's performance. If the award provides only for a single estimated payout, that amount should be reported. If the target amount is not determinable, smaller reporting companies must provide a representative amount based on the previous fiscal year's performance.

4. Multiple awards may be aggregated where the expiration date and the exercise and/or base price of the instruments is identical. A single award consisting of a combination of options, SARs and/or similar option-like instruments shall be reported as separate awards with respect to each tranche with a different exercise and/or base price or expiration date.

5. Options or stock awarded under an equity incentive plan are reported in columns (d) or (i) and (j), respectively, until the relevant performance condition has been satisfied. Once the relevant performance condition has been satisfied, even if the option or stock award is subject to forfeiture conditions, options are reported in column (b) or (c), as appropriate, until they are exercised or expire, or stock is reported in columns (g) and (h) until it vests.

(q) *Smaller reporting companies—Additional narrative disclosure.* Provide a narrative description of the following to the extent material:

(1) The material terms of each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans, supplemental executive retirement plans, tax-qualified defined contribution plans and non-qualified defined contribution plans.

(2) The material terms of each contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) to a named executive officer at, following, or in connection with the resignation, retirement or other termination of a named executive officer, or a change in control of the smaller reporting company or a change in the named executive officer's

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

responsibilities following a change in control, with respect to each named executive officer.

(r) *Smaller reporting companies—Compensation of directors.* (1) Provide the information specified in paragraph (r)(2) of this Item, concerning the compensation of the directors for the smaller reporting company’s last completed fiscal year, in the following tabular format:

Director Compensation

Name	Fees earned or paid in cash (\$)	Stock awards (\$)	Option awards (\$)	Non-equity incentive plan compensation (\$)	Nonqualified deferred compensation earnings (\$)	All other compensation (\$)	Total (\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A							
B							
C							
D							
E							

(2) The Table shall include:

(i) The name of each director unless such director is also a named executive officer under paragraph (m) of this Item and his or her compensation for service as a director is fully reflected in the Summary Compensation Table pursuant to paragraph (n) of this Item and otherwise as required pursuant to paragraphs (o) through (q) of this Item (column (a));

(ii) The aggregate dollar amount of all fees earned or paid in cash for services as a director, including annual retainer fees, committee and/or chairmanship fees, and meeting fees (column (b));

(iii) For awards of stock, the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (c));

(iv) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (d));

Instruction to Item 402(r)(2)(iii) and (iv). For each director, disclose by footnote to the appropriate column, the aggregate number of stock awards and the aggregate number of option awards outstanding at fiscal year end.

RR DONNELLEY

(v) The dollar value of all earnings for services performed during the fiscal year pursuant to non-equity incentive plans as defined in paragraph (m)(5)(iii) of this Item, and all earnings on any outstanding awards (column (e));

(vi) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on non-qualified defined contribution plans (column (f));

(vii) All other compensation for the covered fiscal year that the smaller reporting company could not properly report in any other column of the Director Compensation Table (column (g)). Each compensation item that is not properly reportable in columns (b) through (f), regardless of the amount of the compensation item, must be included in column (g) and must be identified and quantified in a footnote if it is deemed material in accordance with paragraph (o)(7) of this Item. Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than \$10,000;

(B) All “gross-ups” or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the smaller reporting company or its subsidiaries purchased from the smaller reporting company or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the smaller reporting company, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any director pursuant to a plan or arrangement in connection with:

(1) The resignation, retirement or any other termination of such director; or

(2) A change in control of the smaller reporting company;

(E) Smaller reporting company contributions or other allocations to vested and unvested defined contribution plans;

(F) Consulting fees earned from, or paid or payable by the smaller reporting company and/or its subsidiaries (including joint ventures);

(G) The annual costs of payments and promises of payments pursuant to director legacy programs and similar charitable award programs;

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

(H) The dollar value of any insurance premiums paid by, or on behalf of, the smaller reporting company during the covered fiscal year with respect to life insurance for the benefit of a director; and

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (c) or (d); and

Instruction to Item 402(r)(2)(vii). Programs in which smaller reporting companies agree to make donations to one or more charitable institutions in a director's name, payable by the smaller reporting company currently or upon a designated event, such as the retirement or death of the director, are charitable awards programs or director legacy programs for purposes of the disclosure required by paragraph (r)(2)(vii)(G) of this Item. Provide footnote disclosure of the total dollar amount payable under the program and other material terms of each such program for which tabular disclosure is provided.

(viii) The dollar value of total compensation for the covered fiscal year (column (h)). With respect to each director, disclose the sum of all amounts reported in columns (b) through (g).

Instruction to Item 402(r)(2). Two or more directors may be grouped in a single row in the Table if all elements of their compensation are identical. The names of the directors for whom disclosure is presented on a group basis should be clear from the Table.

(3) *Narrative to director compensation table.* Provide a narrative description of any material factors necessary to an understanding of the director compensation disclosed in this Table. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) A description of standard compensation arrangements (such as fees for retainer, committee service, service as chairman of the board or a committee, and meeting attendance); and

(ii) Whether any director has a different compensation arrangement, identifying that director and describing the terms of that arrangement.

Instruction to Item 402(r). In addition to the Instruction to paragraph (r)(2)(vii) of this Item, the following apply equally to paragraph (r) of this Item: Instructions 2 and 4 to paragraph (n) of this Item; the Instructions to para-

RR DONNELLEY

graphs (n)(2)(iii) and (iv) of this Item; the Instructions to paragraphs (n)(2)(v) and (vi) of this Item; the Instructions to paragraph (n)(2)(vii) of this Item; the Instruction to paragraph (n)(2)(viii) of this Item; the Instructions to paragraph (n)(2)(ix) of this Item; and paragraph (o)(7) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (r) of this Item that correspond to analogous disclosures provided for in paragraph (n) of this Item to which they refer.

(s) *Narrative disclosure of the registrant's compensation policies and practices as they relate to the registrant's risk management.* To the extent that risks arising from the registrant's compensation policies and practices for its employees are reasonably likely to have a material adverse effect on the registrant, discuss the registrant's policies and practices of compensating its employees, including non-executive officers, as they relate to risk management practices and risk-taking incentives. While the situations requiring disclosure will vary depending on the particular registrant and compensation policies and practices, situations that may trigger disclosure include, among others, compensation policies and practices: at a business unit of the company that carries a significant portion of the registrant's risk profile; at a business unit with compensation structured significantly differently than other units within the registrant; at a business unit that is significantly more profitable than others within the registrant; at a business unit where compensation expense is a significant percentage of the unit's revenues; and that vary significantly from the overall risk and reward structure of the registrant, such as when bonuses are awarded upon accomplishment of a task, while the income and risk to the registrant from the task extend over a significantly longer period of time. The purpose of this paragraph(s) is to provide investors material information concerning how the registrant compensates and incentivizes its employees that may create risks that are reasonably likely to have a material adverse effect on the registrant. While the information to be disclosed pursuant to this paragraph(s) will vary depending upon the nature of the registrant's business and the compensation approach, the following are examples of the issues that the registrant may need to address for the business units or employees discussed:

(1) The general design philosophy of the registrant's compensation policies and practices for employees whose behavior would be most affected by the incentives established by the policies and practices, as such policies and practi-

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

ces relate to or affect risk taking by employees on behalf of the registrant, and the manner of their implementation;

(2) The registrant's risk assessment or incentive considerations, if any, in structuring its compensation policies and practices or in awarding and paying compensation;

(3) How the registrant's compensation policies and practices relate to the realization of risks resulting from the actions of employees in both the short term and the long term, such as through policies requiring claw backs or imposing holding periods;

(4) The registrant's policies regarding adjustments to its compensation policies and practices to address changes in its risk profile;

(5) Material adjustments the registrant has made to its compensation policies and practices as a result of changes in its risk profile; and

(6) The extent to which the registrant monitors its compensation policies and practices to determine whether its risk management objectives are being met with respect to incentivizing its employees.

Instruction to Item 402. Specify the applicable fiscal year in the title to each table required under this Item which calls for disclosure as of or for a completed fiscal year.

[71 FR 53241, Sept. 8, 2006; 71 FR 56225, Sept. 26, 2006, as amended at 71 FR 78350, Dec. 29, 2006; 73 FR 958, Jan. 4, 2008; 74 FR 68362, Dec. 23, 2009]

§ 229.403 (Item 403) Security ownership of certain beneficial owners and management.

(a) *Security ownership of certain beneficial owners.* Furnish the following information, as of the most recent practicable date, substantially in the tabular form indicated, with respect to any person (including any "group" as that term is used in section 13(d)(3) of the Exchange Act) who is known to the registrant to be the beneficial owner of more than five percent of any class of the registrant's voting securities. The address given in column (2) may be a business, mailing or residence address. Show in column (3) the total number of shares beneficially owned and in column (4) the percentage of class so owned. Of the number of shares shown in column (3), indicate by footnote or otherwise the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership, as specified in Rule 13d-3(d)(1) under the Exchange Act (§240.13d-3(d)(1) of this chapter).

RR DONNELLEY

(1) Title of class	(2) Name and address of beneficial owner	(3) Amount and nature of beneficial ownership	(4) Percent of class
--------------------	---	--	-------------------------

(b) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries, including directors' qualifying shares, beneficially owned by all directors and nominees, naming them, each of the named executive officers as defined in Item 402(a)(3) (§229.402(a)(3)), and directors and executive officers of the registrant as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of the class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares that are pledged as security and the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in §240.13d-3(d)(1) of this chapter.

(1) Title of class	(2) Name of beneficial owner	(3) Amount and nature of beneficial ownership	(4) Percent of class
--------------------	---------------------------------	--	-------------------------

(c) *Changes in control.* Describe any arrangements, known to the registrant, including any pledge by any person of securities of the registrant or any of its parents, the operation of which may at a subsequent date result in a change in control of the registrant.

Instructions to Item 403: 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the registrant or its subsidiaries, plus securities deemed outstanding pursuant to Rule 13d-3(d)(1) under the Exchange Act 17 (CFR 240.13d-3(d)(1)). For purposes of paragraph (b), if the percentage of shares beneficially owned by any director or nominee, or by all directors and officers of the registrant as a group, does not exceed one percent of the class so owned, the registrant may, in lieu of furnishing a precise percentage, indicate this fact by means of an asterisk and explanatory footnote or other similar means.

2. For the purposes of this Item, beneficial ownership shall be determined in accordance with Rule 13d-3 under the Exchange Act (§240.13d-3 of this chapter). Include such additional subcolumns or other appropriate explanation of column (3) necessary to reflect amounts as to which the beneficial owner has (A) sole voting power, (B) shared voting power, (C) sole investment power, or (D) shared investment power.

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

3. The registrant shall be deemed to know the contents of any statements filed with the Commission pursuant to section 13(d) or 13(g) of the Exchange Act. When applicable, a registrant may rely upon information set forth in such statements unless the registrant knows or has reason to believe that such information is not complete or accurate or that a statement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to paragraph (a) of this Item, the registrant may indicate the source and date of such information.

5. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion. For purposes of paragraph (b), in computing the aggregate number of shares owned by directors and officers of the registrant as a group, the same shares shall not be counted more than once.

6. Paragraph (c) of this Item does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the registrant.

7. Where the holder(s) of voting securities reported pursuant to paragraph (a) hold more than five percent of any class of voting securities of the registrant pursuant to any voting trust or similar agreement, state the title of such securities, the amount held or to be held pursuant to the trust or agreement (if not clear from the table) and the duration of the agreement. Give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the trust or agreement.

[47 FR 11401, Mar. 16, 1982, as amended at 47 FR 55665, Dec. 13, 1982; 51 FR 42056, Nov. 20, 1986; 57 FR 48158, Oct. 21, 1992; 71 FR 53252, Sept. 8, 2006]

§ 229.404 (Item 404) Transactions with related persons, promoters and certain control persons.

(a) *Transactions with related persons.* Describe any transaction, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, in which the registrant was or is to be a participant and the amount involved exceeds \$120,000, and in which any related person had or will have a direct or indirect material interest. Disclose the following information regarding the transaction:

(1) The name of the related person and the basis on which the person is a related person.

RR DONNELLEY

(2) The related person's interest in the transaction with the registrant, including the related person's position(s) or relationship(s) with, or ownership in, a firm, corporation, or other entity that is a party to, or has an interest in, the transaction.

(3) The approximate dollar value of the amount involved in the transaction.

(4) The approximate dollar value of the amount of the related person's interest in the transaction, which shall be computed without regard to the amount of profit or loss.

(5) In the case of indebtedness, disclosure of the amount involved in the transaction shall include the largest aggregate amount of principal outstanding during the period for which disclosure is provided, the amount thereof outstanding as of the latest practicable date, the amount of principal paid during the periods for which disclosure is provided, the amount of interest paid during the period for which disclosure is provided, and the rate or amount of interest payable on the indebtedness.

(6) Any other information regarding the transaction or the related person in the context of the transaction that is material to investors in light of the circumstances of the particular transaction.

Instructions to Item 404(a). 1. For the purposes of paragraph (a) of this Item, the term related person means:

a. Any person who was in any of the following categories at any time during the specified period for which disclosure under paragraph (a) of this Item is required:

i. Any director or executive officer of the registrant;

ii. Any nominee for director, when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director; or

iii. Any immediate family member of a director or executive officer of the registrant, or of any nominee for director when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of such director, executive officer or nominee for director, and any person (other than a tenant or employee) sharing the household of such director, executive officer or nominee for director; and

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

b. Any person who was in any of the following categories when a transaction in which such person had a direct or indirect material interest occurred or existed:

i. A security holder covered by Item 403(a) (§229.403(a)); or

ii. Any immediate family member of any such security holder, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of such security holder, and any person (other than a tenant or employee) sharing the household of such security holder.

2. For purposes of paragraph (a) of this Item, a transaction includes, but is not limited to, any financial transaction, arrangement or relationship (including any indebtedness or guarantee of indebtedness) or any series of similar transactions, arrangements or relationships.

3. The amount involved in the transaction shall be computed by determining the dollar value of the amount involved in the transaction in question, which shall include:

a. In the case of any lease or other transaction providing for periodic payments or installments, the aggregate amount of all periodic payments or installments due on or after the beginning of the registrant's last fiscal year, including any required or optional payments due during or at the conclusion of the lease or other transaction providing for periodic payments or installments; and

b. In the case of indebtedness, the largest aggregate amount of all indebtedness outstanding at any time since the beginning of the registrant's last fiscal year and all amounts of interest payable on it during the last fiscal year.

4. In the case of a transaction involving indebtedness:

a. The following items of indebtedness may be excluded from the calculation of the amount of indebtedness and need not be disclosed: Amounts due from the related person for purchases of goods and services subject to usual trade terms, for ordinary business travel and expense payments and for other transactions in the ordinary course of business;

b. Disclosure need not be provided of any indebtedness transaction for the related persons specified in Instruction 1.b. to paragraph (a) of this Item; and

c. If the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T (12 CFR part 220) and the

RR DONNELLEY

loans are not disclosed as nonaccrual, past due, restructured or potential problems (see Item III.C.1. and 2. of Industry Guide 3, Statistical Disclosure by Bank Holding Companies (17 CFR 229.802(c))), disclosure under paragraph (a) of this Item may consist of a statement, if such is the case, that the loans to such persons:

- i. Were made in the ordinary course of business;
- ii. Were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable loans with persons not related to the lender; and
- iii. Did not involve more than the normal risk of collectibility or present other unfavorable features.

5.a. Disclosure of an employment relationship or transaction involving an executive officer and any related compensation solely resulting from that employment relationship or transaction need not be provided pursuant to paragraph (a) of this Item if:

- i. The compensation arising from the relationship or transaction is reported pursuant to Item 402 (§229.402); or
- ii. The executive officer is not an immediate family member (as specified in Instruction 1 to paragraph (a) of this Item) and such compensation would have been reported under Item 402 (§229.402) as compensation earned for services to the registrant if the executive officer was a named executive officer as that term is defined in Item 402(a)(3) (§229.402(a)(3)), and such compensation had been approved, or recommended to the board of directors of the registrant for approval, by the compensation committee of the board of directors (or group of independent directors performing a similar function) of the registrant.

b. Disclosure of compensation to a director need not be provided pursuant to paragraph (a) of this Item if the compensation is reported pursuant to Item 402(k) (§229.402(k)).

6. A person who has a position or relationship with a firm, corporation, or other entity that engages in a transaction with the registrant shall not be deemed to have an indirect material interest within the meaning of paragraph (a) of this Item where:

- a. The interest arises only:
 - i. From such person's position as a director of another corporation or organization that is a party to the transaction; or

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

ii. From the direct or indirect ownership by such person and all other persons specified in Instruction 1 to paragraph (a) of this Item, in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or

iii. From both such position and ownership; or

b. The interest arises only from such person's position as a limited partner in a partnership in which the person and all other persons specified in Instruction 1 to paragraph (a) of this Item, have an interest of less than ten percent, and the person is not a general partner of and does not hold another position in the partnership.

7. Disclosure need not be provided pursuant to paragraph (a) of this Item if:

a. The transaction is one where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

b. The transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture, or similar services; or

c. The interest of the related person arises solely from the ownership of a class of equity securities of the registrant and all holders of that class of equity securities of the registrant received the same benefit on a pro rata basis.

(b) *Review, approval or ratification of transactions with related persons.*

(1) Describe the registrant's policies and procedures for the review, approval, or ratification of any transaction required to be reported under paragraph (a) of this Item. While the material features of such policies and procedures will vary depending on the particular circumstances, examples of such features may include, in given cases, among other things:

(i) The types of transactions that are covered by such policies and procedures;

(ii) The standards to be applied pursuant to such policies and procedures;

(iii) The persons or groups of persons on the board of directors or otherwise who are responsible for applying such policies and procedures; and

(iv) A statement of whether such policies and procedures are in writing and, if not, how such policies and procedures are evidenced.

RR DONNELLEY

(2) Identify any transaction required to be reported under paragraph (a) of this Item since the beginning of the registrant's last fiscal year where such policies and procedures did not require review, approval or ratification or where such policies and procedures were not followed.

Instruction to Item 404(b). Disclosure need not be provided pursuant to this paragraph regarding any transaction that occurred at a time before the related person became one of the enumerated persons in Instruction 1.a.i., ii., or iii. to Item 404(a) if such transaction did not continue after the related person became one of the enumerated persons in Instruction 1.a.i., ii., or iii. to Item 404(a).

(c) *Promoters and certain control persons.* (1) Registrants that are filing a registration statement on Form S-1 under the Securities Act (§239.11 of this chapter) or on Form 10 under the Exchange Act (§249.210 of this chapter) and that had a promoter at any time during the past five fiscal years shall:

(i) State the names of the promoter(s), the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter, directly or indirectly, from the registrant and the nature and amount of any assets, services or other consideration therefore received or to be received by the registrant; and

(ii) As to any assets acquired or to be acquired by the registrant from a promoter, state the amount at which the assets were acquired or are to be acquired and the principle followed or to be followed in determining such amount, and identify the persons making the determination and their relationship, if any, with the registrant or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the registrant, also state the cost thereof to the promoter.

(2) Registrants shall provide the disclosure required by paragraphs (c)(1)(i) and (c)(1)(ii) of this Item as to any person who acquired control of a registrant that is a shell company, or any person that is part of a group, consisting of two or more persons that agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of a registrant, that acquired control of a registrant that is a shell company. For purposes of this Item, *shell company* has the same meaning as in Rule 405 under the Securities Act (17 CFR 230.405) and Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2).

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

(d) *Smaller reporting companies.* A registrant that qualifies as a “smaller reporting company,” as defined by §229.10(f)(1), must provide the following information in order to comply with this Item:

(1) The information required by paragraph (a) of this Item for the period specified there for a transaction in which the amount involved exceeds the lesser of \$120,000 or one percent of the average of the smaller reporting company’s total assets at year end for the last two completed fiscal years;

(2) The information required by paragraph (c) of this Item; and

(3) A list of all parents of the smaller reporting company showing the basis of control and as to each parent, the percentage of voting securities owned or other basis of control by its immediate parent, if any.

Instruction to Item 404(d).

1. Include information for any material underwriting discounts and commissions upon the sale of securities by the smaller reporting company where any of the persons specified in paragraph (a) of this Item was or is to be a principal underwriter or is a controlling person or member of a firm that was or is to be a principal underwriter.

2. For smaller reporting companies information shall be given for the period specified in paragraph (a) of this Item and, in addition, for the fiscal year preceding the small reporting company’s last fiscal year.

Instructions to Item 404. 1. If the information called for by this Item is being presented in a registration statement filed pursuant to the Securities Act or the Exchange Act, information shall be given for the periods specified in the Item and, in addition, for the two fiscal years preceding the registrant’s last fiscal year, unless the information is being incorporated by reference into a registration statement on Form S-4 (17 CFR 239.25), in which case, information shall be given for the periods specified in the Item.

2. A foreign private issuer will be deemed to comply with this Item if it provides the information required by Item 7.B. of Form 20-F (17 CFR 249.220f) with more detailed information provided if otherwise made publicly available or required to be disclosed by the issuer’s home jurisdiction or a market in which its securities are listed or traded.

[71 FR 53252, Sept. 8, 2006, as amended at 73 FR 964, Jan. 4, 2008]

§ 229.407 (Item 407) Corporate governance.

(a) *Director independence.* Identify each director and, when the disclosure called for by this paragraph is being presented in a proxy or information statement relating to the election of directors, each nominee for director, that is independent under the independence standards applicable to the registrant under paragraph (a)(1) of this Item. In addition, if such independence standards contain independence requirements for committees of the board of directors, identify each director that is a member of the compensation, nominating or audit committee that is not independent under such committee independence standards. If the registrant does not have a separately designated audit, nominating or compensation committee or committee performing similar functions, the registrant must provide the disclosure of directors that are not independent with respect to all members of the board of directors applying such committee independence standards.

(1) In determining whether or not the director or nominee for director is independent for the purposes of paragraph (a) of this Item, the registrant shall use the applicable definition of independence, as follows:

(i) If the registrant is a listed issuer whose securities are listed on a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, the registrant's definition of independence that it uses for determining if a majority of the board of directors is independent in compliance with the listing standards applicable to the registrant. When determining whether the members of a committee of the board of directors are independent, the registrant's definition of independence that it uses for determining if the members of that specific committee are independent in compliance with the independence standards applicable for the members of the specific committee in the listing standards of the national securities exchange or inter-dealer quotation system that the registrant uses for determining if a majority of the board of directors are independent. If the registrant does not have independence standards for a committee, the independence standards for that specific committee in the listing standards of the national securities exchange or inter-dealer quotation system that the registrant uses for determining if a majority of the board of directors are independent.

(ii) If the registrant is not a listed issuer, a definition of independence of a national securities exchange or of an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, and state which definition is used. Whatever such definition the registrant chooses, it

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

must use the same definition with respect to all directors and nominees for director. When determining whether the members of a specific committee of the board of directors are independent, if the national securities exchange or national securities association whose standards are used has independence standards for the members of a specific committee, use those committee specific standards.

(iii) If the information called for by paragraph (a) of this Item is being presented in a registration statement on Form S-1 (§239.11 of this chapter) under the Securities Act or on a Form 10 (§249.210 of this chapter) under the Exchange Act where the registrant has applied for listing with a national securities exchange or in an inter-dealer quotation system that has requirements that a majority of the board of directors be independent, the definition of independence that the registrant uses for determining if a majority of the board of directors is independent, and the definition of independence that the registrant uses for determining if members of the specific committee of the board of directors are independent, that is in compliance with the independence listing standards of the national securities exchange or inter-dealer quotation system on which it has applied for listing, or if the registrant has not adopted such definitions, the independence standards for determining if the majority of the board of directors is independent and if members of the committee of the board of directors are independent of that national securities exchange or inter-dealer quotation system.

(2) If the registrant uses its own definitions for determining whether its directors and nominees for director, and members of specific committees of the board of directors, are independent, disclose whether these definitions are available to security holders on the registrant's Web site. If so, provide the registrant's Web site address. If not, include a copy of these policies in an appendix to the registrant's proxy statement or information statement that is provided to security holders at least once every three fiscal years or if the policies have been materially amended since the beginning of the registrant's last fiscal year. If a current copy of the policies is not available to security holders on the registrant's Web site, and is not included as an appendix to the registrant's proxy statement or information statement, identify the most recent fiscal year in which the policies were so included in satisfaction of this requirement.

(3) For each director and nominee for director that is identified as independent, describe, by specific category or type, any transactions, relationships or arrangements not disclosed pursuant to Item 404(a) (§229.404(a)), or

RR DONNELLEY

for investment companies, Item 22(b) of Schedule 14A (§240.14a-101 of this chapter), that were considered by the board of directors under the applicable independence definitions in determining that the director is independent.

Instructions to Item 407(a). 1. If the registrant is a listed issuer whose securities are listed on a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, and also has exemptions to those requirements (for independence of a majority of the board of directors or committee member independence) upon which the registrant relied, disclose the exemption relied upon and explain the basis for the registrant's conclusion that such exemption is applicable. The same disclosure should be provided if the registrant is not a listed issuer and the national securities exchange or inter-dealer quotation system selected by the registrant has exemptions that are applicable to the registrant. Any national securities exchange or inter-dealer quotation system which has requirements that at least 50 percent of the members of a small business issuer's board of directors must be independent shall be considered a national securities exchange or inter-dealer quotation system which has requirements that a majority of the board of directors be independent for the purposes of the disclosure required by paragraph (a) of this Item.

2. Registrants shall provide the disclosure required by paragraph (a) of this Item for any person who served as a director during any part of the last completed fiscal year, except that no information called for by paragraph (a) of this Item need be given in a registration statement filed at a time when the registrant is not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78 o (d)) respecting any director who is no longer a director at the time of effectiveness of the registration statement.

3. The description of the specific categories or types of transactions, relationships or arrangements required by paragraph (a)(3) of this Item must be provided in such detail as is necessary to fully describe the nature of the transactions, relationships or arrangements.

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

(b) *Board meetings and committees; annual meeting attendance.* (1) State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of:

(i) The total number of meetings of the board of directors (held during the period for which he has been a director); and

(ii) The total number of meetings held by all committees of the board on which he served (during the periods that he served).

(2) Describe the registrant's policy, if any, with regard to board members' attendance at annual meetings of security holders and state the number of board members who attended the prior year's annual meeting.

Instruction to Item 407(b)(2). In lieu of providing the information required by paragraph (b)(2) of this Item in the proxy statement, the registrant may instead provide the registrant's Web site address where such information appears.

(3) State whether or not the registrant has standing audit, nominating and compensation committees of the board of directors, or committees performing similar functions. If the registrant has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by each such committee. Such disclosure need not be provided to the extent it is duplicative of disclosure provided in accordance with paragraph (c), (d) or (e) of this Item.

(c) *Nominating committee.* (1) If the registrant does not have a standing nominating committee or committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a committee and identify each director who participates in the consideration of director nominees.

(2) Provide the following information regarding the registrant's director nomination process:

(i) State whether or not the nominating committee has a charter. If the nominating committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the nominating committee charter;

(ii) If the nominating committee has a policy with regard to the consideration of any director candidates recommended by security holders, provide a

RR DONNELLEY

description of the material elements of that policy, which shall include, but need not be limited to, a statement as to whether the committee will consider director candidates recommended by security holders;

(iii) If the nominating committee does not have a policy with regard to the consideration of any director candidates recommended by security holders, state that fact and state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a policy;

(iv) If the nominating committee will consider candidates recommended by security holders, describe the procedures to be followed by security holders in submitting such recommendations;

(v) Describe any specific minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the registrant's board of directors, and describe any specific qualities or skills that the nominating committee believes are necessary for one or more of the registrant's directors to possess;

(vi) Describe the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder, and whether, and if so how, the nominating committee (or the board) considers diversity in identifying nominees for director. If the nominating committee (or the board) has a policy with regard to the consideration of diversity in identifying director nominees, describe how this policy is implemented, as well as how the nominating committee (or the board) assesses the effectiveness of its policy;

(vii) With regard to each nominee approved by the nominating committee for inclusion on the registrant's proxy card (other than nominees who are executive officers or who are directors standing for re-election), state which one or more of the following categories of persons or entities recommended that nominee: Security holder, non-management director, chief executive officer, other executive officer, third-party search firm, or other specified source. With regard to each such nominee approved by a nominating committee of an investment company, state which one or more of the following additional categories of persons or entities recommended that nominee: Security holder, director, chief executive officer, other executive officer, or employee of the investment company's investment adviser, principal underwriter, or any affiliated person of the investment adviser or principal underwriter;

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

(viii) If the registrant pays a fee to any third party or parties to identify or evaluate or assist in identifying or evaluating potential nominees, disclose the function performed by each such third party; and

(ix) If the registrant's nominating committee received, by a date not later than the 120th calendar day before the date of the registrant's proxy statement released to security holders in connection with the previous year's annual meeting, a recommended nominee from a security holder that beneficially owned more than 5% of the registrant's voting common stock for at least one year as of the date the recommendation was made, or from a group of security holders that beneficially owned, in the aggregate, more than 5% of the registrant's voting common stock, with each of the securities used to calculate that ownership held for at least one year as of the date the recommendation was made, identify the candidate and the security holder or security holder group that recommended the candidate and disclose whether the nominating committee chose to nominate the candidate, *provided, however*, that no such identification or disclosure is required without the written consent of both the security holder or security holder group and the candidate to be so identified.

Instructions to Item 407(c)(2)(ix). 1. For purposes of paragraph (c)(2)(ix) of this Item, the percentage of securities held by a nominating security holder may be determined using information set forth in the registrant's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Commission pursuant to the Exchange Act (or, in the case of a registrant that is an investment company registered under the Investment Company Act of 1940, the registrant's most recent report on Form N-CSR (§§249.331 and 274.128 of this chapter)), unless the party relying on such report knows or has reason to believe that the information contained therein is inaccurate.

2. For purposes of the registrant's obligation to provide the disclosure specified in paragraph (c)(2)(ix) of this Item, where the date of the annual meeting has been changed by more than 30 days from the date of the previous year's meeting, the obligation under that Item will arise where the registrant receives the security holder recommendation a reasonable time before the registrant begins to print and mail its proxy materials.

RR DONNELLEY

3. For purposes of paragraph (c)(2)(ix) of this Item, the percentage of securities held by a recommending security holder, as well as the holding period of those securities, may be determined by the registrant if the security holder is the registered holder of the securities. If the security holder is not the registered owner of the securities, he or she can submit one of the following to the registrant to evidence the required ownership percentage and holding period:

a. A written statement from the “record” holder of the securities (usually a broker or bank) verifying that, at the time the security holder made the recommendation, he or she had held the required securities for at least one year; or

b. If the security holder has filed a Schedule 13D (§240.13d–101 of this chapter), Schedule 13G (§240.13d–102 of this chapter), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter), and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting ownership of the securities as of or before the date of the recommendation, a copy of the schedule and/or form, and any subsequent amendments reporting a change in ownership level, as well as a written statement that the security holder continuously held the securities for the one-year period as of the date of the recommendation.

4. For purposes of the registrant’s obligation to provide the disclosure specified in paragraph (c)(2)(ix) of this Item, the security holder or group must have provided to the registrant, at the time of the recommendation, the written consent of all parties to be identified and, where the security holder or group members are not registered holders, proof that the security holder or group satisfied the required ownership percentage and holding period as of the date of the recommendation.

Instruction to Item 407(c)(2).

For purposes of paragraph (c)(2) of this Item, the term *nominating committee* refers not only to nominating committees and committees performing similar functions, but also to groups of directors fulfilling the role of a nominating committee, including the entire board of directors.

(3) Describe any material changes to the procedures by which security holders may recommend nominees to the registrant’s board of directors, where those changes were implemented after the registrant last provided disclosure in response to the requirements of paragraph (c)(2)(iv) of this Item, or paragraph (c)(3) of this Item.

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Instructions to Item 407(c)(3). 1. The disclosure required in paragraph (c)(3) of this Item need only be provided in a registrant's quarterly or annual reports.

2. For purposes of paragraph (c)(3) of this Item, adoption of procedures by which security holders may recommend nominees to the registrant's board of directors, where the registrant's most recent disclosure in response to the requirements of paragraph (c)(2)(iv) of this Item, or paragraph (c)(3) of this Item, indicated that the registrant did not have in place such procedures, will constitute a material change.

(d) *Audit committee.* (1) State whether or not the audit committee has a charter. If the audit committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the audit committee charter.

(2) If a listed issuer's board of directors determines, in accordance with the listing standards applicable to the issuer, to appoint a director to the audit committee who is not independent (apart from the requirements in §240.10A-3 of this chapter), including as a result of exceptional or limited or similar circumstances, disclose the nature of the relationship that makes that individual not independent and the reasons for the board of directors' determination.

(3) (i) The audit committee must state whether:

(A) The audit committee has reviewed and discussed the audited financial statements with management;

(B) The audit committee has discussed with the independent auditors the matters required to be discussed by the statement on Auditing Standards No. 61, as amended (AICPA, *Professional Standards*, Vol. 1. AU section 380),¹ as adopted by the Public Company Accounting Oversight Board in Rule 3200T;

(C) The audit committee has received the written disclosures and the letter from the independent accountant required by applicable requirements of the Public Company Accounting Oversight Board regarding the independent accountant's communications with the audit committee concerning independence, and has discussed with the independent accountant the independent accountant's independence; and

¹ Available at http://www.pcaobus.org/standards/interim_standards/auditing_standards/index_au.asp?series=300§ion=300.

RR DONNELLEY

(D) Based on the review and discussions referred to in paragraphs (d)(3)(i)(A) through (d)(3)(i)(C) of this Item, the audit committee recommended to the board of directors that the audited financial statements be included in the company's annual report on Form 10-K (17 CFR 249.310) (or, for closed-end investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), the annual report to shareholders required by section 30(e) of the Investment Company Act of 1940 (15 U.S.C. 80a-29(e)) and Rule 30d-1 (17 CFR 270.30d-1) thereunder) for the last fiscal year for filing with the Commission.

(ii) The name of each member of the company's audit committee (or, in the absence of an audit committee, the board committee performing equivalent functions or the entire board of directors) must appear below the disclosure required by paragraph (d)(3)(i) of this Item.

(4) (i) If the registrant meets the following requirements, provide the disclosure in paragraph (d)(4)(ii) of this Item:

(A) The registrant is a listed issuer, as defined in §240.10A-3 of this chapter;

(B) The registrant is filing an annual report on Form 10-K (§249.310 of this chapter) or a proxy statement or information statement pursuant to the Exchange Act (15 U.S.C. 78a *et seq.*) if action is to be taken with respect to the election of directors; and

(C) The registrant is neither:

(1) A subsidiary of another listed issuer that is relying on the exemption in §240.10A-3(c)(2) of this chapter; nor

(2) Relying on any of the exemptions in §240.10A-3(c)(4) through (c)(7) of this chapter.

(ii) (A) State whether or not the registrant has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)), or a committee performing similar functions. If the registrant has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the registrant's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(B) If applicable, provide the disclosure required by §240.10A-3(d) of this chapter regarding an exemption from the listing standards for audit committees.

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

(5) *Audit committee financial expert.* (i)(A) Disclose that the registrant's board of directors has determined that the registrant either:

(1) Has at least one audit committee financial expert serving on its audit committee; or

(2) Does not have an audit committee financial expert serving on its audit committee.

(B) If the registrant provides the disclosure required by paragraph (d)(5)(i)(A)(1) of this Item, it must disclose the name of the audit committee financial expert and whether that person is independent, as *independence* for audit committee members is defined in the listing standards applicable to the listed issuer.

(C) If the registrant provides the disclosure required by paragraph (d)(5)(i)(A)(2) of this Item, it must explain why it does not have an audit committee financial expert.

Instruction to Item 407(d)(5)(i). If the registrant's board of directors has determined that the registrant has more than one audit committee financial expert serving on its audit committee, the registrant may, but is not required to, disclose the names of those additional persons. A registrant choosing to identify such persons must indicate whether they are independent pursuant to paragraph (d)(5)(i)(B) of this Item.

(ii) For purposes of this Item, an *audit committee financial expert* means a person who has the following attributes:

(A) An understanding of generally accepted accounting principles and financial statements;

(B) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

(C) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;

(D) An understanding of internal control over financial reporting; and

(E) An understanding of audit committee functions.

(iii) A person shall have acquired such attributes through:

RR DONNELLEY

(A) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(B) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(C) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(D) Other relevant experience.

(iv) *Safe harbor.* (A) A person who is determined to be an audit committee financial expert will not be deemed an *expert* for any purpose, including without limitation for purposes of section 11 of the Securities Act (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item 407.

(B) The designation or identification of a person as an audit committee financial expert pursuant to this Item 407 does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(C) The designation or identification of a person as an audit committee financial expert pursuant to this Item does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

Instructions to Item 407(d)(5). 1. The disclosure under paragraph (d)(5) of this Item is required only in a registrant's annual report. The registrant need not provide the disclosure required by paragraph (d)(5) of this Item in a proxy or information statement unless that registrant is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to General Instruction G(3) to Form 10-K (17 CFR 249.310).

2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (d)(5)(iii)(D) of this Item, the registrant shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures required under Item 401(e) (§229.401(e)).

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of paragraph (d)(5) of this Item, the term *board of directors* means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of §240.10A-3(c)(3) of this chapter, for purposes of paragraph (d)(5) of this Item, the term *board of directors* means the issuer's board of auditors (or similar body) or statutory auditors, as applicable. Also, in the case of a foreign private issuer, the term *generally accepted accounting principles* in paragraph (d)(5)(ii)(A) of this Item means the body of generally accepted accounting principles used by that issuer in its primary financial statements filed with the Commission.

4. A registrant that is an Asset-Backed Issuer (as defined in §229.1101) is not required to disclose the information required by paragraph (d)(5) of this Item.

Instructions to Item 407(d).

1. The information required by paragraphs (d)(1)–(3) of this Item shall not be deemed to be “soliciting material,” or to be “filed” with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a–1 through 240.14b–2 or 240.14c–1 through 240.14c–101), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the registrant specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act. Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

2. The disclosure required by paragraphs (d)(1)–(3) of this Item need only be provided one time during any fiscal year.

3. The disclosure required by paragraph (d)(3) of this Item need not be provided in any filings other than a registrant's proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting).

(e) *Compensation committee.* (1) If the registrant does not have a standing compensation committee or committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a committee and identify each director who participates in the consideration of executive officer and director compensation.

RR DONNELLEY

(2) State whether or not the compensation committee has a charter. If the compensation committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the compensation committee charter.

(3) Provide a narrative description of the registrant's processes and procedures for the consideration and determination of executive and director compensation, including:

(i) (A) The scope of authority of the compensation committee (or persons performing the equivalent functions); and

(B) The extent to which the compensation committee (or persons performing the equivalent functions) may delegate any authority described in paragraph (e)(3)(i)(A) of this Item to other persons, specifying what authority may be so delegated and to whom;

(ii) Any role of executive officers in determining or recommending the amount or form of executive and director compensation; and

(iii) Any role of compensation consultants in determining or recommending the amount or form of executive and director compensation (other than any role *limited* to consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the registrant, and that is available generally to all salaried employees; or providing information that either is not customized for a particular registrant or that is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant does not provide advice) during the registrant's last completed fiscal year, identifying such consultants, stating whether such consultants were engaged directly by the compensation committee (or persons performing the equivalent functions) or any other person, describing the nature and scope of their assignment, and the material elements of the instructions or directions given to the consultants with respect to the performance of their duties under the engagement:

(A) If such compensation consultant was engaged by the compensation committee (or persons performing the equivalent functions) to provide advice or recommendations on the amount or form of executive and director compensation (other than any role *limited* to consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the registrant, and that is available generally to all salaried employees; or providing information that either is not customized for a particular registrant or that is customized based on parameters that are not devel-

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

oped by the compensation consultant, and about which the compensation consultant does not provide advice) and the compensation consultant or its affiliates also provided additional services to the registrant or its affiliates in an amount in excess of \$120,000 during the registrant's last completed fiscal year, then disclose the aggregate fees for determining or recommending the amount or form of executive and director compensation and the aggregate fees for such additional services. Disclose whether the decision to engage the compensation consultant or its affiliates for these other services was made, or recommended, by management, and whether the compensation committee or the board approved such other services of the compensation consultant or its affiliates.

(B) If the compensation committee (or persons performing the equivalent functions) has not engaged a compensation consultant, but management has engaged a compensation consultant to provide advice or recommendations on the amount or form of executive and director compensation (other than any role *limited* to consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the registrant, and that is available generally to all salaried employees; or providing information that either is not customized for a particular registrant or that is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant does not provide advice) and such compensation consultant or its affiliates has provided additional services to the registrant in an amount in excess of \$120,000 during the registrant's last completed fiscal year, then disclose the aggregate fees for determining or recommending the amount or form of executive and director compensation and the aggregate fees for any additional services provided by the compensation consultant or its affiliates.

(4) Under the caption "Compensation Committee Interlocks and Insider Participation":

(i) Identify each person who served as a member of the compensation committee of the registrant's board of directors (or board committee performing equivalent functions) during the last completed fiscal year, indicating each committee member who:

- (A) Was, during the fiscal year, an officer or employee of the registrant;
- (B) Was formerly an officer of the registrant; or

RR DONNELLEY

(C) Had any relationship requiring disclosure by the registrant under any paragraph of Item 404 (§229.404). In this event, the disclosure required by Item 404 (§229.404) shall accompany such identification.

(ii) If the registrant has no compensation committee (or other board committee performing equivalent functions), the registrant shall identify each officer and employee of the registrant, and any former officer of the registrant, who, during the last completed fiscal year, participated in deliberations of the registrant's board of directors concerning executive officer compensation.

(iii) Describe any of the following relationships that existed during the last completed fiscal year:

(A) An executive officer of the registrant served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one of whose executive officers served on the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of the registrant;

(B) An executive officer of the registrant served as a director of another entity, one of whose executive officers served on the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of the registrant; and

(C) An executive officer of the registrant served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one of whose executive officers served as a director of the registrant.

(iv) Disclosure required under paragraph (e)(4)(iii) of this Item regarding a compensation committee member or other director of the registrant who also served as an executive officer of another entity shall be accompanied by the disclosure called for by Item 404 with respect to that person.

Instruction to Item 407(e)(4). For purposes of paragraph (e)(4) of this Item, the term *entity* shall not include an entity exempt from tax under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).

(5) Under the caption "Compensation Committee Report:"

(i) The compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) must state whether:

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

(A) The compensation committee has reviewed and discussed the Compensation Discussion and Analysis required by Item 402(b) (§229.402(b)) with management; and

(B) Based on the review and discussions referred to in paragraph (e)(5)(i)(A) of this Item, the compensation committee recommended to the board of directors that the Compensation Discussion and Analysis be included in the registrant's annual report on Form 10-K (§249.310 of this chapter), proxy statement on Schedule 14A (§240.14a-101 of this chapter) or information statement on Schedule 14C (§240.14c-101 of this chapter).

(ii) The name of each member of the registrant's compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) must appear below the disclosure required by paragraph (e)(5)(i) of this Item.

Instructions to Item 407(e)(5). 1. The information required by paragraph (e)(5) of this Item shall not be deemed to be "soliciting material," or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a-1 through 240.14b-2 or 240.14c-1 through 240.14c-101), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the registrant specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act.

2. The disclosure required by paragraph (e)(5) of this Item need not be provided in any filings other than an annual report on Form 10-K (§249.310 of this chapter), a proxy statement on Schedule 14A (§240.14a-101 of this chapter) or an information statement on Schedule 14C (§240.14c-101 of this chapter). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference. If the registrant elects to incorporate this information by reference from the proxy or information statement into its annual report on Form 10-K pursuant to General Instruction G(3) to Form 10-K, the disclosure required by paragraph (e)(5) of this Item will be deemed furnished in the annual report on Form 10-K and will not be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act as a result as a result of furnishing the disclosure in this manner.

3. The disclosure required by paragraph (e)(5) of this Item need only be provided one time during any fiscal year.

RR DONNELLEY

(f) *Shareholder communications.* (1) State whether or not the registrant's board of directors provides a process for security holders to send communications to the board of directors and, if the registrant does not have such a process for security holders to send communications to the board of directors, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a process.

(2) If the registrant has a process for security holders to send communications to the board of directors:

(i) Describe the manner in which security holders can send communications to the board and, if applicable, to specified individual directors; and

(ii) If all security holder communications are not sent directly to board members, describe the registrant's process for determining which communications will be relayed to board members.

Instructions to Item 407(f). 1. In lieu of providing the information required by paragraph (f)(2) of this Item in the proxy statement, the registrant may instead provide the registrant's Web site address where such information appears.

2. For purposes of the disclosure required by paragraph (f)(2)(ii) of this Item, a registrant's process for collecting and organizing security holder communications, as well as similar or related activities, need not be disclosed provided that the registrant's process is approved by a majority of the independent directors or, in the case of a registrant that is an investment company, a majority of the directors who are not "interested persons" of the investment company as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)).

3. For purposes of this paragraph, communications from an officer or director of the registrant will not be viewed as "security holder communications." Communications from an employee or agent of the registrant will be viewed as "security holder communications" for purposes of this paragraph only if those communications are made solely in such employee's or agent's capacity as a security holder.

4. For purposes of this paragraph, security holder proposals submitted pursuant to §240.14a-8 of this chapter, and communications made in connection with such proposals, will not be viewed as "security holder communications."

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

(g) *Smaller reporting companies.* A registrant that qualifies as a “smaller reporting company,” as defined by §229.10(f)(1), is not required to provide:

(1) The disclosure required in paragraph (d)(5) of this Item in its first annual report filed pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) following the effective date of its first registration statement filed under the Securities Act (15 U.S.C. 77a *et seq.*) or Exchange Act (15 U.S.C. 78a *et seq.*); and

(2) Need not provide the disclosures required by paragraphs (e)(4) and (e)(5) of this Item.

(h) *Board leadership structure and role in risk oversight.* Briefly describe the leadership structure of the registrant’s board, such as whether the same person serves as both principal executive officer and chairman of the board, or whether two individuals serve in those positions, and, in the case of a registrant that is an investment company, whether the chairman of the board is an “interested person” of the registrant as defined in section 2(a)(19) of the Investment Company Act (15 U.S.C. 80a–2(a)(19)). If one person serves as both principal executive officer and chairman of the board, or if the chairman of the board of a registrant that is an investment company is an “interested person” of the registrant, disclose whether the registrant has a lead independent director and what specific role the lead independent director plays in the leadership of the board. This disclosure should indicate why the registrant has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the registrant. In addition, disclose the extent of the board’s role in the risk oversight of the registrant, such as how the board administers its oversight function, and the effect that this has on the board’s leadership structure.

Instructions to Item 407.

1. For purposes of this Item:

a. *Listed issuer* means a listed issuer as defined in §240.10A–3 of this chapter;

b. *National securities exchange* means a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a));

c. *Inter-dealer quotation system* means an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)); and

RR DONNELLEY

d. *National securities association* means a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o-3(a)) that has been approved by the Commission (as that definition may be modified or supplemented).

2. With respect to paragraphs (c)(2)(i), (d)(1) and (e)(2) of this Item, disclose whether a current copy of the applicable committee charter is available to security holders on the registrant's Web site, and if so, provide the registrant's Web site address. If a current copy of the charter is not available to security holders on the registrant's Web site, include a copy of the charter in an appendix to the registrant's proxy or information statement that is provided to security holders at least once every three fiscal years, or if the charter has been materially amended since the beginning of the registrant's last fiscal year. If a current copy of the charter is not available to security holders on the registrant's Web site, and is not included as an appendix to the registrant's proxy or information statement, identify in which of the prior fiscal years the charter was so included in satisfaction of this requirement.

[71 FR 53254, Sept. 8, 2006, as amended at 73 FR 964, Jan. 4, 2008; 73 FR 57238, Oct. 2, 2008; 74 FR 68364, Dec. 23, 2009]

Appendix B
Excerpts from the December 16, 2009 Adopting Release

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 229, 239, 240, 249 and 274

[RELEASE NOS. 33-9089; 34-61175; IC-29092; File No. S7-13-09]

RIN 3235-AK28

PROXY DISCLOSURE ENHANCEMENTS

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to our rules that will enhance information provided in connection with proxy solicitations and in other reports filed with the Commission. The amendments will require registrants to make new or revised disclosures about: compensation policies and practices that present material risks to the company; stock and option awards of executives and directors; director and nominee qualifications and legal proceedings; board leadership structure; the board's role in risk oversight; and potential conflicts of interest of compensation consultants that advise companies and their boards of directors. The amendments to our disclosure rules will be applicable to proxy and information statements, annual reports and registration statements under the Securities Exchange Act of 1934, and registration statements under the Securities Act of 1933 as well as the Investment Company Act of 1940. We are

also transferring from Forms 10-Q and 10-K to Form 8-K the requirement to disclose shareholder voting results.

EFFECTIVE DATE: February 28, 2010

FOR FURTHER INFORMATION CONTACT: N. Sean Harrison, Special Counsel, at (202) 551-3430 or Anne Krauskopf, Senior Special Counsel, at (202) 551-3500, in the Division of Corporation Finance; or with respect to questions regarding investment companies, Alberto Zapata, Senior Counsel, Division of Investment Management, at (202) 551-6784, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Items 401,¹ 402,² and 407³ of Regulation S-K;⁴ Schedule 14A⁵ and Forms 8-K,⁶ 10-Q,⁷ and 10-K⁸ under the Securities Exchange Act of 1934 (“Exchange

¹ 17 CFR 229.401.

² 17 CFR 229.402.

³ 17 CFR 229.407.

⁴ 17 CFR 229.10 et al.

⁵ 17 CFR 240.14a-101.

⁶ 17 CFR 249.308.

⁷ 17 CFR 249.308a.

⁸ 17 CFR 249.310.

Act”);⁹ and Forms N-1A,¹⁰ N-2,¹¹ and N-3,¹² registration forms used by management investment companies to register under the Investment Company Act of 1940 (“Investment Company Act”)¹³ and to offer their securities under the Securities Act of 1933 (“Securities Act”).¹⁴

⁹ 15 U.S.C. 78a et seq.

¹⁰ 17 CFR 239.15A and 274.11A.

¹¹ 17 CFR 239.14 and 274.11a-1.

¹² 17 CFR 239.17a and 274.11b.

¹³ 15 U.S.C. 80a-1 et seq.

¹⁴ 15 U.S.C. 77a et seq.

TABLE OF CONTENTS

I.	Background and Overview of the Amendments	B-6
II.	Discussion of the Amendments	B-11
A.	Enhanced Compensation Disclosure	B-11
	1. Narrative Disclosure of the Company’s Compensation Policies and Practices as They Relate to the Company’s Risk Management	B-11
	a. Proposed Amendments	B-11
	b. Comments on the Proposed Amendments	B-12
	c. Final Rule	B-16
	2. Revisions to the Summary Compensation Table	B-24
	a. Proposed Amendments	B-24
	b. Comments on the Proposed Amendments	B-25
	c. Final Rule	B-29
	d. Transition	B-34
	e. Comment Responses Regarding Rulemaking Petition and Other Requests for Comment	B-36
B.	Enhanced Director and Nominee Disclosure	B-39
	1. Proposed Amendments	B-39
	2. Comments on the Proposed Amendments	B-41
	3. Final Rule	B-45

C.	New Disclosure about Board Leadership Structure and the Board’s Role in Risk Oversight	B-52
	1. Proposed Amendments	B-53
	2. Comments on the Proposed Amendments	B-54
	3. Final Rule	B-57
D.	New Disclosure Regarding Compensation Consultants	B-60
	1. Proposed Amendments	B-61
	2. Comments on the Proposed Amendments	B-62
	3. Final Rule	B-68
E.	Reporting of Voting Results on Form 8-K	B-79
	1. Proposed Amendments	B-79
	2. Comments on the Proposed Amendments	B-80
	3. Final Rule	B-82
III.	Paperwork Reduction Act	
IV.	Cost-Benefit Analysis	
V.	Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation	
VI.	Final Regulatory Flexibility Analysis	
VII.	Statutory Authority and Text of the Amendments	

I. BACKGROUND AND OVERVIEW OF THE AMENDMENTS

On July 10, 2009, we proposed a number of revisions to our rules that were designed to improve the disclosure shareholders of public companies receive regarding compensation and corporate governance.¹⁵ As discussed in detail below, we have taken into consideration the comments received on the proposed amendments and are adopting several amendments to our rules. Among other improvements, the new disclosure requirements adopted today enhance the information provided in annual reports, and proxy and information statements to better enable shareholders to evaluate the leadership of public companies.

As discussed more fully in the Proposing Release, during the past few years, investors have increasingly focused on corporate accountability and have expressed the desire for additional information that would enhance their ability to make informed voting and investment decisions. The disclosure enhancements we are adopting respond to this focus, and will significantly improve the information companies provide to shareholders with regard to the following:

- Risk: by requiring disclosure about the board’s role in risk oversight and, to the extent that risks arising from a company’s compensation policies and practices are reasonably likely to have a material adverse effect on the company, disclosure about such policies and practices as they relate to risk management;

¹⁵ See Release No. 33-9052 (July 10, 2009) [74 FR 35076] (“Proposing Release”).

- Governance and Director Qualifications: by requiring expanded disclosure of the background and qualifications of directors and director nominees and new disclosure about a company's board leadership structure, and accelerating the reporting of information regarding voting results; and
- Compensation: by revising the reporting of stock and option awards in the Summary Compensation Table¹⁶ and Director Compensation Table,¹⁷ and requiring disclosure of potential conflicts of interest of compensation consultants in certain circumstances.

We believe that providing a more transparent view of these key risk, governance and compensation matters will help shareholders make more informed voting and investment decisions.

We received over 130 comment letters in response to the proposed amendments.¹⁸ These letters came from corporations, pension funds, professional associations, trade unions, accounting firms, law firms, consultants, academics, individual investors and other interested parties. In general, the commenters supported the objectives of the proposed new

¹⁶ Item 402(c) and 402(n) of Regulation S-K [17 CFR 229.402(c) and 229.402(n)].

¹⁷ Item 402(k) and 402(r) of Regulation S-K [17 CFR 229.402(k) and 229.402(r)].

¹⁸ The public comments we received are available on our Web site at <http://www.sec.gov/comments/s7-13-09/s71309.shtml>. Comments are also available for Web site viewing and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

requirements. Most investors supported the manner in which we proposed to achieve these objectives and, in some cases, urged us to require additional disclosure from companies. Other commenters, however, opposed some of the proposed revisions and suggested modifications to the proposals.

We have reviewed and considered all of the comments that we received on the proposed amendments. The adopted rules reflect changes made in response to many of these comments. We discuss our revisions with respect to each proposed rule amendment in more detail throughout this release. The amendments that we are adopting will require:

- To the extent that risks arising from a company's compensation policies and practices for employees are reasonably likely to have a material adverse effect on the company, discussion of the company's compensation policies or practices as they relate to risk management and risk-taking incentives that can affect the company's risk and management of that risk;
- Reporting of the aggregate grant date fair value of stock awards and option awards granted in the fiscal year in the Summary Compensation Table and Director Compensation Table to be computed in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 718, Compensation—

Stock Compensation (“FASB ASC Topic 718”),¹⁹ rather than the dollar amount recognized for financial statement purposes for the fiscal year, with a special instruction for awards subject to performance conditions;

- New disclosure of the qualifications of directors and nominees for director, and the reasons why that person should serve as a director of the company at the time at which the relevant filing is made with the Commission; the same information would be required in the proxy materials prepared with respect to nominees for director nominated by others;
- Additional disclosure of any directorships held by each director and nominee at any time during the past five years at any public company or registered investment company;
- New disclosure regarding the consideration of diversity in the process by which candidates for director are considered for nomination by a company’s nominating committee;
- Additional disclosure of other legal actions involving a company’s executive officers, directors, and nominees for director, and

¹⁹ Both our rule proposal and the former disclosure requirement used the nomenclature Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004) Share-Based Payment (FAS 123R). We are updating our references in this release and the final rules to reflect that the FASB Accounting Standards Codification has superseded all references to previous FASB standards for interim or annual periods ending on or after September 15, 2009.

‘lengthening the time during which such disclosure is required from five to ten years;

- New disclosure about a company’s board leadership structure and the board’s role in the oversight of risk;
- New disclosure about the fees paid to compensation consultants and their affiliates under certain circumstances; and
- Disclosure of the vote results from a meeting of shareholders on Form 8-K generally within four business days of the meeting.

With respect to management investment companies that are registered under the Investment Company Act (“funds”),²⁰ the amendments we are adopting will require expanded disclosure regarding director and nominee qualifications; past directorships held by directors and nominees; and legal proceedings involving directors, nominees, and executive officers to funds; and new disclosure about leadership structure and the board’s role in the oversight of risk.

The Proposing Release also included several proposed amendments to our rules governing the proxy solicitation process. We have decided to defer consideration of those proposed amendments at this time, pending our

²⁰ Management investment companies typically issue shares representing an interest in a changing pool of securities, and include open-end and closed-end companies. An open-end company is a management company that is offering for sale or has outstanding any redeemable securities of which it is the issuer. A closed-end company is any management company other than an open-end company. See Section 5 of the Investment Company Act [15 U.S.C. 80a-5].

consideration of our proposal intended to facilitate shareholder director nominations in companies' proxy materials.²¹

II. DISCUSSION OF THE AMENDMENTS

A. Enhanced Compensation Disclosure

1. Narrative Disclosure of the Company's Compensation Policies and Practices as They Relate to the Company's Risk Management

We proposed amendments to our Compensation Discussion and Analysis ("CD&A") requirements to broaden their scope to include a new section regarding how the company's overall compensation policies for employees create incentives that can affect the company's risk and management of that risk. We are adopting the disclosure requirements generally as proposed, but we are revising the placement of the new required disclosures and the disclosure threshold, as suggested by commenters.

a. Proposed Amendments

Under the amendments we proposed, companies would be required to discuss and analyze their broader compensation policies and overall actual compensation practices for employees generally, including non-executive officers, if risks arising from those compensation policies or practices may have a material effect on the company. As we stated in the Proposing Release,

²¹ See Release No. 33-9046 (June 10, 2009) [74 FR 29024].

we believe that disclosure of a company’s compensation policies and practices in certain circumstances can help investors identify whether the company has established a system of incentives that can lead to excessive or inappropriate risk taking by employees.

The proposed amendments enumerated a non-exclusive list of situations where compensation programs may raise material risks to companies, and several examples of the types of issues that would be appropriate for a company to discuss and analyze. The illustrative examples, consistent with the principles-based approach of the CD&A, were intended to help identify the types of situations in which the disclosure may be required.

b. Comments on the Proposed Amendments

Comments on the proposal were mixed. Individual investors, trade unions, institutional investors and pension funds supported the proposals.²² Some of these commenters believed the new CD&A disclosure would improve the ability of investors to make informed investment decisions.²³ Other

²² See, e.g., letters from American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”), American Association of Retired Persons (“AARP”), Grahall Partners LLC, Institute of Internal Auditors (“IIA”), Pfizer Inc., Risk and Insurance Management Society, Inc. (“RIMS”), State of Connecticut Treasurer’s Office (“CTO”), State of Wisconsin Investment Board (“SWIB”), Ralph S. Saul, Teachers Insurance and Annuity Association of America—College Retirement and Equities Fund (“TIAA-CREF”), and Mark Whitton.

²³ See, e.g., letters from California State Teachers’ Retirement System (“CalSTRS”), and RIMS.

commenters believed the amendments would significantly improve shareholders' understanding of both the process by which pay is set and the substantive policies that guide companies' risk assessment or incentive considerations in structuring compensation policies or awarding compensation.²⁴

Most companies, law firms and bar groups opposed the proposal.²⁵ Concerns that were expressed included, for example, that the proposed amendments would not lead to meaningful disclosures,²⁶ and that the CD&A was already long and the proposed amendments would add length without a corresponding benefit to shareholders.²⁷ Another concern expressed by commenters was that the linkage between risk-taking and executive compensation is not well understood, and that the disclosures provided under the proposed amendments would likely be boilerplate that could give investors a false sense of comfort regarding risk and risk-taking.²⁸

²⁴ See, e.g., letters from Service Employees International Union (“SEIU”), and Walden Asset Management.

²⁵ See, e.g., letters from the American Bar Association (“ABA”), Robert Ahrenholz, American Electric Power, Business Roundtable, StanCorp Financial Group, and Wisconsin Electric Corporation.

²⁶ See, e.g., letters from Association Corporate Council (“ACC”), BorgWarner Inc., NACCO Industries, Inc. (“NACCO”), and Sullivan & Cromwell (“S&C”).

²⁷ See, e.g., letters from National Association of Corporate Directors (“NACD”) and S&C.

²⁸ See, e.g., letters from ABA and DolmatConnell Partners, Inc. (“DolmatConnell”).

Other commenters argued that it was not appropriate to expand the CD&A beyond the named executive officers to include disclosure of the company’s broader compensation policies and overall compensation practices for employees generally.²⁹ Some of these commenters argued that expanding the CD&A would represent a fundamental shift in the approach to the CD&A.³⁰ Concerns were also expressed that risk management, risk-taking incentives and related business strategy are complex subjects that could not be adequately analyzed in CD&A without adding voluminous text to an already lengthy proxy statement.³¹

Comments also were mixed on the illustrative examples included with the proposed amendments. Some commenters supported the list, noting that the additional disclosures would provide investors with a better understanding of a company’s compensation policies and how such policies can create incentives that could affect the company’s risk profile and ability to manage that risk.³² Other commenters asserted that the proposed revisions would lead to

²⁹ See, e.g., letters from BorgWarner, NACCO and the Society of Corporate Secretaries and Corporate Governance Professionals (“SCSGP”).

³⁰ See, e.g., letters from BorgWarner and NACCO.

³¹ See, e.g., letter of NACD.

³² See, e.g., letters from CalSTRS, Council of Institutional Investors (“CII”), Glass Lewis & Co (“Glass Lewis”), and RIMS.

boilerplate disclosures and information that would not be meaningful to investors.³³

Several commenters recommended that we revise the disclosure threshold in the proposed amendments, which we proposed as “may have a material effect” on the company.³⁴ Suggested alternatives included changing the standard to “likely to have a material effect,” “reasonably likely to have a material effect,” or “will likely have a material effect.”³⁵ Some commenters believed the “may have a material effect” standard was too speculative and that basing the disclosure standard on whether the risks are “reasonably likely to have a material effect” would give companies more certainty and provide investors with more meaningful disclosure.³⁶ Commenters also noted that, to avoid voluminous and extraneous disclosure, the requirement should focus on compensation arrangements that are likely to promote risk-taking behavior that could have a significant and damaging impact on the company’s operations.³⁷

³³ See, e.g., letters of Business Roundtable and Cleary Gottlieb Steen & Hamilton LLP (“Cleary Gottlieb”).

³⁴ See letters from ACC, BorgWarner, Davis Polk & Wardwell LLP (“Davis Polk”), Honeywell International Inc. (“Honeywell”), NACCO, and SCSGP.

³⁵ See letters from ABA, ACC, BorgWarner, Davis Polk, Honeywell, NACCO, and SCSGP

³⁶ See letters from ABA and Davis Polk.

³⁷ See letters from ABA and Pearl Meyer & Partners (“Pearl Meyer”).

c. Final Rule

After considering the comments, we are adopting the disclosure requirement substantially as proposed with some modifications. We continue to believe that it is important for investors to be informed of the compensation policies and practices that are likely to expose the company to material risk, but we recognize that, consistent with the comments received, we should revise our proposals. We have tailored the final amendments to address many of the concerns expressed by commenters, consistent with the purposes to be advanced by the disclosure.

The final rule requires a company to address its compensation policies and practices for all employees, including non-executive officers, if the compensation policies and practices create risks that are reasonably likely to have a material adverse effect on the company.³⁸ As noted above, the proposed rules would have required discussion and analysis of compensation policies if risks arising from those compensation policies “may have a material effect on the company.” We agree with the suggestions of several commenters that the new requirements should have a “reasonably likely” disclosure threshold. Companies are familiar with the “reasonably likely” disclosure threshold used

³⁸ See new Item 402(s) of Regulation S-K. As we noted in the Proposing Release, to the extent that risk considerations are a material aspect of the company’s compensation policies or decisions for named executive officers, the company is required to discuss them as part of its CD&A under the current rules.

in our Management Discussion and Analysis (“MD&A”) rules,³⁹ and this approach would parallel the MD&A requirement, which requires risk-oriented disclosure of known trends and uncertainties that are material to the business. We believe that the “reasonably likely” threshold also addresses concerns of some commenters that the proposed requirements might have caused companies attempting compliance to burden shareholders and investors with voluminous disclosure of potentially insignificant and unnecessarily speculative information about their compensation policies. By focusing on risks that are “reasonably likely to have a material adverse effect” on the company, the amendments are intended to elicit disclosure about incentives in the company’s compensation policies and practices that would be most relevant to investors.⁴⁰ This change from the proposal also addresses concerns some commenters raised that the proposal did not allow companies to consider compensating or offsetting steps or controls designed to limit risks of certain compensation arrangements.⁴¹ If a company has compensation policies and practices for different groups that mitigate or balance incentives, these could be considered in deciding whether risks arising from the company’s compensation policies and practices for employees are reasonably likely to have a material adverse effect on the company as a whole.

³⁹ See Item 303 of Regulation S-K [17 CFR 229.303].

⁴⁰ See note 36 above and accompanying text.

⁴¹ See letters from ABA and Center on Executive Compensation.

In addition, we have modified the proposal to provide that disclosure is only required if the compensation policies and practices are reasonably likely to have a material “adverse” effect on the company, as opposed to any “material effect” as proposed. As noted in the Proposing Release, well-designed compensation policies can enhance a company’s business interests by encouraging innovation and appropriate levels of risk-taking. By focusing the disclosure on material adverse effects, the final rule should help avoid voluminous and unnecessary discussion of compensation arrangements that may mitigate inappropriate risk-taking incentives.

We are also moving the new requirements into a separate paragraph in Item 402 of Regulation S-K.⁴² As adopted, the new disclosure requirements will not be a part of the CD&A.⁴³ We were persuaded by commenters who asserted that it would be potentially confusing to expand the CD&A beyond the named executive officers to include disclosure of the company’s broader compensation policies and practices for employees. CD&A provides discussion and analysis of the compensation of the named executive officers and the

⁴² See new Item 402(s) of Regulation S-K.

⁴³ In making this change, we also revised the final rule from what was proposed by eliminating the term “generally.” Previously, we believed this term was helpful to distinguish the proposed amendments from the CD&A for the named executive officers by emphasizing that it also applied to non-executive officers. Because we are moving the new requirements into a separate paragraph, we do not believe the term is needed. Moreover, one commenter noted that the term could be confusing in light of the examples listed in the rule. See letter from ABA.

information contained in the Summary Compensation Table and other required tables, and the new disclosure requirements would be inconsistent with that approach because they would cover all employees, not just the named executive officers.⁴⁴

The final rule will contain, as proposed, the non-exclusive list of situations where compensation programs may have the potential to raise material risks to companies, and the examples of the types of issues that would be appropriate for a company to address. Under the amendments, the situations that would require disclosure will vary depending on the particular company and its compensation program. We believe situations that potentially could trigger discussion include, among others, compensation policies and practices:

- At a business unit of the company that carries a significant portion of the company's risk profile;
- At a business unit with compensation structured significantly differently than other units within the company;
- At a business unit that is significantly more profitable than others within the company;
- At a business unit where the compensation expense is a significant percentage of the unit's revenues; and

⁴⁴ See letters from BorgWarner, NACCO and SCSGP.

- That vary significantly from the overall risk and reward structure of the company, such as when bonuses are awarded upon accomplishment of a task, while the income and risk to the company from the task extend over a significantly longer period of time.

This is a non-exclusive list of situations where compensation programs may have the potential to raise material risks to the company. There may be other features of a company's compensation policies and practices that have the potential to incentivize its employees to create risks that are reasonably likely to have a material adverse effect on the company. However, disclosure under the amendments is only required if the compensation policies and practices create risks that are reasonably likely to have a material adverse effect on the company. We note that in the situations listed above, a company may under appropriate circumstances conclude that its compensation policies and practices are not reasonably likely to have a material adverse effect on the company.

We are adopting, as proposed, the illustrative examples of the issues that would potentially be appropriate for a company to address. As we stated in the Proposing Release, the examples are non-exclusive and that the application of an example should be tailored to the facts and circumstances of the company. We believe that a principles-based approach, similar to our CD&A requirements, utilizing illustrative examples strikes an appropriate balance that will effectively elicit meaningful disclosure. If a company determines that

disclosure is required, we believe examples of the issues that companies may need to address regarding their compensation policies or practices include the following:

- The general design philosophy of the company's compensation policies and practices for employees whose behavior would be most affected by the incentives established by the policies and practices, as such policies and practices relate to or affect risk taking by those employees on behalf of the company, and the manner of their implementation;
- The company's risk assessment or incentive considerations, if any, in structuring its compensation policies and practices or in awarding and paying compensation;
- How the company's compensation policies and practices relate to the realization of risks resulting from the actions of employees in both the short term and the long term, such as through policies requiring claw backs or imposing holding periods;
- The company's policies regarding adjustments to its compensation policies and practices to address changes in its risk profile;
- Material adjustments the company has made to its compensation policies and practices as a result of changes in its risk profile; and

- The extent to which the company monitors its compensation policies and practices to determine whether its risk management objectives are being met with respect to incentivizing its employees.

We believe using illustrative examples helps to identify the types of disclosure that may be applicable. However, companies must assess the information that is identified by the example in light of the company’s particular situation. Thus, for example, we would not expect to see generic or boilerplate disclosure that the incentives are designed to have a positive effect, or that compensation levels may not be sufficient to attract or retain employees with appropriate skills in order to enable the company to maintain or expand operations.

Consistent with the approach taken in the proposals, smaller reporting companies will not be required to provide the new disclosure, even though the new rule will not be part of CD&A.⁴⁵ At this time, we believe that such companies are less likely to have the types of compensation policies and practices that are intended to be addressed in this rulemaking.⁴⁶

⁴⁵ Because smaller reporting companies are not required to provide CD&A disclosure, we did not propose to require that they provide the new disclosure.

⁴⁶ See, e.g., letter of Committee on Securities Law of the Business Law Section of the Maryland State Bar Association (“In our view smaller reporting companies and their compensation structures generally are not geared towards the kind of disclosure that would be required by the proposal”). The amendments will not alter the reporting requirements for smaller reporting companies under Item 402. Specifically, smaller reporting companies are permitted to provide the scaled disclosures specified in Items 402(l) through (r) of Regulation S-K, rather than the disclosure specified in Items 402(a) through (k) of Regulation S-K.

In the Proposing Release, we requested comment on whether we should require a company to affirmatively state that it has determined that the risks arising from its compensation policies are not reasonably expected to have a material effect on the company if it has concluded that disclosure was not required. Commenters were mixed in their response to this request. Several commenters believed that companies should be required to affirmatively state that they have determined that the risks arising from their broader compensation policies are not reasonably expected to have a material effect.⁴⁷ Others believed that the proposed amendments should not require an affirmative statement because it would not provide investors with useful information and would create potential liability for companies.⁴⁸ Another commenter noted that our disclosure rules have not traditionally required companies to address affirmatively matters that the company has determined are not applicable to it.⁴⁹ We believe an approach consistent with our prior practice is appropriate and the final rule does not require a company to make an affirmative statement that it has determined that the risks arising from its compensation policies and practices are not reasonably likely to have a material adverse effect on the company.

⁴⁷ See, e.g., letters from Calvert Group, Ltd. (“Calvert”), Grahall Partners and Integrated Governance Solutions.

⁴⁸ See, e.g., letters from the Business Roundtable, Honeywell, Pfizer and S&C.

⁴⁹ See letter from ABA.

2. Revisions to the Summary Compensation Table

We proposed to amend Item 402 of Regulation S-K to revise Summary Compensation Table and Director Compensation Table disclosure of stock awards and option awards to require disclosure of the aggregate grant date fair value of awards computed in accordance with FASB ASC Topic 718. The revised disclosure⁵⁰ would replace previously mandated disclosure of the dollar amount recognized for financial statement reporting purposes for the fiscal year in accordance with FASB ASC Topic 718, and would affect the calculation of total compensation, including for purposes of determining who is a named executive officer.⁵¹ We are adopting the revisions substantially as proposed with some changes in response to comments.

a. Proposed Amendments

As we stated in the Proposing Release, we proposed these amendments because of comments we previously received from a variety of sources that the information that investors would find most useful and informative in the Summary Compensation Table and Director Compensation Table is the full grant date fair value of equity awards made during the covered fiscal year. Investors may consider compensation decisions made during the fiscal year, which usually are reflected in the full grant date fair value measure but not in

⁵⁰ Items 402(c)(2)(v) and (vi), 402(k)(2)(iii) and (iv), 402(n)(2)(v) and (vi), and 402(r)(2)(iii) and (iv) of Regulation S-K.

⁵¹ Items 402(a)(3)(iii) and (iv) and 402(m)(2)(ii) and (iii) of Regulation S-K.

the financial statement recognition measure, to be material to voting and investment decisions.

We also proposed to rescind the requirement to report the full grant date fair value of each individual equity award in the Grants of Plan-Based Awards Table⁵² and the corresponding footnote disclosure to the Director Compensation Table⁵³ because these disclosures may be considered duplicative of the aggregate grant date fair value to be provided in the amended Summary Compensation Table. In addition, we proposed to amend Instruction 2 to the salary and bonus columns of the Summary Compensation Table so that companies would not be required to report in those columns the amount of salary or bonus forgone at a named executive officer's election, and the non-cash awards received instead of salary or bonus would be reported in the column applicable to the form of award elected. As proposed, the Summary Compensation Table disclosure would reflect the form of compensation ultimately received by the named executive officer.

b. Comments on the Proposed Amendments

A broad spectrum of commenters supported the proposal to revise the Summary Compensation Table and Director Compensation Table disclosure of stock awards and option awards to require disclosure of the aggregate grant

⁵² Item 402(d)(2)(viii) of Regulation S-K and Instruction 7 to Item 402(d).

⁵³ Instruction to Item 402(k)(2)(iii) and (iv) of Regulation S-K.

date fair value of awards.⁵⁴ Most commenters agreed that because aggregate grant date fair value disclosure better reflects compensation committee decisions with respect to stock and option awards,⁵⁵ it is more informative to voting and investment decisions⁵⁶ and a better measure for purposes of identifying named executive officers.⁵⁷ However, some commenters objected that use of grant date fair value to identify named executive officers may result in relatively frequent changes in the named executive officer group based on grants of “one time” multi-year awards to newly hired executives or special awards to enhance retention.⁵⁸

⁵⁴ See, e.g., letters from AARP, Business Roundtable, State of Wisconsin Investment Board (“SWIB”), Pfizer, SCSGP, S&C, United Brotherhood of Carpenters and Joiners of America (“United Brotherhood of Carpenters”), United States Proxy Exchange (“USPX”).

⁵⁵ See, e.g., letters from Business Roundtable (“Generally, we support the Proposed Rules, as they likely will produce disclosure that, in most situations, is more in line with how compensation committees view annual equity compensation – that is, disclosure of the equity compensation that a company grants in a particular year.”); and SCSGP (“We support this change. The aggregate grant date fair value is generally used by compensation committees in determining the amount of stock and options to award, whereas the current disclosure requirement confusingly focuses on accounting considerations that may have no bearing on compensation decisions.”).

⁵⁶ See, e.g., letter of United Brotherhood of Carpenters (“The proposed SCT reporting of equity awards will help inform investment decisions, as well as important investor voting decisions regarding executive compensation and director performance.”).

⁵⁷ See, e.g., letter of Mercer (“Because the value included in the SCT determines the identification of at least three of the named executive officers (other than the principal executive officer and the principal financial officer), disclosure of the full grant-date fair value would also better align the identification of these officers with company compensation decisions.”).

⁵⁸ See, e.g., letter of Protective Life Corporation.

As discussed in detail below, many commenters expressed concern that the amount to be reported in the table for performance awards would be calculated without regard to the likelihood of achieving the relevant performance objectives, which could discourage companies from granting these awards.⁵⁹ Others, however, suggested that the design of equity awards is driven by numerous considerations, and companies would continue to make equity awards subject to performance conditions.⁶⁰

With respect to the proposal to rescind the requirement to report the full grant date fair value of each individual equity award in the Grants of Plan-Based Awards Table, the comments were mixed. While some commenters supported this proposal,⁶¹ others stated that retaining disclosure of the grant date fair value of individual awards would continue to provide investors valuable information. Because different companies may vary in the assumptions they apply to compute grant date fair value, some commenters noted that retaining this disclosure makes it easier for investors to assess how

⁵⁹ See, e.g., letters from ABA, Business Roundtable, Center on Executive Compensation, Cleary Gottlieb, Compensia, Honeywell, Frederic W. Cook & Co., Inc., Pearl Meyer, Protective Life Corporation, Securities Industry and Financial Markets Association (SIFMA), SCSGP, and Towers Perrin.

⁶⁰ See, e.g., letter from Hewitt Associates LLC (“Hewitt”).

⁶¹ See letters from Buck Consultants, Chadbourne Park, Mercer, Pfizer, Protective Life Corporation, and S&C.

companies determined fair value for individual grants.⁶² Further, different types of equity awards can have different incentive effects, making it important that shareholders understand the value associated with each type of award granted and the mix of values among various award types.⁶³ Commenters pointed out that reporting the separate value of multiple individual awards provides investors more information regarding the specific decisions of the compensation committee, so that investors can better evaluate those decisions and understand pay for performance.⁶⁴

We also received a wide range of comments on our proposal to amend Instruction 2 to the salary and bonus columns of the Summary Compensation Table. Some commenters favored this amendment because, as stated in the Proposing Release, it would report compensation in the form actually received.⁶⁵ Other commenters, however, said it is important to report the form of compensation that the compensation committee originally awarded, so that investors can understand the overall compensation strategy and the intended distribution of risk among different types of compensation.⁶⁶

⁶² See letters from AFL-CIO, Compensia and Graef Crystal.

⁶³ See letters from Compensia, Frederic W. Cook & Co., Inc., and Risk Metrics.

⁶⁴ See letters from Center on Executive Compensation, Hewitt, Pearl Meyer, Towers Perrin, and Universities Superannuation Scheme, et al.

⁶⁵ See, e.g., letters from Pfizer and RiskMetrics.

⁶⁶ See letters from Center on Executive Compensation, and Pearl Meyer.

c. Final Rule

After considering the comments received, we are adopting the proposed amendments to revise Summary Compensation Table and Director Compensation Table disclosure of stock awards and option awards to require disclosure of the aggregate grant date fair value of awards computed in accordance with FASB ASC Topic 718, with a special instruction for awards subject to performance conditions as described below. We agree with commenters that aggregate grant date fair value disclosure better reflects the compensation committee’s decision with regard to stock and option awards. We remain of the view that it is more meaningful to shareholders if company compensation decisions—including decisions to grant large “one time” multi-year awards—cause the named executive officers to change. In circumstances where such a large “new hire” or “retention” grant results in the omission from the Summary Compensation Table of another executive officer whose compensation otherwise would have been subject to reporting, the company can consider including compensation disclosure for that executive officer to supplement the required disclosures.

Based on comments received, we are clarifying how performance awards⁶⁷ are disclosed. Most commenters stated that reporting the aggregate grant date fair value of performance awards based on maximum performance

⁶⁷ Performance awards include only those awards that are subject to performance conditions as defined in the Glossary to FASB ASC Topic 718.

could discourage companies from granting these awards.⁶⁸ Noting that compensation committees take performance-contingent conditions into account when granting such awards, commenters said that the grant date fair value reported for awards with a performance condition should instead be based on the probable outcome of the performance conditions, consistent with the recognition criteria in the accounting literature.⁶⁹ As commenters stated, because performance awards generally are designed to incentivize attainment of target performance and set a higher maximum performance level as a “cap” on attainable compensation, requiring disclosure of an award’s value to always be based on maximum performance would overstate the intended level of compensation and result in investor misinterpretation of compensation decisions. This could also discourage the grant of awards with difficult – or any – performance conditions, and lead to inflated benchmarking values used to set equity award or total compensation levels at other companies.

We are persuaded that the value of performance awards reported in the Summary Compensation Table, Grants of Plan-Based Awards Table and Director Compensation Table should be computed based upon the probable outcome of the performance condition(s) as of the grant date because that value

⁶⁸ See, e.g., letters from ABA, Business Roundtable, Center on Executive Compensation, Cleary Gottlieb, Compensia, Honeywell, Frederic W. Cook & Co., Inc., Pearl Meyer, Protective Life Corporation, SIFMA, SCSGP, and Towers Perrin.

⁶⁹ FASB ASC Topic 718.

better reflects how compensation committees take performance-contingent vesting conditions into account in granting such awards. We are adopting new Instructions to these tables to clarify that this amount will be consistent with the grant date estimate of compensation cost to be recognized over the service period, excluding the effect of forfeitures.⁷⁰ To provide investors additional information about an award's potential maximum value subject to changes in performance outcome, we will also require in the Summary Compensation Table and Director Compensation Table footnote disclosure of the maximum value assuming the highest level of performance conditions is probable.⁷¹ Such footnote disclosure will permit investors to understand an award's maximum value without raising the concerns associated with requiring its tabular disclosure.⁷²

We are requiring disclosure of awards granted during the year, as proposed. A number of commenters responded to our request for comment by indicating that they would prefer disclosure of the aggregate grant date fair value of equity awards granted for services in the relevant fiscal year, even if granted after fiscal year end, rather than awards granted during the relevant

⁷⁰ See Instruction 3 to Item 402(c)(2)(v) and (vi), Instruction 8 to Item 402(d), and Instruction 3 to Item 402(n)(2)(v) and (vi).

⁷¹ See Instruction 3 to Item 402(c)(2)(v) and (vi), and Instruction 3 to Item 402(n)(2)(v) and (vi).

⁷² See, e.g., letter from ABA.

fiscal year, as proposed.⁷³ Other commenters expressed concern that revising the proposal in this way would result in a lack of uniformity that would confuse investors, would be inconsistent with the FASB ASC Topic 718 grant date, and could invite manipulated reporting.⁷⁴ We recognize that a “performance year” standard for reporting equity awards in securities in the relevant fiscal year may sometimes better align compensation disclosure with compensation decision making, and may be more consistent with Summary Compensation Table salary and bonus disclosure.⁷⁵ However, because it appears that multiple subjective factors, which could vary significantly from company to company, influence equity awards granted after fiscal year end, we are concerned that changing the approach to reporting could result in inconsistencies that would erode comparability. One commenter noted that many companies make equity awards after the end of the fiscal year based on executive performance during

⁷³ See, e.g., letters from ACC, Ameriprise Financial, Inc., BorgWarner, Business Roundtable, Cleary Gottlieb, Committee on Securities Law of the Business Law Section of the Maryland State Bar Association, Frederic W. Cook & Co., Inc., Graef Crystal, Davis Polk, General Mills, Inc., Glass Lewis, Grahall Partners, LLC., Honeywell, JP Morgan Chase & Co., RiskMetrics, SCSGP, SIFMA, and S&C. These commenters suggested this approach would better align the amounts reported in the Summary Compensation Table with the compensation decisions discussed in CD&A, and clarify the relationship between pay and performance

⁷⁴ See letters from Buck Consultants, Compensia, Pearl Meyer, Protective Life Corporation, and United Brotherhood of Carpenters.

⁷⁵ Instruction 1 to Item 402(c)(2)(iii) and (iv) provides that if the amount of salary or bonus earned for the fiscal year cannot be calculated as of the most recent practicable date, footnote disclosure of this fact and the date the amount is expected to be determined is required. When determined, the omitted amount and a recalculated total compensation figure must be reported in a filing under Item 5.02(f) of Form 8-K [17 CFR 249.308].

the last completed fiscal year, but determining whether an equity award was granted primarily for services performed during the last completed fiscal year can be a highly subjective determination and the factors that influence the decision of when to report an equity award may vary significantly from company to company.⁷⁶ Companies should continue to analyze in CD&A their decisions to grant post-fiscal year end equity awards where those decisions could affect a fair understanding of named executive officers' compensation for the last fiscal year,⁷⁷ and consider including supplemental tabular disclosure where it facilitates understanding the CD&A.

Although we proposed to revise Instruction 2 to the salary and bonus column of the Summary Compensation Table so that companies would not be required to report in those columns the amount of salary or bonus forgone at a named executive officer's election and the non-cash awards received instead of salary or bonus would be reported in the column applicable to the form of award elected, we have decided not to adopt this amendment. We agree with commenters that disclosing the amounts of salary and bonus that the compensation committee awarded better enables investors to understand the relative weights the company applied to annual incentives and salary.⁷⁸ This information provides investors more insight into the extent to which a

⁷⁶ See letter from Compensia.

⁷⁷ Instruction 2 to Item 402(b).

⁷⁸ See, e.g., letters from Center on Executive Compensation and Pearl Meyer.

company's compensation strategy pays for performance, may be heavily weighted in salary, or may be heavily weighted in annual incentives. Consistent with our decision to amend our rules to require disclosure enabling investors to better understand the risks involved in compensation programs, we are retaining the current version of this instruction, so that investors can understand overall compensation strategy and the intended distribution of risk among different types of compensation. Companies will continue to report the forgone amounts in the salary or bonus column, with footnote disclosure of the receipt of non-cash compensation that refers to the Grants of Plan-Based Awards Table where the stock, option or non-equity incentive plan award the named executive officer elected is reported.⁷⁹

Finally, based on the comments received, we have decided not to rescind, as was proposed, the requirement to report the full grant date fair value of each equity award in the Grants of Plan-Based Awards Table and the Director Compensation Table. We agree with commenters that, because this disclosure reveals the value associated with each type of equity award granted and the mix of values among various awards with different incentive effects, retaining it will help investors better evaluate the decisions of the compensation committee.⁸⁰

d. Transition

To facilitate year-to-year comparisons, consistent with our proposal, we will implement the Summary Compensation Table amendments by requiring

⁷⁹ Instruction 2 to Item 402(c)(2)(iii) and (iv).

⁸⁰ See letters from Center on Executive Compensation and Pearl Meyer.

companies providing Item 402 disclosure for a fiscal year ending on or after December 20, 2009 to present recomputed disclosure for each preceding fiscal year required to be included in the table, so that the stock awards and option awards columns present the applicable full grant date fair values, and the total compensation column is correspondingly recomputed.⁸¹ The stock awards and option awards columns amounts should be computed based on the individual award grant date fair values reported in the applicable year's Grants of Plan-Based Awards Table, except that awards with performance conditions should be recomputed to report grant date fair value based on the probable outcome as of the grant date, consistent with FASB ASC Topic 718. In addition, if a person who would be a named executive officer for the most recent fiscal year (2009) also was disclosed as a named executive officer for 2007, but not for 2008, the named executive officer's compensation for each of those three fiscal years must be reported pursuant to the amendments.⁸² However, companies are not required to include different named executive officers for any preceding fiscal year based on recomputing total compensation for those years pursuant to the amendments, or to amend prior years' Item 402 disclosure in previously filed Forms 10-K or other filings.

⁸¹ Commenters generally favored this approach as a means of ensuring year-to-year comparability, and said it would not be difficult to comply. See, e.g., letters from Glass Lewis, Mercer, and Pfizer.

⁸² However, a smaller reporting company, which is required to provide disclosure only for the two most recent fiscal years, could provide Summary Compensation Table disclosure only for 2009 if the person was a named executive officer for 2009 but not for 2008.

e. Comment Responses Regarding Rulemaking Petition and Other Requests for Comment

We requested comment regarding a rulemaking petition recommending Summary Compensation Table disclosure of stock and option awards based on the annual change in value of awards.⁸³ We also requested comment on whether any potential amendments to the Grants of Plan-Based Awards Table or the Outstanding Equity Awards at Fiscal Year-End Table should be considered to better illustrate the relationship between pay and company performance. Most commenters did not support the petition’s recommendation because they believed it would not report the board’s compensation decisions, on which investors focus in making voting and investment decisions, and could result in disclosure of negative numbers.⁸⁴ However, several commenters recommended other tabular revisions to highlight how compensation may be related to the company’s performance.⁸⁵ Most of these suggestions were in anticipation that legislation establishing an annual “say-on-pay” shareholder

⁸³ See May 26, 2009, rulemaking petition submitted by Ira T. Kay and Steven Seelig, Watson Wyatt Worldwide, File No. 4-585, at <http://www.sec.gov/rules/petitions/2009/petn4-585.pdf>.

⁸⁴ See, e.g., letters from Protective Life Corporation, RiskMetrics.

⁸⁵ See, e.g., letters from Center on Executive Compensation, Graef Crystal, Paul Hodgson, Don Meiers and Dan Gode.

advisory vote may be enacted.⁸⁶ Commenters most frequently recommended adding a column to the Outstanding Equity Awards at Fiscal Year-End Table to report the fiscal year end intrinsic value of outstanding options and stock appreciation rights (“SARs”).⁸⁷

In addition, we solicited comment on whether there are other initiatives we should consider proposing to improve executive compensation disclosure, such as including disclosure of each executive officer’s compensation, not just the named executive officers; eliminating the instruction providing that performance targets can be excluded based on the potential adverse competitive effect on the company of their disclosure; making the CD&A part of the Compensation Committee Report, and requiring the report to be “filed;” additional disclosure regarding “hold to retirement” and/or claw back

⁸⁶ The United States House of Representatives has passed H.R. 3269, the Corporate and Financial Institution Compensation Fairness Act of 2009, which would provide shareholders an advisory vote to approve the compensation of executives in any proxy, consent, or authorization for an annual meeting.

⁸⁷ See, e.g., letters from Cleary Gottlieb, Compensia, Grant Thornton, Hewitt, Pearl Meyer, and Towers Perrin. We would not object if companies voluntarily add a column captioned “Value of unexercised in-the-money options/SARs at fiscal year end (\$)” to the Outstanding Awards at Fiscal Year-End Table to report these fiscal year end intrinsic values.

provisions; and internal pay ratios.⁸⁸ Commenters who addressed these topics expressed mixed views.⁸⁹

Our goal at this stage is to adopt discrete amendments to improve compensation disclosure in proxy statements, such as the changes to option reporting in the Summary Compensation Table and Director Compensation

⁸⁸ See Proposing Release at Section II.H.

⁸⁹ Commenters who addressed these topics generally opposed expanding executive compensation disclosure beyond the named executive officers, stating that it would not add meaningful information. See, e.g., letters from BorgWarner, Business Roundtable, Hewitt, Pearl Meyer, SCSGP and SIFMA. Some commenters opposed eliminating the ability to omit disclosure of performance targets based on competitive harm to the company, stating that disclosure would discourage use of performance targets or that adverse consequences to the company would outweigh the targets' informative value to investors. See, e.g., letters from BorgWarner, Business Roundtable, SCSGP, and Pearl Meyer (supporting disclosure of the percentage of target awards actually earned). Other commenters supported requiring retrospective disclosure of performance targets for awards in completed periods. See letters from RiskMetrics, SEIU, State Board of Administration of Florida, and Towers Perrin (supporting the competitive harm exclusion for performance cycles in effect when the proxy statement is distributed). Some commenters supported making CD&A part of the Compensation Committee Report as a means to improve CD&A disclosure quality, often recommending that the combined document be "filed." See letters from AFL-CIO, Jesse M. Brill, United Brotherhood of Carpenters, Hodak Value Advisors, RiskMetrics, and SEIU. Others supported retaining the current disclosure roles and status of the CD&A and Compensation Committee Report, finding no compelling reasons to change them. See, e.g., letters from Ameriprise Financial, Pearl Meyer, and SIFMA. Some commenters favored requiring enhanced disclosure of hold-to-retirement and clawback policies to demonstrate whether compensation practices foster a long-term value approach. See letters from Jesse M. Brill, SEIU, and State Board of Administration of Florida. Others opposed adding specific requirements, often noting that if such policies are material to compensation decisions, principles-based CD&A currently subjects them to disclosure. See, e.g., letters from Buck Consultants, Business Roundtable, Pearl Meyer, and Towers Perrin. Commenters similarly divided about requiring disclosure of internal pay ratios. See letters from Jesse M. Brill, Pearl Meyer, SCSGP and SIFMA. One commenter opposed all of the potential initiatives on which we solicited comment, stating that they "would generate extensive disclosures of questionable relevance." See letter from Pfizer.

Table, that can be implemented for the 2010 proxy season. Therefore, we are not adopting any other changes to executive compensation disclosure at this time. However, we will consider the comments received in connection with future rulemaking initiatives on compensation disclosure.

B. Enhanced Director and Nominee Disclosure

We proposed to amend Item 401 of Regulation S-K to expand the disclosure requirements regarding the qualifications of directors and nominees, past directorships held by directors and nominees, and the time period for disclosure of legal proceedings involving directors, nominees and executive officers. We are adopting the changes generally as proposed, but have made revisions in response to comments.

1. Proposed Amendments

Under the proposed amendments, a company would be required to disclose for each director and any nominee for director the particular experience, qualifications, attributes or skills that qualified that person to serve as a director of the company, and as a member of any committee that the person serves on or is chosen to serve on, in light of the company's business. In addition to the expanded narrative disclosure regarding director and nominee qualifications, the proposed amendments would require disclosure of any directorships held by each director and nominee at any time during the past five years at public companies and registered investment companies, and would

lengthen the time during which disclosure of legal proceedings involving directors, director nominees and executive officers is required from five to ten years. As proposed, this expanded disclosure would apply to incumbent directors, to nominees for director who are selected by a company's nominating committee, and to any nominees put forward by another proponent in its proxy materials.

We proposed that the disclosures under the Item 401 amendments would appear in proxy and information statements on Schedules 14A and 14C, annual reports on Form 10-K and registration statements on Form 10 under the Exchange Act, as well as in registration statements under the Securities Act.

We also proposed to apply the expanded disclosure requirements regarding director and nominee qualifications, past directorships held by directors and nominees, and the time frame for disclosure of legal proceedings involving directors, nominees, and executive officers to funds. Specifically, we proposed to amend Schedules 14A and 14C to apply these expanded requirements to fund proxy and information statements, where action is to be taken with respect to the election of directors, and to amend Forms N-1A, N-2, and N-3 to require that funds include the expanded disclosures regarding

director qualifications and past directorships in their statements of additional information.⁹⁰

2. Comments on the Proposed Amendments

Comments on the proposal were mixed. Individual investors, trade unions, institutional investors and pension funds supported the proposals. Several of these commenters noted that the amendments would be a helpful step forward in providing investors and shareholders with additional information they need to make more informed investment and voting decisions relating to corporate governance and the election of directors.⁹¹ Most companies, law firms and bar groups opposed the proposal. Many of the commenters opposed to the proposed amendments expressed concern about requiring companies to disclose the qualifications, attributes and skills of directors and nominees on a person-by-person basis.⁹² Some of these commenters believed that requiring disclosure of the qualifications, attributes and skills of directors and nominees on a person-by-person basis would not elicit meaningful disclosure. They asserted that well-assembled boards usually

⁹⁰ Form N-1A is used by open-end management investment companies. Form N-2 is used by closed-end management investment companies. Form N-3 is used by separate accounts, organized as management investment companies, which offer variable annuity contracts.

⁹¹ See, e.g., letters from Board of Directors Network, Forum of Executive Women, Integrated Governance Solutions, Norges Bank Investment Management (“Norges Bank”), and Ralph Saul.

⁹² See, e.g., letters from ABA, Ameriprise, Business Roundtable, BorgWarner, Davis Polk, Honeywell, JPMorgan, Southern Company (“Southern”), and Wisconsin Energy.

consist of a diverse collection of individuals who bring a variety of complementary skills that nominating committees and boards generally consider in the broader context of the board’s overall composition, with a view toward constituting a board that, as a body, possesses the appropriate skills and experience to oversee the company’s business. Another concern expressed by commenters opposed to the proposed amendments was that the disclosure of specialized knowledge or background of particular directors could lead to heightened liability.⁹³

Commenters also objected to the use of term “qualify” in the proposed amendment. They noted that the term “qualify” would only be relevant to the extent that a company’s governing instruments create minimum qualifications for directors, such as a requirement to own a certain amount of shares in the company.⁹⁴ Other commenters believed that “risk assessment skills” should not be singled out for specific discussion, but rather should be considered as part of the discussion of the board’s aggregate skills and attributes.⁹⁵ These commenters stated that a better alternative may be to address risk as separate disclosure topic to elicit more detailed disclosure about risk.

⁹³ See, e.g., letters from ABA, Ameriprise and Business Roundtable.

⁹⁴ See letter from ABA.

⁹⁵ See, e.g., letters from Honeywell and Protective Life Corporation.

Several commenters believed that it would be inappropriate to require disclosure of the specific experience, qualifications or skills that qualify a person to serve as a member of a particular board committee.⁹⁶ According to these commenters, other than having a least one member of the board with “financial expertise” satisfying the requirements for the audit committee, companies generally do not select individuals to serve on the board based on what committee they will serve on. These commenters noted that in many instances, companies will rotate directors among several committee positions during their tenure on the board.⁹⁷

On the question of how frequently the disclosure should be required, many commenters supported having the disclosure provided on an annual basis for all continuing directors and new nominees.⁹⁸ These commenters noted that the overall composition of the board changes when new nominees are introduced and annual disclosure would facilitate shareholders’ assessments of the quality of the board as a whole, which must be analyzed in relation to any changes in the company’s strategy, relevant risks, operations and organization.

⁹⁶ See letters from SCSGP, S&C and Southern.

⁹⁷ See, e.g., letters from SCSGP and S&C.

⁹⁸ See, e.g., letters from IIA, Norges Bank, Pax World Management Corporation, and RiskMetrics.

However, several other commenters stated that if the requirements are adopted, they should only be required when a director is first nominated.⁹⁹

A broad spectrum of commenters supported the proposed amendments to require disclosure of any directorships at public companies held by each director and nominee at any time during the past five years instead of only currently held directorships, and to lengthen the time during which disclosure of legal proceedings is required from five to ten years.¹⁰⁰ However, other commenters asserted that additional disclosure of past directorships would become voluminous and tend to obfuscate a nominee's most relevant credentials.¹⁰¹

We requested comment on whether we should retain Item 407(c)(2)(v) of Regulation S-K in light of the proposed amendments to Item 401 of Regulation S-K. This item, among other things, requires disclosure of any minimum qualifications that a nominating committee believes must be met by someone nominated by a committee for a position on the board. Several commenters believed we should retain the disclosure currently required by Item 407(c)(2)(v) because this information allows shareholders to gain an

⁹⁹ See letters from BorgWarner, Business Roundtable, Cleary Gottlieb, SCSGP and S&C.

¹⁰⁰ See, e.g., letters from AARP, AFL-CIO, CII, Evolution Petroleum, Pfizer, RILA, SCSGP, TIAA-CREF, United Brotherhood of Carpenters, and Universities Superannuation Scheme, et al. Cf. letters from AFSCME and Florida State Board of Administration (supporting the proposed amendment and also suggesting that the disclosure of legal proceedings involving fraud should not be subject to a time limit).

¹⁰¹ See, e.g., letter from S&C.

understanding of the overall quality of the board and the board’s priorities, and would improve the ability of shareholders to compare a nominee’s background to the standards set by the board itself and to further evaluate board and committee composition.¹⁰²

We also requested comment on whether there were additional legal proceeding disclosures that reflect on a director’s, executive officer’s, or nominee’s character and fitness to serve as a public company official that should be required to be disclosed, and we listed several possible additions to the current list. Several commenters agreed that the disclosure about the additional legal proceedings noted was important information that reflected on an individual’s competence and integrity and as such, should be disclosed.¹⁰³ Other commenters believed the current disclosure requirements were adequate.¹⁰⁴

3. Final Rule

After considering the comments, we are adopting the amendments to Item 401, but with several revisions. We believe the amendments will provide investors with more meaningful disclosure that will help them in their voting decisions by better enabling them to determine whether and why a director or nominee is an appropriate choice for a particular company.

¹⁰² See, e.g., letters from ABA and CII.

¹⁰³ See, e.g., letters from AARP, Colorado Public Employees’ Retirement Association (“COPERA”), and Interfaith Center on Corporate Responsibility.

¹⁰⁴ See, e.g., letters from American Electric Power and S&C.

The final rules require companies to disclose for each director and any nominee for director the particular experience, qualifications, attributes or skills that led the board to conclude that the person should serve as a director for the company as of the time that a filing containing this disclosure is made with the Commission.¹⁰⁵ The same disclosure, with respect to any nominee for director put forward by another proponent, would be required in the proxy soliciting materials of that proponent. This new disclosure will be required for all nominees and for all directors, including those not up for reelection in a particular year. The final rule requires this disclosure to be made annually because the composition of the entire board is important information for voting decisions. Although we are adopting the amendments to Item 401, we are not eliminating the disclosure requirements in Item 407(c)(2)(v) of Regulation S-K regarding the specific minimum qualifications and specific qualities or skills used by the nominating committee. We agree with commenters that this requirement should be retained because it will allow investors to compare and evaluate the skills and qualifications of each director and nominee against the standards established by the board.¹⁰⁶

¹⁰⁵ Consistent with the comments, we are revising the requirement to delete the term “qualify,” and instead we are focusing on the reasons for the decision that the person should serve as a director.

¹⁰⁶ See, e.g., letter from CII.

The final rules do not require disclosure of the specific experience, qualifications or skills that qualify a person to serve as a committee member. In making this change from the proposal, we were persuaded by commenters who noted that many companies rotate directors among different committee positions to allow directors to gain different perspectives of the company.¹⁰⁷ However, if an individual is chosen to be a director or a nominee to the board because of a particular qualification, attribute or experience related to service on a specific committee, such as the audit committee, then this should be disclosed under the new requirements as part of the individual’s qualifications to serve on the board.

The final amendments do not specify the particular information that should be disclosed. We believe companies and other proponents should be afforded flexibility in determining the information about a director’s or nominee’s skills, qualifications or particular area of expertise that would benefit the company and should be disclosed to shareholders. Accordingly, we have deleted the reference to “risk assessment skills” that was included in the proposed amendments.¹⁰⁸ However, we note that if particular skills, such as risk assessment or financial reporting expertise, were part of the specific

¹⁰⁷ See, e.g., letters from Davis Polk and Pfizer.

¹⁰⁸ See, e.g., letters from Honeywell and Protective Life Corporation.

experience, qualifications, attributes or skills that led the board or proponent to conclude that the person should serve as a director, this should be disclosed.

We are adopting substantially as proposed the amendments to require disclosure of any directorships at public companies and registered investment companies held by each director and nominee at any time during the past five years. Item 401 presently requires disclosure of any current director positions held by each director and nominee in any company with a class of securities registered pursuant to Section 12 of the Exchange Act,¹⁰⁹ or subject to the requirements of Section 15(d) of that Act,¹¹⁰ or any company registered as an investment company under the Investment Company Act. We believe that expanding this disclosure to include service on boards of those companies for the past five years (even if the director or nominee no longer serves on that board) will allow investors to better evaluate the relevance of a director's or nominee's past board experience, as well as professional or financial relationships that might pose potential conflicts of interest (such as past membership on boards of major suppliers, customers, or competitors).

In addition to these amendments, we are adopting amendments as proposed to lengthen the time during which disclosure of legal proceedings involving directors, director nominees and executive officers is required from

¹⁰⁹ 15 U.S.C. 78j.

¹¹⁰ 15 U.S.C. 78o(d).

five to ten years. We believe it is appropriate to extend the required reporting period from five to ten years as a means of providing investors with more extensive information regarding an individual's competence and character. We were persuaded by commenters who believed that disclosures of legal proceedings during the ten-year period would provide investors with additional important information.¹¹¹ We are also adopting amendments to expand the list of legal proceedings involving directors, executive officers, and nominees covered under Item 401(f) of Regulation S-K. Some commenters agreed that certain legal proceedings can reflect on an individual's competence and integrity to serve as a director, and that the additional disclosure noted in the proposing release would provide investors with valuable information for assessing the competence, character and overall suitability of a director, nominee or executive officer.¹¹²

¹¹¹ See, e.g., letters from ABA, AARP and COPERA.

¹¹² See, e.g., letters from AARP, CII, COPERA, SEIU, and USPX.

In addition, consistent with our request for comment and comments received,¹¹³ we are amending Item 401(f) to require disclosure of additional legal proceedings. These new legal proceedings include:

- Any judicial or administrative proceedings resulting from involvement in mail or wire fraud or fraud in connection with any business entity;
- Any judicial or administrative proceedings based on violations of federal or state securities, commodities, banking or insurance laws and regulations, or any settlement¹¹⁴ to such actions; and
- Any disciplinary sanctions or orders imposed by a stock, commodities or derivatives exchange or other self-regulatory organization.

We believe this amendment will provide investors with information that is important to an evaluation of an individual's competence and character to serve as a public company official.¹¹⁵

¹¹³ See note 103 above and accompanying text.

¹¹⁴ This does not include disclosure of a settlement of a civil proceeding among private parties. We are including an instruction as part of the amendments to clarify this.

¹¹⁵ Consistent with the current disclosure requirement regarding legal proceedings, the additional legal proceedings included in the new requirements will not need to be disclosed if they are not material to an evaluation of the ability or integrity of the director or director nominee. See 17 CFR 229.401(f).

In the Proposing Release, we also requested comment on whether we should amend our rules to require disclosure of additional factors considered by a nominating committee when selecting someone for a board position, such as board diversity. A significant number of commenters responded that disclosure about board diversity was important information to investors.¹¹⁶ Many of these commenters believed that requiring this disclosure would provide investors with information on corporate culture and governance practices that would enable investors to make more informed voting and investment decisions.¹¹⁷ Commenters also noted that there appears to be a meaningful relationship between diverse boards and improved corporate financial performance, and that diverse boards can help companies more effectively recruit talent and retain staff.¹¹⁸ We agree that it is useful for investors to understand how the board considers and addresses diversity, as well as the board’s assessment of the implementation of its diversity policy, if any. Consequently, we are adopting

¹¹⁶ See, e.g., letters from Board of Directors Network, Boston Common Asset Management, CalPERS, CalSTRS, Calvert, Council of Urban Professionals, Ernst & Young LLP (“E&Y”), Greenlining Institute, Hispanic Association on Corporate Responsibility, Interfaith Center on Corporate Responsibility, InterOrganization Network, Latino Business Chamber of Greater Los Angeles, Pax World Management Corporation, Prout Group, Inc., RiskMetrics, Sisters of Charity BVM, Sisters of St. Joseph Carondelet, and Trillium Asset Management Corporation.

¹¹⁷ See, e.g., letters from the Boston Club, Boston Common Asset Management, CalPERS, Pax World Management Corporation, Trillium Asset Management Corporation, and Social Investment Forum.

¹¹⁸ See, e.g., letters from Catalyst and the Social Investment Forum.

amendments to Item 407(c) of Regulation S-K to require disclosure of whether, and if so how, a nominating committee considers diversity in identifying nominees for director.¹¹⁹ In addition, if the nominating committee (or the board) has a policy with regard to the consideration of diversity in identifying director nominees, disclosure would be required of how this policy is implemented, as well as how the nominating committee (or the board) assesses the effectiveness of its policy. We recognize that companies may define diversity in various ways, reflecting different perspectives. For instance, some companies may conceptualize diversity expansively to include differences of viewpoint, professional experience, education, skill and other individual qualities and attributes that contribute to board heterogeneity, while others may focus on diversity concepts such as race, gender and national origin. We believe that for purposes of this disclosure requirement, companies should be allowed to define diversity in ways that they consider appropriate. As a result we have not defined diversity in the amendments.

C. New Disclosure about Board Leadership Structure and the Board's Role in Risk Oversight

We proposed a new disclosure requirement to Item 407 of Regulation S-K and a corresponding amendment to Item 7 of Schedule 14A to require disclosure of the company's leadership structure and why the company believes

¹¹⁹ See Item 407(c)(2)(vi) of Regulation S-K. Funds will be subject to the diversity disclosure requirement of Item 407(c)(2)(vi) of Regulation S-K under Item 22(b)(15)(ii)(A) of Schedule 14A. See 17 CFR 240.14a-101, Item 22(b)(15)(ii)(A).

it is the most appropriate structure for it at the time of the filing. The proposal also required disclosure about the board's role in the company's risk management process. We are adopting the proposals with some changes.

1. Proposed Amendments

Under the proposed amendments, companies would be required to disclose their leadership structure and the reasons why they believe that it is an appropriate structure for the company. As part of this proposed disclosure, companies would be required to disclose whether and why they have chosen to combine or separate the principal executive officer and board chair positions. In addition, in some companies the role of principal executive officer and board chairman are combined, and a lead independent director is designated to chair meetings of the independent directors. For these companies, the proposed amendments would require disclosure of whether and why the company has a lead independent director, as well as the specific role the lead independent director plays in the leadership of the company. In proposing this requirement, we noted that different leadership structures may be suitable for different companies depending on factors such as the size of a company, the nature of a company's business, or internal control considerations, among other things. Irrespective of the type of leadership structure selected by a company, the proposed requirements were intended to provide investors with insights about why the company has chosen that particular leadership structure.

We also proposed to require additional disclosure in proxy and information statements about the board’s role in the company’s risk management process. Disclosure about the board’s approach to risk oversight might address questions such as whether the persons who oversee risk management report directly to the board as whole, to a committee, such as the audit committee, or to one of the other standing committees of the board; and whether and how the board, or board committee, monitors risk.

We also proposed that funds provide the new Item 407 disclosure about leadership structure and the board’s role in the risk management process in proxy and information statements and similar disclosure as part of registration statements on Forms N-1A, N-2 and N-3. The proposed amendments were tailored to require that a fund disclose whether the board chair is an “interested person” of the fund, as defined in Section 2(a)(19) of the Investment Company Act. We proposed that if the board chair is an interested person, a fund would be required to disclose whether it has a lead independent director and what specific role the lead independent director plays in the leadership of the fund.

2. Comments on the Proposed Amendments

Comments were mostly supportive of the proposals.¹²⁰ Commenters believed the disclosure regarding a company’s leadership structure and the

¹²⁰ See, e.g., letters from AFL-CIO, Chairmen’s Forum, Calvert, CII, CalSTRS, the General Board of Pension and Health Benefits of the United Methodist Church, Hermes, Norges Bank, Pfizer, RiskMetrics, and SEIU.

board’s role in risk management process would provide useful information to investors and improve investor understanding of the role of the board in a company’s risk management practices.¹²¹ Some commenters opposed the disclosures. Many of these commenters believed that the proposed amendments were too vague and would likely elicit boilerplate descriptions of a company’s management hierarchy and risk management that would not provide significant insight or meaning to investors.¹²²

Many commenters suggested revisions to the proposed disclosure requirements. For instance, several commenters recommended that we use the phrase “board leadership structure” rather than “company leadership structure” and noted that the discussion of the board leadership structure and the board’s role in risk management are two separate disclosure items.¹²³ These commenters believed that the use of the phrase “company leadership structure” could be misinterpreted to require a discussion of a company’s management leadership structures. Other commenters suggested that we replace the phrase “risk management” with “risk oversight” because the board’s role is to oversee

¹²¹ See, e.g., letters from CII, the General Board of Pension and Health Benefits of the United Methodist Church, IGS, and RIMS.

¹²² See, e.g., letters from Cleary Gottlieb, S&C and Theragenics.

¹²³ See, e.g., letters from Business Roundtable and Honeywell.

management, which is responsible for the day-to-day issues of risk management.¹²⁴

Several commenters believed disclosure of the board’s role in risk management would be more effective as part of a comprehensive discussion of a company’s risk management processes, rather than as stand-alone disclosure.¹²⁵ They suggested that companies be allowed to provide the required disclosure in the MD&A discussion included in the Form 10-K, and to incorporate by reference this information in the proxy statement rather than repeat the information.

With respect to funds, commenters addressing the issue generally supported the proposal that funds disclose whether the board chair is an “interested person” as defined under the Investment Company Act.¹²⁶ In addition, commenters noted the importance of fund board oversight of risk management,¹²⁷ but commenters were split regarding whether we should require disclosure about fund board oversight of risk management.¹²⁸

¹²⁴ See, e.g., letters from GovernanceMetrics and PLC.

¹²⁵ See, e.g., letters from ABA and JPMorgan.

¹²⁶ See, e.g., letters from Independent Directors Council (“IDC”) and Mutual Fund Directors Forum (“MFDF”).

¹²⁷ See, e.g., letters from IDC and MFDF.

¹²⁸ See letters from Calvert and MFDF (supporting disclosure). But see letters from the Investment Company Institute and IDC (opposing disclosure).

3. Final Rule

After consideration of the comments, we are adopting the proposals substantially as proposed with a few technical revisions in response to comments. We believe that, in making voting and investment decisions, investors should be provided with meaningful information about the corporate governance practices of companies.¹²⁹ As we noted in the Proposing Release, one important aspect of a company's corporate governance practices is its board's leadership structure. Disclosure of a company's board leadership structure and the reasons the company believes that its board leadership structure is appropriate will increase the transparency for investors as to how the board functions.

As stated above, the amendments were designed to provide shareholders with disclosure of, and the reasons for, the leadership structure of a company's board concerning the principal executive officer, the board chairman position and, where applicable, the lead independent director position. We agree with commenters that the phrase "board leadership structure" instead of "company leadership structure" would avoid potential misunderstanding that the amendments require a discussion of the structure of a company's management

¹²⁹ See, e.g., National Association of Corporate Directors, Key Agreed Principles to Strengthen Corporate Governance for U.S. Publicly Traded Companies, (Mar. 2009) ("Every board should explain, in proxy materials and other communications with shareholders, why the governance structures and practices it has developed are best suited to the company.").

leadership.¹³⁰ We also agree with commenters that the phrase “risk oversight” instead of “risk management” would be more appropriate in describing the board’s responsibilities in this area.¹³¹

Under the amendments, a company is required to disclose whether and why it has chosen to combine or separate the principal executive officer and board chairman positions, and the reasons why the company believes that this board leadership structure is the most appropriate structure for the company at the time of the filing. In addition, in some companies the role of principal executive officer and board chairman are combined, and a lead independent director is designated to chair meetings of the independent directors. In these circumstances, the amendments will require disclosure of whether and why the company has a lead independent director, as well as the specific role the lead independent director plays in the leadership of the company. As we previously stated in the Proposing Release, these amendments are intended to provide investors with more transparency about the company’s corporate governance, but are not intended to influence a company’s decision regarding its board leadership structure.

The final rules also require companies to describe the board’s role in the oversight of risk. We were persuaded by commenters who noted that risk

¹³⁰ See letter from Honeywell.

¹³¹ See, e.g., letters from Ameriprise Financial and Protective Life Corporation.

oversight is a key competence of the board, and that additional disclosures would improve investor and shareholder understanding of the role of the board in the organization's risk management practices.¹³² Companies face a variety of risks, including credit risk, liquidity risk, and operational risk. As we noted in the Proposing Release, similar to disclosure about the leadership structure of a board, disclosure about the board's involvement in the oversight of the risk management process should provide important information to investors about how a company perceives the role of its board and the relationship between the board and senior management in managing the material risks facing the company. This disclosure requirement gives companies the flexibility to describe how the board administers its risk oversight function, such as through the whole board, or through a separate risk committee or the audit committee, for example. Where relevant, companies may want to address whether the individuals who supervise the day-to-day risk management responsibilities report directly to the board as a whole or to a board committee or how the board or committee otherwise receives information from such individuals.

The final rules also require funds to provide disclosure about the board's role in risk oversight. Funds face a number of risks, including investment risk, compliance, and valuation; and we agree with commenters

¹³² See, e.g., letters from Norges Bank and RIMS.

who favored disclosure of board risk oversight by funds.¹³³ As with corporate issuers, we believe that additional disclosures would improve investor understanding of the role of the board in the fund's risk management practices. Furthermore, the disclosure should provide important information to investors about how a fund perceives the role of its board and the relationship between the board and its advisor in managing material risks facing the fund.

D. New Disclosure Regarding Compensation Consultants

We proposed amendments to Item 407 of Regulation S-K to require, for the first time, disclosure about the fees paid to compensation consultants and their affiliates when they played a role in determining or recommending the amount or form of executive and director compensation, and they also provided additional services to the company. The proposed amendments also would have required a description of the additional services provided to the company by the compensation consultants and any affiliates of the consultants. We are adopting the amendments with changes in response to comments.

¹³³ See letters from Calvert and MFDF.

1. Proposed Amendments

Under the proposed amendments to Item 407, if a compensation consultant or its affiliates played a role in determining or recommending the amount or form of executive and director compensation, and also provided additional services, then the company would be required to disclose the following:

- The nature and extent of all additional services provided to the company or its affiliates during the last fiscal year by the compensation consultant and any affiliates of the consultant;
- The aggregate fees paid for all additional services, and the aggregate fees paid for work related to determining or recommending the amount or form of executive and director compensation;
- Whether the decision to engage the compensation consultant or its affiliates for non-executive compensation services was made, recommended, subject to screening or reviewed by management; and
- Whether the board of directors or the compensation committee has approved the other services provided by the compensation consultant in addition to executive compensation services.

The proposed disclosure requirements would have applied to all services provided by a compensation consultant and its affiliates if the compensation consultant played any role in determining or recommending the

amount or form of executive and director compensation. The proposed amendments did not distinguish between consultants engaged by the board and consultants engaged by management. We provided an exception from the proposed disclosure requirements for those situations in which the compensation consultant's role in recommending the amount or form of executive and director compensation was limited to consulting on broad-based plans that did not discriminate in favor of executive officers or directors of the company, such as 401(k) plans or health insurance plans. We believed that when a compensation consultant's services were limited to consulting on broad-based, non-discriminatory plans, these services did not give rise to the type of potential conflict of interest intended to be addressed by our proposed amendments.¹³⁴

2. Comments on the Proposed Amendments

A significant number of commenters generally supported the proposed amendments to Item 407 of Regulation S-K to require disclosure of the fees paid to compensation consultants as well as a description of other services

¹³⁴ We also proposed to amend Item 407 along the same lines to clarify that the current disclosure requirements under the item were not triggered for a compensation consultant whose only services with regard to executive or director compensation were limited to these types of broad-based, non-discriminatory plans. Many commenters supported this amendment and we are adopting it as proposed.

provided by compensation consultants.¹³⁵ Many of these commenters believed investors would benefit from disclosure regarding the potential conflicts of interests of compensation consultants when they advise on the amount or form of executive and director compensation and also provide additional services to the company.¹³⁶ These commenters believed that disclosure of the fees paid to compensation consultants would go a long way towards minimizing potential conflicts of interests and would allow shareholders to assess the potential conflicts of interest in regard to the compensation advice given to companies.

However, several commenters, primarily multi-service compensation consulting firms, opposed the proposed amendments.¹³⁷ These commenters believed the proposed amendments were too narrowly focused on fees paid to multi-service consulting firms and ignored important considerations relating to the consultant's qualifications, selection, and role.¹³⁸ They also asserted that the proposed disclosure could give investors a distorted view of how companies

¹³⁵ See, e.g., letters from AFL-CIO, AFSCME, Business Roundtable, CalSTRS, CII, COPERA, Evolution Petroleum, Glass Lewis, Grahall, Hermes Equity Ownership Services, NACD, Oppenheimer Funds, Pax World Management Corporation, State of Connecticut Treasurer's Office, TIAA-CREF, Trillium Asset Management Corporation, and Walden Asset Management.

¹³⁶ See, e.g., letters from AFL-CIO, Frank Inman, Hermes Equity Ownership Services Ltd., TIAA-CREF, and Trillium Asset Management.

¹³⁷ See letters from ABA, Hewitt, Mercer, Pfizer, Protective Life Corporation, Radford, Towers Perrin, Value Alliance, and Watson Wyatt.

¹³⁸ See, e.g., letters from Hewitt, Mercer and Towers Perrin.

use and select compensation consultants. Because the role of consultants is not uniform and varies considerably from company to company, these commenters asserted that investors should be given an understanding not only of the role consultants serve for each company, but also of the board's or compensation committee's selection process. This would include how it assessed the consultant's qualifications and how any potential conflicts of interest that may have been identified are mitigated by formal processes, or by the internal controls and processes maintained by the consulting firm.¹³⁹

Several commenters opposed to the proposed amendments asserted that the amendments would decrease the compensation consulting resources available to companies.¹⁴⁰ Other commenters asserted that the proposed amendments would cause competitive harm to multi-service consulting firms who provide services other than executive compensation consulting, as companies would be discouraged from using multi-service compensation consulting firms in more than one capacity.¹⁴¹ These commenters also claimed that the proposed amendments would cause competitive harm because disclosure of the nature and extent of all additional services provided by the consultant would reveal confidential and competitively sensitive pricing

¹³⁹ See, e.g., letter from Hewitt.

¹⁴⁰ See, e.g., letters from Hewitt and Mercer.

¹⁴¹ See, e.g., letters from Mercer, Towers Perrin and Watson Wyatt.

information that could allow competitors to determine the fee structure for these additional services.¹⁴²

These commenters also expressed concern that the proposed amendments did not address potential conflicts of interest that may occur when a compensation consultant that only provides executive-compensation related services to the board is overly reliant on the fees it receives from a particular client. They suggested an alternative rule that would require disclosure of fees paid to a compensation consultant when a significant portion of the annual revenues of the compensation consultant were generated from any one client.¹⁴³

Several commenters expressed concern that the scope of the proposed amendments was too broad. These commenters believed that when a compensation committee engages its own compensation consultant, it mitigates any concerns about potential conflicts of interest involving consultants engaged by management.¹⁴⁴ According to these commenters, from that perspective, a compensation consulting firm that provides executive compensation consulting services to the company, and also provides other services to the company, would not present a conflict of interest issue when the compensation committee

¹⁴² See, e.g., letter from Mercer.

¹⁴³ See, e.g., letters from Hewitt, Mercer, Towers Perrin and Watson Wyatt.

¹⁴⁴ See, e.g., letters from E&Y and Deloitte.

retains a different consultant.¹⁴⁵ Noting that management should have broad access to compensation experts and other third parties when developing executive pay proposals for board consideration, and that it is the board's responsibility to evaluate management's compensation proposals when determining whether or not to approve them, some commenters expressed concerns about the potential effect of the proposed disclosure on the board's discharge of its oversight responsibility.¹⁴⁶

In the Proposing Release, we requested comment on whether there were other consulting services that do not give rise to potential conflicts of interest that should be excluded from the proposed disclosure requirements similar to the proposed exemption for consulting services that are limited to broad-based, non-discriminatory plans. Several commenters responded by suggesting that we exclude consulting services where the compensation consultant only provides the board with peer surveys that provide general information regarding the forms and amounts of compensation typically paid to executive officers and directors within a particular industry.¹⁴⁷ Another commenter suggested that surveys that are either not customized for a particular company, or that are customized based on parameters that are not developed by the compensation

¹⁴⁵ Id.

¹⁴⁶ See letters from Hewitt and E&Y.

¹⁴⁷ See, e.g., letters from BorgWarner, Davis Polk, Honeywell, JPMorgan and Wisconsin Energy.

consultant, should be excluded from the amendments.¹⁴⁸ These commenters believed that in situations where the compensation consultant's services provided to a company were limited to providing those types of surveys, such services did not raise the potential conflicts of interest that the proposed amendments were intended to address.¹⁴⁹

We also requested comment on whether we should establish a disclosure threshold based on the amount of the fees for the non-executive compensation related services, such as above a certain dollar amount or a percentage of income or revenues. Several commenters recommended that the proposed amendments should include a disclosure threshold, including many who suggested that we should require disclosure only if the aggregate fees for all additional services provided by the consultant and its affiliates exceeded \$120,000.¹⁵⁰

¹⁴⁸ See letter from ABA.

¹⁴⁹ See, e.g., letters from BorgWarner, Davis Polk and Honeywell.

¹⁵⁰ See, e.g., letters from ACC, Business Roundtable, Davis Polk, and SCSGP. Some commenters also suggested a disclosure threshold based on tests in effect under rules with a similar focus in self-regulatory organizations, such as the 2% (for New York Stock Exchange-listed companies) or 5% (for NASDAQ-listed companies) of gross revenues test for disclosure of business relationships between a company and a director-affiliated entity. See, e.g., letter from Cleary Gottlieb. See also, letter from ABA (suggesting a percentage threshold set at a level where the effect of such fees diminishes the possible appearance of a conflict of interest).

3. Final Rule

After considering the comments received, we are adopting a modified version of the proposed amendments. We believe the new disclosure requirements will provide investors with information that will enable them to better assess the potential conflicts a compensation consultant may have in recommending executive compensation, and the compensation decisions made by the board. As we noted in the Proposing Release, many companies engage compensation consultants to make recommendations on appropriate executive and director compensation levels, to design and implement incentive plans, and to provide information on industry and peer group pay practices. The services offered by compensation consultants, however, are often not limited to recommending executive and director compensation plans or policies. Many compensation consultants, or their affiliates, are retained by management to provide a broad range of additional services, such as benefits administration, human resources consulting and actuarial services. The fees generated by these additional services may be more significant than the fees earned by the consultants for their executive and director compensation services. The extent of the fees and provision of additional services by a compensation consultant or its affiliate may create the risk of a conflict of interest that may call into question the objectivity of the consultant's advice and recommendations on executive compensation.

At the same time, we are persuaded that there are circumstances where this disclosure should not be required either because of the limited nature of the additional services or because of other factors that mitigate the concern that the board may be receiving advice potentially influenced by a conflict of interest.

a. Summary of the Final Rule

As more fully described below, under our final rule, in addition to the requirement under the current rule to describe the role of the compensation consultant in determining or recommending the amount or form of executive and director compensation, fee disclosure related to the retention of a compensation consultant will be required in certain circumstances. The final rules can be summarized generally as follows:

- If the board, compensation committee or other persons performing the equivalent functions (collectively, “board”) has engaged its own consultant to provide advice or recommendations on the amount or form of executive and director compensation and the board’s consultant or its affiliates provide other non-executive compensation consulting services to the company, fee and related disclosure is required, provided the fees for the non-executive compensation consulting services exceed \$120,000 during the company’s fiscal year. Disclosure is also required of whether the decision to engage the compensation consultant or its affiliates for non-executive compensation consulting services was made

or recommended by management, and whether the board has approved these non-executive compensation consulting services provided by the compensation consultant or its affiliate;

- If the board has not engaged its own consultant, fee disclosures are required if there is a consultant (including its affiliates) providing executive compensation consulting services and non-executive compensation consulting services to the company, provided the fees for the non-executive compensation consulting services exceed \$120,000 during the company's fiscal year;
- Fee and related disclosure for consultants that work with management (whether for only executive compensation consulting services, or for both executive compensation consulting and other non-executive compensation consulting services) is not required if the board has its own consultant; and
- Services involving only broad-based non-discriminatory plans or the provision of information, such as surveys, that are not customized for the company, or are customized based on parameters that are not developed by the consultant, are not treated as executive compensation consulting services for purposes of the compensation consultant disclosure rules.

b. Disclosure required if the board’s compensation consultant provides additional services to the company

If the board has engaged a compensation consultant to advise the board as to executive and director compensation, and such consultant or its affiliates provides other non-executive compensation consulting services to the company, the disclosures specified by the new rules are required. We believe that in that situation, the receipt of fees for non-executive compensation consulting services by the board’s consultant presents the potential conflict of interest intended to be highlighted for investors by our new rules. Subject to the disclosure threshold discussed below, the final rule requires disclosure of the aggregate fees paid for services provided to either the board or the company with regard to determining or recommending the amount or form of executive and director compensation, and the aggregate fees paid for any non-executive compensation consulting services provided by the compensation consultant or its affiliates.

In addition, the new rules require disclosure of whether the decision to engage the compensation consultant or its affiliates for the non-executive compensation consulting services was made, or recommended by, management, and whether the board approved such other services.¹⁵¹

¹⁵¹ Item 407(e)(3)(iii)(A) of Regulation S-K.

c. Disclosure required if the board does not have a compensation consultant, but the company receives executive compensation and non-executive compensation services from its consultant

The new rule also requires disclosure of fees in situations where the board has not engaged a compensation consultant, but management or the company received executive compensation consulting services and other non-executive compensation consulting services from a consultant or its affiliates, and the fees from the non-executive compensation consulting services provided by that consultant or its affiliates exceed \$120,000 for the company's fiscal year.¹⁵² We recognize that in that situation the board, which generally is primarily responsible for determining the compensation paid to senior executives, may not be relying on the consultant used by management, and, therefore, conflicts of interest may be less of a concern. However, we believe that when management has a compensation consultant and the board does not have its own compensation consultant to help filter any advice provided by management's compensation consultant, the concerns about board reliance on consultants that may have a conflict are sufficiently present to require this approach. Consequently, the final rule provides that in this fact pattern, fee disclosure is required if the fees from the non-executive compensation consulting services provided by the compensation consultant exceed the disclosure threshold described below.

¹⁵² Item 407(e)(3)(iii)(B).

d. Disclosure not required if the board and management have different compensation consultants, even if management’s consultant provides additional services to the company

In some instances, the board may engage a compensation consultant to advise it on executive or director compensation, and management may engage a separate consultant to provide executive compensation consulting services and one or more additional non-executive compensation consulting services. We believe there is less potential for a conflict of interest to arise when the board has retained its own compensation consultant, and the company or management has a different consultant to provide executive compensation consulting and other non-executive compensation consulting services.¹⁵³ When the board engages its own compensation consultant, it mitigates concerns about potential conflicts of interest involving compensation consultants engaged by management.¹⁵⁴ Accordingly, the final rules provide a limited exception to the disclosure requirements for fees paid to other compensation consultants retained by the company if the board has retained its own consultant that reports to the board. In addition to limiting disclosure to circumstances that are more likely to present potential conflicts of interests, we believe this approach should address some concerns about competitive harm that were raised by commenters. The exception would be available without regard to whether

¹⁵³ See, e.g., letters from Hewitt and E&Y.

¹⁵⁴ See letter from E&Y.

management's consultant participates in board meetings. Where the board's compensation consultant provides additional non-executive compensation consulting services to the company, the rule would, as described above, require fee and other related disclosures, which should address concerns about conflicts of interest by that consultant. Fee disclosure for services provided by management's compensation consultant would be less relevant in this situation because the board is able to rely on its own compensation consultant's advice, rather than the advice provided by management's compensation consultant, when making its executive compensation decisions.

e. Disclosure required only if fees for additional services exceed \$120,000 during the company's last completed fiscal year

As noted previously, we agree with commenters that the final rule should have a disclosure threshold.¹⁵⁵ We believe that when aggregate fees paid for the non-executive compensation consulting services are limited, the potential conflict of interest is likely to be commensurately reduced. A disclosure threshold would also reduce the compliance burdens on companies when the potential conflict of interest is minimal. Under the rule as adopted, if the board has engaged a compensation consultant to provide executive and director compensation consulting services to the board or if the board has not retained a consultant but there is a firm providing executive compensation

¹⁵⁵ See, e.g., letters from ACC, Davis Polk and SCSGP. This threshold requirement should also help address some of the competitive concerns expressed by some commenters. See, e.g., note 150 above and accompanying text.

consulting services, fee disclosure is required if the consultant or its affiliates also provides other non-executive compensation consulting services to the company, and the fees paid for the other services exceed \$120,000 for the company's fiscal year. We believe fees for other non-executive compensation consulting services below that threshold are less likely to raise potential conflicts of interest concerns, and note this disclosure threshold should reduce the recordkeeping burden on companies. This threshold is similar to the disclosure threshold for transactions with related persons in Item 404 of Regulation S-K, which also deals with potential conflicts of interest on the part of related persons who have financial transactions or arrangements with the company, and therefore provides some regulatory consistency.¹⁵⁶

f. Disclosure of nature and extent of additional services not required

The rule, as adopted, does not require disclosure of the nature and extent of additional services provided by the compensation consultant and its affiliates to the company, as we proposed. We made this change from the proposal because we are persuaded by commenters who noted that requiring this disclosure could cause competitive harm by revealing confidential and sensitive pricing information, and we believe that the critical information about the potential conflict is adequately conveyed through the fee disclosure requirement. Although we are not adopting this requirement, companies may at

¹⁵⁶ See 17 CFR 229.404.

their discretion include a description of any additional non-executive compensation consulting services provided by the compensation consultant and its affiliates where such information would facilitate investor understanding of the existence or nature of any potential conflict of interest.

g. Exceptions to the disclosure requirement for consulting on broad-based plans and provision of survey information

We are adopting substantially as proposed the exception from the disclosure requirements for situations in which the compensation consultant's only role in recommending the amount or form of executive or director compensation is in connection with consulting on broad-based plans that do not discriminate in favor of executive officers or directors of the company. In addition, in response to comments received, we are expanding the exception to include situations where the compensation consultant's services are limited to providing information, such as surveys, that either is not customized for a particular company, or that is customized based on parameters that are not developed by the compensation consultant.¹⁵⁷ We are persuaded by commenters who noted that surveys that provide general information regarding the form and amount of compensation typically paid to executive officers and directors within a particular industry generally do not raise the potential conflicts of interest that the amendments are intended to address.¹⁵⁸ However,

¹⁵⁷ See, e.g., letters from ABA, Mercer and Towers Perrin.

¹⁵⁸ See letters from Davis Polk and Mercer.

the exception would not be available if the compensation consultant provides advice or recommendations in connection with the information provided in the survey.

h. Other concerns

We did not propose, and do not at this time adopt, disclosure of consulting fees based on a percentage of revenues received from a company. We have considered the concern expressed by some commenters that compensation consultants, even if they are only retained by the board for executive compensation related services and do not provide any additional services to the company, may become overly reliant on a single client for revenues, which could affect the advice the consultant provides to the board.¹⁵⁹ However, we are not currently persuaded that such reliance would cause a consultant to provide advice to the board that inappropriately reflects management's influence as a result of fees for additional services, which is the primary concern addressed by the final rule.

We also considered the suggestion provided by these commenters that companies be required to disclose various matters about the consideration of

¹⁵⁹ See letters from Hewitt, Mercer, Pearl Meyer, and Towers Perrin.

potential conflicts of interest.¹⁶⁰ We are not persuaded that we need to address this issue at this time and believe our final rule addresses our concerns without adding significant length to the disclosure or burdens on companies.

Our amendments as adopted are intended to facilitate investors' consideration of whether, in providing advice, a compensation consultant may have been influenced by a desire to retain other engagements from the company. This does not reflect a conclusion that we believe that a conflict of interest is present when disclosure is required under our new rule, or that a compensation committee or a company could not reasonably conclude that it is appropriate to engage a consultant that provides other services to the company requiring disclosure under our new rule. It also does not mean that we have concluded that there are no other circumstances that might present a conflict of interest for a compensation consultant retained by a compensation committee or company. Rather, the amendments are designed to provide context to investors in considering the compensation disclosures required to be provided under our rules, and, as explained above, are based on our understanding of the situations that are more likely to raise potential conflicts of interest concerns.

¹⁶⁰ In their comment letters, several multi-service compensation consulting firms proposed an alternative disclosure requirement. Under their proposal, if the total fees paid to the consultant for all services provided to the company and its affiliates during the preceding fiscal year exceeded one-half of one percent of the total revenues of the consultant for that fiscal year, the company would be required to disclose, among other things, the protocols established by the compensation committee to ensure that the consultant is able to provide unbiased advice and is not inappropriately influenced by the company's management. See letters from Hewitt, Mercer, Watson Wyatt, and Towers Perrin.

E. Reporting of Voting Results on Form 8-K

We proposed to transfer the requirement to disclose shareholder vote results from Forms 10-Q and 10-K to Form 8-K, and to have that information filed within four business days after the end of the meeting at which the vote was held. We are adopting the proposal with some modifications in response to comments.

1. Proposed Amendments

Currently, Item 4 in Part II of Form 10-Q and Item 4 in Form 10-K require the disclosure of the results of any matter that was submitted to a vote of shareholders during the fiscal quarter covered by either the Form 10-Q or Form 10-K with respect to the fourth fiscal quarter. The proposed amendments would delete this requirement from Forms 10-Q and 10-K and move it to Form 8-K. As a result, voting results would be required to be filed on Form 8-K within four business days after the end of the meeting at which the vote was held. To accommodate timing difficulties in contested elections, we proposed a new instruction to the form that stated that if the matter voted upon at the shareholders' meeting related to a contested election of directors and the voting results were not definitively determined at the end of the meeting, companies would be required to file the preliminary voting results within four business days after the preliminary voting results were determined, and then file an amended report on Form 8-K within four business days after the final voting results were certified.

2. Comments on the Proposed Amendments

The majority of comments we received on the proposed amendments supported requiring the filing of voting results on Form 8-K. Many commenters believed that more timely disclosure of the voting result would benefit shareholders and investors.¹⁶¹ Some noted that matters submitted for shareholder vote involve issues that directly impact shareholder interests—for example investment or divestments, changes in shareholder rights and capital changes—and that timely disclosure of voting results can be crucial.¹⁶² One commenter believed that majority vote requirements for director elections have introduced greater accountability and uncertainty into uncontested director elections, making it increasingly important that these election outcomes be reported in a timely manner to shareholders.¹⁶³

Several commenters recommended modifications to the proposed amendments. Specifically, some commenters expressed concern that preliminary voting results should not be required to be disclosed because disclosure of preliminary results could mislead investors if the definitive results reflect a different outcome than what was disclosed initially.¹⁶⁴ Concerns were

¹⁶¹ See, e.g., letters from CalSTRS, CII, Hermes, IIA, Norges Bank, United Brotherhood of Carpenters and Walden.

¹⁶² See, e.g., letters from CalSTRS and Norges Bank.

¹⁶³ See letter from United Brotherhood of Carpenters.

¹⁶⁴ See e.g., letter from Chadbourne.

also expressed that the reporting of preliminary voting results could inadvertently influence voting if the disclosure is made at a time when the opportunity remains open for additional votes to be cast.¹⁶⁵ Commenters also believed that the four business day reporting requirement should not be tied to the end of the shareholders' meeting, but rather to the issuance of a certified report of an inspector of election.¹⁶⁶ In addition, commenters suggested that the proposed instruction excepting the filing of voting results in contested elections of directors within four business days after the end of the shareholders' meeting should be expanded to cover any matter for which final voting results are not available or "too close to call" within four business days following the end of the shareholders' meeting.¹⁶⁷

A few commenters opposed the proposed amendments.¹⁶⁸ Commenters opposed to amendments expressed concern that it would be very difficult to meet the four business day filing requirement. One of these commenters noted that problems that stem from share lending and other practices can significantly delay the time that votes can be tabulated.¹⁶⁹

¹⁶⁵ See letter from ABA.

¹⁶⁶ See letter from Allen Goolsby, et al.

¹⁶⁷ See, e.g., letters from BorgWarner, Business Roundtable, SCSG, S&C and Southern.

¹⁶⁸ See, e.g., letters from Keith Bishop, NACD, RILA and SCC.

¹⁶⁹ See letter from NACD.

Several commenters believed that the disclosure of the results of shareholder votes should be added to the list of items on Form 8-K that are currently excluded from liability under Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5, and that do not result in a loss of Form S-3 eligibility under General Instruction I.A.3(b).¹⁷⁰ One commenter, however, believed that an amendment to General Instruction I.A.3(b) of Form S-3 to add an exception to the Form S-3 eligibility requirements for the reporting of voting results would not be necessary if we allowed preliminary voting results for contested elections and on proposals that are “too close to call” to be reported within four business days of the meeting and final voting results within four business days after the voting results become final.¹⁷¹

3. Final Rule

After evaluating the comments received, we are adopting the proposed amendments to Form 8-K, and are eliminating the requirement to disclose shareholder voting results on Forms 10-Q and 10-K. Accordingly, new Item 5.07 to Form 8-K requires companies to disclose on the form the results of a shareholder vote and to have that information filed within four business days after the end of the meeting at which the vote was held. Tying the filing requirement to the end of the meeting will provide shareholders, investors and

¹⁷⁰ See letters from ABA, Business Roundtable, Honeywell and S&C.

¹⁷¹ See letter from SCSGP.

other users of this information with a readily identifiable and certain date upon which a company would be required to disclose information on the results of the vote. We believe more timely disclosure of the voting results from an annual or special meeting would benefit investors and the markets. Under our prior disclosure requirements, it could be a few months before voting results are disclosed in a Form 10-Q or 10-K. Often, matters submitted for a shareholder vote at an annual or special meeting involve issues that directly impact shareholder interests, such as the election of directors, changes in shareholder rights, investments or divestments, and capital changes. The delay between the end of an annual or special meeting of shareholders and when the voting results of the meeting are disclosed in a Form 10-Q or 10-K can make the information less useful to investors and the markets. We also understand that technological advances in shareholder communications and the growing use of third-party proxy services have increased the ability of companies to tabulate vote results and disseminate this information on a more expedited basis.

We agree with the suggestions of commenters that there may be situations other than contested elections where it may take a longer period of time to determine definitive voting results.¹⁷² As a result, we are expanding the instruction to Form 8-K as adopted to state that companies are required to file

¹⁷² See, e.g., letters from Business Roundtable, S&C and Southern.

the preliminary voting results within four business days after the end of the shareholders' meeting, and then file an amended report on Form 8-K within four business days after the final voting results are known.¹⁷³ However, if a company obtains the definitive voting results before the preliminary voting results must be reported and decides to report its definitive results on Form 8-K, it will not be required to file the preliminary voting results. For example, if a company obtains the definitive voting results two days after the end of the shareholders' meeting, it could report its definitive voting results on Form 8-K within four business days after the meeting and would not be required to file its preliminary voting results. To the extent that companies are concerned that the disclosure of preliminary voting results could be confusing to investors, they may include additional disclosure that helps to put the preliminary voting disclosure in a proper context.

In the Proposing Release, we requested comment on whether we should consider additional revisions to the requirement to report voting results, such as eliminating a portion of prior Instruction 4 to the disclosure item. One commenter responded by suggesting that we could consolidate and simplify some of the disclosure requirements and instructions to the item.¹⁷⁴ We agree

¹⁷³ See Instruction 1 to Item 5.07 of Form 8-K. We note that our amendments to Form 8-K are not intended to preclude a company from announcing preliminary voting results during the meeting of shareholders at which the vote was taken and before filing the Form 8-K, without regard to whether the company webcast the meeting.

¹⁷⁴ See letter of ABA.

with the suggestions that were submitted, and believe that certain requirements and instructions to the Item can be simplified, without changing the substance of what is required to be reported. Accordingly, we are adopting the following revisions to new Item 5.07:

- Adding to paragraph (a) of the item a statement that the information required by the item need be provided only when a meeting of shareholders is involved;¹⁷⁵
- Combining paragraphs (b) and (c) to the item into a single paragraph that requires disclosure of the quantitative results of each matter voted on at the meeting, and a brief description of each matter; and
- Eliminating Instruction 3, Instruction 5 and Instruction 7 to the item, as well as deleting the first sentence of Instruction 4.

¹⁷⁵ But see current Instruction 1 to Item 4 of Form 10-Q with respect to matters that have been submitted to a vote otherwise than at a meeting of shareholders, which we are not amending and which will be retained as Instruction 2 to new Item 5.07 of Form 8-K.

[remainder of document omitted]

Appendix C
Excerpts from the July 26, 2006 Adopting Release

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 228, 229, 232, 239, 240, 245, 249 AND 274

[RELEASE NOS. 33-8732A; 34-54302A; IC-27444A; FILE NO. S7-03-06]

RIN 3235-AI80

EXECUTIVE COMPENSATION AND RELATED PERSON

DISCLOSURE

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to the disclosure requirements for executive and director compensation, related person transactions, director independence and other corporate governance matters and security ownership of officers and directors. These amendments apply to disclosure in proxy and information statements, periodic reports, current reports and other filings under the Securities Exchange Act of 1934 and to registration statements under the Exchange Act and the Securities Act of 1933. We are also adopting a requirement that disclosure under the amended items generally be provided in plain English. The amendments are intended to make proxy and information statements, reports and registration statements easier to understand. They are also intended to

provide investors with a clearer and more complete picture of the compensation earned by a company's principal executive officer, principal financial officer and highest paid executive officers and members of its board of directors. In addition, they are intended to provide better information about key financial relationships among companies and their executive officers, directors, significant shareholders and their respective immediate family members. In Release No. 33-8735, published elsewhere in the proposed rules section of this issue of the Federal Register, we also request additional comments regarding the proposal to require compensation disclosure for three additional highly compensated employees.

DATES: Effective Date: November 7, 2006.

Comment Date: Comments regarding the request for comment in Section II.C.3.b. of this document should be received on or before October 23, 2006.

Compliance Dates: Companies must comply with these disclosure requirements in Forms 8-K for triggering events that occur on or after November 7, 2006 and in Forms 10-K and 10-KSB for fiscal years ending on or after December 15, 2006. Companies other than registered investment companies must comply with these disclosure requirements in Securities Act registration statements and Exchange Act registration statements (including pre-effective and post-effective amendments), and in any proxy or information statements filed on or after December 15, 2006 that are required to include Item 402 and 404 disclosure for

fiscal years ending on or after December 15, 2006. Registered investment companies must comply with these disclosure requirements in initial registration statements and post-effective amendments that are annual updates to effective registration statements on Forms N-1A, N-2 (except those filed by business development companies) and N-3, and in any new proxy or information statements, filed with the Commission on or after December 15, 2006.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/final.shtml>): or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-03-06 on the subject line; or
- Use the Federal Rulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington DC 20549-1090.

All submissions should refer to File Number S7-03-06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will

post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/final/shtml>). Comments are also available for public inspection and copying in the Commission’s Public Reference Room, 100 F Street, NE, Washington, DC, 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Anne Krauskopf, Carolyn Sherman, or Daniel Greenspan, at (202) 551-3500, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3010 or, with respect to questions regarding investment companies, Kieran Brown in the Division of Investment Management, at (202) 551-6784.

SUPPLEMENTARY INFORMATION: We are amending: Items 201,¹ 306,² 401,³ 402,⁴ 403⁵ and 404⁶ of Regulations S-K⁷ and S-B,⁸ Item 601⁹ of

¹ 17 CFR 229.201 and 17 CFR 228.201.

² 17 CFR 229.306 and 17 CFR 228.306.

³ 17 CFR 229.401 and 17 CFR 228.401.

⁴ 17 CFR 229.402 and 17 CFR 228.402.

⁵ 17 CFR 229.403 and 17 CFR 228.403.

⁶ 17 CFR 229.404 and 17 CFR 228.404.

⁷ 17 CFR 229.10 et seq.

⁸ 17 CFR 228.10 et seq.

⁹ 17 CFR 229.601.

Regulation S-K, Item 1107¹⁰ of Regulation AB,¹¹ Item 304¹² of Regulation S-T,¹³ and Rule 100¹⁴ of Regulation BTR.¹⁵ We are also adding new Item 407 to Regulations S-K and S-B. In addition, we are amending Rules 13a-11,¹⁶ 14a-3,¹⁷ 14a-6,¹⁸ 14c-5,¹⁹ 15d-11²⁰ and 16b-3²¹ under the Securities Exchange Act of 1934.²² We are adding Rules 13a-20 and 15d-20 under the Exchange Act. We are further amending Schedule 14A²³ under the Exchange Act, as well

¹⁰ 17 CFR 229.1107.

¹¹ 17 CFR 229.1100 et seq.

¹² 17 CFR 232.304.

¹³ 17 CFR 232.10 et seq.

¹⁴ 17 CFR 245.100.

¹⁵ 17 CFR 245.100 et seq.

¹⁶ 17 CFR 240.13a-11.

¹⁷ 17 CFR 240.14a-3.

¹⁸ 17 CFR 240.14a-6.

¹⁹ 17 CFR 240.14c-5.

²⁰ 17 CFR 240.15d-11.

²¹ 17 CFR 240.16b-3.

²² 15 U.S.C. 78a et seq.

²³ 17 CFR 240.14a-101.

as Exchange Act Forms 8-K,²⁴ 10,²⁵ 10SB,²⁶ 10-Q,²⁷ 10-QSB,²⁸ 10-K,²⁹ 10-KSB³⁰ and 20-F.³¹ Finally, we are amending Forms SB-2,³² S-1,³³ S-3,³⁴ S-4³⁵ and S-11³⁶ under the Securities Act of 1933,³⁷ Forms N-1A,³⁸ N-2,³⁹ and N-3⁴⁰ under the Securities Act and the Investment Company Act of 1940,⁴¹ and Form N-CSR⁴² under the Investment Company Act and the Exchange Act.

²⁴ 17 CFR 249.308.

²⁵ 17 CFR 249.210.

²⁶ 17 CFR 249.210b.

²⁷ 17 CFR 249.308a.

²⁸ 17 CFR 249.308b.

²⁹ 17 CFR 249.310.

³⁰ 17 CFR 249.310b.

³¹ 17 CFR 249.220f.

³² 17 CFR 239.10.

³³ 17 CFR 239.11.

³⁴ 17 CFR 239.13.

³⁵ 17 CFR 239.25.

³⁶ 17 CFR 239.18.

³⁷ 15 U.S.C. 77a et seq.

³⁸ 17 CFR 239.15A and 274.11A.

³⁹ 17 CFR 239.14 and 274.11a-1.

⁴⁰ 17 CFR 239.17a and 274.11b.

⁴¹ 15 U.S.C. 80a-1 et seq.

⁴² 17 CFR 249.331 and 274.128.

Table of Contents

I.	Background and Overview	C-11
II.	Executive and Director Compensation Disclosure	C-21
A.	Options Disclosure	C-23
1.	Background	C-23
2.	Required Option Disclosures	C-25
a.	Tabular Disclosures	C-27
b.	Compensation Discussion and Analysis	C-28
i.	Timing of Option Grants	C-29
ii.	Determination of Exercise Price	C-33
B.	Compensation Discussion and Analysis	C-34
1.	Intent and Operation of the Compensation Discussion and Analysis	C-36
2.	Instructions to Compensation Discussion and Analysis	C-44
3.	“Filed” Status of Compensation Discussion and Analysis and the “Furnished” Compensation Committee Report	C-49
4.	Retention of the Performance Graph	C-54
C.	Compensation Tables	C-57
1.	Compensation to Named Executive Officers in the Last Three Completed Fiscal Years-The Summary Compensation Table and Related Disclosure	C-60
a.	Total Compensation Column	C-63
b.	Salary and Bonus Columns	C-67
c.	Plan-Based Awards	C-69
i.	Stock Awards and Option Awards Columns	C-69
ii.	Non-Equity Incentive Plan Compensation Column	C-79
d.	Change in Pension Value and Nonqualified Deferred Compensation Earnings Column	C-82
i.	Earnings on Deferred Compensation	C-82

	ii.	Increase in Pension Value	C-85
	e.	All Other Compensation Column	C-89
	i.	Perquisites and Other Personal Benefits	C-90
	ii.	Additional All Other Compensation Column Items	C-101
	f.	Captions and Table Layout	C-103
2.		Supplemental Grants of Plan-Based Awards Table	C-105
3.		Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards Table	C-112
	a.	Narrative Description of Additional Material Factors	C-112
	b.	Request for Additional Comment on Compensation Disclosure for up to Three Additional Employees	C-116
4.		Exercises and Holdings of Previously Awarded Equity	C-126
	a.	Outstanding Equity Awards at Fiscal Year-End Table	C-127
	b.	Option Exercises and Stock Vested Table	C-132
5.		Post-Employment Compensation	C-134
	a.	Pension Benefits Table	C-135
	b.	Nonqualified Deferred Compensation Table	C-141
	c.	Other Potential Post-Employment Payments	C-144
6.		Officers Covered	C-149
	a.	Named Executive Officers	C-149
	b.	Identification of Most Highly Compensated Executive Officers; Dollar Threshold for Disclosure	C-152
7.		Interplay of Items 402 and 404	C-155
8.		Other Changes	C-156
9.		Compensation of Directors	C-157
D.		Treatment of Specific Types of Issuers	C-162
	1.	Small Business Issuers	C-162

	2.	Foreign Private Issuers	C-166
	3.	Business Development Companies	C-166
E.		Conforming Amendments	C-169
III.		Revisions to Form 8-K and the Periodic Report Exhibit Requirements	C-169
	A.	Items 1.01 and 5.02 of Form 8-K	C-171
		1. Item 1.01—Entry into a Material Definitive Agreement	C-175
		2. Item 5.02—Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers	C-176
	B.	Extension of Limited Safe Harbor under Section 10(b) and Rule 10b-5 to Item 5.02(e) of Form 8-K and Exclusion of Item 5.02(e) from Form S-3 Eligibility Requirements	C-181
	C.	General Instruction D to Form 8-K	C-183
	D.	Foreign Private Issuers	C-183
IV.		Beneficial Ownership Disclosure	C-185
V.		Certain Relationships and Related Transactions Disclosure	C-188
	A.	Transactions with Related Persons	C-190
		1. Broad Principle for Disclosure	C-191
		a. Indebtedness	C-196
		b. Definitions	C-199
		2. Disclosure Requirements	C-203
		3. Exceptions	C-206
	B.	Procedures for Approval of Related Person Transactions	C-213
	C.	Promoters and Control Persons	C-215
	D.	Corporate Governance Disclosure	C-217
	E.	Treatment of Specific Types of Issuers	C-230
		1. Small Business Issuers	C-230
		2. Foreign Private Issuers	C-234
		3. Registered Investment Companies	C-234

F.	Conforming Amendments	C-236
1.	Regulation Blackout Trading Restriction	C-236
2.	Rule 16b-3 Non-Employee Director Definition	C-238
3.	Other Conforming Amendments	C-242
VI.	Plain English Disclosure	C-245
VII.	Transition	C-250
VIII.	Paperwork Reduction Act	
A.	Background	
B.	Summary of Information Collections	
C.	Summary of Comment Letters and Revisions to Proposals	
D.	Revisions to Paperwork Reduction Act Burden Estimates	
1.	Securities Act Registration Statements, Exchange Act Registration Statements, Exchange Act Annual Reports, Proxy Statements and Information Statements	
2.	Exchange Act Current Reports	
IX.	Cost-Benefit Analysis	
A.	Background	
B.	Summary of Amendments	
C.	Benefits	
D.	Costs	
X.	Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation	
XI.	Final Regulatory Flexibility Act Analysis	
A.	Need for the Rules and Amendments	
B.	Significant Issues Raised by Public Comment	
C.	Small Entities Subject to the Rules and Amendments	
D.	Reporting, Recordkeeping and Other Compliance Requirements	
E.	Agency Action to Minimize Effect on Small Entities	
XII.	Statutory Authority and Text of the Amendments	

I. Background and Overview

On January 27, 2006, we proposed revisions to our rules governing disclosure of executive compensation, director compensation, related party transactions, director independence and other corporate governance matters, current reporting regarding compensation arrangements and beneficial ownership.⁴³ We received over 20,000 comment letters in response to our proposals. In general, commenters supported the proposals and their objectives. We are adopting the rules and amendments substantially as proposed, with certain modifications to address a number of points that commenters raised.

The amendments to the compensation disclosure rules are intended to provide investors with a clearer and more complete picture of compensation to principal executive officers, principal financial officers, the other highest paid executive officers and directors. Closely related to executive officer and director compensation is the participation by executive officers, directors, significant shareholders and other related persons in financial transactions and relationships with the company. We are also adopting revisions to our disclosure rules regarding related party transactions and director independence and board committee functions.

Finally, some compensation arrangements must be disclosed under our rules relating to current reports on Form 8-K. Accordingly, we are reorganizing

⁴³ Executive Compensation and Related Party Disclosure, Release No. 33-8655 (Jan. 27, 2006) [71 FR 6542] (the “Proposing Release”).

and more appropriately focusing our requirements on the type of compensation information that should be disclosed on a real-time basis.

Since the enactment of the Securities Act and the Exchange Act,⁴⁴ the Commission has on a number of occasions explored the best methods for communicating clear, concise and meaningful information about executive and director compensation and relationships with the company.⁴⁵ The Commission

⁴⁴ Initially, disclosure requirements regarding executive and director compensation were set forth in Schedule A to the Securities Act and Section 12(b) of the Exchange Act, which list the type of information to be included in Securities Act and Exchange Act registration statements. Item 14 of Schedule A called for disclosure of the “remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly, during the past year and ensuing year to (a) the directors or persons performing similar functions, and (b) its officers and other persons, naming them wherever such remuneration exceeded \$25,000 during any such year.” Section 12(b) of the Exchange Act as enacted required disclosure of “(D) the directors, officers, and underwriters, and each security holder of record holding more than 10 per centum of any class of any equity security of the issuer (other than an exempted security), their remuneration and their interests in the securities of, and their material contracts with, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer;” and “(E) remuneration to others than directors and officers exceeding \$20,000 per annum.”

⁴⁵ In 1938, the Commission promulgated its first executive and director compensation disclosure rules for proxy statements. Release No. 34-1823 (Aug. 11, 1938) [3 FR 1991]. At different times thereafter, the Commission has adopted rules mandating narrative, tabular, or combinations of narrative and tabular disclosure as the best method for presenting compensation disclosure in a manner that is clear and useful to investors. See, e.g., Release No. 34-3347 (Dec. 18, 1942) [7 FR 10653] (introducing first tabular disclosure); Release No. 34-4775 (Dec. 11, 1952) [17 FR 11431] (introducing separate table for pensions and deferred remuneration); Uniform and Integrated Reporting Requirements: Management Remuneration, Release No. 33-6003 (Dec. 4, 1978) [43 FR 58151] (the “1978 Release”) (expanding tabular disclosure to cover all forms of compensation); and Disclosure of Executive Compensation, Release No. 33-6486 (Sept. 23, 1983) [48 FR 44467] (the “1983 Release”) (limiting tabular disclosure to cash remuneration).

also has had to reconsider executive and director compensation disclosure requirements in light of changing trends in executive compensation. Most recently, in 1992, the Commission adopted amendments to the disclosure rules that eschewed a mostly narrative disclosure approach adopted in 1983 in favor of formatted tables that captured all compensation, while categorizing the various elements of compensation and promoting comparability from year to year and from company to company.⁴⁶

We believe this tabular approach remains a sound basis for disclosure. However, especially in light of the complexity of and variations in compensation programs, the very formatted nature of those rules has resulted in too many cases in disclosure that does not inform investors adequately as to all elements of compensation. In those cases investors may lack material information that we believe they should receive.

We are thus today adopting an approach that builds on the strengths of the requirements adopted in 1992 rather than discarding them. However, today's amendments do represent a thorough rethinking of the rules in place prior to these amendments, combining a broader-based tabular presentation with improved narrative disclosure supplementing the tables. This approach will promote clarity and completeness of numerical information through an

⁴⁶ Executive Compensation Disclosure, Release No. 33-6962 (Oct. 16, 1992) [57 FR 48126] (the "1992 Release"); See also Executive Compensation Disclosure; Securityholder Lists and Mailing Requests, Release No. 33-7032 (Nov. 22, 1993) [58 FR 63010] (the "1993 Release"), at Section II.

improved tabular presentation, continue to provide the ability to make comparisons using tables, and call for material qualitative information regarding the manner and context in which compensation is awarded and earned.

The amendments that we publish today require that all elements of compensation must be disclosed. We also have sought to structure the revised requirements sufficiently broadly so that they will continue to operate effectively as new forms of compensation are developed in the future.

Under the amendments, compensation disclosure will now begin with a narrative providing a general overview. Much like the overview that we have encouraged companies to provide with their Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A),⁴⁷ the new Compensation Discussion and Analysis calls for a discussion and analysis of the material factors underlying compensation policies and decisions reflected in the data presented in the tables. This overview addresses in one place these factors with respect to both the separate elements of executive compensation and executive compensation as a whole. We are adopting the overview substantially as proposed, but, in response to comments, we are requiring a

⁴⁷ Item 303 of Regulation S-K [17 CFR 229.303]. See also Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33-8350 (Dec. 19, 2003) [68 FR 75055], at Section III.A.

separate report of the compensation committee similar to the report required of the audit committee,⁴⁸ which will be considered furnished and not filed.⁴⁹

Following the Compensation Discussion and Analysis, we have organized detailed disclosure of executive compensation into three broad categories:

- compensation with respect to the last fiscal year (and the two preceding fiscal years), as reflected in an amended Summary Compensation Table that presents compensation paid currently or deferred (including options, restricted stock and similar grants) and compensation consisting of current earnings or awards that are part of a plan, and as supplemented by a table providing back-up information for certain data in the Summary Compensation Table;
- holdings of equity-related interests that relate to compensation or are potential sources of future gains, with a focus on compensation-related equity interests that were awarded in prior years and are “at risk,”

⁴⁸ The Audit Committee Report, required by Item 306 of Regulations S-B [17 CFR 228.306] and S-K [17 CFR 229.306] prior to these amendments, will now be required by Item 407(d) of Regulations S-B and S-K.

⁴⁹ The Compensation Committee Report that we adopt today is not deemed to be “soliciting material” or to be “filed” with the Commission or subject to Regulation 14A or 14C [17 CFR 240.14a-1 et seq. or 240.14c-1 et seq.], other than as specified, or to the liabilities of Section 18 of the Exchange Act [15 U.S.C. 78r], except to the extent a company specifically requests that the report be treated as filed or as soliciting material or specifically incorporates it by reference into a filing under the Securities Act or the Exchange Act, other than by incorporating by reference the report from a proxy or information statement into the Form 10-K. Instructions 1 and 2 to Item 407(e)(5).

whether or not these interests are in-the-money, as well as recent realization on these interests, such as through vesting of restricted stock or the exercise of options and similar instruments; and

- retirement and other post-employment compensation, including retirement and deferred compensation plans, other retirement benefits and other post-employment benefits, such as those payable in the event of a change in control.

We are requiring improved tabular disclosure for each of the above three categories and appropriate narrative disclosure that provides material information necessary to an understanding of the information presented in the individual tables.⁵⁰ We have made some modifications from the proposal in response to comments.

In Release No. 33-8735, published elsewhere in the proposed rules section of this issue of the Federal Register and for which comments are due on or before October 23, 2006, we also solicit additional comments regarding the proposed disclosure requirement of the total compensation and job description of up to an additional three most highly compensated employees who are not executive officers or directors but who earn more than the named executive

⁵⁰ This narrative disclosure, together with the Compensation Discussion and Analysis noted above, will replace the narrative discussion that was required in the Board Compensation Report on Executive Compensation prior to these amendments. The narrative disclosure, along with the rest of the amended executive officer and director compensation disclosure, other than the new Compensation Committee Report, will be company disclosure filed with the Commission.

officers. In particular, we have specific requests for comment as to whether the proposal should be modified to apply only to large accelerated filers who would disclose the total compensation for the most recent fiscal year and a description of the job position for each of their three most highly compensated employees whose total compensation is greater than any of the named executive officers, whether or not such persons are executive officers. Under this approach, employees who have no responsibility for significant policy decisions within either the company, a significant subsidiary or a principal business unit, division, or function, would be excluded from the determination of the three most highly compensated employees and no disclosure regarding them would be required.

Finally, we are adopting a director compensation table that is similar to the amended Summary Compensation Table.⁵¹

We also highlight in the release that the principles-based disclosure rules we are adopting today, including but not limited to the Compensation Discussion and Analysis section, may require disclosure of various aspects of a company's use of options in compensating its executives and directors, including any programs, plans or practices a company may have with regard to the timing or dating of option grants.

⁵¹ We had proposed similar amendments, which we did not act on, regarding director compensation in 1995. Streamlining and Consolidation of Executive and Director Compensation Disclosure, Release No. 33-7184 (Aug. 6, 1995) [60 FR 35633] (the "1995 Release"), at Section I.B.

We are also modifying, as proposed, some of the Form 8-K requirements regarding compensation. Form 8-K requires disclosure within four business days of the entry into, amendment of, and termination of, material definitive agreements that are entered into outside of the ordinary course of business. Under our definition of material contracts in Item 601 of Regulation S-K for the purposes of determining what exhibits are required to be filed, many agreements regarding executive compensation are deemed to be material agreements entered into outside the ordinary course. When, in 2004, for purposes of consistency, we looked to this definition for use in the Form 8-K requirements, we incorporated all of these executive compensation agreements into the Form 8-K disclosure requirements. Therefore, many agreements regarding executive compensation, including some not related to named executive officers, have been required to be disclosed on Form 8-K within four business days of the applicable triggering event. Consistent with our intent that Form 8-K capture only events that are unquestionably or presumptively material to investors, we are today amending the Form 8-K requirements substantially as proposed.

We believe that executive and director compensation is closely related to financial transactions and relationships involving companies and their directors, executive officers and significant shareholders and respective immediate family members. Disclosure requirements regarding these matters

historically have been interconnected, given that relationships among these parties and the company can include transactions that involve compensation or analogous features. Such disclosure also represents material information in evaluating the overall relationship with a company’s executive officers and directors. Further, this disclosure provides material information regarding the independence of directors. The related party transaction disclosure requirements were adopted piecemeal over the years and were combined into one disclosure requirement beginning in 1982.⁵² In light of many developments since then, including the increasing focus on corporate governance and director independence, we believe it is necessary to revise our requirements. Today’s amendments update, clarify and somewhat expand the related party transaction disclosure requirements. The amendments fold into the disclosure requirements for related party transactions what had been a separate disclosure requirement regarding indebtedness of management and directors.⁵³ Further, we are adopting a requirement that calls for a narrative explanation of the independence status of directors under a company’s director independence policies. We intend this requirement to be consistent with recent significant changes to the listing standards of the nation’s principal securities trading

⁵² Disclosure of Certain Relationships and Transactions Involving Management, Release No. 33-6441 (Dec. 2, 1982) [47 FR 55661] (the “1982 Release”).

⁵³ Prior to these amendments, related party transactions were disclosed under Item 404(a) of Regulations S-K and S-B, while indebtedness was separately required to be disclosed under Item 404(c) of Regulation S-K.

markets.⁵⁴ We also are consolidating this and other corporate governance disclosure requirements regarding director independence and board committees, including new disclosure requirements about the compensation committee, into a single expanded disclosure item.⁵⁵

In order to ensure that these amended requirements result in disclosure that is clear, concise and understandable for investors, we are adding Rules 13a-20 and 15d-20 under the Exchange Act to require that most of the disclosure provided in response to the amended items be presented in plain English. This extends the plain English requirements currently applicable to portions of registration statements under the Securities Act to the disclosure required under the items that we have amended, which impose requirements for Exchange Act reports and proxy or information statements incorporated by reference into those reports.

Finally, we are amending our beneficial ownership disclosure requirements as proposed to require disclosure of shares pledged by named executive officers, directors and director nominees, as well as directors' qualifying shares.⁵⁶

⁵⁴ See, e.g., NASD and NYSE Rulemaking: Relating to Corporate Governance, Release No. 34-48745 (Nov. 4, 2003) [68 FR 64154] (the "NASD and NYSE Listing Standards Release"). This new requirement will replace the disclosure requirement about director relationships that could affect independence specified in Item 404(b) of Regulation S-K prior to these amendments.

⁵⁵ New Item 407 of Regulations S-K and S-B.

⁵⁶ Item 403(b) of Regulations S-K and S-B.

II. Executive and Director Compensation Disclosure

Executive and director compensation disclosure has been required since 1933, and the Commission has had disclosure rules in this area applicable to proxy statements since 1938. In 1992, the Commission proposed and adopted substantially revised rules that embody our current requirements.⁵⁷ In doing so, the Commission moved away from narrative disclosure and back to using tables that permit comparability from year to year and from company to company. As we noted in the Proposing Release, although the reasoning behind this approach remains fundamentally sound, significant changes are appropriate. Much of the concern with the tables adopted in 1992 had also been their strength: they were highly formatted and rigid.⁵⁸ Thus, information not specifically called for in the tables had sometimes not been provided. For example, the highly formatted and specific approach had led some to suggest that items that did not fit squarely within a “box” specified by the rules need not have been disclosed.⁵⁹ As another example, because the tables did not call

⁵⁷ 1992 Release.

⁵⁸ See, e.g., Council of Institutional Investors’ Discussion Paper on Executive Pay Disclosure, Executive Compensation Disclosure: How it Works Now, How It Can Be Improved, at 11 (available at www.cii.org/site_files/pdfs/CII%20pay%20primer%20edited.pdf).

⁵⁹ For examples, see, e.g., The Corporate Counsel (Sept.–Oct. 2005) at 6-7; The Corporate Counsel (Sept.– Oct. 2004) at 7; but see Alan L. Beller, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission, Remarks Before Conference of the NASPP, The Corporate Counsel and the Corporate Executive (Oct. 20, 2004), available at www.sec.gov/news/speech/spch102004alb.htm.

for a single figure for total compensation, that information had generally not been provided prior to today's amendments, although there had been considerable commentary indicating that a single total figure is high on the list of information that some investors wish to have. To preserve the strengths of the former approach and build on them, we are taking several steps in adopting amendments to Item 402,⁶⁰ substantially as we proposed:

- first, we are retaining the tabular approach to provide clarity and comparability while improving the tabular disclosure requirements;
- second, we are confirming that all elements of compensation must be included in the tables;
- third, we are providing a format for the amended Summary Compensation Table that requires disclosure of a single figure for total compensation; and
- finally, we are requiring narrative disclosure comprising both a general discussion and analysis of compensation and specific material information regarding tabular items where necessary to an understanding of the tabular disclosure.

⁶⁰ The discussion that follows focuses on amendments to Item 402 of Regulation S-K, with Section II.D.1. explaining the different amendments to Item 402 of Regulation S-B. References throughout the following discussion are to Items of Regulation S-K, unless otherwise indicated.

A. Options Disclosure

1. Background

Many companies use stock options to compensate their employees, including executives. In a simple stock option, a company may grant an employee the right to purchase a specified number of shares of the company's stock at a specific price, called the exercise price and usually set as the market price of the company's stock on the grant date. While some options require no future service from the employee, most include vesting provisions, such that the employee does not earn the option unless he remains employed by the company for a specified period of service. Often a company will grant a specific number of options that will then vest proportionately in staggered increments over a set time period. For example, if the grant vests at a rate of 20% per year for five years, the option for the last 20% is earned by the employee's provision of five years of services. Most options become exercisable upon vesting and remain exercisable until their stated expiration. Generally, upon termination of the employment relationship, however, an employee loses unvested options, and has a limited term (e.g., 90 days) to exercise vested options.⁶¹

Options have most often been issued "at-the-money" – i.e., with an exercise price equal to the market price of the underlying stock at the date of

⁶¹ More complex stock options can include provisions that alter the terms of the instrument based on whether performance or other targets are met.

grant – but may also be issued either “in-the-money” – i.e., with an exercise price below the market price of the underlying stock at the date of grant – or “out-of-the-money” – i.e., with an exercise price above the market price of the underlying stock at the date of grant. An option holder benefits only when the company’s stock price is above the exercise price when the employee exercises the option. Hence, setting a lower exercise price increases the value of the option.

As some commentators have observed, using options for compensation purposes may have advantages. These commentators point out that, unlike salary and bonus compensation, stock option compensation does not require the payment of cash by the company, and therefore can be particularly attractive to companies for which cash is a scarce resource. Stock option compensation may also provide an incentive for employees to work to increase the company’s stock price. Additionally, some companies may be able to use stock option compensation to help retain employees, because an employee with unvested in-the-money options forfeits their potential value if he leaves the company’s employ.

At the same time, other commentators stress that option compensation is not without costs and disadvantages. Options granted to employees, if ultimately exercised with the resulting issuance of the underlying stock, give rise to a dilution of the interests in the company held by existing stockholders.

Options that are not in-the-money may not provide a retention benefit, and some managers believe that options that fall out-of-the-money (or are “underwater”) not only fail to motivate employees but, in fact, can result in poor employee morale and resultant turnover, especially at companies where option compensation is an important component of total compensation. In addition, options with shorter vesting periods or longer term options approaching their vesting dates may provide incentives to employees to focus on increasing the company’s stock price in the short term rather than working toward achieving longer term business goals and objectives that would enable the company to achieve and sustain future success.

The Commission does not seek to encourage or discourage the use of stock options or any other particular form of executive compensation. The federal securities laws, however, do require full and fair disclosure of compensation information to the extent material or required by Commission rule.

2. Required Option Disclosures

The Commission acknowledged the importance to investors of proper disclosure of executives’ option compensation throughout the Proposing Release. The existing body of rules regarding disclosure of executive stock option grants, however, has not previously contained a line-item requirement with respect to information regarding programs, plans or practices concerning

the selection of stock option grant dates or exercise prices.⁶² The disclosure we proposed in January, along with related disclosure we also adopt today, should provide investors with more information about option compensation.⁶³ We have summarized below the various provisions of the rules that we adopt today that relate to options disclosure.⁶⁴

⁶² Our existing rules for companies' disclosure do prohibit material misrepresentations of option grant dates, as well as any resulting material misstatements of affected financial statements. Companies are also required under our existing rules to disclose any material information that may be necessary to make their other disclosures, in the light of the circumstances under which they are made, not misleading. See, e.g., Rule 12b-20 under the Exchange Act [17 CFR 240.12b-20].

⁶³ We note that Exchange Act Rule 16a-3 [17 CFR 240.16a-3] sets forth the general reporting requirements under Exchange Act Section 16(a). Prior to August 2002, a number of transactions between an issuer and its officers or directors – such as the granting of options – were required to be disclosed following the end of the fiscal year in which the transaction took place although individuals could disclose those transactions earlier if they chose to. In implementing Section 403(a) of the Sarbanes-Oxley Act of 2002, in August 2002, the Commission required immediate disclosure of these transactions for the first time. As a result, since August 2002, grants, awards and other acquisitions of equity-based securities from the issuer, including those pursuant to employee benefit plans (which were previously reportable on an annual basis on Form 5) have been required to be reported by officers and directors on Form 4 within two business days. Ownership Reports and Trading by Officers, Directors and Principal Security Holders, Release No. 34-46421 (Aug. 27, 2002) [56 FR 56461] at Section II.B.

⁶⁴ We also note that under our rules regarding disclosure of director compensation, the concerns and considerations for disclosure of option timing or dating practices in the executive compensation realm would also apply when the recipients of the stock option grants are directors of the company.

a. Tabular Disclosures

The following disclosures are required in the tables we adopt today. These provisions are discussed in more detail later in the section relating to each particular table.

- As proposed and adopted, grants of stock options will be disclosed in the Summary Compensation Table at their fair value on the date of grant, as determined under FAS 123R. By basing the executive compensation disclosure on the full grant date fair value computed in accordance with FAS 123R, companies will give shareholders an accurate picture of the value of options at the time they are actually granted to the highest-paid executive officers.⁶⁵
- A separate table including disclosure of equity awards, the Grants of Plan-Based Awards Table, requires disclosure of the grant date as determined pursuant to FAS 123R.⁶⁶ The grant date is generally considered the day the decision is made to award the option as long as recipients of the award are notified promptly. Even if the option's exercise price is set based on trading prices as of an earlier date or dates, the grant date does not change.

⁶⁵ Item 402(c)(2)(vi).

⁶⁶ Item 402(d)(2)(ii) and Item 402(a)(6)(iv).

- If the exercise price is less than the closing market price of the underlying security on the date of the grant, a separate, adjoining column would have to be added to this table showing that market price on the date of the grant.⁶⁷
- If the grant date is different from the date the compensation committee or full board of directors takes action or is deemed to take action to grant an option, a separate, adjoining column would have to be added to this table showing the date the compensation committee or full board of directors took action or was deemed to take action to grant the option.⁶⁸

Further, if the exercise or base price of an option grant is not the closing market price per share on the grant date, we require a description of the methodology for determining the exercise or base price.⁶⁹

b. Compensation Discussion and Analysis

Companies will also be required to address matters relating to executives' option compensation in the new Compensation Discussion and Analysis section, particularly as they relate to the timing and pricing of stock option grants. Without being an exhaustive list, several of the examples provided in Item 402(b)(2) illustrate how these types of issues and questions might be covered in a company's disclosure. For example, Item 402(b)(2)(iv)

⁶⁷ Item 402(d)(2)(vii).

⁶⁸ Item 402(d)(2)(ii).

⁶⁹ Instruction 3 to Item 402(d).

shows that how the determination is made as to when awards are granted could be required disclosure. This example was included in part to note that material information to be disclosed under Compensation Discussion and Analysis may include the reasons a company selects particular grant dates for awards, such as for stock options. Similarly, other examples we provide in Item 402(b)(2) illustrate how the material information to be disclosed under Compensation Discussion and Analysis might need to include the methods a company uses to select the terms of awards, such as the exercise prices of stock options.

i. Timing of Option Grants

We understand that some companies grant options in coordination with the release of material non-public information. If the company had since the beginning of the last fiscal year, or intends to have during the current fiscal year, a program, plan or practice to select option grant dates for executive officers in coordination with the release of material non-public information, the company should disclose that in the Compensation Discussion and Analysis section. For example, a company may grant awards of stock options while it knows of material non-public information that is likely to result in an increase in its stock price, such as immediately prior to a significant positive earnings or product development announcement. Such timing could occur in at least two ways:

- the company grants options just prior to the release of material non-public information that is likely to result in an increase in its stock

price (whether the date of that release of material non-public information is a regular date or otherwise pre-announced, or not); or

- the company chooses to delay the release of material non-public information that is likely to result in an increase in its stock price until after a stock option grant date.

Although the facts would be slightly different, a company also may coordinate its grant of stock options with the release of negative material non-public information. Again, such timing could occur in at least two ways:

- the company delays granting options until after the release of material non-public information that is likely to result in a decrease in its stock price; or
- the company chooses to release material non-public information that is likely to result in a decrease in its stock price prior to an upcoming stock option grant.

The Commission does not express a view as to whether or not a company may or may not have valid and sufficient reasons for such timing of option grants, consistent with a company's own business purposes. Some commentators have expressed the view that following these practices may enable a company to receive more benefit from the incentive or retention effect of options because recipients may value options granted in this manner more highly or because doing so provides an immediate incentive for employee

retention because an employee who leaves the company forfeits the potential value of unvested, in-the-money options. Other commentators believe that timing option grants in connection with the release of material non-public information may unfairly benefit executives and employees.

Regardless of the reasons a company or its board may have, the Commission believes that in many circumstances the existence of a program, plan or practice to time the grant of stock options to executives in coordination with material non-public information would be material to investors and thus should be fully disclosed in keeping with the rules we adopt today. Consistent with principles-based disclosure, companies should consider their own facts and circumstances and include all relevant material information in their corresponding disclosures.⁷⁰ If the company has such a program, plan or practice, the company should disclose that the board of directors or compensation committee may grant options at times when the board or committee is in possession of material non-public information. Companies might also need to consider disclosure about how the board or compensation committee takes such information into account when determining whether and in what amount to make those grants.

⁷⁰ Relevant material information might include disclosure in response to the examples in Item 402(b)(2) in the Compensation Discussion and Analysis section, discussed below.

Although it is not an exhaustive list, there are some elements and questions about option timing to which we believe a company should pay particular attention when drafting the appropriate corresponding disclosure.

- Does a company have any program, plan or practice to time option grants to its executives in coordination with the release of material non-public information?
- How does any program, plan or practice to time option grants to executives fit in the context of the company's program, plan or practice, if any, with regard to option grants to employees more generally?
- What was the role of the compensation committee in approving and administering such a program, plan or practice? How did the board or compensation committee take such information into account when determining whether and in what amount to make those grants? Did the compensation committee delegate any aspect of the actual administration of a program, plan or practice to any other persons?
- What was the role of executive officers in the company's program, plan or practice of option timing?
- Does the company set the grant date of its stock 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, its release of material non-public information for the purpose of affecting the value of executive compensation?

Disclosure would also be required where a company has not previously disclosed a program, plan or practice of timing option grants, but has adopted such a program, plan or practice or has made one or more decisions since the beginning of the past fiscal year to time option grants.

ii. Determination of Exercise Price

Separate from these timing issues, some companies may have a program, plan or practice of awarding options and setting the exercise price based on the stock's price on a date other than the actual grant date. Such a program, plan or practice would also require disclosure, including, as appropriate, in the tables described in II.A.2.a above and in the Compensation Discussion and Analysis section. Again, as with the timing matters discussed above, companies should consider their own facts and circumstances and include all relevant material information in their corresponding disclosures.

Similar to such a practice of setting the exercise price based on a date other than the actual grant date, some companies have provisions in their option plans or have followed practices for determining the exercise price by using formulas based on average prices (or lowest prices) of the company's stock in a period preceding, surrounding or following the grant date. In some

cases these provisions may increase the likelihood that recipients will be granted in-the-money options. As these provisions or practices relate to a material term of a stock option grant, they should be discussed in the Compensation Discussion and Analysis section.

B. Compensation Discussion and Analysis

We are adopting a new Compensation Discussion and Analysis section.⁷¹ As we proposed, this section will be an overview providing narrative disclosure that puts into context the compensation disclosure provided elsewhere.⁷² Commenters generally supported the new Compensation

⁷¹ Item 402(b). In addition to the narrative Compensation Discussion and Analysis, we are amending the rules so that, to the extent material, additional narrative disclosure will be provided following certain tables to supplement the disclosure in the table. See, e.g., Section II.C.3.a., discussing the narrative disclosure to the Summary Compensation Table and the Grants of Plan-Based Awards Table. We are also requiring disclosure of compensation committee procedures and processes as well as information regarding compensation committee interlocks and insider participation in compensation decisions as part of new Item 407 of Regulation S-K. See Section V.D., below.

⁷² See Jeffrey N. Gordon, Executive Compensation: What's the Problem, What's the Remedy? The Case for Compensation Discussion and Analysis, 30 J. Corp. L. 695 (2005) (arguing that the Commission should require proxy disclosure that includes a "Compensation Discussion and Analysis" section that collects and summarizes all the compensation elements for senior executives, providing a "bottom line assessment" of the different compensation elements and an explanation as to why the board thinks such compensation is warranted).

Discussion and Analysis section.⁷³ This overview will explain material elements of the particular company’s compensation for named executive officers by answering the following questions:

- What are the objectives of the company’s compensation programs?
- What is the compensation program designed to reward?
- What is each element of compensation?
- Why does the company choose to pay each element?
- How does the company determine the amount (and, where applicable, the formula) for each element?

⁷³ See, e.g., letters from British Columbia Investment Management Corporation (“BCIMC”); Leo J. Burns (“L. Burns”); CFA Centre for Financial Market Integrity, dated April 13, 2006 (“CFA Centre 1”); Chamber of Commerce of the United States of America (“Chamber of Commerce”); Board of Fire and Police Pension Commissioners of the City of Los Angeles (“F&P Pension Board”); F&C Asset Management; Foley & Lardner LLP (“Foley”); Hermes Investment Management Limited; Governance for Owners USA, Inc. (“Governance for Owners”); International Association of Machinists and Aerospace Workers (“IAM”); Board of Trustees of the International Brotherhood of Electrical Workers Pension Benefit Fund (“IBEW PBF”); International Brotherhood of Teamsters (“Teamsters”); Remuneration Committee of the International Corporate Governance Network; Investment Company Institute (“ICI”); Institutional Shareholder Services (“ISS”); jointly, California Public Employees’ Retirement System, California State Teachers’ Retirement System, Co-operative Insurance Society – UK, F&C Asset Management – UK, Illinois State Board of Investment, London Pensions Fund Authority – UK, New York State Common Retirement Fund, New York City Pension Funds, Ontario Teachers’ Pension Plan, PGGM Investments – Netherlands, Public Sector and Commonwealth Super (PSS/CSS) – Australia, RAILPEN Investments – UK, State Board of Administration (SBA) of Florida, Stichting Pensioenfond ABP – Netherlands, UniSuper Limited – Australia, and Universities Superannuation Scheme – UK (“Institutional Investors Group”); The Pension Boards – United Church of Christ (“PB-UCC”); State of Wisconsin Investment Board; and T. Rowe Price Associates, Inc.

- How do each element and the company’s decisions regarding that element fit into the company’s overall compensation objectives and affect decisions regarding other elements?

As proposed, the second question also asked what the compensation program is designed not to reward. Commenters stated that compensation committees often may not consider this objective in developing compensation programs, expressing concern that the question could generate potentially limitless disclosure that would not add meaning to disclosure of what the compensation program is designed to award.⁷⁴ In response to this concern, we have not included this question in the rule as adopted.

1. Intent and Operation of the Compensation Discussion and Analysis

The purpose of the Compensation Discussion and Analysis disclosure is to provide material information about the compensation objectives and policies for named executive officers without resorting to boilerplate disclosure. The Compensation Discussion and Analysis is intended to put into perspective for investors the numbers and narrative that follow it.

As described in the Proposing Release and as adopted, the Compensation Discussion and Analysis requirement is principles-based, in that

⁷⁴ See, e.g., letters from American Bar Association, Committee on Federal Regulation of Securities (“ABA”); Committee on Securities Regulation of the New York City Bar (“NYCBA”); and WorldatWork (“WorldatWork”).

it identifies the disclosure concept and provides several illustrative examples. Some commenters suggested that a principles-based approach would be better served without examples, on the theory that “laundry lists” would lead to boilerplate.⁷⁵ Other commenters expressed the opposite view – that more specific description of required disclosure topics would more effectively elicit meaningful disclosure.⁷⁶

As we explained in the Proposing Release, overall we designed the proposals to state the requirements sufficiently broadly to continue operating effectively as future forms of compensation develop, without suggesting that items that do not fit squarely within a “box” specified by the rules need not be disclosed. We believe that the adopted principles-based Compensation Discussion and Analysis, utilizing a disclosure concept along with illustrative examples, strikes an appropriate balance that will effectively elicit meaningful disclosure, even as new compensation vehicles develop over time.

We wish to emphasize, however, that the application of a particular example must be tailored to the company and that the examples are non-exclusive. We believe using illustrative examples helps to identify the types of disclosure that may be applicable. A company must assess the

⁷⁵ See, e.g., letter from Curt Kollar (“C. Kollar”).

⁷⁶ See, e.g., letters from CFA Centre 1 and Hewitt Associates LLC (“Hewitt”).

materiality to investors of the information that is identified by the example in light of the particular situation of the company. We also note that in some cases an example may not be material to a particular company, and therefore no disclosure would be required. Because the scope of the Compensation Discussion and Analysis is intended to be comprehensive, a company must address the compensation policies that it applies, even if not included among the examples. The Compensation Discussion and Analysis should reflect the individual circumstances of a company and should avoid boilerplate disclosure.

We have adopted, substantially as proposed, the following examples of the issues that would potentially be appropriate for the company to address in given cases in the Compensation Discussion and Analysis:

- policies for allocating between long-term and currently paid out compensation;
- policies for allocating between cash and non-cash compensation, and among different forms of non-cash compensation;
- for long-term compensation, the basis for allocating compensation to each different form of award;
- how the determination is made as to when awards are granted, including awards of equity-based compensation such as options;
- what specific items of corporate performance are taken into account in setting compensation policies and making compensation decisions;

- how specific elements of compensation are structured and implemented to reflect these items of the company's performance and the executive's individual performance;
- the factors considered in decisions to increase or decrease compensation materially;
- how compensation or amounts realizable from prior compensation are considered in setting other elements of compensation (e.g., how gains from prior option or stock 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 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.

At the suggestion of a commenter,⁷⁷ we have expanded the example addressing how specific forms of compensation are structured to reflect company performance to also address implementation. We have made a similar change with regard to the example regarding the executive's individual performance.⁷⁸ As adopted, this example includes not only whether discretion can be exercised (either to award compensation absent attainment of the relevant performance goal(s) or to reduce or increase the size of any award or payout), as proposed, but also whether such discretion has been exercised. By doing this, we move to the Compensation Discussion and Analysis overview an example of a material factor that had been proposed for the narrative disclosure that follows the Summary Compensation Table,⁷⁹ and expand its scope so that it is no longer limited to non-equity incentive plans. Because of the policy significance of decisions to waive or modify performance goals, we believe that they are more appropriately discussed in the Compensation Discussion and Analysis.

As discussed in Section II.A. above, a company's policies, programs and practices regarding the award of stock options and other equity-based instruments to compensate executives may require disclosure and discussion in

⁷⁷ See letter from ABA.

⁷⁸ We have also reordered this example, so it is clearer that the items of company performance referenced are the ones noted in the immediately preceding example.

⁷⁹ This example had been proposed as Item 402(f)(1)(iv).

the Compensation Discussion and Analysis. As with all disclosure in the Compensation Discussion and Analysis, a company must evaluate the specific facts and circumstances of its grants of options and equity-based instruments and provide such disclosure if it supplies material information about the company's compensation objectives and policies for named executive officers.

Further in response to comment,⁸⁰ we have revised the example addressing how the determination is made as to when awards are granted so that it is not limited to equity-based compensation, as was proposed, but we clarify in the rule as adopted that it would include equity-based compensation, such as stock options.⁸¹ Regarding the example noting the impact of accounting and tax treatments of a particular form of compensation, some commenters urged that companies be required to continue to disclose their Internal Revenue Code Section 162(m) policy.⁸² The adoption of this example should not be construed to eliminate this discussion. Rather, this example indicates more broadly that any tax or accounting treatment, including but not limited to Section 162(m), that is material to the company's compensation policy or

⁸⁰ See letter from ABA.

⁸¹ This example is discussed in more detail above in Section II.A., the discussion of stock option disclosure.

⁸² See, e.g., letters from Buck Consultants; Frederic W. Cook & Co., Inc., dated March 9, 2006 ("Frederic W. Cook & Co."); Thomas Rogers; and WorldatWork. The Commission has construed the Board Compensation Committee Report on Executive Compensation (which had been required to be furnished by Item 402(k) prior to these amendments) to require discussion of this policy. 1993 Release at Section III.

decisions with respect to a named executive officer is covered by Compensation Discussion and Analysis. Tax consequences to the named executive officers, as well as tax consequences to the company, may fall within this example.

In addition, we have followed commenters' recommendations to add the following specific examples addressing additional factors:

- company policies and decisions regarding the adjustment or recovery of awards or payments if the relevant company performance measures upon which they are based are restated or otherwise adjusted in a manner that would reduce the size of an award or payment;⁸³ and
- the basis for selecting particular events as triggering payment with respect to post-termination agreements (e.g., the rationale for providing a single trigger for payment in the event of a change-in-control).⁸⁴

⁸³ See, e.g., letters from Amalgamated Bank Long-View Funds (“Amalgamated”); CFA Centre 1; and Council of Institutional Investors, dated March 29, 2006 (“CII”). Section 304 of the Sarbanes-Oxley Act of 2002 [codified at 15 U.S.C. 7243] provides that if a company is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws, the principal executive officer and principal financial officer of the company shall reimburse the company for any bonus or other incentive-based or equity-based compensation received by that person from the company during the 12-month period following the first public issuance or filing with the Commission (whichever first occurs) of the financial document embodying such financial reporting requirement, and any profits realized from the sale of securities of the company during that 12-month period. This example would not necessarily be limited to policies covering only situations contemplated by Section 304.

⁸⁴ See letter from Anonymous, dated April 10, 2006.

Commenters also requested clarification as to whether Compensation Discussion and Analysis is limited to compensation for the last fiscal year, like the former Board Compensation Committee Report on Executive Compensation that was required prior to these amendments.⁸⁵ While the Compensation Discussion and Analysis must cover this subject, the Compensation Discussion and Analysis may also require discussion of post-termination compensation arrangements, on-going compensation arrangements, and policies that the company will apply on a going-forward basis.⁸⁶ Compensation Discussion and Analysis should also cover actions regarding executive compensation that were taken after the last fiscal year's end. Actions that should be addressed might include, as examples only, the adoption or implementation of new or modified programs and policies or specific decisions that were made or steps that were taken that could affect a fair understanding of the named executive officer's compensation for the last fiscal year. Moreover, in some situations it may be necessary to discuss prior years in order to give context to the disclosure provided.

The Compensation Discussion and Analysis should be sufficiently precise to identify material differences in compensation policies and decisions

⁸⁵ See, e.g., letters from Buck Consultants; Frederic W. Cook & Co.; and Mercer Human Resource Consulting, Inc., dated April 10, 2006 ("Mercer").

⁸⁶ Forward looking information in the Compensation Discussion and Analysis will fall within the safe harbors for disclosure of such information. See, e.g., Securities Act Section 27A [15 U.S.C. 77z-2] and Exchange Act Section 21E [15 U.S.C. 78u-5].

for individual named executive officers where appropriate. Where policies or decisions are materially similar, officers can be grouped together. Where, however, the policy or decisions for a named executive officer are materially different, for example in the case of a principal executive officer, his or her compensation should be discussed separately.

2. Instructions to Compensation Discussion and Analysis

We are adopting instructions to make clear that the Compensation Discussion and Analysis should focus on the material principles underlying the company's executive compensation policies and decisions, and the most important factors relevant to analysis of those policies and decisions, without using boilerplate language or repeating the more detailed information set forth in the tables and related narrative disclosures that follow. The instructions also provide that the Compensation Discussion and Analysis should concern the information contained in the tables and otherwise disclosed.⁸⁷ Because this section is intended to provide meaningful analysis, it may specifically refer to the tabular or other disclosures where helpful to make the discussion more robust. A commenter raised a concern that the instruction not to repeat information set forth in the other disclosures might somehow limit the disclosure made in Compensation Discussion and Analysis.⁸⁸ We have

⁸⁷ Instruction 2 to Item 402(b).

⁸⁸ See letter from ABA.

revisited this instruction, which is intended to encourage analysis and to forestall mere repetition of the information in the tables, to provide that repetition and boilerplate language should be avoided. The instruction does not prohibit or discourage discussion of that specific information.

We are adopting an instruction to make clear that, as was the case with the Board Compensation Committee Report on Executive Compensation required prior to the adoption of these amendments, companies are not required to disclose target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm to the company.⁸⁹ Some commenters objected that this instruction would impair the quality of information disclosed by making it difficult to assess the link between pay and company performance, and suggested that competitive harm would be mitigated if disclosure were required on an after-the-fact basis, after the performance related to the award is measured.⁹⁰ Different commenters stated that performance targets often are based on confidential, competitively sensitive

⁸⁹ Instruction 4 to Item 402(b). Prior to these amendments, Instruction 2 to Item 402(k) had provided a similar exclusion for this type of information.

⁹⁰ See, e.g., letters from American Federation of Labor and Congress of Industrial Organizations, dated April 5, 2006 (“AFL-CIO”); CII; Governance for Owners; IAM; and The Honorable Barney Frank, United States Representative (MA).

business plans, and that requiring disclosure could encourage the use of more generic targets that could hinder a company's goal of pay-for-performance.⁹¹ Other commenters observed that companies rarely use a performance metric for a single year or plan cycle, but select measures because of their relevance to the company's business strategy over several years, so that even disclosure on an after-the-fact basis could reveal proprietary business information that would be useful to competitors.⁹² Having considered these comments, we remain persuaded that this disclosure, even on an after-the-fact basis could pose significant risk of competitive harm and we are therefore not requiring it in those cases in which the factors or criteria considered involve confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm to the company.

As noted in the Proposing Release, in applying this instruction, we intend the standard for companies to use in making a determination that this information does not have to be disclosed to be the same one that would apply when companies request confidential treatment of confidential trade secrets or confidential commercial or financial information that otherwise is required to be disclosed in registration statements, periodic reports and other documents

⁹¹ See, e.g., letter from Sullivan & Cromwell LLP ("Sullivan").

⁹² See, e.g., letter from Mercer.

filed with us.⁹³ Under this approach, to the extent a performance target has otherwise been disclosed publicly, non-disclosure pursuant to this instruction would not be permitted. To make these standards clearer and respond to commenters' concerns that companies may exploit the instruction to exclude information in inappropriate circumstances, we are revising this instruction as adopted to clearly apply the same standard as for confidential treatment requests. Companies will not be required, however, to submit confidential treatment requests in order to rely on the instruction.⁹⁴ To mitigate commenters' concerns that omission of specific performance targets would impair the quality of disclosure, the instruction requires additional disclosure regarding the significance of the undisclosed target. Specifically, if the company uses target levels for specific quantitative or qualitative performance-related factors, or other factors or criteria that it does not disclose in reliance on the instruction, the company must discuss how difficult it will be for the executive or how likely it will be for the company to achieve the undisclosed

⁹³ See Securities Act Rule 406 [17 CFR 230.406], Exchange Act Rule 24b-2 [17 CFR 240.24b-2], Exemption 4 of the Freedom of Information Act [5 U.S.C. 552(b)(4)], and Rule 80(b)(4) promulgated under the Freedom of Information Act [17 CFR 200.80(b)(4)].

⁹⁴ While the instruction adopted today, like the instruction that it replaces, does not require a company to seek confidential treatment under the procedures in Securities Act Rule 406 and Exchange Act Rule 24b-2 with regard to the exclusion of the information from the disclosure provided in response to this item, the standards specified in Securities Act Rule 406, Exchange Act Rule 24b-2, Exemption 4 of the Freedom of Information Act and Rule 80(b)(4) promulgated under the Freedom of Information Act still apply and are subject to review and comment by the staff of the Commission.

target levels or other factors. In addition, as discussed below, the Compensation Discussion and Analysis will be considered soliciting material and will be filed with the Commission. This disclosure will be subject to review by the Commission and its staff. Therefore, if a company uses target levels that otherwise would need to be disclosed but does not disclose them in reliance on the instruction, the company may be required to demonstrate to the Commission or its staff that the particular factors or criteria involve confidential trade secrets or confidential commercial or financial information and why disclosure would result in competitive harm. If the Commission or its staff ultimately determines that a company has not met these standards, then the company will be required to disclose publicly the factors or criteria used. In response to a commenter's concern,⁹⁵ we have also added an instruction to clarify that disclosure of a target level that applies a non-GAAP financial measure will not be subject to the general rules regarding disclosure of non-GAAP financial measures but the company must disclose how the number is calculated from the audited financial statements.⁹⁶

One commenter stated that the Compensation Discussion and Analysis of a new public company should be permitted to be a prospective-only

⁹⁵ See letter from ABA.

⁹⁶ Instruction 5 to Item 402(b). The non-GAAP financial measure provisions are specified in Regulation G [17 CFR 244.100 - 102], Item 10(e) of Regulation S-K [17 CFR 229.10] and Item 10(h) of Regulation S-B [17 CFR 228.10].

discussion.⁹⁷ While we agree the most significant disclosure in that situation may be future plans, we do not believe a prospective-only discussion is appropriate. Instead, companies may emphasize the new plans or policies.

3. “Filed” Status of Compensation Discussion and Analysis and the “Furnished” Compensation Committee Report

We proposed that the Compensation Discussion and Analysis would be considered a part of the proxy statement and any other filing in which it was included. Unlike the Board Compensation Committee Report on Executive Compensation that was required prior to these amendments, we proposed that the Compensation Discussion and Analysis would be soliciting material and would be filed with the Commission. Therefore, it would be subject to Regulation 14A or 14C and to the liabilities of Section 18 of the Exchange Act.⁹⁸ In addition, to the extent that the Compensation Discussion and Analysis and any of the other disclosure regarding executive officer and director compensation or other matters are included or incorporated by reference into a periodic report, the disclosure would be covered by the certifications that principal executive officers and principal financial officers are required to

⁹⁷ See letter from ABA.

⁹⁸ 15 U.S.C. 78r.

make under the Sarbanes-Oxley Act of 2002.⁹⁹ Likewise, a company’s disclosure controls and procedures¹⁰⁰ apply to the preparation of the company’s proxy statement and Form 10-K, including the Compensation Discussion and Analysis.

We noted in the Proposing Release that in adopting the rules that have applied since 1992, the Commission took into account comments that the Board Compensation Committee Report on Executive Compensation should be furnished rather than filed to allow for more open and robust discussion in the reports.¹⁰¹ The Board Compensation Committee Reports on Executive Compensation that were provided prior to today’s amendments in general did not suggest that this treatment resulted in such discussion, nor the more transparent disclosure that the comments suggested would result.¹⁰² Further, we noted that we believe that it is appropriate for companies to take responsibility for disclosure involving board matters as with other disclosure.

⁹⁹ Exchange Act Rules 13a-14 [17 CFR 240.13a-14] and 15d-14 [17 CFR 240.15d-14]. See also Certification of Disclosure in Companies’ Quarterly and Annual Reports, Release No. 34-46427 (Aug. 29, 2002) [67 FR 57275], at n. 35 (the “Certification Release”) (stating that “the certification in the annual report on Form 10-K or 10-KSB would be considered to cover the Part III information in a registrant’s proxy or information statement as and when filed”).

¹⁰⁰ Exchange Act Rules 13a-15 [17 CFR 240.13a-15] and 15d-15 [17 CFR 240.15d-15].

¹⁰¹ 1992 Release, at Section II.H.

¹⁰² See also Martin D. Mobley, Compensation Committee Reports Post-Sarbanes-Oxley: Unimproved Disclosure for Executive Compensation Policies and Practices, 2005 Colum. Bus. L. Rev. 111 (2005).

Some commenters supported the proposal to have the Compensation Discussion and Analysis filed, noting among other things that filing should lead to increased accuracy and better disclosure.¹⁰³ Other commenters objected to this treatment, claiming that certification by principal executive officers and principal financial officers with regard to the disclosure included in the annual report on Form 10-K, including particularly the Compensation Discussion and Analysis, would inappropriately insert these officers into the compensation committee’s deliberative process, potentially calling into question the committee’s independence.¹⁰⁴ Further, many commenters expressed the view that the Compensation Discussion and Analysis should, in effect, be the report of the compensation committee, submitted under the names of its members, for which they should be accountable.¹⁰⁵

¹⁰³ See, e.g., letters from AFL-CIO; American Federation of State, County and Municipal Employees; California Public Employees’ Retirement System (“CalPERS”); Paul Hodgson, Senior Research Associate, Executive and Board Compensation, the Corporate Library (“Corporate Library”); Connecticut Retirement Plans and Trust Funds, dated April 10, 2006 (“CRPTF”); Southwestern Pennsylvania and Western Maryland Area Teamsters and Employers Pension Fund (“Teamsters PA/MD”); Teamsters Local 671 Health Services and Insurance Plan (“Teamsters Local 671”); Walden Asset Management (“Walden”); and Western PA Teamsters & Employers Welfare Fund (“Western PA Teamsters Fund”).

¹⁰⁴ See, e.g., letters from The Corporate & Securities Law Committee and the Employment & Labor Law Committee of the Association of Corporate Counsel (“ACC”); Compass Bancshares, Inc. (“Compass Bancshares”); National Association of Manufacturers (“NAM”); Peabody Energy Corporation (“Peabody Energy”); and WorldatWork.

¹⁰⁵ See, e.g., letters from Jesse Brill, Chair of CompensationStandards.com and Chair of the National Association of Stock Plan Professionals, dated March 1, 2006 (“J. Brill 1”); CFA Centre 1; CRPTF; Frederic W. Cook & Co.; and Hewitt.

Some of these objections may reflect a misconception of the purpose of the Compensation Discussion and Analysis. Although the Compensation Discussion and Analysis discusses company compensation policies and decisions, the Compensation Discussion and Analysis does not address the deliberations of the compensation committee, and is not a report of that committee. Consequently, in certifying the Compensation Discussion and Analysis, principal executive officers and principal financial officers will not need to certify as to the compensation committee deliberations.

However, in response to concerns of commenters that compensation committees should continue to be focused on the executive compensation disclosure process, we are adopting a Compensation Committee Report similar to the Audit Committee Report.¹⁰⁶ Drawing on commenters' suggestions for a new Compensation Committee Report,¹⁰⁷ the rules we adopt today require the compensation committee to state whether:

- the compensation committee has reviewed and discussed the Compensation Discussion and Analysis with management; and
- based on the review and discussions, the compensation committee recommended to the board of directors that the Compensation

¹⁰⁶ We are moving the audit committee report previously required by Item 306 of Regulations S-K and S-B to Item 407(d) under the amendments adopted today. See Section V.D., below.

¹⁰⁷ See, e.g., letters from J. Brill 1; California State Teachers' Retirement System ("CalSTRS"); CFA Centre 1; and Professor William J. Heisler.

Discussion and Analysis be included in the company's annual report on Form 10-K and, as applicable, the company's proxy or information statement.

Unlike the Audit Committee Report, the Compensation Committee Report will be required to be included or incorporated by reference into the company's annual report on Form 10-K, so that it is presented along with the Compensation Discussion and Analysis when that disclosure is provided in the Form 10-K or incorporated by reference from a proxy or information statement.¹⁰⁸ Like the Audit Committee Report, the Compensation Committee Report will only be required one time during any fiscal year.¹⁰⁹ The name of each member of the company's compensation committee (or, in the absence of a compensation committee, the persons performing equivalent functions or the entire board of directors) must appear below the disclosure.¹¹⁰ This report will be "furnished" rather than "filed." The principal executive officer and principal

¹⁰⁸ The audit committee report is only required in a company proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). See Instruction 3 to Item 407(d).

¹⁰⁹ Instruction 3 to Item 407(e)(5). The audit committee instruction is specified in Instruction 2 to Item 407(d).

¹¹⁰ Item 407(e)(5)(ii).

financial officer will be able to look to the Compensation Committee Report in providing their certifications required under Exchange Act Rules 13a-14 and 15d-14.¹¹¹

4. Retention of the Performance Graph

In light of the Compensation Discussion and Analysis requirement, we proposed to eliminate both the Board Compensation Committee Report on Executive Compensation and the Performance Graph.¹¹² The report and the graph were intended to be related and to show the relationship, if any, between compensation and corporate performance, as reflected by stock price. The rules we adopt today eliminate the Board Compensation Committee Report on Executive Compensation, as we proposed, in favor of the more comprehensive Compensation Discussion and Analysis and the new Compensation Committee Report, as described immediately above.¹¹³

¹¹¹ We note that one commenter suggested that the Compensation Discussion and Analysis should not be required of companies that have only registered the offer and sale of debt securities. See letter from Financial Security Assurance Holdings Ltd. The Compensation Discussion and Analysis is intended to put into perspective for investors the numbers and narrative that follow it. This section will provide a broader discussion than just that of the relationship of compensation to the performance of the company as reflected by stock price. Therefore, we believe it is appropriate for all companies that are not small business issuers or foreign private issuers filing on forms specified for their use to include the information.

¹¹² Prior to these amendments, the Board Compensation Committee Report on Executive Compensation had been required by Item 402(k) and the Performance Graph had been required by Item 402(I).

¹¹³ Section II.B.3.

Given the widespread availability of stock performance information about companies, industries and indexes through business-related Web sites or similar sources, we proposed to eliminate the requirement for the Performance Graph in the belief that it was outdated, particularly since the disclosure in the Compensation Discussion and Analysis regarding the elements of corporate performance that a given company’s policies might reach is intended to allow broader discussion than just that of the relationship of compensation to the performance of the company as reflected by stock price. Many commenters objected to eliminating the Performance Graph, however, stating that it provides an easily accessible visual comparison of a company’s performance relative to its peers and the market, and provides a standardized source for this type of information.¹¹⁴ In light of the significance of this disclosure to a broad spectrum of commenters, we have decided to retain the Performance Graph in the amendments we adopt today.

However, we remain of the view that the Performance Graph should not be presented as part of executive compensation disclosure. In particular, as noted above, the disclosure in the Compensation Discussion and Analysis regarding the elements of corporate performance that a given company’s policies consider is intended to encourage broader discussion than just that of

¹¹⁴ See, e.g., letters from CalSTRS; CFA Centre 1; CII; IUE-CWA Pension Fund and 401(k) Plan (“IUE-CWA”); John W. Hamm; NYCBA; Standard Life Investments Limited (“Standard Life”); and Vivient Consulting LLC.

the relationship of executive compensation to the performance of the company as reflected by stock price. Presenting the Performance Graph as compensation disclosure may weaken this objective. Accordingly, we have decided to retain the requirements for the Performance Graph, but have moved them to the disclosure item entitled “Market Price of and Dividends on the Registrant’s Common Equity and Related Stockholder Matters.”¹¹⁵ As retained, the Performance Graph will continue to be “furnished” rather than “filed.” The Performance Graph will be required only in the company’s annual report to security holders that accompanies or precedes a proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting), and will not be deemed to be soliciting material under the proxy rules or

¹¹⁵ New Item 201(e) of Regulation S-K [17 CFR 229.201(e)] will require the Performance Graph. Consistent with our belief that the Performance Graph should not be linked to the compensation disclosure, we have not retained the portion of the language that was included in Instruction 4 to Item 402(l) prior to these amendments, which conditioned that other performance measures in addition to total return may be included in the graph only so long as the compensation committee (or persons performing equivalent functions or the entire board if there is no such committee) provided a description of the link between the measure and the level of compensation in the Board Compensation Committee Report on Executive Compensation. As a result, companies may include other performance measures, such as return on average common shareholders’ equity, so long as the meaning of any such measures is clear from the Performance Graph and any related legend or other disclosure.

incorporated by reference into any filing except to the extent that the company specifically incorporates it.¹¹⁶

C. Compensation Tables

To enhance the benefits of the tabular approach to eliciting compensation disclosure,¹¹⁷ we proposed to reorganize and streamline the tables to provide a clearer and more logical picture of total compensation and its elements for named executive officers. We are adopting reorganized compensation tables and related narrative disclosure that cover three broad categories:

1. compensation with respect to the last fiscal year (and the two preceding fiscal years), as reflected in a revised Summary Compensation Table that presents compensation paid currently or

¹¹⁶ Instructions 7 and 8 to Item 201(e). A “small business issuer” as defined in Regulation S-B, is not required to provide the Performance Graph. Instruction 6 to Item 201(e). Because Nasdaq has registered as a national securities exchange under Section 6 of the Exchange Act [15 U.S.C. 78f], the former separate reference to “Nasdaq market” is not retained. See Release No. 34-53128 (Jan. 13, 2006) ordering that the application of The NASDAQ Stock Market LLC for registration as a national securities exchange be granted. We also adopt a conforming revision to Rules 304(d) and (e) of Regulation S-T [17 CFR 232.304(d) and (e)], and we make technical revisions to those rules to correctly reference Item 22(b)(7)(ii) of Form N-1A and to eliminate the references to “prospectuses.”

¹¹⁷ The tabular disclosure and related narrative disclosure under amended Item 402 applies, as it did prior to today’s amendments, to named executive officers, with amended Item 402(k) applying to directors, as described in Section II.C.9. below. As discussed below in Section II.C.6.a., we are adopting certain changes to the definition of named executive officer.

- deferred (including options, restricted stock and similar grants) and compensation consisting of current earnings or awards that are part of a plan, and as supplemented by one table providing back-up information for certain data in the Summary Compensation Table;¹¹⁸
2. holdings of equity-based interests that relate to compensation or are potential sources of future compensation, focusing on compensation-related equity-based interests that were awarded in prior years¹¹⁹ and are “at risk,” as well as recent realization on these interests, such as through vesting of restricted stock or the exercise of options and similar instruments;¹²⁰ and
 3. retirement and other post-employment compensation, including retirement and deferred compensation plans, other retirement benefits

¹¹⁸ The table supplementing the Summary Compensation Table is the Grants of Plan-Based Awards Table, discussed below in Section II.C.2., which combines into a single table the disclosure of the proposed Grants of Performance-Based Awards Table and the proposed Grants of All Other Equity Awards Table. The accompanying narrative disclosure requirement is discussed below in Section II.C.3.a.

¹¹⁹ Under the disclosure rules as adopted, these interests will be disclosed as current compensation for those prior years.

¹²⁰ Information regarding holdings of such equity-based interests that relate to compensation will be disclosed in the Outstanding Equity Awards at Fiscal Year-End Table, discussed below in Section II.C.4.a. Information regarding realization on holdings of equity-based interests will be required in the Option Exercises and Stock Vested Table discussed below in Section II.C.4.b.

and other post-employment benefits, such as those payable in the event of a change in control.¹²¹

Reorganizing the tables along these themes should help investors understand how compensation components relate to each other. At the same time, we are retaining the ability for investors to use the tables to compare compensation from year to year and from company to company.

As we noted in the Proposing Release, by more clearly organizing the compensation tables to explain how the elements relate to each other, we may in some situations be requiring disclosure of both amounts earned (or potentially earned) and amounts subsequently paid out. This approach raises the possible perception of “double counting” some elements of compensation in multiple tables. However, a particular item of compensation only appears once in the Summary Compensation Table. In order to explain the item of compensation, it may also appear in one or more of the other tables. We believe the possible perception of double disclosure is outweighed by the clearer and more complete picture the disclosure in the additional tables will provide to investors. We strongly encourage companies to use the narrative following the tables (and where appropriate the Compensation Discussion and Analysis) to explain how disclosures relate to each other in their particular circumstances.

¹²¹ Disclosure regarding retirement and post-employment compensation is required in the Pension Benefits Table, discussed below in Section II.C.5.a., the Nonqualified Deferred Compensation Table, discussed below in Section II.C.5.b., and the narrative disclosure requirement for other potential post-employment payments discussed below in Section II.C.5.c.

Commenters stated their general support for the format and presentation of the proposed tables.¹²² We are adopting the tables substantially as proposed with some revisions, as noted below, in response to comments.

1. Compensation to Named Executive Officers in the Last Three Completed Fiscal Years – The Summary Compensation Table and Related Disclosure

Under today's amendments, the Summary Compensation Table continues to serve as the principal disclosure vehicle regarding executive compensation. This table, as amended, shows the named executive officers' compensation for each of the last three years, whether or not actually paid out. Consistent with the requirements prior to today's amendments, the amended Summary Compensation Table continues to require disclosure of compensation for each of the company's last three completed fiscal years.¹²³

As we proposed, the amendments add disclosure of a figure representing total compensation, as reflected in other columns of the Summary Compensation Table, and simplify the presentation from that of the table prior

¹²² See, e.g., letters from CFA Centre 1; jointly, Jennifer Clowes, Lindsey Erskine, Kendra Freeck and Kapri Malesich; F&P Pension Board; IAM; IBEW PBF; Plumbers & Pipefitters National Pension Fund; and Standard Life.

¹²³ Prior to today's amendments, an instruction to Item 402(b) permitted the exclusion of information for fiscal years prior to the last completed fiscal year if the company was not a reporting company pursuant to Exchange Act Section 13(a) or 15(d) at any time during that year, unless the company previously was required to provide information for any such year in response to a Commission filing requirement. This instruction has been retained and redesignated as Instruction 1 to Item 402(c) in the amended rule.

to these amendments. As described in greater detail below, the amendments also provide for a supplemental table disclosing additional information about grants of plan-based awards. Narrative disclosure will follow the two tables, providing disclosure of material information necessary to an understanding of the information disclosed in the tables.

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 ¹²⁴	_____								

PFO ¹²⁵	_____								

A	_____								

B	_____								

C	_____								

¹²⁴ “PEO” refers to principal executive officer. See Section II.C.6.a. below for a description of the proposed named executive officers for whom compensation disclosure is required.

¹²⁵ “PFO” refers to principal financial officer.

a. Total Compensation Column

We are modifying the Summary Compensation Table to provide a clearer picture of total compensation. As we proposed, we are requiring that all compensation be disclosed in dollars and that a total of all compensation be provided.¹²⁶ The new “Total” column aggregates the total dollar value of each form of compensation quantified in the other columns (revised columns (c) through (i)). This column responds to concerns that investors, analysts and other users of Item 402 disclosure have not been able to compute aggregate amounts of compensation using the disclosure in the table as specified prior to these amendments in a manner that was accurate or comparable across years or companies. Many commenters expressed their support for the proposal to include a Total column.¹²⁷

Other commenters expressed concerns that, as proposed, the total number was an amalgam of dissimilar types of compensation.¹²⁸ These

¹²⁶ Instruction 2 to Item 402(c) (requiring all compensation values in the Summary Compensation Table to be reported in dollars and rounded to the nearest dollar). Prior to today’s amendments, some stock-based compensation was disclosed in per share increments rather than in dollar amounts. Instruction 2 to Item 402(c) further requires, where compensation was paid or received in a different currency, footnote disclosure identifying that currency and describing the rate and methodology used for conversion to dollars.

¹²⁷ See, e.g., letters from CFA Centre 1; CII; Frederic W. Cook & Co.; ISS; Standard Life; and Walden. In addition, over 20,000 form letters from individuals specifically supported this proposal. See Letter Type A, available at www.sec.gov/rules/proposed/s70306.shtml.

¹²⁸ See, e.g., letters from Fenwick & West LLP (“Fenwick”); Chamber of Commerce; and Hodak Value Advisors, LLC (“Hodak Value Advisors”).

concerns centered on the mix of compensation elements reported in the Summary Compensation Table being measured at different times and having different valuation methods, so that a Total column in effect would combine “apples” with “oranges.”¹²⁹ To address this issue, some commenters suggested dividing the Total column into two separate columns reporting Total Earned Compensation and Total Contingent Compensation.¹³⁰ Others recommended two separate Summary Compensation Tables – one for compensation that had been earned or realized and another for compensation that remained contingent or an opportunity.¹³¹

As we noted in the Proposing Release, the Summary Compensation Table is designed to disclose all compensation. Each element of compensation is only disclosed once in the Summary Compensation Table, although it may also be disclosed in some of the other tables. We realize that the timing of when particular items of compensation are disclosed in the Summary Compensation Table varies depending on the form of the compensation.¹³² Given the various forms and complexities of compensation and the different

¹²⁹ See, e.g., letters from Caterpillar Inc. and Corporate Library.

¹³⁰ See, e.g., letters from Business Roundtable (“BRT”) and Mercer.

¹³¹ See, e.g., letters from Eli Lilly and Company (“Eli Lilly”); Hewitt; Society of Corporate Secretaries & Governance Professionals (“SCSGP”); Towers Perrin, dated April 10, 2006 (“Towers Perrin”); and Watson Wyatt Worldwide (“Watson Wyatt”).

¹³² Compensation is generally calculated in a manner that reflects the cost of the compensation to the company and its shareholders.

periods they may be designed to relate to,¹³³ it is unavoidable that the timing of disclosure may vary from element to element in this table.¹³⁴

We note that some commenters were particularly concerned that non-equity incentive plan awards are reported when earned, while equity incentive plan awards are reported based on grant date value when awarded.¹³⁵ No single accepted standard for measuring non-equity incentive plan awards at grant date currently exists. Some commenters nonetheless suggested that we require grant date fair value estimates of non-equity incentive plan awards in the Summary Compensation Table.¹³⁶ We do not believe it is appropriate at this time for us to develop such a standard expressly for compensation disclosure purposes. Nevertheless, we believe that the Summary Compensation Table that we adopt today, including a total of all of the various elements presented,

¹³³ See, e.g., letter from ABA (noting that option grants made early in the year may be viewed by the compensation committee primarily as an award for the prior year’s performance or as an incentive for future performance).

¹³⁴ The approach as to the timing of disclosure that we proposed and that we adopt today is the same approach that has been used in the Summary Compensation Table since it was first proposed in 1992. See Executive Compensation Disclosure, Release No. 33-6940 (June 23, 1992) [57 FR 29582] (noting that the Summary Compensation Table will “provide shareholders a concise, comprehensive overview of compensation awarded, earned or paid in the reporting period”).

¹³⁵ See, e.g., letters from ACC; Amalgamated; BDO Seidman, LLP (“BDO Seidman”); CII; IUE-CWA; and Mercer.

¹³⁶ See, e.g., letters from CII; IUE-CWA; and CRPTF. Information about the amounts that could be earned under non-equity incentive plans is required to be disclosed in the Grants of Plan-Based Awards Table when such awards are granted.

provides meaningful disclosure to investors and allows for comparability between companies and within a company.

However, in response to comments, we have created a separate column for the annual change in actuarial value of defined benefit plans and earnings on nonqualified deferred compensation.¹³⁷ As proposed, these compensation elements would have been included in the aggregate amount reported in the All Other Compensation column. We believe that presenting these items in a separate column will permit investors and other users of the Summary Compensation Table to readily identify elements included in the Total column that may relate principally to longevity of service. These items will not be used to determine the officers included in the table.¹³⁸

We proposed that the new column disclosing total compensation would appear as the first column providing compensation information.¹³⁹ Some commenters suggested moving this column to the right of the table, so that it would follow – rather than precede – the relevant component numbers.¹⁴⁰ In

¹³⁷ See Section II.C.1.d.i. below, which describes a modification of the proposed Summary Compensation Table disclosure of nonqualified deferred compensation earnings to present only the above-market or preferential portion in this table.

¹³⁸ See Section II.C.6.b. below describing how in response to commenters this column is excluded from total compensation for the purpose of identifying named executive officers.

¹³⁹ Columns (a) and (b) specify the executive officer and the year in question.

¹⁴⁰ See, e.g., letters from Buck Consultants; Frederic W. Cook & Co.; and SCSGP.

response to these comments, we have moved the Total column to the final column in the table.

b. Salary and Bonus Columns

The first columns providing compensation information that we are requiring are the salary and bonus columns (columns (c) and (d), respectively), which are retained substantially in their previous form. However, we are adopting some changes, as proposed, that will give an investor a clearer picture of the total amount earned.

As we proposed, compensation that is earned, but for which payment will be deferred, must be included in the salary, bonus or other column, as appropriate. A new instruction, applicable to the entire Summary Compensation Table, provides that if receipt of any amount of compensation is currently payable but has been deferred for any reason, the amount so deferred must be included in the appropriate column.¹⁴¹ This treatment is no longer limited to salary and bonus, as it was prior to these amendments, and under the amended rules this treatment applies regardless of the reason for the deferral.¹⁴²

We also proposed that the amount so deferred must be disclosed in a footnote to the applicable column. As described below, the amount deferred

¹⁴¹ Instruction 4 to Item 402(c).

¹⁴² Prior to the amendments, this requirement was triggered only if the officer elected the deferral. We are amending this requirement as we proposed to cover all deferrals, no matter who has initiated the deferrals.

will also generally be reflected as a contribution in the deferred compensation presentation.¹⁴³ The proposed footnote disclosure was intended to clarify the extent to which amounts disclosed in the Nonqualified Deferred Compensation Table described below represent compensation already reported, rather than additional compensation. Because commenters thought it could lead to potential double counting, we have not adopted this proposed footnote requirement.¹⁴⁴

As proposed, we have eliminated the delay that existed under the former rules where salary or bonus for the most recent fiscal year is determined following compliance with Item 402 disclosure. Under our new rules, where salary or bonus cannot be calculated as of the most recent practicable date, a current report under Item 5.02 of Form 8-K will be triggered by a payment, decision or other occurrence as a result of which either of such amounts

¹⁴³ See Section II.C.5.b., describing the Nonqualified Deferred Compensation Table. Disclosure of these amounts as contributions will now be required for nonqualified deferred compensation plans. This disclosure will not be required for qualified plans. Nonqualified deferred compensation plans and arrangements provide for the deferral of compensation that does not satisfy the minimum coverage, nondiscrimination and other rules that “qualify” broad-based plans for favorable tax treatment under the Internal Revenue Code.

¹⁴⁴ See, e.g., letter from WorldatWork. As described in Section II.C.5.b. below, however, we have adopted the corresponding footnote proposed for the Nonqualified Deferred Compensation Table.

become calculable in whole or part.¹⁴⁵ The Form 8-K will include disclosure of the salary or bonus amount and a new total compensation figure including that salary or bonus amount.

c. Plan-Based Awards

As we proposed, the next three columns – Stock Awards, Option Awards and Non-Equity Incentive Plan Compensation – cover plan-based awards.

i. Stock Awards and Option Awards Columns

As proposed and adopted, the Stock Awards column (column (e)) discloses stock-related awards that derive their value from the company's equity securities or permit settlement by issuance of the company's equity securities and, as we have clarified, are thus within the scope of FAS 123R for financial reporting, such as restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or other similar

¹⁴⁵ New Item 5.02(f) of Form 8-K and Instruction 1 to Item 402(c)(2)(iii) and (iv). Prior to these amendments, in the event that such amounts were not determinable at the most recent practicable date, they were generally reported in the annual report on Form 10-K or proxy statement for the following fiscal year. We believe providing the information more quickly is appropriate and are therefore adopting the use of a current report on Form 8-K. Instruction 1 to Item 402(c)(2)(iii) and (iv) requires that the company disclose in a footnote that the salary or bonus is not calculable through the latest practicable date and the date that the salary or bonus is expected to be determined. We proposed to include this requirement in an instruction to proposed paragraph (e) of Item 5.02 of Form 8-K. We are adopting it as a separate paragraph of Item 5.02 in order to make it clearer that it is a separate triggering event.

instruments that do not have option-like features.¹⁴⁶ Valuation is based on the grant date fair value of the award determined pursuant to FAS 123R for financial reporting purposes. Stock awards granted pursuant to an equity incentive plan are also included in this column to ensure consistent reporting of stock awards and to ensure their inclusion in the revised Summary Compensation Table.¹⁴⁷

Awards of options, stock appreciation rights, and similar equity-based compensation instruments that have option-like features that, as we have clarified, are within the scope of FAS 123R, must be disclosed in the Option Awards column (column (f)) in a manner similar to the treatment of stock and

¹⁴⁶ Generally speaking, a restricted stock award is an award of stock subject to vesting conditions, such as performance-based conditions or conditions based on continued employment for a specified period of time. This type of award is referred to as “nonvested equity shares” in FAS 123R. Phantom stock, phantom stock units, common stock equivalent units and other similar awards are typically awards where an executive obtains a right to receive payment in the future of an amount based on the value of a hypothetical, or notional, amount of shares of common equity (or in some cases stock based on that value). To the extent that the terms of phantom stock, phantom stock units, common stock equivalents or other similar awards include option-like features, the awards will be required to be included in the Option Awards column. Prior to these amendments, restricted stock awards were valued in the Summary Compensation Table by multiplying the closing market price of the company’s unrestricted stock on the date of grant by the number of shares awarded.

¹⁴⁷ Prior to these amendments, these performance-based stock awards could be reported at the company’s election as incentive plan awards under what was then specified in Instruction 1 to Item 402(b)(2)(iv). Our amendments today eliminate this alternative.

other equity-based awards under the amendments.¹⁴⁸ Instead of the disclosure of the number of securities underlying the awards as was the case prior to today's amendments, this column requires disclosure of the grant date fair value of the award as determined pursuant to FAS 123R. In order to calculate a total dollar amount of compensation, the value rather than the number of securities underlying an award must be used. The FAS 123R valuation must 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.¹⁴⁹

¹⁴⁸ A stock appreciation right usually gives the executive the right to receive the value of the increase in the price of a specified number of shares over a specified period of time. These awards may be settled in cash or in shares.

¹⁴⁹ As proposed, we are eliminating the requirement that had been specified in Options/SAR Grants in Last Fiscal Year Table under Item 402(c)(2)(vi) to report the potential realizable value of each option grant under 5% or 10% increases in value or the present value of each grant (computed under any option pricing model). These alternative disclosures are no longer necessary insofar as the grant date fair value of equity-based awards is included in the Summary Compensation Table.

Under FAS 123R, the compensation cost is initially measured based on the grant date fair value of an award,¹⁵⁰ and generally recognized for financial reporting purposes over the period in which the employee is required to provide service in exchange for the award (generally the vesting period). Some commenters suggested that rather than requiring disclosure of the grant date fair value of equity awards, we should require a company to disclose just the portion of the award expensed in the company’s financial statements.¹⁵¹ These commenters expressed concerns that disclosing the full grant date fair value would be inconsistent with the company’s financial statements, would overstate compensation earned related to service rendered for the year, and would be

¹⁵⁰ Under FAS 123R, the classification of an award as an equity or liability award is an important aspect of the accounting because the classification will affect the measurement of compensation cost. Awards with cash-based settlement, repurchase features, or other features that do not result in an employee bearing the risks and rewards normally associated with share ownership for a specified period of time would be classified as liability awards under FAS 123R. For an award classified as an equity award under FAS 123R, the compensation cost recognized is fixed for a particular award, and absent modification, is not revised with subsequent changes in market prices or other assumptions used for purposes of the valuation. In contrast, liability awards are initially measured at fair value on the grant date, but for purposes of recognition in financial statement reporting are then re-measured at each reporting date through the settlement date under FAS 123R. These re-measurements would not be the basis for executive compensation disclosure under our amended rules, unless the award has been modified, as described later in this release.

¹⁵¹ See, e.g., letters from the SEC Regulations Committee of the American Institute of Certified Public Accountants (“AICPA”); Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.; Chamber of Commerce; Computer Sciences Corporation (“Computer Sciences”); Deloitte & Touche LLP; Ernst & Young LLP (“E&Y”); Fenwick; Foley; HR Policy Association (“HRPA”); American Bar Association, Joint Committee on Employee Benefits (“ABA-JCEB”); and KPMG LLP (“KPMG”).

inconsistent with the presentation of non-equity incentive plan compensation. Other commenters expressed support for requiring companies to report the full grant date fair value in the year of the award because it would provide a more complete representation of compensation.¹⁵²

We are adopting these columns substantially as proposed.¹⁵³ Under our amendments, the compensation cost calculated as the grant date fair value will be shown as compensation in the year in which the grant is made.¹⁵⁴ As we stated in the Proposing Release, we believe that this approach is more consistent with the purpose of executive compensation disclosure. We are adopting an approach that subscribes to the measurement method of FAS 123R based on grant date fair value, but also provides for immediate disclosure of

¹⁵² See, e.g., letters from CalPERS; CFA Centre 1; CRPTF; L. Burns; Governance for Owners; Laborers International Union of North America; Nancy Lucke Ludgus (“N. Ludgus”); Institutional Investors Group; State Board of Administration (SBA) of Florida (“SBAF”); Teamsters Local 671; Teamsters PA/MD; United Church Foundation, Inc. (“UCF”); Washington State Investment Board (“WSIB”); and Western PA Teamsters Fund.

¹⁵³ Item 402(c)(2)(v) and (vi).

¹⁵⁴ FAS 123R requires a company to aggregate individuals receiving awards into relatively homogenous groups with respect to exercise and post-vesting employment termination behaviors for the purpose of determining expected term, for example executives and non-executives. The rules we adopt today are not intended to change the method used to value employee stock options for purposes of FAS 123R or to affect the judgments as to reasonable groupings for purposes of determining the expected term assumption required by FAS 123R. Under the rules we adopt today, where a company uses more than one group, the measurement of grant date fair value for purposes of Item 402 would be derived using the expected term assumption for the group that includes the named executive officers (or the group that includes directors for purposes of Item 402(k)).

compensation. This timing of disclosure of option awards remains the same as it has been since 1992. The only change is that the awards are now disclosed in dollars rather than numbers of units or shares. Disclosing these awards as they are expensed for financial statement reporting purposes would not mirror the timing of disclosure of non-equity incentive plan compensation. While we have imported a financial statement reporting principle to enable disclosure of compensation costs, executive compensation disclosure must continue to inform investors of current actions regarding plan awards – a function that would not be fulfilled applying financial reporting recognition timing. If a company does not believe that the full grant date fair value reflects compensation earned, awarded or paid during a fiscal year, it can provide appropriate explanatory disclosure in the accompanying narrative section. Furthermore, disclosing grant date fair value will give investors a clearer picture of the value of any in-the-money awards. As we proposed, the number of shares underlying an award and other details regarding the award must be disclosed in a separate table covering grants of plan-based awards supplementing the Summary Compensation Table.¹⁵⁵ This supplemental table, which combines the disclosure that would have been required by the proposed Grants of Performance-Based Awards Table and Grants of All Other Equity Awards Table, discloses equity awards granted pursuant to incentive plans separately from other equity awards.

¹⁵⁵ See Section II.C.2., discussing the Grants of Plan-Based Awards Table required by Item 402(d).

We are adopting as proposed an instruction that requires a footnote referencing the discussion of the relevant assumptions in the notes to the company's financial statements or the discussion of relevant assumptions in the MD&A.¹⁵⁶ The same instruction also provides that the referenced sections will be deemed to be part of the disclosure provided pursuant to Item 402. The referenced sections containing this disclosure are required in the company's annual report to shareholders that must precede or accompany the company's proxy statement.¹⁵⁷ In the case of Internet disclosure of proxy materials, companies could provide hyperlinks from the proxy statement to the referenced sections contained in the annual report.¹⁵⁸ While some commenters recommended requiring these valuation assumptions to be presented in the proxy statement,¹⁵⁹ we believe that investors will be able to easily access this information without requiring it to be repeated from other documents.

We proposed that previously awarded options or freestanding stock appreciation awards that the company repriced or otherwise materially modified during the last fiscal year be disclosed in the Summary Compensation

¹⁵⁶ Instruction 1 to Item 402(c)(2)(v) and (vi).

¹⁵⁷ See Exchange Act Rule 14a-3 [17 CFR 240.14a-3].

¹⁵⁸ In addition, in December 2005, we proposed rules that would allow companies and other persons to use the Internet to satisfy proxy material delivery requirements. Internet Availability of Proxy Materials, Release No. 34-52926 (Dec. 8, 2005) [70 FR 74597].

¹⁵⁹ See, e.g., letters from Buck Consultants; CII; Frederic W. Cook & Co.; and IUE-CWA.

Table based on the total fair value of the award as so modified. Under FAS 123R, only the incremental fair value, computed as of the repricing or modification date, is recognized for such an award. Several commenters recommended conforming Summary Compensation Table reporting to the incremental fair value recognition approach of FAS 123R, objecting that the proposed total fair value approach would inappropriately double count the fair value of many modified awards.¹⁶⁰

As adopted, the new rules reflect this recommendation.¹⁶¹ Grants of reload or restorative options, however, are reportable based on total grant date fair value because they are new awards that do not replace previously cancelled awards.¹⁶²

We proposed that all earnings, such as dividends, be included in the Stock Awards and Option Awards columns when paid. Several commenters noted that the value of the right to receive dividends is factored into the grant date fair value computed under FAS 123R.¹⁶³ If the stock award or option award entitles the holder to receive dividends, then such “dividend protection”

¹⁶⁰ See, e.g., letters from AICPA; Cleary Gottlieb Steen & Hamilton LLP (“Cleary”); Compass Bancshares; Cravath, Swaine & Moore LLP (“Cravath”); Hewitt; KPMG; Leggett & Platt, Incorporated (“Leggett & Platt”); SCSGP; and Sullivan.

¹⁶¹ Instruction 2 to Item 402(c)(2)(v) and (vi).

¹⁶² Generally speaking, reload or restorative options are grants of new options that are granted automatically when an executive exercises the old option. Reload or restorative options are treated as new grants under FAS 123R.

¹⁶³ See, e.g., letters from Cleary; Emerson Electric Co. (“Emerson”); Foley; Hewitt; SCSGP; and Towers Perrin.

is included in the grant date fair value computed under FAS 123R. We are persuaded by the commenters that subsequent disclosure of the value of dividends in these circumstances, as they are received, would repeat in the same table compensation that was previously disclosed. Therefore, we have revised the requirement. However, we note that if the stock award or option award does not entitle the holder to receive dividends, then “dividend protection” is not included in the grant date fair value computed under FAS 123R. Accordingly, the value of any dividends received would not have been previously disclosed in the Summary Compensation Table as part of the grant date fair value of the award. In order to appropriately capture the compensation in these latter circumstances, we are adopting a requirement to disclose any earnings on stock awards or option awards that are not included in the grant date fair value computation for those awards in the All Other Compensation column of the Summary Compensation Table when the dividends or other earnings are paid.¹⁶⁴ In addition, the material terms of any equity award (including whether dividends will be paid, the applicable dividend rate and whether that rate is preferential) may be factors to be discussed in the related narrative section.¹⁶⁵

¹⁶⁴ Item 402(c)(2)(ix)(G).

¹⁶⁵ Item 402(e)(1)(iii), discussed in Section II.C.3.a. below.

We had proposed a definition of “non-stock incentive plan” that some commenters stated would result in confusing and potentially anomalous treatment of some awards.¹⁶⁶ To clarify the reporting treatment of different types of awards, we have:

- adopted a separate definition of “equity incentive plan” as “an incentive plan or portion of an incentive plan under which awards are granted that fall within the scope of FAS 123R”;¹⁶⁷ and

¹⁶⁶ See, e.g., letter from ABA.

¹⁶⁷ Item 402(a)(6)(iii). An equity incentive plan includes plans that have a performance or market condition. As defined in Appendix E of FAS 123R, a performance condition is “a condition affecting the vesting, exercisability, exercise price or other pertinent factors used in determining the fair value of an award that relates to both (a) an employee’s rendering service for a specified (either explicitly or implicitly) period of time and (b) achieving a specified performance target that is defined solely by reference to the employer’s own operations (or activities). Attaining a specified growth rate in return on assets, obtaining regulatory approval to market a specified product, selling shares in an initial public offering or other financing event, and a change in control are examples of performance conditions for purposes of this Statement. A performance target also may be defined by reference to the same performance measure of another entity or group of entities. For example, attaining a growth rate in earnings per share that exceeds the average growth rate in earnings per share of other entities in the same industry is a performance condition for purposes of this Statement. A performance target might pertain either to the performance of the enterprise as a whole or to some part of the enterprise, such as a division or an individual employee.” An award also would be considered to have a performance condition if it is subject to a market condition, which is “a condition affecting the exercise price, exercisability, or other pertinent factors used in determining the fair value of an award under a share-based payment arrangement that relates to the achievement of (a) a specified price of the issuer’s shares or a specified amount of intrinsic value indexed solely to the issuer’s shares or (b) a specified price of the issuer’s shares in terms of a similar (or index of similar) equity security (securities).” An award that vests on an accelerated basis upon the occurrence of a change in control is not considered an award under an equity incentive plan if (a) the award contains no other performance or market conditions and (b) the award would otherwise vest based on the completion of a specified employee service period.

- defined “non-equity incentive plan” as “an incentive plan or portion of an incentive plan that is not an equity incentive plan.”¹⁶⁸

ii. Non-Equity Incentive Plan Compensation Column

The Non-Equity Incentive Plan Compensation column (column (g)) will report, as proposed, the dollar value of all amounts earned during the fiscal year pursuant to non-equity incentive plans.¹⁶⁹ This column includes all other incentive plan awards not included in the stock awards and option awards columns.¹⁷⁰ Compensation awarded under an incentive plan that is not within the scope of FAS 123R will be disclosed in the Summary Compensation Table in the year when the relevant specified performance criteria under the plan are satisfied and the compensation earned, whether or not payment is actually made to the named executive officer in that year.

The grant of an award under a non-equity incentive plan will be disclosed in the supplemental Grants of Plan-Based Awards Table in the year

¹⁶⁸ Item 402(a)(6)(iii). See also discussion of the definition of “incentive plan” at Section II.C.1.f. below.

¹⁶⁹ Item 402(c)(2)(vii). An incentive plan generally provides for compensation intended to serve as an incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the company or an affiliate, the company’s stock price, or any other performance measure. See Item 402(a)(6)(iii) for the definition of “incentive plan.”

¹⁷⁰ Awards disclosed in this column, column (g), are not covered by FAS 123R for financial reporting purposes because they do not involve share-based payment arrangements. Awards that involve share-based payment arrangements should be disclosed in the Stock Awards or Option Awards columns, as appropriate.

of grant, which may be some year prior to the year in which compensation under the non-equity incentive plan is reported in the Summary Compensation Table.¹⁷¹ As noted above, several commenters recommended Summary Compensation Table reporting of non-equity incentive plan awards on a grant date fair value basis, consistent with the reporting of equity incentive plans.¹⁷² However, because there is not one clearly required or accepted standard for measuring the value at grant date of these non-equity incentive plan awards that reflects the applicable performance contingencies, as there is for equity-based awards with FAS 123R, we are not including such a value in the Summary Compensation Table. Instead, we continue the disclosure approach of reflecting these items of compensation when earned.¹⁷³

Once the disclosure has been provided in the Summary Compensation Table when the specified performance criteria have been satisfied and the compensation earned, and the grant of the award has been disclosed in the Grants of Plan-Based Awards Table, no further disclosure will be specifically required when payment is actually made to the named executive officer. Some commenters objected to Summary Compensation Table reporting of awards for

¹⁷¹ See Section II.C.2., discussing the Grants of Plan-Based Awards Table.

¹⁷² See, e.g., letters from Amalgamated; Anonymous Compensation Consultant; BDO Seidman; CII; CRPTF; Mercer; and Teamsters Local 671. See discussion at Section II.C.1.a. above.

¹⁷³ Prior to these amendments, Items 402(b)(2)(iv)(C) and 402(e) required disclosure of long-term incentive plan payouts when earned.

which the relevant performance condition has been satisfied that remain subject to forfeiture conditions (such as conditions requiring continued service or conditions that provide for forfeiture based on future company performance).¹⁷⁴ We continue to believe that satisfaction of the relevant performance condition (including an interim performance condition in a long term plan) is the event that is material to investors for Summary Compensation Table reporting purposes. We encourage companies to use the related narrative section to disclose material features that are not reflected in the tabular disclosure including, for example, subsequent forfeitures of amounts reported in the table with respect to previous fiscal years.¹⁷⁵

As proposed and adopted, earnings on outstanding non-equity incentive plan awards are also included in the Non-Equity Incentive Plan Compensation column and identified and quantified in a footnote to the table.¹⁷⁶

¹⁷⁴ See, e.g., letters from Mercer; Watson Wyatt; and Richard E. Wood.

¹⁷⁵ Commenters' issues concerning the scope of awards reportable in this column, in particular as compared to compensation reportable in the bonus column, are discussed in Section II.C.1.f. below.

¹⁷⁶ Item 402(c)(2)(vii). These earnings were reportable prior to today's amendments in the Other Annual Compensation or All Other Compensation columns of the Summary Compensation Table under Items 402(b)(2)(iii)(C)(3) and 402(b)(2)(v)(C), respectively.

d. Change in Pension Value and Nonqualified Deferred Compensation Earnings Column

As we proposed, we are expanding the Summary Compensation Table to include information regarding the aggregate increase in actuarial value to the named executive officer of all defined benefit and actuarial plans (including supplemental plans) accrued during the year and earnings on nonqualified deferred compensation. However, as mentioned above, we have decided to present this information in a separate column rather than include it in the All Other Compensation column as proposed.¹⁷⁷ Footnote identification and quantification of the full amount of each element is required.¹⁷⁸ Any amount attributable to the defined benefit and actuarial plans that is a negative number should be disclosed by footnote, but should not be reflected in the amount reported in the column.¹⁷⁹

i. Earnings on Deferred Compensation

We proposed to require disclosure of all earnings on compensation that is deferred on a basis that is not tax-qualified, including non-tax qualified

¹⁷⁷ See the discussion of the Total column in Section II.C.1.a. above and the discussion of determination of named executive officers in Section II.C.6. below.

¹⁷⁸ Instruction 3 to Item 402(c)(2)(viii). In contrast, as proposed to be disclosed in the All Other Compensation Column, separate identification and quantification of each element would have been required only if the element exceeded \$10,000, although the amounts would have been included in that column without regard to size.

¹⁷⁹ Instruction 3 to Item 402(c)(2)(viii).

defined contribution retirement plans.¹⁸⁰ Prior to our amendments, these earnings were required to be disclosed only to the extent of any portion that was “above-market or preferential.” This limitation generated criticism that the rule prior to today’s amendments permitted companies to avoid disclosure of substantial compensation.

Some commenters supported this proposal.¹⁸¹ However, many commenters asserted that the Summary Compensation Table should continue to require disclosure only of earnings at above-market or preferential rates.¹⁸² Commenters stated that differences in earnings on nonqualified deferred compensation among executives may result entirely from the executives’ investment acumen and decisions as to amounts to defer. Commenters further claimed that deferred amounts invested at market rates are conceptually no different from amounts invested directly by an executive. Absent providing an

¹⁸⁰ Nonqualified defined contribution and other nonqualified deferred compensation plans are plans providing for deferral of compensation that do not satisfy the minimum coverage, nondiscrimination and other rules that “qualify” broad-based plans for favorable tax treatment under the Internal Revenue Code. A typical 401(k) plan, by contrast, is a qualified deferred compensation plan.

¹⁸¹ See, e.g., letters from CFA Centre 1 and jointly, Lucian A. Bebchuk, Jesse M. Fried and Robert J. Jackson, Jr. (“Professor Bebchuk, et al”).

¹⁸² See, e.g., letters from American Academy of Actuaries’ Pension Committee (“Academy of Actuaries”); BRT; Frederic W. Cook & Co.; Computer Sciences; Kimball International, Inc.; NAM; and Sullivan.

above-market return, contributing additional amounts or guaranteeing investment returns, commenters asserted that the company has no role in the annual growth of the account.

We are persuaded that Summary Compensation Table disclosure of nonqualified deferred compensation earnings should continue to be limited to the above-market or preferential portion.¹⁸³ As under the rule prior to these amendments, the above-market or preferential portion is determined for interest by reference to 120% of the applicable federal long-term rate and for dividends by reference to the dividend rate on the company's common stock.¹⁸⁴ Footnote or narrative disclosure of the company's criteria for determining any portion considered to be above-market may be provided. The above-market or preferential earnings in this column would always be positive, as it would not be possible for above-market or preferential losses to occur.

However, we do not overlook the fact that the company is obligated to pay the executive the entire amount of the nonqualified deferred compensation account, which represents a claim on company assets and is part of a plan that provides the executive with tax benefits.¹⁸⁵ To reflect this obligation, we have

¹⁸³ Item 402(c)(2)(viii)(B).

¹⁸⁴ Instruction 2 to Item 402(c)(2)(viii), which is based on the language which had appeared in Instructions 3 and 4 to Item 402(b)(2)(iii)(C) prior to these amendments.

¹⁸⁵ Nonqualified defined contribution and other nonqualified deferred compensation plans are generally unfunded, and their taxation is governed by Section 409A of the Internal Revenue Code [26 U.S.C. 409A].

decided to require disclosure of all earnings on nonqualified deferred compensation in the separate Nonqualified Deferred Compensation Table, as we proposed.¹⁸⁶ The disclosure required by that table discloses the rate at which the company's obligation grows on an annual basis.

Further, the method of calculating earnings on deferred compensation plans is an example of a factor that may be material and therefore described in the narrative disclosure to the Summary Compensation Table and the Grants of Plan-Based Awards Table.¹⁸⁷

ii. Increase in Pension Value

We proposed to require Summary Compensation Table disclosure of the aggregate increase in actuarial value to the executive officer of defined benefit and actuarial plans (including supplemental plans) accrued during the year.

In contrast to defined contribution plans, for which the Summary Compensation Table requires disclosure of company contributions, the rules prior to our amendments did not require disclosure of the annual change in value of defined benefit plans, such as pension plans, in which the named

¹⁸⁶ This separate table is discussed in Section II.C.5.b. below.

¹⁸⁷ See Section II.C.3.a. below.

executive officers participated.¹⁸⁸ The annual increase in actuarial value of these plans may be a significant element of compensation that is earned on an annual basis, thus we proposed to include it in the computation of total compensation.

Such disclosure is necessary to permit the Summary Compensation Table to reflect total compensation for the year. Such disclosure also permits a full understanding of the company's compensation obligations to named executive officers, given that defined benefit plans guarantee what can be a lifetime stream of payments and allocate risk of investment performance to the company and its shareholders. In addition commentators have noted that the absence of such a disclosure requirement creates an incentive to shift compensation to pensions, results in the understatement of non-performance-based compensation, and distorts pay comparisons between executives and between companies.

We are adopting the requirement substantially as proposed.¹⁸⁹ As proposed and adopted, an instruction specifies that this disclosure applies to each plan that provides for the payment of retirement benefits, or benefits that

¹⁸⁸ A typical defined contribution plan is a retirement plan in which the company and/or the executive makes contributions of a specified amount, and the amount that is paid out to the executive depends on the return on investments from the contributed amounts. A typical defined benefit plan is a retirement plan in which the company pays the executive specified amounts at retirement which are not tied to investment performance of the contributions that fund the plan.

¹⁸⁹ Item 402(c)(2)(viii)(A).

will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans and supplemental executive retirement plans, but excluding defined contribution plans.¹⁹⁰ The retirement section, discussed below, provides more information regarding these covered plans.¹⁹¹

Some commenters raised issues regarding computation of the amount to be disclosed.¹⁹² In response to these comments, we have revised the language of the requirement as adopted to clarify that the disclosure applies to the change, from the pension plan measurement date used for the company's audited financial statements for the prior completed fiscal year to the pension plan measurement date used for the company's audited financial statements for the covered fiscal year, in the actuarial present value of the named executive officer's accumulated benefit under all defined benefit and actuarial pension plans (including supplemental plans). The disclosure therefore includes both:

- the increase in value due to an additional year of service, compensation increases, and plan amendments (if any); and
- the increase (or decrease) in value attributable to interest.

¹⁹⁰ Instruction 1 to Item 402(c)(2)(viii). Defined benefit plans include, for example, cash balance plans in which the retiree's benefit may be determined by the amount represented in an account rather than based on a formula referencing salary while still employed.

¹⁹¹ See Section II.C.5.a., discussing the Pension Benefits Table.

¹⁹² See, e.g., letters from Academy of Actuaries; Frederic W. Cook & Co.; ABA-JCEB; and Mercer.

As discussed below, this disclosure relates to the disclosure provided in the Pension Benefits Table¹⁹³ and promotes company-to-company comparability. In computing the amount to be disclosed, the company must use the assumptions it uses for financial reporting purposes under generally accepted accounting principles.¹⁹⁴

Other commenters objected to this item’s potential to “distort” the Total column and the determination of named executive officers.¹⁹⁵ As described above, we continue to believe that inclusion of this element in the table is necessary to permit the Summary Compensation Table to reflect total compensation. However, we have addressed commenters’ concerns by segregating this item and above-market or preferential earnings on nonqualified deferred compensation from the All Other Compensation column, presenting their sum in a separate column so that it will be deducted from the total for purposes of determining the named executive officers.¹⁹⁶

¹⁹³ Item 402(h), discussed in Section II.C.5.a. below.

¹⁹⁴ Instruction 1 to Item 402(c)(2)(viii) and Instruction 2 to Item (h)(2). Regarding such key assumptions as interest rate, form of benefit, number of years of service, level of compensation used to determine the benefit and mortality tables, a company must use the same assumptions as it applies pursuant to Financial Accounting Standards Board Statement of Financial Accounting Standards No. 87, Employers’ Accounting for Pensions (FAS 87) both for this Summary Compensation Table column and the separate Pension Benefits Table.

¹⁹⁵ See, e.g., letters from Eli Lilly and SCSGP.

¹⁹⁶ See Section II.C.6. below.

e. All Other Compensation Column

The next column in the Summary Compensation Table discloses all other compensation not required to be included in any other column.¹⁹⁷ This approach allows the capture of all compensation in the Summary Compensation Table and also allows a total compensation calculation. We confirm that disclosure of all compensation is clearly required under the rules.¹⁹⁸

As proposed, we are clarifying the disclosure required in the All Other Compensation column (revised column (i)) in two principal respects:

- consistent with the requirement that the Summary Compensation Table disclose all compensation, we state explicitly that compensation not properly reportable in the other columns reporting specified forms of compensation must be reported in this column; and
- to simplify the Summary Compensation Table and eliminate confusing distinctions between items currently reported as “Annual” and “Long

¹⁹⁷ Item 402(c)(2)(ix).

¹⁹⁸ The only exception, as discussed below, is for perquisites and personal benefits if they aggregate less than \$10,000 for a named executive officer. The 1992 Release, at Section II.A.4., also noted “the revised item includes an express statement that it requires disclosure of all compensation to the named executive officers and directors for services rendered in all capacities to the registrant and its subsidiaries.” See also Item 402(a)(2) as stated prior to these amendments. Further, as described above, Summary Compensation Table disclosure of nonqualified deferred compensation earnings is limited to the above-market or preferential portion of earnings. As was previously the case before these amendments, companies may omit information regarding group life, health, hospitalization and medical reimbursement plans that do not discriminate in scope, terms or operation in favor of executive officers or directors of the company and that are available generally to all salaried employees. See Item 402(a)(6)(ii).

Term” compensation, we have moved into this column all items formerly reportable as “Other Annual Compensation.”¹⁹⁹

We also are requiring that each item of compensation included in the All Other Compensation column that exceeds \$10,000 be separately identified and quantified in a footnote. We believe that the \$10,000 threshold balances our desire to avoid disclosure of clearly de minimis matters against the interests of investors in the nature of items comprising compensation. Each item of compensation less than that amount will be included in the column (other than aggregate perquisites and other personal benefits less than \$10,000 as discussed below), but is not required to be identified by type and amount.²⁰⁰ Items to be disclosed in the All Other Compensation column include, but are not limited to, the items discussed below.

i. Perquisites and Other Personal Benefits

Perquisites and other personal benefits are included in the All Other Compensation column. As we proposed, we are adopting changes to the disclosure of perquisites and other personal benefits to improve disclosure and facilitate computing a total amount of compensation. Our amendments require the disclosure of perquisites and other personal benefits unless the aggregate

¹⁹⁹ Prior to today’s amendments, Item 402(b)(2)(iii)(c) had required the separate column entitled “Other Annual Compensation.”

²⁰⁰ See Section II.C.1.e.i. regarding separate standards for identification of perquisites and other personal benefits.

amount of such compensation is less than \$10,000. Some commenters thought this threshold was too high;²⁰¹ while other commenters thought it was too low.²⁰² While we realize that this threshold may result in the total amount of compensation reportable in the Summary Compensation Table being slightly less than a complete total amount of compensation, we believe \$10,000 is a reasonable balance between investors' need for disclosure of total compensation and the burden on a company to track every benefit, no matter how small. Prior to today's amendments, the rule permitted omission of perquisites and other personal benefits if the aggregate amount of such compensation was the lesser of either \$50,000 or 10% of the total of annual salary and bonus, allowing omission of too much information that investors may consider material.

The amendments we adopt today require, as proposed, footnote disclosure that identifies perquisites and other personal benefits. Prior to these amendments, the rule required identification and quantification only of perquisites and other personal benefits that were 25% of the total amount for

²⁰¹ See, e.g., letters from Association of BellTel Retirees ("ABTR"); AFL-CIO; Amalgamated; Association of US West Retirees ("AUSWR"); Corporate Library; ISS; UCF; and Walden.

²⁰² See, e.g., letters from Buck Consultants; Chamber of Commerce; Compass Bancshares; Computer Sciences; Eli Lilly; Emerson; Hodak Value Advisors; C. Kollar; NAM; and SCSGP.

each named executive officer.²⁰³ We have modified this requirement so that, unless the aggregate value of perquisites and personal benefits is less than \$10,000, any perquisite or other personal benefit must be identified and, if it is valued at the greater of \$25,000 or ten percent of total perquisites and other personal benefits, its value must be disclosed.²⁰⁴ Consistent with our objective to streamline the Summary Compensation Table, the revised threshold is intended to avoid requiring separate quantification of perquisites having de minimis value. Where perquisites are subject to identification, they must be described in a manner that identifies the particular nature of the benefit received. For example, it is not sufficient to characterize generally as “travel and entertainment” different company-financed benefits, such as clothing, jewelry, artwork, theater tickets and housekeeping services.

As was formerly the case, tax “gross-ups” or other reimbursement of taxes owed with respect to any compensation, including but not limited to perquisites and other personal benefits, must be separately quantified and identified in the tax reimbursement category described below, even if the associated perquisites or other personal benefits are eligible for exclusion or would not require identification or footnote quantification under the rule.

²⁰³ This requirement had been set forth in Instruction 1 to Item 402(b)(2)(iii)(C) prior to these amendments.

²⁰⁴ Instruction 4 to Item 402(c)(2)(ix).

In the Proposing Release, we provided interpretive guidance about factors to be considered in determining whether an item is a perquisite or other personal benefit. One commenter suggested that the Commission engage in a separate rulemaking to adopt a definition of perquisites in Regulation S-K.²⁰⁵ As we noted in the Proposing Release, for decades questions have arisen as to what is a perquisite or other personal benefit required to be disclosed. We continue to believe that it is not appropriate for Item 402 to define perquisites or personal benefits, given that different forms of these items continue to develop, and thus a definition would become outdated. As stated in the Proposing Release, we are concerned that sole reliance on a bright line definition in our rules might provide an incentive to characterize perquisites or personal benefits in ways that would attempt to circumvent the bright lines. Many commenters sought additional or modified interpretive guidance, including guidance with respect to an item that is integrally and directly related to the performance of the executive's duties but has a personal benefit aspect as well.²⁰⁶ Accordingly, we are providing additional explanation regarding how to apply this guidance. The amendments we adopt today require perquisites and personal benefits to be disclosed for both named executive officers and

²⁰⁵ See letter from Chamber of Commerce.

²⁰⁶ See, e.g., letter from SCSGP.

directors.²⁰⁷ Further, the disclosure requirements we adopt regarding potential payments upon termination or change-in-control include disclosure of perquisites.²⁰⁸ Accordingly, this discussion also applies in the context of each of these disclosure requirements.

Among the factors to be considered in determining whether an item is a perquisite or other 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.
- Otherwise, an item 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.

We believe the way to approach this is by initially evaluating the first prong of the analysis. If an item is integrally and directly related to the performance of the executive's duties, that is the end of the analysis – the item is not a perquisite or personal benefit and no compensation disclosure is required. Moreover, if an item is integrally and directly related to the performance of an executive's duties under this analysis, there is no

²⁰⁷ For directors, the disclosure will be required in the Director Compensation Table discussed below in Section II.C.9.

²⁰⁸ Item 402(j), discussed in Section II.C.5.c. below.

requirement to disclose any incremental cost over a less expensive alternative. For example, with respect to business travel, it is not necessary to disclose the cost differential between renting a mid-sized car over a compact car.

Because of the integral and direct connection to job performance, the elements of the second part of the analysis (e.g., whether there is also a personal benefit or whether the item is generally available to other employees) are irrelevant. An example of such an item could be a “Blackberry” or a laptop computer if the company believes it is an integral part of the executive’s duties to be accessible by e-mail to the executive’s colleagues and clients when out of the office. Just as these devices represent advances over earlier technology (such as voicemail), we expect that as new technology facilitates the extent to which work is conducted outside the office, additional devices may be developed that will fall into this category.

The concept of a benefit that is “integrally and directly related” to job performance is a narrow one. The analysis draws a critical distinction between an item that a company provides because the executive needs it to do the job, making it integrally and directly related to the performance of duties, and an item provided for some other reason, even where that other reason can involve both company benefit and personal benefit. Some commenters objected that “integrally and directly related” is too narrow a standard, suggesting that other business reasons for providing an item should not be disregarded in

determining whether an item is a perquisite.²⁰⁹ We do not adopt this suggested approach. As we stated in the Proposing Release, the fact that the company has determined that an expense is an “ordinary” or “necessary” business expense for tax or other purposes or that an expense is for the benefit or convenience of the company is not responsive to the inquiry as to whether the expense provides a perquisite or other personal benefit for disclosure purposes. Whether the company should pay for an expense or it is deductible for tax purposes relates principally to questions of state law regarding use of corporate assets and of tax law; our disclosure requirements are triggered by different and broader concepts.

As we noted in the Proposing Release, 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 of his or her job. Therefore, 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. A company policy that for security purposes an executive (or an executive and his or her family) must use company aircraft or other company means of travel for personal travel, or must use company or company-provided property for vacations, does not affect the conclusion that the item provided is a perquisite or personal benefit.

²⁰⁹ See, e.g., letters from NACCO Industries, Inc. (“NACCO Industries”) and NAM.

If an item is not integrally and directly related to the performance of the executive's duties, the second step of the analysis comes into play. Does the item confer 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)? If so, is it generally available on a non-discriminatory basis to all employees? For example, a company's provision of helicopter service for an executive to commute to work from home is not integrally and directly related to job performance (although it would benefit the company by getting the executive to work faster), clearly bestows a benefit that has a personal aspect, and is not generally available to all employees on a non-discriminatory basis. As we have noted, 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 of his or her job.

A company may reasonably conclude that an item is generally available to all employees on a non-discriminatory basis if it is available to those employees to whom it lawfully may be provided. For this purpose, a company may recognize jurisdictionally based legal restrictions (such as for foreign employees) or the employees' "accredited investor"²¹⁰ status. In contrast, merely providing a benefit consistent with its availability to employees in the

²¹⁰ "Accredited investor" is defined in Securities Act Rule 501(a) [17 CFR 230.501(a)] for purposes of Regulation D [17 CFR 230.501 - 508].

same job category or at the same pay scale does not establish that it is generally available on a non-discriminatory basis to all employees.

Applying the concepts that we outline above, examples of items requiring disclosure as perquisites or personal benefits under Item 402 include, but are not limited to: club memberships not used exclusively for business entertainment purposes, personal financial or tax advice, personal travel using vehicles owned or leased by the company, personal travel otherwise financed by the company, personal use of other property owned or leased by the company, housing and other living expenses (including but not limited to relocation assistance and payments for the executive or director to stay at his or her personal residence), security provided at a personal residence or during personal travel, commuting expenses (whether or not for the company's convenience or benefit), and discounts on the company's products or services not generally available to employees on a non-discriminatory basis.

Beyond the examples provided, we assume that companies and their advisors, who are more familiar with the detailed facts of a particular situation and who are responsible for providing materially accurate and complete disclosure satisfying our requirements, can apply the two-step analysis to assess whether particular arrangements require disclosure as perquisites or personal

benefits. In light of the importance of the subject to many investors, all participants should approach the subject of perquisites and personal benefits thoughtfully.²¹¹

The amendments we adopt today, as proposed, call for aggregate incremental cost to the company as the proper measure of value of perquisites and other personal benefits.²¹² Some commenters instead recommended valuing perquisites based on current market values.²¹³ Consistent with our approach of disclosing a company's compensation costs, we remain of the view that perquisites should be valued based on aggregate incremental cost.

Finally, commenters observed that investors cannot fully understand disclosed perquisite amounts without disclosure of the methodology used to

²¹¹ The Commission has taken action in circumstances where perquisites were not properly disclosed. See SEC v. Greg A. Gadel and Daniel J. Skrypek, Litigation Release No. 19720 (June 7, 2006) and In the Matter of Tyson Foods, Inc. and Donald Tyson, Litigation Release No. 19208 (Apr. 28, 2005).

²¹² Instruction 4 to Item 402(c)(2)(ix).

²¹³ See, e.g., letters from ABTR; AUSWR; CII; Computer Sciences; Pearl Meyer & Partners; and Institutional Investors Group. As we stated in the Proposing Release, the amount attributed to perquisites and other personal benefits for federal income tax purposes is not the incremental cost for purposes of our disclosure rules unless, independently of the tax characterization, it constitutes such incremental cost. Therefore, for example, the cost of aircraft travel attributed to an executive for federal income tax purposes is not generally the incremental cost of such a perquisite or personal benefit for purposes of our disclosure rules. See IRS Regulation §1.61-21(g) [26 CFR 1.61-21(g)] regarding Internal Revenue Service guidelines for imputing taxable personal income to an employee who travels for personal reasons on corporate aircraft. These complex regulations are known as the Standard Industry Fare Level or SIFL rules.

compute them.²¹⁴ We agree that this disclosure will improve investors' ability to compare the cost of perquisites from company to company. The rule as adopted requires footnote disclosure of the methodology for computing the aggregate incremental cost for the perquisites.²¹⁵

²¹⁴ See, e.g., letter from Mercer.

²¹⁵ Instruction 4 to Item 402(c)(2)(ix).

ii. Additional All Other Compensation Column Items

We are adopting as proposed a requirement that items to be disclosed in the All Other Compensation column include, but are not limited to, the following items:²¹⁶

- amounts paid or accrued pursuant to a plan or arrangement in connection with any termination (or constructive termination) of employment or a change in control;²¹⁷
- annual company contributions or other allocations to vested and unvested defined contribution plans;²¹⁸

²¹⁶ All of these items were required to be disclosed either under All Other Compensation or under Other Annual Compensation prior to these amendments.

²¹⁷ Unlike the text of Item 402(b)(2)(v)(A) prior to these amendments, Item 402(c)(2)(ix)(D) as amended does not refer to amounts payable under post-employment benefits. Instruction 5 to Item 402(c)(2)(ix) provides that an accrued amount is an amount for which payment has become due, such as a severance payment currently owed by the company to an executive officer. These items, as well as amounts that are payable in the future, are also the subject of disclosure as post-termination compensation, as described in Section II.C.5.c. below. For any compensation as a result of a business combination, other than pursuant to a plan or arrangement in connection with any termination of employment or change-in-control, such as a retention bonus, acceleration of option or stock vesting periods, or performance-based compensation intended to serve as an incentive for named executive officers to acquire other companies or enter into a merger agreement, disclosure will now be required in the appropriate Summary Compensation Table column and in the other tables or narrative disclosure where the particular element of compensation is required to be disclosed.

²¹⁸ Item 402(c)(2)(ix)(E).

- the dollar value of any insurance premiums paid by the company with respect to life insurance for the benefit of a named executive officer;²¹⁹
- “gross-ups” or other amounts reimbursed during the fiscal year for the payment of taxes;²²⁰ and
- for any security of the company or its subsidiaries purchased from the company or its subsidiaries (through deferral of salary or bonus) at a discount from the market price of such security at the date of purchase, unless that discount is available generally either to all security holders or to all salaried employees of the company, the compensation cost, if any, computed in accordance with FAS 123R.²²¹

An additional requirement to include the dollar value of any dividends or other earnings paid on stock or option awards when the dividends or

²¹⁹ Item 402(c)(2)(ix)(F). Because the amendments call for disclosure of the dollar value of any life insurance premiums, rather than only premiums with respect to term life insurance (as was required prior to these amendments), the requirement that had been previously specified in Item 402(b)(2)(v)(E)(1) and (2) to disclose the value of any remaining premiums with respect to circumstances where the named executive officer has an interest in the policy’s cash surrender value is not retained in the amended rule.

²²⁰ Item 402(c)(2)(ix)(B).

²²¹ Item 402(c)(2)(ix)(C). This requirement as adopted has been revised from the proposal to clarify that no amount of compensation is required to be disclosed if there is no compensation cost computed for the discounted securities purchase in accordance with FAS 123R. For example, under FAS 123R, if the discount is five percent or less, all qualified employees can participate in the offer and there are no option features, then there is no compensation cost to recognize for financial reporting purposes and thus no compensation is reported for this item in the All Other Compensation column.

earnings were not factored into the grant date fair value has been adopted for this column as discussed above.²²²

In response to commenters' concerns about double counting pension benefits,²²³ we have not retained the aspect of proposed Instruction 2 to this column that would have required disclosure of pension benefits paid to the named executive officer during the period covered by the table.²²⁴ As adopted, an instruction provides that benefits paid pursuant to defined benefit and actuarial plans are not reportable as All Other Compensation unless accelerated pursuant to a change in control.²²⁵ Similarly, distributions of nonqualified deferred compensation are not reportable as All Other Compensation.

f. Captions and Table Layout

Before today's amendments, a portion of the table was labeled as "annual compensation" and another portion as "long term compensation." These captions created distinctions that may have been confusing to both users and preparers of the Summary Compensation Table. As proposed, the amendments we adopt today do not separately identify some columns as "annual" and other columns as "long term" compensation. Consistent with this

²²² Item 402(c)(2)(ix)(G).

²²³ See, e.g., letter from Cravath.

²²⁴ We have moved this disclosure requirement to the Pension Benefits Table, described in Section II.C.5.a. below.

²²⁵ Instruction 2 to Item 402(c)(2)(ix).

change, as described above, we are merging the current Other Annual Compensation column into the new All Other Compensation column, and include current earnings information regarding non-equity incentive plan compensation in the column for that form of award.

In eliminating this distinction, we also revise the former definition of “long term incentive plan” to eliminate any distinction between a “long term” plan and one that may provide for periods shorter than one year. Like the captions, the former approach created distinctions that may have been confusing to users and preparers. As proposed and adopted, the amendments define an “incentive plan” as any plan providing compensation intended to serve as incentive for performance to occur over a specified period.²²⁶ The related definition of “incentive plan award” as an award provided under an incentive plan is also adopted as proposed.²²⁷

Noting that companies formerly reported as “bonuses” awards that would be short-term incentive plan awards under this definition, commenters requested guidance as to what distinguishes items reportable as non-equity incentive plan compensation from those reportable as bonuses under the amended rules.²²⁸ An award would be considered “intended to serve as an

²²⁶ Item 402(a)(6)(iii).

²²⁷ Id.

²²⁸ See, e.g., letters from Hewitt; Mercer; NACCO Industries; and SCSGP.

incentive for performance to occur over a specified period” if the outcome with respect to the relevant performance target is substantially uncertain at the time the performance target is established and the target is communicated to the executive. Compensation pursuant to such a non-equity award would be reported in the Summary Compensation Table as non-equity incentive plan compensation and the grant of the award would be reported as a non-equity incentive plan award in the Grants of Plan-Based Awards Table.²²⁹ In contrast, a cash award based on satisfaction of a performance target that was not pre-established and communicated, or the outcome of which is not substantially uncertain, would be reportable in the Summary Compensation Table as a bonus.

2. Supplemental Grants of Plan-Based Awards Table

Following the Summary Compensation Table, we proposed two supplemental tables to explain information in the Summary Compensation Table. The proposed tables were derived from two tables required under the rules prior to these amendments.

²²⁹ This table is described in Section II.C.2. immediately below. Further, no longer reporting compensation pursuant to these awards as “bonus” in the Summary Compensation Table does not affect the determination of named executive officers because, as described in Section II.C.6.b. below, that determination is not limited to consideration of salary and bonus.

The first table we proposed to supplement the Summary Compensation Table would have included information regarding non-stock grants of incentive plan awards, stock-based incentive plan awards and awards of options, restricted stock and similar instruments under plans that are performance-based (and thus provide the opportunity for future compensation if conditions are satisfied).²³⁰ The second table we proposed to supplement the Summary Compensation Table would have shown the equity-based compensation awards granted in the last fiscal year that are not performance-based, such as stock, options or similar instruments where the payout or future value is tied to the company's stock price, and not to other performance criteria.²³¹

Because much of the information for each proposed table is consistent, we have followed the recommendation of a commenter to simplify the disclosure format by combining the proposed disclosure in a single table.²³²

²³⁰ Proposed Item 402(d).

²³¹ Proposed Item 402(e), containing much of the information that was required prior to these amendments by the Option/SAR Grants Table (formerly specified in Item 402(c)).

²³² See letter from Hewitt.

GRANTS OF PLAN-BASED AWARDS

Name (a)	Grant Date (b)	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 (#) (i)	All Other Option Awards: Number of Securities Underlying Options (#) (j)	Exercise or Base Price of Option Awards (\$/Sh) (k)
		Thresh- old (\$) (c)	Target (\$) (d)	Maxi- mum (\$) (e)	Thresh- old (#) (f)	Target (#) (g)	Maxi- mum (#) (h)			
PEO										
PFO										
A										
B										
C										

Disclosure in this table complements Summary Compensation Table disclosure of grant date fair value of stock awards and option awards by disclosing the number of shares of stock or units comprising or underlying the award. This supplemental table shows the terms of grants made during the current year, including estimated future payouts for both equity incentive plans and non-equity incentive plans, with separate disclosure for each grant.²³³

To simplify the presentation further, we have eliminated some of the proposed columns. Because the narrative section identifies the material terms of an award reported in this table as an example of a material factor to be described,²³⁴ and thus will cover the same information, we have eliminated the

²³³ Instruction 1 to Item 402(d).

²³⁴ Item 402(e)(1)(iii), described in Section II.C.3.a. immediately below.

proposed columns reporting vesting date, or performance or other period until vesting or payout. As a commenter noted, vesting information typically cannot be reported easily in a single line in a table.²³⁵ Similarly, because the modifications we are making to the Outstanding Equity Awards at Fiscal Year-End Table require that table to report the expiration dates of options and similar awards,²³⁶ we are eliminating the proposed expiration date column. Finally, the proposed column reporting the dollar amount of consideration paid for the award, if any, is not adopted, reflecting comments that this column would be used only rarely.²³⁷ Instead, in those rare instances where consideration is paid for an award, this disclosure will be provided in a footnote to the appropriate column.²³⁸

As proposed, the Grants of All Other Equity Awards Table would have permitted aggregation of option grants with the same exercise or base price. We have not adopted such an instruction for this table, based on our belief that grant-by-grant disclosure is the most appropriate approach, particularly given our particular disclosure concerns regarding option grants. For incentive plan awards, threshold, target and maximum payout information should be provided, but if the

²³⁵ See letter from ABA.

²³⁶ See Section II.C.4.a. below.

²³⁷ Proposed Item 402(d)(2)(v). See, e.g., letters from Frederic W. Cook & Co. and SCSGP.

²³⁸ Instruction 5 to Item 402(d).

award provides only for a single estimated payout, that amount should be reported as the target.²³⁹ Where there is a tandem grant of two instruments, only one of which is granted under an incentive plan, only the instrument that is not granted under an incentive plan is reported in the table, with the tandem feature noted.²⁴⁰ Because the rules as adopted require Summary Compensation Table disclosure of the incremental fair value, computed in accordance with FAS 123R, of options, stock appreciation rights and similar option-like instruments granted in connection with a repricing transaction, rather than the total fair value as we had proposed, grants of these instruments are not reported in this table.²⁴¹ Disclosure should be provided in the Compensation Discussion and Analysis and the narrative disclosures for the Summary Compensation Table and Grants of Plan-Based Awards, as appropriate, regarding awards granted in connection with repricing transactions.

As proposed and adopted, if the per-share exercise or base price of options, stock appreciation rights and similar option-like instruments is less than the market price of the underlying security on the grant date, a separate column must be added showing market price on the grant date.²⁴² Some commenters

²³⁹ Instruction 2 to Item 402(d).

²⁴⁰ Instruction 4 to Item 402(d).

²⁴¹ See discussion at Section II.C.1.c.i. above.

²⁴² Item 402(d)(2)(vii).

objected to our proposal to calculate grant date market price for this purpose using the closing price per share of the underlying security on that date. These commenters stated that plans requiring awards to be granted with an exercise price equal to the underlying security’s grant date fair market value may define “fair market value” based on a formula related to the average market price on the grant date or a range of days either before or after the grant date.²⁴³ Our proposed departure from the rule prior to these amendments, which permitted use of such formulas even for securities traded on an established market,²⁴⁴ was considered, and along with the requirement to disclose the grant date, reflects the significance of issues in awards of option grants.²⁴⁵ Moreover, commenters expressed concern regarding the manipulation of option grant dates to achieve below-market exercise prices.²⁴⁶ The rule as adopted uses the measure for grant date market price of the underlying security that we proposed, modified to specify that the grant date closing market price per share is the last sale price on

²⁴³ See, e.g., letters from Cravath; Eli Lilly; and Sidley Austin LLP (“Sidley Austin”).

²⁴⁴ This requirement had been set forth in Instruction 6 to Item 402(c) prior to today’s amendments.

²⁴⁵ See the discussion of options disclosure in Section II.A., above.

²⁴⁶ See, e.g., letter from CFA Centre for Financial Market Integrity, dated May 30, 2006 (“CFA Centre 2”).

the principal United States market for the security on the specified date.²⁴⁷ Moreover, if the exercise or base price is not the grant date closing market price per share, we require a description of the methodology for determining the exercise or base price either by footnote to the table or in the accompanying narrative section.²⁴⁸ Further reflecting the significance of grant date issues in awards of option grants and in response to comments,²⁴⁹ we are also providing that if the date on which the compensation committee (or a committee of the board of directors performing a similar function or the full board of directors) takes action or is deemed to take action to grant equity-based awards is different from the date of grant, a column must be added to disclose the date of action.²⁵⁰ For these purposes, the “date of grant” or “grant date” is the grant date determined for financial statement reporting purposes pursuant to FAS 123R.²⁵¹ Finally, in combining the proposed tables, we have adopted an instruction

²⁴⁷ Because the concept of closing market price is used in a number of provisions of Item 402, we are adopting a definition of the term closing market price in Item 402(a)(6)(v). A foreign company complying with this requirement may instead look to the principal foreign market in which the underlying securities trade.

²⁴⁸ Instruction 3 to Item 402(d).

²⁴⁹ See, e.g., letter from CFA Centre 2.

²⁵⁰ Item 402(d)(2)(ii).

²⁵¹ Item 402(a)(6)(iv).

specifying that if a non-equity incentive plan award is denominated in units or other rights, then a separate, adjoining column would be required to disclose the units or other rights awarded.²⁵²

3. Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards Table

a. Narrative Description of Additional Material Factors

As we proposed, we are requiring narrative disclosure following the Summary Compensation Table and the Grants of Plan-Based Awards Table in order to give context to the tabular disclosure. A company will be required to provide a narrative description of any additional material factors necessary to an understanding of the information disclosed in the tables.²⁵³ Unlike the Compensation Discussion and Analysis, which focuses on broader topics regarding the objectives and implementation of executive compensation policies, the narrative disclosures following the Summary Compensation Table and other tables focus on and provide specific context to the quantitative disclosure in the tables. For example, narrative disclosure following a table might explain material aspects of a plan that are not evident from the quantitative tabular disclosure and are not addressed in the Compensation Discussion and Analysis.

²⁵² Instruction 6 to Item 402(d).

²⁵³ Item 402(e)(1). The standard of materiality that applies in Item 402(e) is that of Basic v. Levinson, 485 U.S. 224 (1988) and TSC Industries v. Northway, 426 U.S. 438 (1976).

The material factors that require disclosure will vary depending on the facts and circumstances. As one example, such material factors might include descriptions of the material terms in the named executive officers' employment agreements as those descriptions might provide material information necessary to an understanding of the tabular disclosure. The narrative disclosure covers written or unwritten agreements or arrangements.²⁵⁴ Requiring this disclosure in proximity to the Summary Compensation Table is intended to make the tabular disclosure more meaningful. Mere filing of employment agreements (or summaries of oral agreements) may not be adequate to disclose material factors depending on the circumstances. As stated in the Proposing Release, provisions regarding post-termination compensation need to be addressed in the narrative section only to the extent disclosure of such compensation is required in the Summary Compensation Table; otherwise these provisions will be disclosable as post-termination compensation.²⁵⁵

The factors that could be material include each repricing or other material modification of any outstanding option or other equity-based award during the last fiscal year. This disclosure addresses not only option repricings, but also other significant changes to the terms of equity-based awards.²⁵⁶ As

²⁵⁴ Item 402(e)(1)(i).

²⁵⁵ Item 402(j), described in Section II.C.5.c.

²⁵⁶ Item 402(e)(1)(ii).

proposed, we are eliminating the former ten-year option repricing table.²⁵⁷ In its place, the narrative disclosure following the Summary Compensation Table will describe, to the extent material and necessary to an understanding of the tabular disclosure, repricing, extension of exercise periods, change of vesting or forfeiture conditions, change or elimination of applicable performance criteria, change of the bases upon which returns are determined, or any other material modification.²⁵⁸

Narrative text accompanying the tables will also describe, to the extent material and necessary to an understanding of the tabular disclosure, award terms relating to disclosure provided in the Grants of Plan-Based Awards Table. This could include, for example, a general description of the formula or criteria to be applied in determining the amounts payable, the vesting schedule, a description of the performance-based conditions and any other material conditions applicable to the award, whether dividends or other amounts would

²⁵⁷ The ten-year option repricing table had been required by Item 402(i) prior to its elimination with these amendments. We believe that the narrative disclosure requirement will provide investors with material information regarding repricings and modifications and eliminate the arguably dated information contained in the former ten-year option repricing table.

²⁵⁸ As described in Section II.C.1.c.i. above, the tabular disclosure will report the incremental fair value of the modification for financial reporting purposes. However, narrative disclosure will not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or stock appreciation right exercise or base price, an antidilution provision, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or stock appreciation rights. Instruction 1 to Item 402(e).

be paid, the applicable rate and whether that rate is preferential.²⁵⁹ As noted above and consistent with current disclosure requirements, however, companies will not be required to disclose any factor, criteria, or performance-related or other condition to payout or vesting of a particular award that involves confidential trade secrets or confidential commercial or financial information, disclosure of which would result in competitive harm to the company.²⁶⁰

We proposed that this example also include material assumptions underlying the determination of the amount of increase in the actuarial value of defined benefit and actuarial plans. However, in light of the modifications we are adopting, we have concluded that the better place to discuss these assumptions is in the narrative section accompanying the Pension Benefits Table.²⁶¹

Further, in response to commenters' concerns regarding the computation of total compensation and the expanded basis for determining the

²⁵⁹ Item 402(e)(1)(iii), which combines some information that had been required by Instruction 2 to Item 402(b)(2)(iv) with information that had been required by Instruction 1 to Item 402(e) as they were stated in the rule before these amendments.

²⁶⁰ We have adopted Instruction 2 to Item 402(e)(1), which specifically applies to the narrative disclosure of Item 402(e)(1) the same standard applicable to Compensation Discussion and Analysis for determining whether disclosure would result in competitive harm for the company. See Section II.B.2., above, for a discussion of this standard.

²⁶¹ See Section II.C.5.a. below.

most highly compensated officers,²⁶² we specify as an additional example an explanation of the level of salary and bonus in proportion to total compensation.²⁶³

b. Request for Additional Comment on Compensation Disclosure for up to Three Additional Employees

As part of this narrative disclosure requirement, we had proposed an additional item that would have required disclosure for up to three employees who were not executive officers during the last completed fiscal year and whose total compensation for the last completed fiscal year was greater than that of any of the named executive officers.²⁶⁴ We received extensive comment on this proposal. Some commenters supported the proposal or suggested that it should go further.²⁶⁵ Many commenters expressed concern that the benefits of this disclosure to investors would be negligible, yet compliance might require the outlay of considerable company resources.²⁶⁶ Some commenters expressed concern that the proposed disclosure would raise privacy issues or negatively

²⁶² See Section II.C.1.a. above and Section II.C.6.b. below.

²⁶³ Item 402(e)(1)(iv).

²⁶⁴ Proposed Item 402(f)(2).

²⁶⁵ See, e.g., letters from Corporate Library; The Greenlining Institute; Institutional Investor Group; and SBAF.

²⁶⁶ See, e.g., letters from ABA; Chamber of Commerce; Eli Lilly; Leggett & Platt; N. Ludgus; and Mercer.

impact competition for employees.²⁶⁷ While we continue to consider whether to adopt such a requirement as part of the executive compensation disclosure rules, in Release No. 33-8735 we are requesting additional comment as to whether potential modifications would address the concerns that commenters have raised.

We note in particular that some commenters questioned the materiality of the information that would have been required by the proposal, given that the covered employees would not be in policy-making positions as executive officers.²⁶⁸ After considering the issues raised by these commenters, we remain concerned about disclosure with respect to employees, particularly within very large companies, whether or not they are executive officers, whose total compensation for the last completed fiscal year was greater than that of one or

²⁶⁷ See, e.g., letters from ABA-JCEB; BRT; jointly, CBS Corporation, The Walt Disney Company, NBC Universal, News Corporation, and Viacom, Inc. (“Entertainment Industry Group”); Committee on Corporate Finance of Financial Executives International (“FEI”); Chamber of Commerce; Cleary; CNET Networks, Inc. (“CNET Networks”); Compass Bancshares; Compensia; Cravath; DreamWorks Animation SKG (“DreamWorks”); Eli Lilly; Emerson; Fenwick; The Financial Services Roundtable (“FSR”); Professor Joseph A. Grundfest, dated April 10, 2006 (“Grundfest”); ICI; Intel Corporation (“Intel”); Kellogg Company (“Kellogg”); Kennedy & Baris, LLP (“Kennedy”); Mercer; Peabody Energy; Pearl Meyer & Partners; Securities Industry Association (“SIA”); Sullivan; SCSGP; and WorldatWork.

²⁶⁸ See, e.g., letters from CalSTRS; Cleary; CNET Networks; Compass Bancshares; DreamWorks; Entertainment Industry Group; Fried, Frank, Harris, Shriver & Jacobson LLP (“Fried Frank”); FSR; Hewitt; ICI; Intel; Kellogg; Kennedy; Leggett & Platt; Peabody Energy; Pearl Meyer & Partners; SCSGP; SIA; Stradling Yocca Carlson & Rauth (“Stradling Yocca”); Top Five Data Services, Inc. (“Top Five Data”); Towers Perrin; and Walden.

more of the named executive officers. If any of these employees 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, then investors seeking a fuller understanding of a company's compensation program may believe that disclosure of these employees' total compensation is important information.²⁶⁹ Knowing the compensation, and job positions within the organization, of these highly compensated policy-makers whose total compensation for the last fiscal year was greater than that of a named executive officer, should assist in placing in context and permit a better understanding of the compensation structure of the named executive officers and directors.

Our intention is to provide investors with information regarding the most highly compensated employees who exert significant policy influence by having responsibility for significant policy decisions. Responsibility for significant policy decisions could consist of, for example, the exercise of strategic, technical, editorial, creative, managerial, or similar responsibilities. Examples of employees who might not be executive officers but who might have responsibility for significant policy decisions could include the director of

²⁶⁹ The Commission expressed similar concerns in 1978, when it stated "a key employee or director of a subsidiary might be the highest-paid person in the entire corporate structure and have managerial responsibility for major aspects of the registrant's overall operations." 1978 Release. See n. 327 for a discussion of the term "executive officer." In light of some of the comments that we received, we have clarified that the definition of "executive officer" includes all individuals in a registrant policy-making role. See, e.g., letters from SCSGP and Cravath.

the news division of a major network; the principal creative leader of the entertainment function of a media conglomerate; or the head of a principal business unit developing a significant technological innovation. By contrast, we are convinced by commenters that a salesperson, entertainment personality, actor, singer, or professional athlete who is highly compensated but who does not have responsibility for significant policy decisions would not be the type of employee about whom we would seek disclosure. Nor, as a general matter, would investment professionals (such as a trader, or a portfolio manager for an investment adviser who is responsible for one or more mutual funds or other clients) be deemed to have responsibility for significant policy decisions at the company, at a significant subsidiary or at a principal business unit, division or function simply as a result of performing the duties associated with those positions. On the other hand, an investment professional, such as a trader or portfolio manager, who does have broader duties within a firm (such as, for example, oversight of all equity funds for an investment adviser) may be considered to have responsibility for significant policy decisions.

We continue to consider whether it is appropriate to require some level of narrative disclosure so that shareholders will have information about these most highly compensated employees. This consideration includes the appropriate level of information about these employees and their compensation in light of their roles.

As to issues regarding privacy and competition for employees, to the extent that commenters objected that the disclosure could result in a competitor stealing a company’s top “talent,”²⁷⁰ we have tried to address these concerns by focusing the disclosure on persons who exert significant policy influence within the company or significant parts of the company.

Request for Comment

We request additional comment on the proposal to require compensation disclosure for up to three additional employees. In addition to general comment, we encourage commenters to address the following specific questions:

- Would the rule more appropriately require disclosure of the employees described above if it were structured in the following or similar manner:

For each of the company’s three most highly compensated employees, whether or not they were executive officers during the last completed fiscal year, whose total compensation for the last completed fiscal year was greater than that of any of the named executive officers, disclose each such employee’s total

²⁷⁰ See, e.g., letter from Entertainment Industry Group. In addition, we note our intention is not to suggest that these additional employees, whether or not they are executive officers, are individuals whose compensation is required to be reported under the Exchange Act “by reason of such employee being among the 4 highest compensated officers for the taxable year,” as stated in Internal Revenue Code Section 162(m)(3)(B) [26 U.S.C. 162(m)(3)(B)]. See letter from Cleary (expressing concern that the additional individuals not fall within the purview of Section 162(m) of the Internal Revenue Code).

compensation for that year and describe the employee's job position, without naming the employee; provided, however, that employees with no responsibility for significant policy decisions within the company, a significant subsidiary of the company, or a principal business unit, division, or function of the company are not included when determining who are each of the three most highly compensated employees for the purposes of this requirement, and therefore no disclosure is required under this requirement for any employee with no responsibility for significant policy decisions within the company, a significant subsidiary of the company, or a principal business unit, division, or function of the company?

- Would it be appropriate to determine the highest paid employees in the same manner that named executive officers are determined, by calculating total compensation but excluding pension plan benefits and above-market or preferential earnings on nonqualified deferred compensation plans, and by comparing that amount to the same amount earned by the named executive officers (excluding the amount required to be disclosed for those named executive officers pursuant to paragraph (c)(2)(viii) of Item 402)? If so, should the total amount disclosed include these amounts as it does for named executive officers? Should

the pension benefit and above-market earnings be separately disclosed in a footnote so investors can calculate the amounts used in determining highest paid employees?

- Would modifying the proposed rule to apply only to large accelerated filers²⁷¹ properly focus this disclosure obligation on companies that are more likely to have these additional highly compensated employees? Would that modification address concerns that the proposed rule would impose disproportionate compliance burdens by limiting the disclosure obligation to companies that are presumptively better able to track the covered employees? Would a different limitation as to applicability be appropriate?
- Is information regarding highly compensated employees, including those who are not executive officers, material to investors? In answering this question, commenters are encouraged to address the following additional questions:
 - Would modifications limiting the disclosure to employees who make significant policy decisions within the company, a significant subsidiary of the company, or a principal business unit, division, or

²⁷¹ The term large accelerated filer is defined in Exchange Act Rule 12b-2 [17 CFR 240.12b-2].

function of the company appropriately focus the disclosure on employees for whom compensation information is material to investors?

- Would the approach that we are considering provide investors with material information about how policy-making responsibilities are allocated within a company? Are the examples describing responsibility for significant policy decisions too broad or too narrow?
- Would the proposed rule, with the modifications described above, provide investors with material information necessary to understand the company's compensation policies and structure? How should we address those concerns?
- What is typically the role of the compensation committee in determining or approving the compensation of the additional employees if they are not executive officers? If the compensation committee does not oversee their compensation, is the additional employee compensation information material to investors? What types of decisions would investors make based on this information?
- Would the proposed rule, with the modifications described above, raise privacy issues or negatively impact competition for employees in a

manner that would outweigh the materiality of the disclosure to investors?

- Should we require that the three additional employees be named? If not, what additional information should be required? Should more information be required regarding the employee’s compensation or job position?
- Should we define “responsibility for significant policy decisions”? Should we use another test to describe those employees who exert a significant policy influence on the company? Do the examples provided above help identify and delimit the number of employees whose compensation would be subject to disclosure under this provision? What would help companies identify these employees?
- What additional work and costs are involved in collecting the information necessary to identify the three additional employees? What are the types of costs, and in what amounts? In what way can the proposal be further modified to mitigate the costs?
- In connection with the original proposal, we solicited comment on all aspects of the proposal, including this one. No commenter supplied cost estimates. We are now considering whether to limit this provision to only large accelerated filers. For some large accelerated filers, the number of employees potentially subject to this requirement may

already be known or easy to identify. Other, more complex companies may need to establish systems to identify such employees. Every large accelerated filer would need to evaluate whether any employees exerted significant policy influence at the company, at a significant subsidiary or at a principal business unit, division or function and would have to track their compensation in order to comply with the proposed requirement. These monitoring costs may be new to some companies. We believe the cost of actually disclosing the compensation would be incremental and minimal. The monitoring and information collection costs are likely to be greatest in the first year and significantly less in later years. We also assume that costs would largely be borne internally, although some companies may seek the advice of outside counsel in determining which employees meet the standard for disclosure. In that event, for purposes of seeking comment, we estimate that 1,700²⁷² companies will on average retain outside counsel for 8 hours in the first year and 2 hours in each of two succeeding years, at \$400 per hour, for a total estimated average annual cost of approximately \$3 million. Assuming all large accelerated filers spend 60 hours in the first year and 10 hours in each of the two succeeding years, with an average internal

²⁷²

We estimate there are approximately 1,700 companies that are large accelerated filers. See Revisions to Accelerated Filer Definition and Accelerated Deadlines for Reporting Periodic Reports, Release No. 33-8644 (Dec. 21, 2005) [70 FR 76626], at Section V.A.2.

cost of \$175 per hour, the total average annual burden of collecting and monitoring employee compensation would be approximately 45,000 hours, or approximately \$8 million. The total average annual cost is therefore estimated to be \$11 million. We invite comment on this estimate and its assumptions.

4. Exercises and Holdings of Previously Awarded Equity

The next section of the revised executive compensation disclosure provides investors with an understanding of the compensation in the form of equity that has previously been awarded and remains outstanding, and is unexercised or unvested. As proposed, this section also discloses amounts realized on this type of compensation during the most recent fiscal year when, for example, a named executive officer exercises an option or his or her stock award vests. We are adopting substantially as proposed two tables: one table shows the amounts of awards outstanding at fiscal year-end, and the other shows the exercise or vesting of equity awards during the fiscal year.²⁷³ In response to comment, we are requiring additional information regarding out-of-the-money awards.

²⁷³ Some of this information had been required in the Aggregated Option/SAR Exercises in Last Fiscal Year and Fiscal Year-End Option/SAR Value Table, which was required under Item 402(d) prior to adoption of these amendments.

a. Outstanding Equity Awards at Fiscal Year-End Table

As we noted in the Proposing Release, outstanding awards that have been granted but the ultimate outcomes of which have not yet been realized in effect represent potential amounts that the named executive officer might or might not realize, depending on the outcome for the measure or measures (for example, stock price or performance benchmarks) to which the award relates. We are adopting a table that will disclose information regarding outstanding awards, for example, under stock option (or stock appreciation rights) plans, restricted stock plans, incentive plans and similar plans and disclose the market-based values of the rights, shares or units in question as of the company's most recent fiscal year end.²⁷⁴

²⁷⁴ Item 402(f). Under the rules prior to today's amendments, such disclosure was provided only for holdings of outstanding stock options and stock appreciation rights.

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									

As proposed, the table included a column reporting aggregate dollar amounts of in-the-money unexercised options.²⁷⁵ Some commenters believed that this table should not include information on out-of-the-money options

²⁷⁵ Proposed Item 402(g)(2)(iii).

because they believed that these awards have no value to executives at the point they are out-of-the-money.²⁷⁶ Several other commenters recommended disclosure of the number and key terms of out-of-the-money instruments, so investors can understand the potential compensation opportunity of these awards if the market price of the underlying shares increases.²⁷⁷ We proposed to require expiration date information in footnote disclosure. We note that some commenters expressed concern that disclosure of expiration and vesting dates of the instruments would be lengthy.²⁷⁸ However, because we agree with other commenters that information regarding out-of-the-money options is material to investors, we have revised the columns applicable to unexercised options, stock appreciation rights and similar instruments with option-like features to require disclosure of:

- the number of securities underlying unexercised instruments that are exercisable;
- the number of securities underlying unexercised instruments that are unexercisable;
- the exercise or base price; and
- the expiration date.

²⁷⁶ See, e.g., letters from Frederic W. Cook & Co.; N. Ludgus; and SCSGP.

²⁷⁷ See, e.g., letters from Amalgamated; Brian Foley & Company, Inc. (“Brian Foley & Co.”); Buck Consultants; CII; Hodak Value Advisors; IUE-CWA; and SBAF.

²⁷⁸ See, e.g., letters from Leggett & Platt; SCSGP; and Sidley Austin.

After evaluating the comments received, we believe disclosure of individual exercise prices and expiration dates is required to provide a full understanding of the potential compensation opportunity. In particular, with respect to out-of-the-money awards, this allows investors to see the amount the stock price must rise and the amount of time remaining for it to happen. Consequently, this disclosure is required for each instrument, rather than on the aggregate basis that was proposed.²⁷⁹

As suggested by another commenter, we also modify the table to clarify that these columns apply to options and similar awards that have been transferred other than for value.²⁸⁰ The proposal reflected interpretations of the former rule that the transfer of an option or similar award by an executive does not negate the award's status as compensation that should be reported.²⁸¹ Because an award that a named executive officer transferred for value is not an award for which the outcome remains to be realized, the rules adopted today

²⁷⁹ Multiple awards may be aggregated where the expiration date and the exercise and/or base price of the instruments is identical. A single award consisting of a combination of options, SARs and/or similar option-like instruments must be reported as separate awards with respect to each tranche with a different exercise and/or base price or expiration date. Instruction 4 to Item 402(f)(2). We have not adopted the proposed requirements to disclose whether an option that expired after fiscal year-end had been exercised, in response to comment that this would unnecessarily deviate from the standard of reporting last fiscal year information. See letter from ABA.

²⁸⁰ Instruction 1 to Item 402(f)(2). See letter from ABA.

²⁸¹ See Registration of Securities on Form S-8, Release No. 33-7646 (Feb. 25, 1999) [64 FR 11103], at Section III.D.

instead require disclosure in the Option Exercises and Stock Vested Table of the amounts realized upon transfer for value.²⁸²

In view of our approach in the Grants of Plan-Based Awards Table as adopted and the purposes of this table in showing all outstanding equity awards, we are adopting a column (column (d)) for reporting the number of securities underlying unexercised options awarded under equity incentive plans.²⁸³ We have also revised the format of the table to more clearly delineate between the information regarding option awards and the information regarding stock awards.

The remaining disclosure, relating to numbers and market values of nonvested stock and equity incentive plan awards, is adopted on an aggregate basis, substantially as proposed. One commenter expressed the view that the table should not include unearned performance-based awards because it would be difficult to disclose a meaningful value before the performance conditions are satisfied.²⁸⁴ Another commenter requested clarification of valuation of awards that are performance-based and nonvested, specifically whether value should be based on actual performance to date or on achieving target

²⁸² Item 402(g), described in Section II.C.4.b. immediately below.

²⁸³ Item 402(f)(2)(iv).

²⁸⁴ See letter from Sullivan.

performance goals.²⁸⁵ As adopted, an instruction provides that the number of shares reported in the appropriate columns for equity incentive plan awards (columns (d) and (i)) or the payout value reported in column (j) is based on achieving threshold performance goals, except that if the previous fiscal year's performance has exceeded the threshold, the disclosure shall be based on the next higher performance measure (target or maximum) that exceeds the previous fiscal year's performance. If the award provides only for a single estimated payout, that amount should be reported. If the target amount is not determinable, registrants must provide a representative amount based on the previous fiscal year's performance.²⁸⁶ We have also adopted an instruction clarifying that stock or options under equity incentive plans are reported in columns (d) or (i) and (j), as appropriate, until the relevant performance condition has been satisfied. Once the relevant performance condition has been satisfied, if stock remains unvested or the option unexercised, the stock or options are reported in columns (b) or (c), or (g) and (h), as appropriate.²⁸⁷

b. Option Exercises and Stock Vested Table

We are adopting substantially as proposed a table that will show the amounts received upon exercise of options or similar instruments or the vesting

²⁸⁵ See, e. g., letter from Hewitt.

²⁸⁶ Instruction 3 to Item 402(f).

²⁸⁷ Instruction 5 to Item 402(f).

of stock or similar instruments during the most recent fiscal year. This table will allow investors to have a picture of the amounts that a named executive officer realizes on equity compensation through its final stage.²⁸⁸

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				

We proposed that this table include the grant date fair value of these instruments that would have been disclosed in the Summary Compensation Table for the year in which they were awarded. We proposed this column to eliminate the possible impact of double disclosure by showing amounts previously disclosed. We have adopted the table without the grant date fair

²⁸⁸ This table is similar to a portion of the Aggregate Options/SAR Exercises in Last Fiscal Year and FY-End Options/SAR Values Table that was required prior to these amendments, except unlike that table it also includes the vesting of restricted stock and similar instruments. Commentators have noted a need for comparable disclosure of restricted stock vesting.

value column in response to commenters' concerns that this column would confuse investors and increase the potential for double counting.²⁸⁹ As described in the preceding section, in response to comment that transfers of awards for value also are realization events, amounts realized upon such transfers must be included in columns (c) and (e) of this table.²⁹⁰ Finally, we have reformatted the columns to make the presentation of stock and option awards consistent with the presentation in other tables.

5. Post-Employment Compensation

As we proposed, we are making significant revisions to the disclosure requirements regarding post-employment compensation to provide a clearer picture of this potential future compensation. As we noted in the Proposing Release, executive retirement packages and other post-termination compensation may represent a significant commitment of corporate resources and a significant portion of overall compensation. First, we are replacing the former pension plan table, alternative plan disclosure and some of the other narrative descriptions with a table regarding defined benefit pension plans and enhanced narrative disclosure. We have revised the table from the table proposed. Second, we are adding a table and narrative disclosure that will

²⁸⁹ See, e.g., letters from Foley; SCSGP; and Stradling Yocca.

²⁹⁰ Item 402(g)(2)(iii) and (v).

disclose information regarding nonqualified defined contribution plans and other deferred compensation. We have adopted this table substantially as proposed. Finally, we are adopting revised requirements substantially as proposed regarding disclosure of compensation arrangements triggered upon termination and on changes in control.

a. Pension Benefits Table

We proposed significant revisions to the rules disclosing retirement benefits to require disclosure of the estimate of retirement benefits to be payable at normal retirement age and, if available, early retirement. Disclosure under the rules prior to today's amendments frequently did not provide investors useful information regarding specific potential pension benefits relating to a particular named executive officer.²⁹¹ In particular, it may have been difficult to understand which amounts related to any particular named executive officer, obscuring the value of a significant component of compensation.

²⁹¹ The rules prior to today's amendments provided that, for defined benefit or actuarial plans, disclosure was required under Item 402(f) by way of a general table showing estimated annual benefits under the plan payable upon retirement (including amounts attributable to supplementary or excess pension award plans) for specified compensation levels and years of service. This table did not provide disclosure for any specific named executive officer. This requirement applied to plans under which benefits were determined primarily by final compensation (or average final compensation) and years of service, and included narrative disclosure. If named executive officers were subject to other plans under which benefits were not determined primarily by final compensation (or average final compensation), narrative disclosure had been required prior to these amendments of the benefit formula and estimated annual benefits payable to the officers upon retirement at normal retirement age.

We therefore proposed a new table that would have required disclosure of the estimated retirement benefits payable at normal retirement age and, if available, early retirement, under defined benefit plans. Under the proposal, benefits would have been quantified based on the form of benefit currently elected by the named executive officer, such as joint and survivor annuity or single life annuity.

Some commenters objected that the proposed revisions would result in disclosure that would not be comparable and could be manipulated.²⁹² In particular, the calculation of benefits would depend on such factors as the form of benefit payment, the named executive officer's marital status, and the actuarial assumptions applied, which would vary from company to company and plan to plan. Explanations of the complicated methodologies involved could hinder transparency.

Some commenters suggested that the Commission prescribe standard assumptions for calculating annual benefits for disclosure purposes, such as a single life annuity and retirement at age 65, in order to facilitate comparability.²⁹³ Other commenters suggested disclosure of the present value of the current accrued benefit computed as of the end of the company's last

²⁹² See, e.g., letters from BRT; Chadbourne & Parke LLP (“Chadbourne”); Cleary; and ABA-JCEB.

²⁹³ See, e.g., letters from ABA and NACCO Industries.

completed fiscal year,²⁹⁴ achieving comparability by reporting the economic value of the benefit that the executive has accumulated through the plan.

Because the latter approach achieves comparability and transparency by disclosing a benefit that already has accrued, we view it as preferable to an approach that would “normalize” disclosure based on hypothetical annual benefit assumptions prescribed by the Commission that might bear no relationship to the assumptions that the company actually applies with respect to the plan. Furthermore, this approach will make clearer the relationship of this table to the Summary Compensation Table disclosure of increase in pension value. This approach will also lessen the burden on companies, since they are required to calculate the present value for the Summary Compensation Table. Accordingly, the table we adopt today requires disclosure of the actuarial present value of the named executive officer’s accumulated benefit under the plan and the number of years of service credited to the named executive officer under the plan reported in the table, each computed as of the same pension plan measurement date for financial statement reporting purposes with respect to the audited financial statements for the company’s last

²⁹⁴ See, e.g., letters from Buck Consultants; Frederic W. Cook & Co.; Professor Bebchuk, et al; and SBAF.

completed fiscal year.²⁹⁵ This disclosure applies without regard to the particular form(s) of benefit payment available under the plan.

Whether or not the plan allows for a lump-sum payment, presentation of the present value of the accrued plan benefit provides investors an understanding of the cost of promised future benefits in present value terms.²⁹⁶ Companies must use the same assumptions, such as interest rate assumptions, that they use to derive the amounts disclosed in conformity with generally accepted accounting principles, but would assume that retirement age is normal retirement age as defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age.²⁹⁷ The estimates are to be based on current compensation, and as such, future levels of compensation need not be estimated for purposes of the calculation. The valuation method and all material assumptions applied will be

²⁹⁵ Item 402(h)(2)(iv). If the number of years of credited service for a plan differs from the named executive officer's number of actual years of service with the company, footnote quantification of the difference and any resulting benefit augmentation is required. Instruction 4 to Item 402(h)(2).

²⁹⁶ Further, basing pension plan disclosure on the accumulated benefit is consistent with nonqualified deferred compensation plan disclosure, which, as described in Section II.C.5.b. immediately below, reports an aggregate account balance.

²⁹⁷ Instruction 2 to Item 402(h)(2). Of course, the benefits included in the plan document or the executive's contract itself is not an assumption.

described in the narrative section accompanying this table.²⁹⁸ A separate row will be provided for each plan in which a named executive officer participates.²⁹⁹ For purposes of allocating the current accrued benefit between tax qualified defined benefit plans and related supplemental plans, a company will apply the applicable Internal Revenue Code limitations in effect as of the pension plan measurement date.³⁰⁰ At the suggestion of a commenter, we have simplified the name of the table.³⁰¹

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				

²⁹⁸ Item 402(h)(3) and Instruction 2 to Item 402(h)(2). This requirement could be satisfied by reference to a discussion of those assumptions in the company’s financial statements, footnotes to the financial statements, or Management’s Discussion and Analysis. The sections so referenced would be deemed a part of the disclosure provided by this Item.

²⁹⁹ Instruction 1 to Item 402(h)(2).

³⁰⁰ Instruction 3 to Item 402(h).

³⁰¹ See letter from ABA.

We have moved the disclosure proposed to be included in the Summary Compensation Table of pension benefits paid to a named executive officer during the last completed fiscal year to the Pension Benefits Table so that pension benefits are disclosed only once in the Summary Compensation Table.³⁰² We remain of the view that disclosure of these payments would be material to investors, particularly where the named executive officer receives them while still employed by the company.³⁰³

The table will be followed by a narrative description of material factors necessary to an understanding of each plan disclosed in the table. Examples of such factors may include, in given cases, among other things:

- the material terms and conditions of benefits available under the plan, including the plan’s retirement benefit formula and eligibility standards, and early retirement arrangements;³⁰⁴

³⁰² Item 402(h)(2)(v). See also Instruction 1 to Item 402(c)(2)(viii). We have included these amounts in this table rather than the Summary Compensation Table since the increase in the value of the pension benefit would have been previously disclosed in the Summary Compensation Table.

³⁰³ Item 402(a)(5) as amended provides that a column may be omitted if there is no compensation required to be reported in that column in any fiscal year covered by that table.

³⁰⁴ For this purpose, “normal retirement age” means the normal retirement age defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age. “Early retirement age” means early retirement age as defined in the plan, or otherwise available to the executive under the plan. Item 402(h)(3)(i) and (ii).

- the specific elements of compensation, such as salary and various forms of bonus, included in applying the benefit formula, identifying each such element;
- regarding participation in multiple plans, the different purposes for each plan; and
- company policies with regard to such matters as granting extra years of credited service.

b. Nonqualified Deferred Compensation Table

In order to provide a more complete picture of potential post-employment compensation, we are adopting substantially as proposed a new table to disclose contributions, earnings and balances under each defined contribution or other plan that provides for the deferral of compensation on a basis that is not tax-qualified. These plans may be a significant element of retirement and post-termination compensation. Prior to these amendments, the rules had elicited disclosure of the compensation when earned and only the above-market or preferential earnings on nonqualified deferred compensation.³⁰⁵ The full value of those earnings and the accounts on which they are payable was not subject to disclosure, nor were investors informed

³⁰⁵ See Section II.C.1.d.i. above.

regarding the rate at which these amounts, and the corresponding cost to the company, grow.³⁰⁶

As noted above, we are requiring disclosure in the Summary Compensation Table only of the above-market or preferential portion of earnings on compensation that is deferred on a basis that is not tax-qualified. To provide investors with disclosure of the full amount of nonqualified deferred compensation accounts that the company is obligated to pay named executive officers, including the full amount of earnings for the last fiscal year, we are also requiring new tabular and narrative disclosure of nonqualified deferred compensation, as we proposed.³⁰⁷

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					

³⁰⁶ See Lucian A. Bebchuk and Jesse M. Fried, Stealth Compensation via Retirement Benefits, 1 Berkeley Bus. L.J. 291, 314-316 (2004).

³⁰⁷ Item 402(i).

One commenter noted that the title proposed – Nonqualified Defined Contribution and Other Deferred Compensation Plans – suggested that tax qualified plans that provide for deferral of compensation, such as Section 401(k) plans, would be covered.³⁰⁸ We have adopted the commenter’s recommendation to modify the title to clarify that the table covers only deferred compensation that is not tax-qualified, and we have also shortened the title consistent with our amendments regarding the Pension Benefits Table.

As proposed and adopted, an instruction requires footnote quantification of the extent to which amounts in the contributions and earnings columns are reported as compensation in the year in question and other amounts reported in the table in the aggregate balance column were reported previously in the Summary Compensation Table for prior years.³⁰⁹ This footnote provides information so that investors can avoid “double counting” of deferred amounts by clarifying the extent to which amounts payable as deferred compensation represent compensation previously reported, rather than additional currently earned compensation.³¹⁰

³⁰⁸ See letter from Foley.

³⁰⁹ Instruction to Item 402(i)(2).

³¹⁰ As described in Section II.C.1.b. above, the rules as adopted do not include the corresponding footnote that was proposed for the Summary Compensation Table.

The table will be followed by a narrative description of material factors necessary to an understanding of the disclosure in the table.³¹¹ Examples of such factors may include, in given cases, among other things:

- the type(s) of compensation permitted to be deferred, and any limitations (by percentage of compensation or otherwise) on the extent to which deferral is permitted;
- the measures of calculating interest or other plan earnings (including whether such measure(s) are selected by the named executive officer or the company and the frequency and manner in which such selections may be changed), quantifying interest rates and other earnings measures applicable during the company's last fiscal year; and
- material terms with respect to payouts, withdrawals and other distributions. Where plan earnings are calculated by reference to actual earnings of mutual funds or other securities, such as company stock, it is sufficient to identify the reference security and quantify its return. This disclosure may be aggregated to the extent the same measure applies to more than one named executive officer.

c. Other Potential Post-Employment Payments

We are adopting the significant revisions that we proposed to our requirements to describe termination or change in control provisions. The

³¹¹ Item 402(i)(3).

Commission has long recognized that “termination provisions are distinct from other plans in both intent and scope and, moreover, are of particular interest to shareholders.”³¹² Prior to today’s amendments, disclosure did not in many cases capture material information regarding these plans and potential payments under them. We therefore proposed and are adopting disclosure of specific aspects of written or unwritten arrangements that provide 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,³¹³ or a change in control of the company.

Our amendments call for narrative disclosure of the following information regarding termination and change in control provisions:³¹⁴

- the specific circumstances that would trigger payment(s) or the provision of other benefits (references to benefits include perquisites and health care benefits);

³¹² 1983 Release, at Section III.E.

³¹³ We confirm that this aspect of the disclosure requirement is not limited to a change in responsibilities in connection with a change in control.

³¹⁴ Item 402(j).

- the estimated payments and benefits that would be provided in each covered circumstance, and whether they would or could be lump sum or annual, disclosing the duration and by whom they would be provided;³¹⁵
- how the appropriate payment and benefit levels are determined under the various circumstances that would trigger payments or provision of benefits;³¹⁶
- any material conditions or obligations applicable to the receipt of payments or benefits, including but not limited to non-compete, non-solicitation, non-disparagement or confidentiality covenants; and
- any other material factors regarding each such contract, agreement, plan or arrangement.³¹⁷

³¹⁵ We have eliminated the \$100,000 disclosure threshold that was specified in the rule prior to today’s amendments. For post-termination perquisites, however, the same disclosure and itemization thresholds used for the amended Summary Compensation Table apply. See Section II. C.1.e.i. above. We have modified Item 402(j)(2) from the proposal in response to comments to clarify that the required description covers both annual and lump sum payments. See letter from ABA.

³¹⁶ We have modified Item 402(j)(3) from the proposal to clarify the scope of the required disclosure. The proposal would have required the company to describe and explain the specific factors used to determine the appropriate payment and benefit levels under the various triggering circumstances. A commenter suggested that the proposed language was overly broad and ambiguous and could result in mere repetition of the pension payout formula and actuarial assumptions. See letter from ABA.

³¹⁷ This would include, for example, disclosure of whether an executive simultaneously receives both severance and retirement benefits, a practice commonly known as a “double dip.” See letter from WorldatWork.

The item contemplates disclosure of the duration of non-compete and similar agreements, and provisions regarding waiver of breach of these agreements, and disclosure of tax gross-up payments.

A company will be required to provide quantitative disclosure under these requirements even where uncertainties exist as to amounts payable under these plans and arrangements. We clarify that in the event uncertainties exist as to the provision of payments and benefits or the amounts involved, the company is required to make a reasonable estimate (or a reasonable estimated range of amounts), and disclose material assumptions underlying such estimates or estimated ranges in its disclosure. In such event, the disclosure will be considered forward-looking information as appropriate that falls within the safe harbors for disclosure of such information.³¹⁸

We have modified the requirement somewhat in response to comments that compliance with the proposal would involve multiple complex calculations and projections based on circumstantial and variable assumptions.³¹⁹ We adopt commenters' suggestions that the quantitative disclosure required be calculated applying the assumptions that:

- the triggering event took place on the last business day of the company's last completed fiscal year; and

³¹⁸ See, e.g., Securities Act Section 27A and Exchange Act Section 21E.

³¹⁹ See, e.g., letters from Cleary; Foley; HRP; and Top Five Data.

- the price per share of the company’s securities is the closing market price as of that date.³²⁰

We have also revised the rule to provide that if a triggering event has occurred for a named executive officer who was not serving as a named executive officer at the end of the last completed fiscal year, disclosure under this provision is required for that named executive officer only with respect to the actual triggering event that occurred.³²¹ These modifications will both facilitate company compliance and provide investors with disclosure that is more meaningful. We further clarify that health care benefits are included in this requirement, and quantifiable based on the assumptions used for financial reporting purposes under generally accepted accounting principles.³²²

We further clarify in response to comments that to the extent that the form and amount of any payment or benefit that would be provided in connection with any triggering event is fully disclosed in the Pension Benefits Table or the Nonqualified Deferred Compensation Table and the narrative

³²⁰ Instruction 1 to Item 402(j). See, e.g., letters from Emerson; Foley; and Frederic W. Cook & Co.

³²¹ Instruction 4 to Item 402(j). See letter from ABA.

³²² Item 402(j)(1) and Instruction 2 to Item 402(j). These would be the assumptions applied under Financial Accounting Standards Board Statement of Financial Accounting Standards No. 106, Employer’s Accounting for Postretirement Benefits Other Than Pensions (FAS 106). See, e.g., letters from Peabody Energy and WorldatWork.

disclosure related to those tables, reference may be made to that disclosure.³²³ However, to the extent that the form or amount of any such payment or benefit would be increased, or its vesting or other provisions accelerated upon any triggering event, such increase or acceleration must be specifically disclosed in this section.³²⁴ In addition, we have added an instruction that companies need not disclose payments or benefits under this requirement to the extent such payments or benefits do not discriminate in scope, terms or operation, in favor of a company's executive officers and are available generally to all salaried employees.³²⁵

6. Officers Covered

a. Named Executive Officers

As proposed, we are amending the disclosure rules so that the principal executive officer, the principal financial officer³²⁶ and the three most highly compensated executive officers other than the principal executive officer and

³²³ See letter from Academy of Actuaries.

³²⁴ Instruction 3 to Item 402(j).

³²⁵ Instruction 5 to Item 402(j).

³²⁶ We are adopting the nomenclature used in Item 5.02 of Form 8-K, which refers to "principal executive officer" and "principal financial officer."

principal financial officer comprise the named executive officers.³²⁷ In addition, as was the case prior to these amendments, up to two additional individuals for whom disclosure would have been required but for the fact that they were no longer serving as executive officers at the end of the last completed fiscal year shall be included.

As we noted in the Proposing Release, we believe that compensation of the principal financial officer is important to shareholders because, along with the principal executive officer, the principal financial officer provides the certifications required with the company's periodic reports and has important responsibility for the fair presentation of the company's financial statements and other financial information.³²⁸ Like the principal executive officer, disclosure about the principal financial officer will be required even if he or she was no longer serving in that capacity at the end of the last completed fiscal

³²⁷ Item 402(a)(3). As defined in Securities Act Rule 405 [17 CFR 230.405] and Exchange Act Rule 3b-7 [17 CFR 240.3b-7], "the term 'executive officer,' when used with reference to a registrant, means its president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function or any other person who performs similar policy-making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy-making functions for the registrant." Therefore, as was formerly the case, a named executive officer may be an executive officer of a subsidiary or an employee of a subsidiary who performs such policy-making functions for the registrant. We have clarified this point in the provision describing the determination of named executive officer. Instruction 2 to Item 402(a)(3).

³²⁸ Exchange Act Rules 13a-14 and 15d-14.

year.³²⁹ As was the case for the chief executive officer prior to today's amendments, all persons who served as the company's principal executive officer or principal financial officer during the last completed fiscal year are named executive officers.

We are not requiring compensation disclosure for all of the officers listed in Items 5.02(b) and (c) of Form 8-K.³³⁰ Those Form 8-K Items were adopted to provide current disclosure in the event of an appointment, resignation, retirement or termination of the specified officers, based on the principle that changes in employment status of these particular officers are unquestionably or presumptively material. At the time when a decision is made regarding the employment status of a particular officer, it will not always be clear who will be the named executive officers for the current year. Given these factors, it is reasonable for the two groups not to be identical.

³²⁹ Paragraphs (a)(3)(i) and (a)(3)(ii) of Item 402 provide that all individuals who served as a principal executive officer and principal financial officer or in similar capacities during the last completed fiscal year must be considered named executive officers. Item 402(a)(4) specifies that if the principal executive officer or principal financial officer served in that capacity for only part of a fiscal year, information must be provided as to all of the individual's compensation for the full fiscal year. Item 402(a)(4) also specifies that if a named executive officer (other than the principal executive officer or principal financial officer) served as an executive officer of the company (whether or not in the same position) during any part of the fiscal year, then information is required as to all compensation of that individual for the full fiscal year.

³³⁰ These are the registrant's principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer or any person performing similar functions. As described in Section III.A. below, the rules we adopt today also amend Item 5.02 of Form 8-K.

b. Identification of Most Highly Compensated Executive Officers; Dollar Threshold for Disclosure

In the rule prior to today's amendments, the determination of the most highly compensated executive officers was based solely on total annual salary and bonus for the last fiscal year, subject to a \$100,000 disclosure threshold. We proposed to revise the dollar threshold for disclosure of named executive officers other than the principal executive officer and the principal financial officer to \$100,000 of total compensation for the last fiscal year. Given the proliferation of various forms of compensation other than salary and bonus, we believe that total compensation would more accurately identify those officers who are, in fact, the most highly compensated.

Several commenters objected to using total compensation to identify named executive officers.³³¹ In particular, commenters stated that this measure would minimize the importance of the compensation committee's compensation decisions for the most recent year and include significant elements beyond the committee's control, such as the increase in pension value and earnings on nonqualified deferred compensation. Some commenters recommended continuing to rely solely on salary and bonus, stating that these measures more accurately reflect the executives who are most highly valued in the company and permit greater year-to-year consistency.³³² Other commenters

³³¹ See, e.g., letters from ACC; Emerson; Leggett & Platt; SCSGP; and Unitrin.

³³² See, e.g., letters from Frederic W. Cook & Co. and Intel.

expressed concern that including episodic option awards would result in more frequent changes to the named executive officer roster.³³³

We are persuaded that it is appropriate to exclude from the named executive officer determination compensation elements that principally reflect executives' decisions to defer compensation and wealth accumulation in pension plans, or are unduly influenced by age or years of service. However, as we stated in the Proposing Release, basing identification of named executive officers solely on the compensation reportable in the salary and bonus categories may provide an incentive to re-characterize compensation. Further, limiting the determination to salary and bonus is not consistent with our decision to eliminate the distinction between "annual" and "long-term" compensation in the Summary Compensation Table.³³⁴ We realize that this may result in more frequent changes to the officers designated as named executive officers, but believe that it will provide a clearer picture of compensation at a company. Accordingly, we require the most highly compensated executive officers to be determined based on total compensation, reduced by the sum of the increase in pension values and nonqualified deferred compensation above-

³³³ See, e.g., letter from Intel.

³³⁴ See Section II.C.1.f. above, discussing the effect of this change on compensation formerly reported as "bonus."

market or preferential earnings reported in column (h) of the Summary Compensation.³³⁵

Prior to these amendments, companies were permitted to exclude an executive officer (other than the chief executive officer) due to either an unusually large amount of cash compensation that was not part of a recurring arrangement and was unlikely to continue, or cash compensation relating to overseas assignments attributed predominantly to such assignments.³³⁶ Because payments attributed to overseas assignments have the potential to skew the application of Item 402 disclosure away from executives whose compensation otherwise properly would be disclosed, we are retaining this basis for exclusion, as we proposed. However, we believe that other compensation that is “not recurring and unlikely to continue” should be considered compensation for disclosure purposes. There has been inconsistent interpretation of the “not recurring and unlikely to continue” standard, and it is susceptible to manipulation. We therefore are eliminating this basis for exclusion, as we proposed.³³⁷

³³⁵ Instruction 1 to Item 402(a)(3).

³³⁶ This exclusion had been set forth in Instruction 3 to Item 402(a)(3) prior to these amendments.

³³⁷ Instruction 3 to Item 402(a)(3).

7. Interplay of Items 402 and 404

We are amending Item 402 so that it requires disclosure of all transactions between the company and a third party where the primary purpose of the transaction is to furnish compensation to a named executive officer as proposed. Also as proposed, amended Item 402 will no longer exclude from its disclosure requirements information about compensatory transaction that had been disclosed under the related person transaction disclosure requirements of Item 404.³³⁸ Further, instructions to amended Item 404 clarify what compensatory transactions with executive officers and directors need not be disclosed under Item 404.³³⁹

As noted in the Proposing Release, the result of these amendments may be that in some cases compensation information will be required to be disclosed under Item 402, while the related person transaction giving rise to that compensation is also disclosed under Item 404. We believe that the possibility of additional disclosure in the context of each of these respective items is preferable to the possibility that compensation is not properly and fully disclosed under Item 402.

³³⁸ These relevant provisions were set forth in paragraphs (a)(2) and (a)(5) of Item 402 before today's amendments. Because paragraph (a)(5) of Item 402 as it had been stated prior to these amendments was otherwise redundant with paragraph (a)(2) of Item 402 as that provision had been stated, we are eliminating the language that had been set forth in paragraph (a)(5) in its entirety and making a conforming amendment to paragraph (a)(2) of Item 402.

³³⁹ See Instruction 5 to Item 404(a), discussed in Section V.A.3., below.

8. Other Changes

Before today’s amendments, a company was permitted to omit from Item 402 disclosure of “information regarding group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees.”³⁴⁰ Because relocation plans, even when available generally to all salaried employees, are susceptible to operation in a discriminatory manner that favors executive officers, this exclusion may have deprived investors of disclosure of significant compensatory benefits. For this reason, we are deleting relocation plans from this exclusion, as we proposed. For the same reason, as we proposed, we are also deleting relocation plans from the exclusion from portfolio manager compensation in forms used by management investment companies to register under the Investment Company Act and offer securities under the Securities Act.³⁴¹ We also are revising the definition of “plan” so that it is more principles-based, as we proposed.³⁴² Finally, in order to simplify the language of the individual requirements, we have consolidated into one

³⁴⁰ This language appeared in Item 402(a)(7)(ii) prior to today’s amendments, which generally defined the term “plan.”

³⁴¹ Amendment to Instruction 2 to Item 15(b) of Form N-1A; amendment to Instruction 2 to Item 21.2 of Form N-2; amendment to Instruction 2 to Item 22(b) of Form N-3.

³⁴² Item 402(a)(6)(ii).

provision the definitions for the terms stock, option and equity as used in Item 402.³⁴³

9. Compensation of Directors

Director compensation has continued to evolve from simple compensation packages mostly involving cash compensation and attendance fees to more complex packages, which can also include equity-based compensation, incentive plans and other forms of compensation.³⁴⁴ In light of this complexity, we proposed to require formatted tabular disclosure for director compensation, accompanied by narrative disclosure of additional material information. In doing so, we revisited an approach that the Commission proposed in 1995 but did not adopt at that time.³⁴⁵

³⁴³ Item 402(a)(6)(i).

³⁴⁴ See, e.g., National Association of Corporate Directors and Pearl Meyer & Partners, 2003-2004 Director Compensation Survey (2004); National Association of Corporate Directors, Report of the NACD Blue Ribbon Commission On Director Compensation (2001); and Dennis C. Carey, et al, How Should Corporate Directors Be Compensated?, Investment Dealers' Digest Inc.—Special Issue: Boards and Directors (Jan. 1996).

³⁴⁵ 1995 Release. The 1995 proposed amendment was coupled with a proposed amendment to permit companies to reduce the detailed executive compensation information provided in the proxy statement by instead furnishing that information in the Form 10-K. We did not act upon these proposed amendments.

Director compensation has continued to evolve since 1995 so that we are today adopting a Director Compensation Table, which resembles the revised Summary Compensation Table, but presents information only with respect to the company's last completed fiscal year. Consistent with the modifications to the Summary Compensation Table, this table moves pension and nonqualified deferred compensation plan disclosure from All Other Compensation to a separate column.³⁴⁶ Because the same instructions as provided in the Summary Compensation Table govern analogous matters in the Director Compensation Table, our modifications to those instructions also apply to this table.

³⁴⁶ As noted in n. 303 above, Item 402(a)(5) provides that a column may be omitted if there is no compensation required to be reported in that column.

DIRECTOR COMPENSATION

Name	Fees Earned or Paid in Cash (\$)	Stock Awards (\$)	Option Awards (\$)	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value and Nonqualified Deferred Compensation Earnings	All Other Compensation (\$)	Total (\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A							
B							
C							
D							
E							

As proposed and adopted, director fees earned or paid in cash would be reported separately from fees paid in stock. The All Other Compensation column of the Director Compensation Table includes, but is not limited to:

- all perquisites and other personal benefits if the total is \$10,000 or greater;
- all tax reimbursements;
- for any security of the company or its subsidiaries purchased from the company or its subsidiaries (through deferral of fees or otherwise) at a discount from the market price of such security at the date of purchase, unless the discount is generally available to all security holders or to all salaried employees of the company, the compensation cost, if any, computed in accordance with FAS 123R;

- amounts paid or accrued to any director pursuant to a plan or arrangement in connection with the resignation, retirement or any other termination of such director or a change in control of the company;
- annual company contributions to vested and unvested defined contribution plans;
- all consulting fees;
- awards under director legacy or charitable awards programs;³⁴⁷ and
- the dollar value of any insurance premiums paid by, or on behalf of, the company for life insurance for the director's benefit.

An additional requirement to include the dollar value of any dividends or other earnings paid in stock or option awards when the dividend or earnings were not factored into the grant date fair value has been adopted for this column as discussed above.

In addition to the disclosure specified in the columns of the table, we proposed to require, by footnote to the appropriate column, disclosure for each director of the outstanding equity awards at fiscal year end as would be required if the Outstanding Equity Awards at Fiscal Year-End table for named executive officers were required for directors. In response to a comment that

³⁴⁷ Under director legacy programs, also known as charitable award programs, registrants typically agree to make a future donation to one or more charitable institutions in the director's name, payable by the company upon a designated event such as death or retirement. The amount to be disclosed in the table shall be the annual cost of such promises and payments, with footnote disclosure of the total dollar amount and other material terms of each such program. Instruction 1 to Item 402(k)(2)(vii).

this disclosure would be provided in the narrative accompanying the table, we have simplified the relevant instruction to require footnote disclosure only of the aggregate numbers of stock awards and option awards outstanding at fiscal year end.³⁴⁸ As with the Summary Compensation Table, the new rules make clear that all compensation must be included in the table.³⁴⁹ As is the case with the current director disclosure requirement, companies will not be required to include in the director disclosure any amounts of compensation paid to a named executive officer and disclosed in the Summary Compensation Table with footnote disclosure indicating what amounts reflected in that table are compensation for services as a director.³⁵⁰ An instruction to the Director Compensation Table permits the grouping of multiple directors in a single row of the table if all of their elements and amounts of compensation are identical.³⁵¹

³⁴⁸ Instruction to Item 402(k)(2)(iii) and (iv). See letter from ABA.

³⁴⁹ The only exception is if all perquisites received by the director total less than \$10,000, they do not need to be disclosed. Further, as described above for the Summary Compensation Table, disclosure of nonqualified deferred compensation earnings is limited to the above-market or preferential portion.

³⁵⁰ Instruction 3 to Item 402(c).

³⁵¹ Instruction to Item 402(k)(2).

Following the table, narrative disclosure will describe any material factors necessary to an understanding of the table. Such factors may include, for example, a breakdown of types of fees.³⁵² In addition, as noted in Section II.A., disclosure regarding option timing or dating practices may be necessary under this narrative disclosure requirement when the recipients of the stock option grants are directors of the company. As we proposed, we are not requiring a supplemental Grants of Plan-Based Awards Table for directors.

D. Treatment of Specific Types of Issuers

1. Small Business Issuers

The Item 402 amendments continue to differentiate between small business issuers and other issuers, as we proposed. In adopting the amendments, we recognize that the executive compensation arrangements of small business issuers typically are less complex than those of other public companies.³⁵³ We also recognize that satisfying disclosure requirements

³⁵² Item 402(k)(3).

³⁵³ These amendments apply only to small business issuers, as defined by Item 10(a)(1) of Regulation S-B. The Commission's Advisory Committee on Smaller Public Companies has recommended that the Commission incorporate the scaled disclosure accommodations currently available to small business issuers under Regulation S-B into Regulation S-K and make them available to all microcap companies. Final Report of the Advisory Committee on Smaller Public Companies to the United States Securities and Exchange Commission (Apr. 23, 2006). Any future consideration of this recommendation would be the subject of a separate rulemaking.

designed to capture more complicated compensation arrangements may impose new, unwarranted burdens on small business issuers.³⁵⁴

Some commenters addressing the proposed amendments to Item 402 of Regulation S-B expressed the view that all companies whose shares are publicly traded should have to meet the same reporting and disclosure standards, regardless of their size, or urged that exemptions for smaller public companies be limited,³⁵⁵ suggesting that they be required to file some form of a basic Compensation Discussion and Analysis.³⁵⁶ We are not following these recommendations, because the executive compensation arrangements of small business issuers generally are so much less complex than those of other public companies that they do not warrant the more extensive disclosure requirements imposed on companies that are not small business issuers and related regulatory burdens that could be disproportionate for small business issuers.

Other commenters who supported the Commission's proposal to require less extensive disclosure for companies subject to Regulation S-B suggested

³⁵⁴ Prior to today's amendments, under both Item 402 of Regulation S-B and Item 402 of Regulation S-K, a small business issuer was not required to provide the Compensation Committee Report, the Performance Graph, the Compensation Committee Interlocks disclosure, the Ten-Year Option/SAR Repricings Table, and the Option Grant Table columns disclosing potential realizable value or grant date value. The rules prior to today's amendments also permitted small business issuers to exclude the Pension Plan Table.

³⁵⁵ See, e.g., letters from CII; CRPTF; IUE-CWA; SBAF; and WSIB.

³⁵⁶ See, e.g., letters from ISS and Institutional Investors Group.

that the Commission amend the definition of small business issuer to encompass a larger group of smaller public companies, such as by adopting the definition of “smaller public company” recommended by the Advisory Committee on Smaller Public Companies, and scale back the disclosure thresholds for all such smaller companies.³⁵⁷ We are not following this recommendation at this time, but would instead defer consideration until we can fully consider all recommendations of the Advisory Committee.

As proposed and adopted, small business issuers will be required to provide, along with related narrative disclosure:

- the Summary Compensation Table;³⁵⁸
- the Outstanding Equity Awards at Fiscal Year-End Table;³⁵⁹ and
- the Director Compensation Table³⁶⁰

Small business issuers will be required to provide information in the Summary Compensation Table only for the last two fiscal years. In addition, small business issuers will be required to provide information for fewer named

³⁵⁷ See letters from America’s Community Bankers (“ACB”); Independent Community Bankers of America (“ICBA”); and SCSGP.

³⁵⁸ Items 402(b) and 402(c) of Regulation S-B. Consistent with the instructions to the narrative disclosure required by Item 402(e) of Regulation S-K, we have added an instruction to Item 402(c) of Regulation S-B so that disclosure is not required regarding any repricing that occurs through specified provisions. Instruction to Item 402(c) of Regulation S-B.

³⁵⁹ Item 402(d) of Regulation S-B.

³⁶⁰ Item 402(f) of Regulation S-B.

executive officers, namely the principal executive officer and the two most highly compensated officers other than the principal executive officer.³⁶¹ In light of our decision to link the Summary Compensation Table pension plan disclosure to the disclosure in the Pension Benefits Table, which is not required for small business issuers, and in response to comment,³⁶² we have decided not to require that small business issuers include pension plan disclosure in the Summary Compensation Table. Narrative discussion of a number of items to the extent material replaces tabular or footnote disclosure, for example identification of other items in the All Other Compensation column and a description of post-employment payments and other benefits.³⁶³ In light of our request in Release No. 33-8735 for further comment on the proposed additional narrative disclosure requirement regarding up to three highly compensated employees so that it might apply only to large accelerated filers, we have not adopted this proposal for Item 402 of Regulation S-B. Small business issuers

³⁶¹ Item 402(a) of Regulation S-B. Item 402(c)(7) of Regulation S-B requires an identification to the extent material of any item included under All Other Compensation in the Summary Compensation Table. However, identification of an item will not be considered material if it does not exceed the greater of \$25,000 or 10% of all items included in the specified category. All items of compensation are required to be included in the Summary Compensation Table without regard to whether such items are required to be identified.

³⁶² See letter from ABA.

³⁶³ Items 402(c) and 402(e) of Regulation S-B.

are not required to provide a Compensation Discussion and Analysis or the related Compensation Committee Report.³⁶⁴

2. Foreign Private Issuers

Prior to today's amendments, a foreign private issuer was deemed to comply with Item 402 of Regulation S-K if it provided the information required by Items 6.B. and 6.E.2. of Form 20-F, with more detailed information provided if otherwise made publicly available. We proposed to continue this treatment of these issuers and clarify that the treatment of foreign private issuers under Item 402 parallels that under Form 20-F. Commenters supported this approach, stating that it showed appropriate deference to a foreign private issuer's home country requirements.³⁶⁵ We are adopting these requirements as proposed.³⁶⁶

3. Business Development Companies

As proposed, we are applying the same executive compensation disclosure requirements to business development companies that we are

³⁶⁴ We are also eliminating a provision of Item 402 of Regulation S-K that allows small business issuers using forms that call for Regulation S-K disclosure to exclude the disclosure required by certain paragraphs of that Item. This provision had been set forth in Item 402(a)(1)(i) of Regulation S-K prior to today's amendments.

³⁶⁵ See, e.g., letters from Federation of German Industries; DaimlerChrysler AG; and jointly, Allianz AG, Deutsche Bank AG and Siemens AG.

³⁶⁶ Item 402(a)(1).

adopting for operating companies.³⁶⁷ We received no comments on this proposal. Our amendments eliminate the inconsistency between Form 10-K, on the one hand, which requires business development companies to furnish all of the information required by Item 402 of Regulation S-K, and the proxy rules and Form N-2, on the other, which require business development companies to provide some of the information from Item 402 and other information that applies to registered investment companies.

Under the amendments, the registration statements of business development companies will be required to include all of the disclosures required by Item 402 of Regulation S-K for all of the persons covered by Item 402.³⁶⁸ This disclosure will also be required in the proxy and information statements of business development companies if action is to be taken with respect to the election of directors or with respect to the compensation arrangements and other matters enumerated in Items 8(b) through (d) of

³⁶⁷ Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act [15 U.S.C. 80a-2(a)(48)].

³⁶⁸ New Item 18.14 of Form N-2. Under the amendments, business development companies will no longer be required to respond to Item 18.13 of Form N-2, and Item 18.13(c) of Form N-2 is being deleted. Items 18.14 and 18.15 of Form N-2 are being redesignated as Items 18.15 and 18.16, respectively. As a result of the redesignation of Item 18.15 of Form N-2, a change to the cross reference to this Item in Instruction 8(a) of Item 24 of the form is also being made.

Schedule 14A.³⁶⁹ Business development companies will also be required to make these disclosures in their annual reports on Form 10-K.³⁷⁰

As a result of these amendments, the persons covered by the compensation disclosure requirements will be changed. The compensation disclosure in the proxy and information statements and registration statements of business development companies will be required to cover the same officers as for operating companies, including the principal executive officer and principal financial officer, as well as the three most highly compensated executive officers that have total compensation exceeding \$100,000,³⁷¹ instead of each of the three highest paid officers of the company that have aggregate compensation from the company for the most recently completed fiscal year in excess of \$60,000. In addition, the registration statements of business development companies will no longer be required to disclose compensation of members of the advisory board or certain affiliated persons of the company.

Finally, under the amendments, the proxy and information statements and registration statements of business development companies will not be

³⁶⁹ Amendment to Item 8 of Schedule 14A. Under the amendments, business development companies will no longer be required to respond to Item 22(b)(13) of Schedule 14A, and Item 22(b)(13)(iii) of Schedule 14A is being deleted. Amendments to Item 22(b)(13) of Schedule 14A.

³⁷⁰ Item 11 of Form 10-K.

³⁷¹ See Section II.C.6., above.

required to include compensation from the “fund complex.” Previously, this information was required in some circumstances.³⁷²

E. Conforming Amendments

The Item 402 amendments necessitate conforming amendments to the Items of Regulations S-K and S-B and the proxy rules that cross reference amended paragraphs of Item 402. On this basis, we are amending:

- the Item 201(d) of Regulations S-K and S-B and proxy rule references to the Item 402 definition of “plan;”³⁷³
- the Item 601(b)(10) of Regulation S-K reference to the Item 402 treatment of foreign private issuers;³⁷⁴ and
- the proxy rule references to Item 402 retirement plan disclosure.³⁷⁵

III. Revisions to Form 8-K and the Periodic Report Exhibit Requirements

As part of our broader effort to revise our executive and director compensation disclosure requirements, we proposed revisions to Item 1.01 of

³⁷² See instructions 4 and 6 to Item 22(b)(13)(i) of Schedule 14A; and instructions 4 and 6 to Item 18.13(a) of Form N-2 (prior to today’s amendments requiring certain entries in the compensation table in the proxy and information statements and registration statements of business development companies to include compensation from the fund complex).

³⁷³ Amendments to: Instruction 2 to paragraph (d) of Item 201 of Regulation S-B; Instruction 2 to paragraph (d) of Item 201 of Regulation S-K; Exchange Act Rules 14a-6(a)(4) and 14c-5(a)(4); and Instruction 1 to Item 10 of Schedule 14A.

³⁷⁴ Amendment to Item 601(b)(10)(iii)(C)(5).

³⁷⁵ Amendments to Item 10(b)(1)(ii) and Instruction to Item 10(b)(1)(ii) of Schedule 14A.

Form 8-K. This item requires real-time disclosure about an Exchange Act reporting company's entry into a material definitive agreement outside of the ordinary course of the company's business, as well as any material amendment to such an agreement. Our staff's experience since Item 1.01 became effective in 2004 suggests that this item has elicited executive compensation disclosure regarding types of matters that do not appear always to be unquestionably or presumptively material, which is the standard we set for the expanded Form 8-K disclosure events.³⁷⁶ We therefore proposed to revise Items 1.01 and 5.02 of Form 8-K to require real-time disclosure of employee compensation events that more clearly satisfy this standard. We are adopting the revisions substantially as proposed.

In addition to the amendments to Items 1.01 and 5.02 of Form 8-K, we proposed to revise General Instruction D of Form 8-K to permit companies in most cases to omit the Item 1.01 heading if multiple items including Item 1.01 are applicable, so long as all of the substantive disclosure required by Item 1.01 is included. We are adopting this provision as proposed.

³⁷⁶ We stated in Section I of Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date, Release No 33-8400 (Mar. 16, 2004) [69 FR 15594] (the "Form 8-K Adopting Release"): "The revisions that we adopt today will benefit markets by increasing the number of unquestionably or presumptively material events that must be disclosed currently."

A. Items 1.01 and 5.02 of Form 8-K

Item 1.01 of Form 8-K requires an Exchange Act reporting company to disclose, within four business days, the company's entry into a material definitive agreement outside of its ordinary course of business, or any amendment of such agreement that is material to the company. When we initially proposed this item, several commenters stated that it would be difficult to determine, within the shortened Form 8-K filing period, whether a particular definitive agreement met the materiality threshold of Item 1.01, and whether the agreement was outside of the ordinary course of business.³⁷⁷ Some of these commenters suggested that we apply to Item 1.01 the standards used in pre-existing Item 601(b)(10) of Regulation S-K, which governs the filing as exhibits to Commission reports of material contracts entered into outside the ordinary course, because these standards had been in place for many years and were familiar to reporting companies.³⁷⁸

In response to the concerns raised by these comments, we adopted Item 1.01 of Form 8-K so that it uses the standards of Item 601(b)(10) to

³⁷⁷ See, e.g., letters on Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date, Release No. 33-8106 (June 17, 2002) [67 FR 42914] in File No. S7-22-02 from the Committee on Federal Regulation of Securities, Section of Business Law of the American Bar Association, dated September 12, 2002; Cleary, Gottlieb, Steen & Hamilton, dated August 26, 2002; Intel Corporation, dated August 26, 2002; Professor Joseph A. Grundfest, et al, dated October 3, 2002; Perkins Coie LLP, dated August 26, 2002; Shearman & Sterling, dated August 30, 2002; and Sullivan & Cromwell, dated August 26, 2002.

³⁷⁸ See, e.g., letter in File No. S7-22-02 from the Section of Business Law of the American Bar Association.

determine the types of agreements that are material to a company and not in the ordinary course of business. Item 601(b)(10) of Regulation S-K requires a company to file, as an exhibit to Securities Act and Exchange Act filings, material contracts that are not made in the ordinary course of business and are to be performed in whole or part at or after the filing of the registration statement or report, or were entered into not more than two years before the filing. Item 601(b)(10)(iii) refers specifically to employment compensation arrangements and established a company's obligation to file the following as exhibits:

- any management contract or any compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any named executive officer (as defined by Item 402(a)(3) of Regulation S-K) participates;
- any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the company participates, unless immaterial in amount or significance; and
- any compensation plan, contract or arrangement adopted without the approval of security holders pursuant to which equity may be awarded,

including, but not limited to, options, warrants or rights in which any employee (whether or not an executive officer of the company) participates unless immaterial in amount or significance.³⁷⁹

Therefore, entry into these types of contracts triggered the filing of a Form 8-K within four business days. Importantly, the requirement for directors and named executive officers does not include an exception for those that are “immaterial in amount or significance.” The incorporation of the Item 601(b)(10) standards into Item 1.01 of Form 8-K has therefore significantly affected executive compensation disclosure practices. Prior to the

³⁷⁹ Item 601(b)(10)(iii) of Regulation S-K. We note the provision in Item 601(b)(10)(iii)(A) that carves out any plan, contract or arrangement in which named executive officers and directors do not participate that is “immaterial in amount or significance.” In 1980, the Commission adopted amendments to Regulation S-K that consolidated all of the exhibit requirements of various disclosure forms into a single item in Regulation S-K. Amendments Regarding Exhibit Requirements, Release No. 33-6230 (Aug. 27, 1980) [45 FR 58822], at Section II.B. This item was a forerunner of the current Item 601. As part of that 1980 adopting release, the definition of material contract contained in the new item was also revised in an effort to reduce the number of remunerative plans or arrangements that must be filed. Not long after, though, the staff discovered that rather than reduce the number of exhibits filed, the provision actually had the opposite effect. The staff found that the revised definition of material contract “has resulted in registrants filing a large volume of varied remunerative contracts involving directors and executive officers, contracts which are not material and which would not have been filed under the previously existing ‘material in amount or significance’ standard.” Technical Amendment Regarding Exhibit Requirement, Release No. 33-6287 (Feb. 6, 1981) [46 FR 11952], at Section I. Therefore, in February 1981, the Commission added “unless immaterial in amount or significance” to the definition of “material contracts” as applied to remunerative plans, contracts or arrangements participated in by executives who are not named executive officers. Id. We reiterate that this phrase was intended to indicate that whether plans, contracts or arrangements in which executive officers other than named executive officers participate are required to be disclosed under Item 601(b)(10) must be determined on the basis of materiality.

Form 8-K amendments in 2004, it was customary for a company's annual proxy statement to be the primary vehicle for disclosure of executive and director compensation information. However, Item 1.01 of Form 8-K as originally adopted has resulted in executive compensation disclosures that are much more frequent and accelerated than those included in a company's proxy statement. In addition, particularly because of the terms of Item 601(b)(10), Item 1.01 of Form 8-K triggered compensation disclosure of the types of matters that, in some cases, appear to have fallen short of the "unquestionably or presumptively material" standard associated with the expanded Form 8-K disclosure items. Companies and their counsel have raised concerns that the expanded Form 8-K requirements have resulted in real-time disclosure of compensation events that should be disclosed, if at all, in a company's proxy statement for its annual meeting or as an exhibit to the company's next periodic report, such as the Form 10-Q or Form 10-K.

As we stated in the Proposing Release, we believe that much of the disclosure regarding employment compensation matters required in real-time under the Form 8-K requirements is viewed by investors as material. However, we also believe it is appropriate to restore a more balanced approach to this aspect of Form 8-K, an approach which is designed to elicit unquestionably or presumptively material information on a real-time basis, but seeks to limit Form 8-K required disclosure of information below that threshold.

Accordingly, we are adopting amendments to Form 8-K that will uncouple Item 601(b)(10)(iii) of Regulation S-K from the current disclosure requirements of Form 8-K. As proposed, we are eliminating employment compensation arrangements from the scope of Item 1.01 altogether and expanding Item 5.02 of Form 8-K to cover only those compensatory arrangements with executive officers and directors that we believe are unquestionably or presumptively material. Commenters generally supported these proposed amendments.³⁸⁰ We are adopting these amendments substantially as proposed.

1. Item 1.01- Entry into a Material Definitive Agreement

Specifically, we are deleting the last sentence of former Instruction 1 to Item 1.01 of Form 8-K, which references the portions of Item 601(b)(10) of Regulation S-K that specifically relate to management compensation and compensatory plans. In place of the deleted sentence, we are adding a sentence specifying that agreements involving the subject matter identified in Item 601(b)(10)(iii)(A) and (B) of Regulation S-K need not be disclosed under amended Item 1.01 of Form 8-K. This change also will apply to the disclosure of terminations of material definitive agreements under Item 1.02 of Form 8-K, which references the definition of “material definitive agreement” in Item 1.01

³⁸⁰ See, e.g., letters from ABA; Chamber of Commerce; N. Ludgus; Committee on Securities Regulation of the Business Law Section of the New York State Bar Association; SCSGP; and Sullivan.

of Form 8-K.³⁸¹ Instead of being required to be disclosed based on the general requirements with regard to material definitive agreements in Item 1.01 and Item 1.02 of Form 8-K, employment compensation arrangements will now be covered under Item 5.02 of Form 8-K, as amended.

2. Item 5.02 - Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

Item 5.02 generally requires disclosure within four business days of the appointment or departure of directors and specified officers. In particular, Item 5.02(b) has required disclosure if a company's principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or any person performing similar functions, retires, resigns or is terminated from that position and Item 5.02(c) has required disclosure if a company appoints a new principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or any person performing similar functions. Item 5.02 has also required disclosure if a director retires, resigns, is removed, or declines to stand for re-election.³⁸² Before adopting today's amendments, the required disclosure under Item 5.02 included a brief description of the material terms of any employment

³⁸¹ Item 1.02(b) states: "For purposes of this Item 1.02, the term material definitive agreement shall have the same meaning as set forth in Item 1.01(b)."

³⁸² Items 5.02(a) and (b) of Form 8-K.

agreement between the company and the officer and a description of disagreements, if any.

As proposed, we are modifying Item 5.02 to capture generally the information already required under that item, as well as additional information regarding material employment compensation arrangements involving named executive officers that, prior to today's amendments, would be called for under Item 1.01.

With respect to the additional disclosure that we are requiring for named executive officers under amended Item 5.02, one commenter noted that because the definition of "named executive officer" is determined with reference to a company's last completed fiscal year, greater clarity is needed to determine how the standard should be applied for current Form 8-K reporting throughout the year.³⁸³ The commenter suggested that companies might find it difficult to identify their named executive officers for purposes of real-time disclosure under Item 5.02 during the period following the completion of their last fiscal year but prior to preparing their proxy statements or Forms 10-K in the new fiscal year. Accordingly, we are including a new Instruction to Item 5.02 that will clarify that for purposes of this Item the named executive officers are the persons for whom disclosure was required in the most recent filing with the

³⁸³ See letter from ABA.

Commission that required disclosure under Item 402(c) of Regulation S-K or Item 402(b) of Regulation S-B, as applicable.³⁸⁴

In general, our revisions to Form 8-K will both modify the overall requirements for disclosure of employment compensation arrangements on Form 8-K and locate all such disclosure under a single item. We are accomplishing this by taking the following steps:

- expanding the information regarding retirement, resignation or termination to include all persons falling within the definition of named executive officers for the company’s previous fiscal year, whether or not included in the list specified in Item 5.02 prior to these amendments;³⁸⁵
- expanding the disclosure items covered under Item 5.02 beyond employment agreements to require a brief description of any material plan, contract or arrangement to which a covered officer or director is a party or in which he or she participates that is entered into or materially amended in connection with any of the triggering events specified in Item 5.02(c) and (d), or any grant or award to any such covered person,

³⁸⁴ Instruction 4 to Item 5.02.

³⁸⁵ Item 5.02(b) of Form 8-K will continue to cover the officers currently specified therein, whether or not named executive officers for the previous or current years, and all directors.

or modification thereto, under any such plan, contract or arrangement in connection with any such event;³⁸⁶

- with respect to the principal executive officer, the principal financial officer, or persons falling within the definition of named executive officer for the company's previous fiscal year, expanding the disclosure items to include a brief description of any material new compensatory plan, contract or arrangement, or new grant or award thereunder (whether or not written), and any material amendment to any compensatory plan, contract or arrangement (or any modification to a grant or award thereunder), whether or not such occurrence is in connection with a triggering event specified in Item 5.02. Grants or awards or modifications thereto will not be required to be disclosed if they are consistent with the terms of previously disclosed plans or arrangements and they are disclosed the next time the company is required to provide new disclosure under Item 402 of Regulation S-K;³⁸⁷ and
- adding a requirement for disclosure of salary or bonus for the most recent fiscal year that was not available at the latest practicable date

³⁸⁶ Items 5.02(c)(3) and (d)(5). Plans, contracts or arrangements (but not material amendments or grants or awards or modifications thereto) may be denoted by reference to the description in the company's most recent annual report on Form 10-K or proxy statement.

³⁸⁷ Item 5.02(e) and Instruction 2 to Item 5.02(e).

in connection with disclosure under Item 402 of Regulation S-K.³⁸⁸ This disclosure will also require a new total compensation recalculation to reflect the new salary or bonus information.

In the case of each of these disclosure items for amended Item 5.02, we emphasize that we are requiring that a brief description of the specified matter be included. We have observed that in response to the requirements to disclose the entry into material definitive agreements under Item 1.01, some companies have included disclosure that resembles an updating of the disclosure required under former Item 402 of Regulation S-K. In the context of current disclosure under Form 8-K, we are seeking disclosure that informs investors of specified material events and developments. However, the information we are seeking does not require the information necessary to comply with Item 402.

In response to comments received,³⁸⁹ we have revised Instruction 2 to new Item 5.02(e) from the text we proposed and created a new Item 5.02(f), as described above. The revised Instruction 2 to Item 5.02(e) that we are adopting: (i) changes or eliminates prior references to “original terms” and uses instead the phrase “previously disclosed terms,” in order to minimize ambiguity; and (ii) clarifies that, for purposes of the Instruction, no distinction should be made

³⁸⁸ Item 5.02(f). See Section II.C.1.b. above for a discussion of the reporting delay that exists under the current disclosure rules when bonus and salary are not determinable at the most recent practicable date.

³⁸⁹ See letter from ABA.

between awards granted under cash or equity-based plans. New Item 5.02(f) responds to comments we received that our proposed Instruction 3 to 5.02(e) should be codified as a separate item because it called for disclosure (determining salary or bonus amounts for a completed fiscal year) that otherwise may not be required under Item 5.02(e).³⁹⁰

B. Extension of Limited Safe Harbor under Section 10(b) and Rule 10b-5 to Item 5.02(e) of Form 8-K and Exclusion of Item 5.02(e) from Form S-3 Eligibility Requirements

We are extending the safe harbors regarding Section 10(b) and Rule 10b-5 and Form S-3 eligibility in the event that a company fails to timely file reports required by Item 5.02(e) of Form 8-K.

In March 2004, we adopted a limited safe harbor from liability under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder for failure to timely file reports required by Form 8-K Items 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a) and 6.03. Because we believed that these items may require management to make rapid materiality and similar judgments within the condensed timeframe required for filing of a Form 8-K, we established a safe harbor that applies until the filing due date of the company's quarterly or annual report for the period in question. We concluded that the risk of liability under these provisions for the failure to timely file was disproportionate to the benefit of real-time disclosure and therefore justified the need for a limited safe

³⁹⁰ See letter from ABA.

harbor of a fixed duration. For the same reasons, we believe that the safe harbor should also extend to Item 5.02(e) of Form 8-K. We therefore are amending Exchange Act Rules 13a-11(c) and 15d-11(c) accordingly.

In addition, a company forfeits its eligibility to use Form S-3 if it fails to timely file all reports required under Exchange Act Section 13(a) or 15(d) during the 12 month period prior to filing of the registration statement.³⁹¹ For the same reasons, when adopting the expanded Form 8-K rules in 2004, we revised the Form S-3 eligibility requirements so that a company would not lose its eligibility to use Form S-3 registration statements if it failed to timely file reports required by the Form 8-K items to which the Section 10(b) and Rule 10b-5 safe harbor applies.³⁹² In particular, the burden resulting from a company's sudden loss of eligibility to use Form S-3 could be a disproportionately large negative consequence of an untimely Form 8-K filing under one of the specified items.³⁹³ We believe that this safe harbor should be extended to Item 5.02(e) of Form 8-K and, therefore, we are amending General Instruction I.A.3.(b) of Form S-3, which pertains to the eligibility requirements for use of Form S-3 to reflect this position.

³⁹¹ General Instruction I.A.3 to Form S-3.

³⁹² Form 8-K Adopting Release, at Section II.E.

³⁹³ Id.

C. General Instruction D to Form 8-K

We are adopting the revision to General Instruction D as proposed. Frequently, an event may trigger a Form 8-K filing under multiple items, particularly under both Item 1.01 and another item. General Instruction D to Form 8-K permits a company to file a single Form 8-K to satisfy one or more disclosure items, provided that the company identifies by item number and caption all applicable items being satisfied and provides all of the substantive disclosure required by each of the items. In order to promote prompt filings on Form 8-K and avoid potential non-compliance with Form 8-K due to inadvertent exclusions of captions, we are amending General Instruction D to permit companies to omit the Item 1.01 heading in a Form 8-K that also discloses any other item, so long as the substantive disclosure required by Item 1.01 is included in the Form 8-K. This would not extend to allowing a company to omit any other caption if the Item 1.01 caption is included.

D. Foreign Private Issuers

We are amending the exhibit instructions to Form 20-F so that foreign private issuers will be required to file an employment or compensatory plan with management or directors (or portion of such plan) only when the foreign private issuer either is required to publicly file the plan (or portion of it) in its home country or if the foreign private issuer has otherwise publicly disclosed the plan.³⁹⁴

³⁹⁴ We are also making a similar revision to Item 601(b)(10)(iii)(C)(5) of Regulation S-K.

Under Item 6.B.1 of Form 20-F, a foreign private issuer must disclose the compensation of directors and management on an aggregate basis and, additionally, on an individual basis, unless individual disclosure is not required in the issuer's home country and is not otherwise publicly disclosed by the foreign private issuer. Under the exhibit instructions to Form 20-F prior to our amendments, management contracts or compensatory plans in which directors or members of management participate generally were required to be filed as exhibits, unless the foreign private issuer provided compensation information on an aggregate basis and not on an individual basis. Under those pre-amendment provisions, an issuer that provided any individualized compensation disclosure was required to file as an exhibit to Form 20-F management employment agreements that potentially relate to matters that have not otherwise been disclosed.

Our amendment of the exhibit instructions to Form 20-F³⁹⁵ is intended to be consistent with the existing disclosure requirements under Form 20-F relating to executive compensation matters for foreign private issuers. In the same way that executive compensation disclosure under Form 20-F largely mirrors the disclosure that a foreign private issuer makes under home country requirements or voluntarily, so too the public filing of management employment agreements as an exhibit to Form 20-F under our amendments will

³⁹⁵ New Instruction 4(c)(v) to Exhibits to Form 20-F.

mirror the public availability of such agreements under home country requirements or otherwise. In addition, we believe that the amendments may encourage foreign private issuers to provide more compensation disclosure in their filings with the Commission by eliminating privacy concerns associated with filing an individual's employment agreement when such agreement is not required to be made public by a home country exchange or securities regulator. As foreign disclosure related to executive remuneration varies in different countries but continues to improve,³⁹⁶ the revisions recognize that trend and provide for greater harmonization of international disclosure standards with respect to executive compensation in a manner consistent with other requirements of Form 20-F.

IV. Beneficial Ownership Disclosure

Item 403 requires disclosure of company voting securities beneficially owned by more than five percent holders,³⁹⁷ and company equity securities beneficially owned by directors, director nominees and named executive officers.³⁹⁸ These disclosure requirements provide investors with information

³⁹⁶ Many jurisdictions now require or encourage disclosure of executive compensation information. For example, enhanced disclosure of executive remuneration is included as part of the European Commission's 2003 Company Law Action Plan. See Guido Ferrarini and Niamh Moloney, Executive Remuneration in the EU: The Context for Reform, European Corporate Governance Institute, Law Working Paper N. 32/2005 (April 2005).

³⁹⁷ Item 403(a).

³⁹⁸ Item 403(b).

regarding concentrated holdings of voting securities and management's equity stake in the company, including securities for which these holders have the right to acquire beneficial ownership within 60 days.³⁹⁹ Item 403 also requires disclosure of arrangements known to the company that may result in a change in control of the company.⁴⁰⁰

As proposed, we are amending Item 403(b)⁴⁰¹ by adding a requirement for footnote disclosure of the number of shares pledged as security by named executive officers, directors and director nominees.⁴⁰² To the extent that shares beneficially owned by named executive officers, directors and director nominees are used as collateral, these shares may be subject to material risk or contingencies that do not apply to other shares beneficially owned by these persons. These circumstances have the potential to influence management's

³⁹⁹ As specified in Exchange Act Rule 13d-3(d)(1) [17 CFR 240.13d-3(d)(1)].

⁴⁰⁰ Item 403(c).

⁴⁰¹ Item 403(b) of Regulation S-K and Item 403(b) of Regulation S-B are both amended in the same manner.

⁴⁰² This was similar to a proposal the Commission made in 2002. See Form 8-K Disclosure of Certain Management Transactions, Release No. 33-8090 (Apr. 12, 2002) [67 FR 19914].

performance and decisions.⁴⁰³ As a result, we believe that the existence of these securities pledges could be material to shareholders. Because significant shareholders who are not members of management are in a different relationship with other shareholders and have different obligations to them, the amendments do not require disclosure of their pledges pursuant to Item 403(a), other than pledges that may result in a change of control currently required to be disclosed.⁴⁰⁴ The amendments also specifically require disclosure of beneficial ownership of directors' qualifying shares, which was not required prior to these amendments, because we believe the beneficial ownership disclosure should include a complete tally of the securities beneficially owned by directors.

One commenter recommended that we expand this section to also require disclosure of hedging arrangements whereby the executive has altered his or her economic interest in the securities that he or she beneficially owns.⁴⁰⁵

These transactions frequently involve the purchase or sale of a derivative

⁴⁰³ See, e.g., Marianne M. Jennings, The Disconnect Between and Among Legal Ethics, Business Ethics, Law, and Virtue: Learning Not to Make Ethics So Complex, 1 U. St. Thomas L.J. 995, 1010 (Spring 2004) (arguing that the extension of loans to the CEO of WorldCom, which were collateralized by WorldCom shares owned by the CEO, contributed to WorldCom's financial demise). Regarding commenters' views, contrast letters from Frederic W. Cook & Co.; PB-UCC; and SBAF with letters from FSR; NACCO Industries; Unitrin; and Compass Bancshares.

⁴⁰⁴ Item 403(c) of Regulation S-K. See also Items 6 and 7(3) of Schedule 13D [17 CFR 240.13d- 101].

⁴⁰⁵ See letter from ABA.

security that the named executive officer would be required to report within two business days under Section 16(a) of the Exchange Act.⁴⁰⁶ Because information concerning these transactions frequently would be available on a prompt basis in the Section 16(a) filings and companies would disclose their policies regarding these transactions in Compensation Discussion and Analysis,⁴⁰⁷ we have not followed the commenter’s recommendation.

V. Certain Relationships and Related Transactions Disclosure

As we explained in the Proposing Release, we believe that, in addition to disclosure regarding executive compensation, a materially complete picture of financial relationships with a company involves disclosure regarding related party transactions. Therefore, we are also adopting significant revisions to Item 404 of Regulation S-K, previously titled “Certain Relationships and Related Transactions.” In 1982, various provisions that had been adopted in a piecemeal fashion and had been subject to frequent amendment were consolidated into Item 404 of Regulation S-K.⁴⁰⁸ Today we are amending Item 404 of Regulation S-K and S-B to streamline and modernize this disclosure requirement, while making it more principles-based. Although the

⁴⁰⁶ 15 U.S.C. 78p(a).

⁴⁰⁷ See Item 402(b)(2)(xiii) of Regulation S-K, discussed in Section II.B.1., above.

⁴⁰⁸ See the 1982 Release. For a discussion of these provisions, see also Disclosure of Certain Relationships and Transactions Involving Management, Release No. 33-6416 (July 9, 1982) [47 FR 31394], at Section II.

amendments significantly modify this disclosure requirement, its purpose - to elicit disclosure regarding transactions and relationships, including indebtedness, involving the company and related persons and the independence of directors and nominees for director and the interests of management - remains unchanged.

As discussed in greater detail below, the amendments have four parts:⁴⁰⁹

- Item 404(a) contains a general disclosure requirement for related person transactions, including those involving indebtedness.
- Item 404(b) requires disclosure regarding the company's policies and procedures for the review, approval or ratification of related person transactions.
- Item 404(c) requires disclosure regarding promoters and certain control persons of a company.⁴¹⁰

⁴⁰⁹ The discussion that follows focuses on changes to Regulation S-K, with Section V.E.1. explaining the modifications to Regulation S-B. References throughout the following discussion are to Items of Regulation S-K, unless otherwise indicated.

⁴¹⁰ Prior to adoption of these amendments, disclosure regarding promoters was required under Item 404(d).

- Item 407 consolidates corporate governance disclosure requirements.⁴¹¹ Also, Item 407(a) requires disclosure regarding the independence of directors, including whether each director and nominee for director of the company is independent, as well as a description by specific category or type of any transactions, relationships or arrangements not disclosed under paragraph (a) of Item 404 that were considered when determining whether each director and nominee for director is independent.

A. Transactions with Related Persons

We are adopting amendments to Item 404 to make the certain relationships and related transactions disclosure requirements clearer and easier to follow. The revisions retain the principles for disclosure of related person transactions that were previously specified in Item 404(a), but no longer include all of the instructions that served to delineate what transactions are reportable or excludable from disclosure based on bright lines that can depart from a more appropriate materiality analysis. Instead, Item 404(a) as amended consists of a general statement of the principle for disclosure, followed by specific disclosure requirements and instructions. The instructions to

⁴¹¹ These matters previously were required to be disclosed pursuant to various provisions, including Item 7 of Schedule 14A and Items 306, 401(h), (i) and (j), 402(j) and 404(b). We are eliminating as proposed the requirement for disclosure regarding specific director and director nominee relationships that had been set forth in Item 404(b) prior to today's amendments, in favor of the disclosures regarding director independence required by Item 407(a).

Item 404(a) explain the related persons covered by the Item, the scope of transactions covered by the Item, the method for computation of the amount involved in the transaction, special requirements regarding indebtedness, the interaction with Item 402, the materiality of certain interests, and the circumstances in which disclosure need not be provided.

Item 404(a) as adopted extends to disclosure of indebtedness, by consolidating the disclosure formerly required under Item 404(a) regarding transactions involving the company and related persons with the disclosure regarding indebtedness which had been separately required by Item 404(c) prior to these amendments. We have consolidated these two provisions substantially as proposed in order to eliminate confusion regarding the circumstances in which each item applied and to streamline duplicative portions of Item 404.

1. Broad Principle for Disclosure

Item 404(a) as proposed and adopted articulates a broad principle for disclosure; it states that a company must provide disclosure regarding:

- any transaction since the beginning of the company's last fiscal year, or any currently proposed transaction;
- in which the company was or is to be a participant;
- in which the amount involved exceeds \$120,000; and

- in which any related person had or will have a direct or indirect material interest.

As proposed, amended Item 404(a) no longer includes an instruction that is repetitive of the general materiality standard applicable to the Item.⁴¹² By omitting this instruction, we do not intend to change the materiality standard applicable to Item 404(a). The materiality standard for disclosure embodied in Item 404(a) prior to these amendments is retained; a company must disclose based on whether the related person had or will have a direct or indirect material interest in the transaction. The materiality of any interest will continue to be determined on the basis of the significance of the information to investors in light of all the circumstances.⁴¹³ As was the case before adoption of amended Item 404(a), the relationship of the related persons to the transaction, and with each other, the importance of the interest to the person having the interest and the amount involved in the transaction are among the factors to be considered in determining the materiality of the information to investors.

⁴¹² Prior to today's amendments, Instruction 1 to Item 404(a) had stated that "[t]he materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other and the amount involved in the transactions are among the factors to be considered in determining the significance of the information to investors."

⁴¹³ See Basic v. Levinson and TSC Industries v. Northway.

We are also eliminating as proposed an instruction to Item 404(a) which had indicated that the dollar threshold is not a bright line materiality standard.⁴¹⁴ It remains true, however, that when the amount involved in a transaction exceeds the prescribed threshold (\$120,000 under the amended rule we adopt today), a company should evaluate whether the related person has a direct or indirect material interest in the transaction to determine if disclosure is required. We eliminated the instruction because it was repetitive of the general materiality standard applicable to the Item. We believe that application of the materiality principles under the Item are more consistent with a principles-based approach and will lead to more appropriate disclosure outcomes than application of the instruction that was eliminated. By deleting this instruction, we do not intend to change the materiality standard applicable to Item 404(a). As was the case with Item 404(a) prior to adoption of these amendments, there may be situations where, although the instructions to Item 404(a) do not expressly provide that disclosure is not required, the interest of a related person in a particular transaction is not a direct or indirect material interest. In that case, information regarding such interest and transaction is not required to be disclosed under Item 404(a).

⁴¹⁴ Prior to today's amendments, Instruction 9 to Item 404(a) had stated that "There may be situations where, although these instructions do not expressly authorize nondisclosure, the interest of a person specified in paragraphs (a)(1) through (4) in a particular transaction or series of transactions is not a direct or indirect material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this paragraph."

In addition, as proposed the amendments:

- call for disclosure if a company is a “participant” in a transaction, rather than if it is “a party” to the transaction, as “participant” more accurately connotes the company’s involvement;
- modify the \$60,000 threshold for disclosure to \$120,000 to adjust for inflation;
- include a defined term for “transaction” to provide that it includes a series of similar transactions and to make clear its broad scope; and
- include a defined term for “related persons.”⁴¹⁵

As was the case before these amendments, disclosure is required for three years in registration statements filed pursuant to the Securities Act or the Exchange Act.⁴¹⁶

One commenter questioned whether changing the test of company involvement from being a “party” to a transaction to being a “participant” in a transaction is intended to be a substantive change.⁴¹⁷ The purpose of this change is to more accurately connote the company’s involvement in a transaction by clarifying that being a “participant” encompasses situations

⁴¹⁵ The “related persons” covered by the amended Item are discussed below in Section V.A.1.b.

⁴¹⁶ However, if the disclosure is being incorporated by reference into a registration statement on Form S-4, the additional two years of disclosure will not be required, as specified in Instruction 1 to Item 404.

⁴¹⁷ See letter from Sullivan. See also letter from SCSGP.

where the company benefits from a transaction but is not technically a contractual “party” to the transaction.⁴¹⁸

Commenters expressed diverse views on the appropriate disclosure threshold. While some commenters supported increasing the threshold for disclosure from \$60,000 to \$120,000,⁴¹⁹ others recommended retaining the \$60,000 threshold,⁴²⁰ using a minimal dollar threshold,⁴²¹ not including any de minimis dollar threshold,⁴²² or increasing the threshold even further through use of a sliding scale.⁴²³ We believe that a fixed dollar amount for the disclosure threshold will provide the most certainty as to the size of transactions that must be tracked for disclosure purposes under Item 404,⁴²⁴ and

⁴¹⁸ For example, 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, notwithstanding the fact that it is not a party to a contract.

⁴¹⁹ See, e.g., letters from BRT and Sullivan.

⁴²⁰ See, e.g., letters from Amalgamated and CalSTRS.

⁴²¹ See letter from Teamsters (recommending a \$250 disclosure threshold).

⁴²² See, e.g., letters from CII and ISS.

⁴²³ See letter from SCSGP recommending a disclosure threshold for companies that are not small business issuers of the greater of \$120,000 or a percentage (which it believes could be as low as two percent) of consolidated gross revenues of the recipient for certain types of transactions.

⁴²⁴ The disclosure threshold in amended Item 404(a) of Regulation S-B is the lesser of \$120,000 or one percent of the average of the small business issuer’s total assets at year-end for the last three completed fiscal years because we believe that transactions that are below \$120,000 can be significant for small business issuers given their relative size.

that increasing the dollar amount of the threshold based on inflation is appropriate given the amount of time that has elapsed since it was last set nearly twenty-five years ago. Finally, the rule changes include as proposed a technical modification. Prior to today’s amendments, Item 404(a) stated that disclosure was required regarding situations involving “the registrant or any of its subsidiaries.” Because companies must include subsidiaries in making materiality determinations in all circumstances, the reference to “subsidiaries” is superfluous, and we have therefore eliminated it. This modification does not change the scope of disclosure required under the Item.⁴²⁵

a. Indebtedness

Section 402 of the Sarbanes-Oxley Act prohibits most personal loans by a company to its officers and directors.⁴²⁶ This development raises the issue of whether disclosure of indebtedness of the sort required under our rules prior to the amendments should be maintained. We believe that the approach to disclosure of indebtedness involving related persons that we adopt today is appropriate because of the scope of the direct and indirect interests covered by our disclosure requirements, because related persons include persons not covered by the prohibitions, and because there are certain exceptions to the

⁴²⁵ For the same reason, we have eliminated as proposed the references to “subsidiaries” in the “compensation committee interlocks and insider participation in compensation decisions” disclosure requirement adopted in Item 407(e)(4). This revision does not change the scope of disclosure required under the rule.

⁴²⁶ Codified in Section 13(k) of the Exchange Act [15 U.S.C. 78m(k)].

prohibitions. We have, however, eliminated the distinction between indebtedness and other types of related person transactions.

As a result of integrating what had been required to be disclosed under paragraph (c) of Item 404 into paragraph (a) of Item 404, the rule proposals would have changed the situations in which indebtedness disclosure is necessary by requiring disclosure of indebtedness transactions with regard to all related persons covered by the related person transaction disclosure requirement, including significant shareholders.⁴²⁷ Some commenters questioned whether disclosure of indebtedness of significant shareholders would be useful to investors and whether companies would have access to the information necessary to provide this disclosure.⁴²⁸ In response to these comments, the amendments do not require disclosure of indebtedness transactions of significant shareholders (or their immediate family members).⁴²⁹

Another result of integrating the disclosure requirements that had been

⁴²⁷ Prior to today's amendments, the related person transaction disclosure requirement in Item 404(a) covered significant shareholders, while the indebtedness disclosure requirement in Item 404(c) did not. The significant shareholders covered by Item 404(a) as adopted will continue to be any security holder who is known to the company to beneficially own more than five percent of any class of the company's voting securities. See Instruction 1.b.i. to Item 404(a).

⁴²⁸ See, e.g., letter from Sullivan. See also, letter from SCSGP.

⁴²⁹ See Instruction 4.b. to Item 404(a). Disclosure would be required, however, if the significant shareholder (or such shareholder's immediate family member) was also a related person specified in Instruction 1.a. to Item 404(a), for example, if the significant shareholder was also an executive officer.

specified in paragraph (c) of Item 404 into paragraph (a) of Item 404, is that the rule changes set a \$120,000 threshold and require disclosure if there is a direct or indirect material interest in an indebtedness transaction, while prior to these amendments Item 404(c) required disclosure of all indebtedness exceeding \$60,000.⁴³⁰ For example, under amended Item 404(a) disclosure is required if an executive officer had a material indirect interest in an indebtedness transaction (exceeding \$120,000) between the company and another entity due to that executive officer's ownership interest in the other entity. Disclosure of material indirect interests of related persons in transactions involving the company will be required by Item 404(a) as amended, just as it was prior to adoption of these amendments. We believe that disclosure requirements for indebtedness and for other related person transactions should be congruent. In particular, we believe that loans by companies other than financial institutions should be treated like any other related person transactions; however, as discussed below,⁴³¹ we address certain ordinary course loans by financial institutions in an instruction to Item 404(a).

⁴³⁰ Prior to these amendments, Item 404(c) also had required disclosure of some specific indirect interests of directors, nominees for director, and executive officers of the company in indebtedness through corporations, organizations, trusts, and estates. Disclosure of these specific interests had been required by subparagraphs (c)(4) and (c)(5) of Item 404. Under the amendments, these subparagraphs have been eliminated as duplicative and the need for disclosure in these situations will be determined using a materiality analysis under the principle for disclosure in Item 404(a).

⁴³¹ See Section V.A.3. below.

b. Definitions

We have defined the terms “transaction,” “related person” and “amount involved” substantially as proposed in order to streamline Item 404(a) and to clarify the broad scope of financial transactions and relationships covered by the rule.

The term “transaction” has a broad scope in Item 404(a).⁴³² This term is not to be interpreted narrowly, but rather broadly includes, but is not limited to, any financial transaction, arrangement or relationship or any series of similar transactions, arrangements or relationships. The definition of “transaction” also specifically notes that the term includes indebtedness and guarantees of indebtedness.

The definition of “related person” identifies the persons covered, and clarifies the time periods during which they are covered. The term “related person”⁴³³ means any person who was in any of the following categories at any time during the specified period for which disclosure under paragraph (a) of Item 404 is required:

- any director or executive officer of the company and his or her immediate family members; and

⁴³² Instruction 2 to Item 404(a).

⁴³³ Instruction 1 to Item 404(a).

- if disclosure were provided in a proxy or information statement relating to the election of directors, any nominee for director and the immediate family members of any nominee for director.

In addition, a security holder known to the company to beneficially own more than five percent of any class of the company's voting securities or any immediate family member of any such person, when a transaction in which such security holder or family member had a direct or indirect material interest occurred or existed, is also a related person.

The definition of "related person" that we have adopted will require disclosure of related person transactions involving the company and a person (other than a significant shareholder or immediate family member of such shareholder) that occurred during the last fiscal year, if the person was a "related person" during any part of that year.⁴³⁴ A person who had a position or relationship giving rise to the person being a "related person" during only part of the last fiscal year may have had a material interest in a transaction with the company during that year. While prior to these amendments Item 404(a) did not indicate whether disclosure was required for the transaction in this situation, the history of Item 404 suggests that disclosure was required if the

⁴³⁴ As proposed, the principle for disclosure that we have adopted only applies to nominees for director if disclosure is being provided in a proxy or information statement involving the election of directors. Also, as proposed, ongoing disclosure is not required regarding nominees for director who were not elected (unless a nominee has been nominated again for director).

requisite relationship existed at the time of the transaction, even if the person was no longer a related person at the end of the year.⁴³⁵ We believe that, because of the potential for abuse and the close proximity in time between the transaction and the person’s status as a “related person,” it is appropriate to require disclosure for transactions in which the person had a material interest occurring at any time during the fiscal year. For example, it is possible that a material interest of a person in a transaction during this timeframe could influence the person’s performance of his or her duties.

We believe that transactions with persons who have been or who will become significant shareholders (or their immediate family members), but are not at the time of the transaction, raise different considerations and are harder to track, and thus we are excluding them as proposed. Disclosure will be required, however, regarding a transaction that begins before a significant shareholder becomes a significant shareholder, and continues (for example,

⁴³⁵ This position, which had been included in the proxy rule provisions that were the precursor to Item 404, was deleted from those provisions in 1967 as duplicative of a note that applied to all of the disclosure required in Schedule 14A (including the related party disclosure requirement in Schedule 14A). Adoption of Amendments to Proxy Rules and Information Rules, Release No. 34- 8206 (Dec. 14, 1967) [32 FR 20960], at “Schedule 14A—Item7(f).” Before today’s amendments, Note C to Schedule 14A provided that “[i]nformation need not be included for any portion of the period during which such person did not hold any such position or relationship, provided a statement to that effect is made.” We have amended Note C to Schedule 14A as proposed so that it will no longer apply to disclosure of related person transactions.

through the on-going receipt of payments) on or after the time that the person becomes a significant shareholder.

We are adopting the definition of “immediate family member” as proposed. Under Item 404(a), the term “immediate family member” means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and any person (other than a tenant or employee) sharing the household of any director, nominee for director, executive officer, or significant shareholder of the company. The amended definition differs from the former definition in that it includes stepchildren, stepparents, and any person (other than a tenant or employee) sharing the household of a director, nominee for director, executive officer, or significant shareholder of the company.⁴³⁶

The amended definition of “amount involved” is adopted as proposed.⁴³⁷ The definition incorporates two concepts that were included in Item 404 prior to these amendments regarding how to determine the “amount involved” in transactions, and clarifies that the amounts reported must be in dollars even if the amount was set or expensed in a different currency. As

⁴³⁶ The persons included in these additions to the definition are also included in the definition of “family member” in General Instruction A.1.(a)(5) to Securities Act Form S-8.

⁴³⁷ Instruction 3 to Item 404(a).

adopted, the term “amount involved” means the dollar value of the transaction, or series of similar transactions, and includes:

- in the case of any lease or other transaction providing for periodic payments or installments, the aggregate amount of all periodic payments or installments due on or after the beginning of the company’s last fiscal year, including any required or optional payments due during or at the conclusion of the lease or other transaction providing for periodic payments or installments;⁴³⁸ and
- in the case of indebtedness, the largest aggregate amount of all indebtedness outstanding at any time since the beginning of the company’s last fiscal year and all amounts of interest payable on it during the last fiscal year.⁴³⁹

2. Disclosure Requirements

Subparagraphs of Item 404(a) as adopted provide the disclosure requirements for related person transactions. The company will be required to describe the transaction, including:

- the person’s name and relationship to the company;
- the person’s interest in the transaction with the company, including the

⁴³⁸ Prior to today’s amendments, Instruction 3 to Item 404(a) had provided guidance regarding computing the amount involved in lease or other agreements providing for periodic payments or installments.

⁴³⁹ Prior to today’s amendments, the basis for determining the amount involved in indebtedness transactions had been set forth in Item 404(c).

related person's position or relationship with, or ownership in, a firm, corporation, or other entity that is a party to or has an interest in the transaction; and

- the approximate dollar value of the amount involved in the transaction and of the related person's interest in the transaction.⁴⁴⁰

Companies will also be required to disclose any other information regarding the transaction or the related person in the context of the transaction that is material to investors in light of the circumstances of the particular transaction.

As was the case prior to adoption of these amendments, the dollar value of the related person's interest in the transaction will be computed without regard to the amount of the profit or loss involved in the transaction.⁴⁴¹ One commenter pointed out that the proposals expanded the application of this provision to also cover the computation of the "amount involved" when the provision was moved from an instruction into the body of Item 404(a).⁴⁴² In

⁴⁴⁰ Because of the manner in which the amount involved in the transaction is calculated for indebtedness, as discussed above, disclosure with respect to indebtedness will include the largest aggregate amount of principal outstanding during the period for which disclosure is provided, as well as the amount of principal and interest paid during the period for which disclosure is provided, the aggregate amount of principal outstanding as of the latest practicable date, and the rate or amount of interest payable on the indebtedness. Item 404(a)(5).

⁴⁴¹ Item 404(a)(4).

⁴⁴² See letter from Sullivan.

streamlining Item 404(a), we did not intend to change the scope of the prior instruction. Therefore, the final rule clarifies the context in which profit or loss is not to be considered.

Consistent with the principles-based approach that we are applying to related person transaction disclosure, we are eliminating an instruction that, in the case of a related person transaction involving a purchase or sale of assets by or to the company otherwise than in the ordinary course of business, called for specific disclosure of the cost of the assets to the purchaser, and if acquired within two years of the transaction, the cost of the assets to the seller and related information about the price of the assets. We note, however, that if such information is material under the revised standards of Item 404(a), because, for example, the recent purchase price to the related person is materially less than the sale price to the company, or the sale price to the related person is materially more than the recent purchase price to the company, disclosure of such prior purchase price and related information about the prices could be required.

Prior to adoption of today's amendments, disclosure was required under Item 404(c) regarding amounts possibly owed to the company under Section 16(b) of the Exchange Act.⁴⁴³ We believe that the purpose of related person transaction disclosure differs from the purpose of Section 16(b), and one

⁴⁴³ This requirement had been set forth in Instruction 4 to Item 404(c) prior to these amendments.

commenter expressed support for eliminating this requirement.⁴⁴⁴ Accordingly, the rule amendments eliminate this former Section 16(b)-related disclosure requirement.

3. Exceptions

Some categories of transactions do not fall within the principle for disclosure and therefore Item 404(a) as amended includes disclosure exceptions that we believe are consistent with our principles-based approach.⁴⁴⁵ The first category of transactions involves compensation. Disclosure of compensation to an executive officer will not be required if:

- the compensation is reported pursuant to Item 402 of Regulation S-K; or
- the executive officer is not an immediate family member and such compensation would have been reported under Item 402 as compensation earned for services to the company if the executive officer was a named executive officer, and such compensation had been approved, or recommended to the board of directors of the company for approval, by the compensation committee of the board of directors (or group of independent directors performing a similar function) of the company.⁴⁴⁶

⁴⁴⁴ See letter from SCSGP.

⁴⁴⁵ Instructions 4, 5, 6 and 7 to Item 404(a).

⁴⁴⁶ Instruction 5.a. to Item 404(a).

As proposed, this disclosure exception would have required compensation committee approval of an executive officer's compensation if that executive officer's compensation was not reported under Item 402. However, one commenter noted that in accordance with listing standards, compensation committees may only need to recommend to the board of directors, rather than approve, the compensation of executive officers (other than the chief executive officer).⁴⁴⁷ We believe that it is appropriate for this disclosure exception to apply a standard that is consistent with the listing standards and we have thus modified this exception from the proposal accordingly. Finally, as proposed disclosure of compensation to a director will not be required if the compensation is reported pursuant to the director compensation disclosure requirement in Item 402(k).⁴⁴⁸

As we explained in the Proposing Release, since the disclosure either would be reported under Item 402, or would not be required under Item 402, we do not believe that these particular compensation transactions fall within our Item 404 disclosure principle, or they will have already been disclosed. Transactions involving compensation that do not fall within these exceptions, such as compensation of immediate family members, are within the scope of the principle for disclosure

⁴⁴⁷ See letter from NYCBA.

⁴⁴⁸ Instruction 5.b. to Item 404(a).

in amended Item 404(a).⁴⁴⁹ These exceptions thus clarify the limited situations in which disclosure of compensation to related persons is not required under Item 404.

The second category of transactions involves three types of situations that we believe do not raise the potential issues underlying our principle for disclosure. First, in the case of transactions involving indebtedness, as proposed we have adopted amendments so that the following items of indebtedness may be excluded from the calculation of the amount of indebtedness and need not be disclosed because they do not have the potential to impact the parties as do the transactions for which disclosure is required: amounts due from the related person for purchases of goods and services subject to usual trade terms, for ordinary business travel and expense payments and for other transactions in the ordinary course of business.⁴⁵⁰ Also, in the case of a transaction involving indebtedness, the amendments provide, as proposed, that if the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal

⁴⁴⁹ One commenter believed that the proposals would have eliminated disclosure of related person transactions involving the employment of immediate family members. See letter from CRPTF. Item 404(a), as amended, continues to require disclosure of these types of related person transactions when the threshold for disclosure has been met and the immediate family member has or will have a direct or indirect material interest.

⁴⁵⁰ Instruction 4.a. to Item 404(a), which is based on Instruction 2 to Item 404(c) as it was stated prior to today's amendments.

Reserve Regulation T⁴⁵¹ and the loans are not disclosed as nonaccrual, past due, restructured or potential problems,⁴⁵² disclosure under paragraph (a) of Item 404 may consist of a statement, if correct, that the loans to such persons satisfied the following conditions:

- they were made in the ordinary course of business;
- they were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable loans with persons not related to the lender; and
- they did not involve more than the normal risk of collectibility or present other unfavorable features.⁴⁵³

This exception is based on the exception that was included in Instruction 3 to Item 404(c) prior to these amendments, and has been modified as proposed to be more consistent with the prohibition of the Sarbanes-Oxley Act on personal loans to officers and directors.⁴⁵⁴

Second, we are adopting as proposed an instruction indicating that a person who has a position or relationship with a firm, corporation, or other

⁴⁵¹ 12 CFR Part 220.

⁴⁵² See Item III.C.1. and 2. of Industry Guide 3, Statistical Disclosure by Bank Holding Companies [17 CFR 229.802(c)].

⁴⁵³ Instruction 4.c. to Item 404(a).

⁴⁵⁴ Specifically, the language that was in Instruction 3 to paragraph (c) of Item 404 prior to these amendments has been modified to replace the reference “comparable transactions with other persons” with the phrase “comparable loans with persons not related to the lender.”

entity that engages in a transaction with the company shall not be deemed to have an indirect material interest within the meaning of paragraph (a) of Item 404 if:

- the interest arises only: (i) from the person’s position as a director of another corporation or organization that is a party to the transaction; or (ii) from the direct or indirect ownership by such person and all other related persons, in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or (iii) from both such position and ownership; or
- the interest arises only from the person’s position as a limited partner in a partnership in which the person and all other related persons, have an interest of less than ten percent, and the person is not a general partner of and does not have another position in the partnership.⁴⁵⁵

Finally, disclosure will not be required under paragraph (a) of Item 404 in three other types of circumstances. First, disclosure will not be required under paragraph (a) of Item 404 as to any transaction where the rates or charges

⁴⁵⁵ Instruction 6 to Item 404(a). This amendment is based on the language that was in parts A and B of Instruction 8 to Item 404(a) prior to these amendments. This amendment omits the portion of that instruction (Instruction 8.C.) regarding interests arising solely from holding an equity or a creditor interest in a person other than the company that is a party to the transaction, when the transaction is not material to the other person. This exception may have resulted in inappropriate non-disclosure of transactions without regard to whether they were material to the company. In addition, we are eliminating the language that had been set forth in Instruction 6 to Item 404(a) prior to these amendments, which had covered a subset of transactions now covered by Instruction 6, as amended, and therefore was duplicative.

involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority.⁴⁵⁶ We had proposed to eliminate this exception because we considered such bright-line presumptions as inconsistent with our principles-based approach to the rule. We are persuaded, however, by a commenter who indicated that the prior exception embodied a conclusion that the terms of these types of transactions would likely not be influenced by the related persons and therefore should be excluded as not material.⁴⁵⁷ As a result, the instruction is retained in the rule as adopted.

Second, disclosure need not be provided under paragraph (a) of Item 404 if the transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture, or similar services.⁴⁵⁸ We had proposed to eliminate this exception. We are persuaded by commenters' concerns that eliminating this exception may be detrimental to financial institutions and may not result in additional meaningful disclosure.⁴⁵⁹ Accordingly, we are retaining this exception.

⁴⁵⁶ Instruction 7.a. to Item 404(a).

⁴⁵⁷ Letter from SCSGP.

⁴⁵⁸ Instruction 7.b. to Item 404(a).

⁴⁵⁹ See, e.g., letters from American Bankers Association (“American Bankers”); Compass Bancshares; and Whitney Holding Corporation (“Whitney Holding”).

Third, we are adopting an exception indicating that disclosure need not be provided pursuant to paragraph (a) of Item 404 if the interest of the related person arises solely from the ownership of a class of equity securities of the company and all holders of that class of equity securities of the company received the same benefit on a pro rata basis.⁴⁶⁰ Commenters expressed concern that our proposal to eliminate the former exception⁴⁶¹ would require disclosure if a related person receives over \$120,000 in dividends on company stock in a year, even though those dividends are paid on the same terms as for all other stockholders.⁴⁶² We are persuaded by the commenters that related person transaction disclosure is not necessary for transactions where a related person receives pro rata dividends or returns on the ownership of equity securities, and therefore we have adopted an instruction to provide an exception from disclosure in these limited circumstances.⁴⁶³

Some commenters requested that we create a new exception for transactions undertaken in the ordinary course of business of the company and

⁴⁶⁰ Instruction 7.c. to Item 404(a).

⁴⁶¹ Before the adoption of these amendments, Instruction 7.C. to Item 404(a) provided that no information was required under Item 404(a) for transactions where the interest of the related person arose solely from the ownership of securities of the company and such person received no extra or special benefit not shared on a pro rata basis.

⁴⁶² See, e.g., letters from SCSGP and Sullivan.

⁴⁶³ The instruction as adopted differs from the language of Instruction 7.C. prior to these amendments in that it is limited to ownership of a class of equity securities rather than securities generally and focuses on benefits being provided pro rata to the holders of that class rather than the absence of certain extra or special benefits.

conducted on the same terms that the company offers generally in transactions with persons who are not related persons.⁴⁶⁴ Former Item 404(a) did not include such an “ordinary course of business” disclosure exception, and we are not persuaded that it should be expanded to include one. In this regard, we note that transactions which should properly be disclosed under Item 404(a) might be excluded under an ordinary course of business exception, such as employment of immediate family members of officers and directors. However, we note that whether a transaction which was not material to the company or the other entity involved and which was undertaken in the ordinary course of business of the company and on the same terms that the company offers generally in transactions with persons who are not related persons, are factors that could be taken into consideration when performing the materiality analysis for determining whether disclosure is required under the principle for disclosure.

B. Procedures for Approval of Related Person Transactions

We are adopting a new requirement for disclosure of the policies and procedures established by the company and its board of directors regarding related person transactions substantially as proposed. State corporate law and increasingly robust corporate governance practices support or provide for such procedures in connection with transactions involving conflicts of interest.⁴⁶⁵

⁴⁶⁴ See, e.g., letters from SCSGP and Sullivan.

⁴⁶⁵ Del. Code Ann. tit. 8, §144 (2004). See also NYSE, Inc. Listed Company Manual Section 307.00 and NASD Manual, Marketplace Rules 4350(h) and 4360(i).

We believe that this type of information may be material to investors, and our amendments therefore require disclosure of policies and procedures regarding related person transactions under paragraph (b) of Item 404, as amended.

Specifically, the amendments require a description of the company's policies and procedures for the review, approval or ratification of transactions with related persons that are reportable under paragraph (a) of Item 404. The description must include the material features of these policies and procedures that are necessary to understand them. While the material features of such policies and procedures will vary depending on the particular circumstances, examples of such features may include, in given cases, among other things:

- the types of transactions that are covered by such policies and procedures, and the standards to be applied pursuant to such policies and procedures;
- the persons or groups of persons on the board of directors or otherwise who are responsible for applying such policies and procedures; and
- whether such policies and procedures are in writing and, if not, how such policies and procedures are evidenced.

Item 404(b) requires identification of any transactions required to be reported under paragraph (a) of Item 404 where the company's policies and procedures do not require review, approval or ratification or where such policies and procedures have not been followed.

One commenter expressed concern that it is not reasonable or customary for a company's related person transaction policy to extend to transactions occurring before an individual becomes affiliated with a company.⁴⁶⁶ In response, we have added an instruction indicating that disclosure need not be provided pursuant to paragraph (b) of Item 404 regarding any transaction that occurred at a time before the related person had the relationship that would trigger disclosure under Item 404(a), if the transaction did not continue after the related person had that relationship.⁴⁶⁷

C. Promoters and Control Persons

As proposed and adopted, the amendments require a company to provide disclosure 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.⁴⁶⁸ The disclosure will be required in Securities Act registration

⁴⁶⁶ See letter from NYCBA.

⁴⁶⁷ See Instruction to Item 404(b). For example, disclosure would not be required under Item 404(b) in a company's Form 10-K for the fiscal year ended December 31, 2005 of a transaction that occurred in March 2005 between the company and an immediate family member of a person who later became a director of the company in August 2005. However, disclosure would be required under Item 404(a) in this circumstance. This Instruction to Item 404(b) does not apply to transactions of significant shareholders of the company, because Item 404(a) does not require disclosure of transactions with significant shareholders that are completed before they become significant shareholders.

⁴⁶⁸ Item 404(c).

statements on Form S-1 or on Form SB-2 and Exchange Act Form 10 or Form 10-SB. The disclosure includes:

- the names of the promoters;
- the nature and amount of anything of value received by each promoter from the company and the nature and amount of any consideration received by the company; and
- additional information regarding any assets acquired by the company from a promoter.

The amendments are consistent with the previous disclosure requirements regarding promoters. However, prior to these amendments this disclosure was not required if the company had been organized more than five years ago, even if the company otherwise had a promoter within the last five years. Our staff's experience in reviewing registration statements, especially of smaller companies, suggests that the more appropriate five-year test for which the disclosure should be provided relates to the period of time during which the company had a promoter, as our revision provides, rather than the date of organization of the company.⁴⁶⁹ We are also requiring the same disclosure that is required for promoters for any person who acquired control, or is part of a

⁴⁶⁹ We also adopt as proposed similar revisions to the disclosure requirement referencing promoters in Item 401(g)(1) of Regulation S-K. In addition, as proposed our revisions add Form SB-2 to the list of registration statement forms in Item 404 for which promoter disclosure is required. While this revision updates the registration statement forms listed in Item 404, it does not change the promoter disclosure requirement of Form SB-2.

group that acquired control, of an issuer that is a shell company.⁴⁷⁰ We are revising the title of this item to include the term control persons in order to clarify the scope of the disclosure requirement.

D. Corporate Governance Disclosure

We are consolidating our disclosure requirements regarding director independence and related corporate governance disclosure requirements under a single disclosure item and updating such disclosure requirements regarding director independence to reflect our current requirements and current listing standards.⁴⁷¹ Prior to these amendments, Item 404(b) had required disclosure of specific business relationships between a director or nominee for director and the company that could bear on the ability of directors and nominees for

⁴⁷⁰ Item 404(c)(2). The term “group” has the same meaning as in Exchange Act Rule 13d-5(b)(1) [17 CFR 240.13d-5(b)(1)], that is, any two or more persons that agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer. The term “shell company” is defined in Securities Act Rule 405 and Exchange Act Rule 12b-2.

⁴⁷¹ Item 407 of Regulations S-K and S-B. As adopted, Item 407 consolidates corporate governance disclosure requirements located in several places under our rules and the principal markets’ listing standards, including in particular requirements that had been specified in Items 306, 401(h), (i) and (j), 402(j) and 404(b) of Regulation S-K and Item 7 of Schedule 14A under the Exchange Act prior to these amendments. We are not making any changes to the substance of the requirements under Item 306, Item 401(h), (i) or (j), or Item 402(j) as part of this consolidation. However, as proposed, Item 407 reorders some provisions that were specified in Item 306 and reflects the relevant Public Company Accounting Oversight Board rules. See PCAOB Rulemaking: Public Company Accounting Oversight Board; Order Approving Proposed Technical Amendments to Interim Standards Rules, Release No. 34-49624 (Apr. 28, 2004) [69 FR 24199]; and Order Regarding Section 101(d) of the Sarbanes-Oxley Act of 2002, Release No. 33-8223 (Apr. 25, 2003) [68 FR 2336].

director to exercise independent judgment in the performance of their duties. We proposed to eliminate the disclosure requirement that was stated under paragraph (b) of Item 404 in favor of more direct disclosure about the determination of the independence of directors and nominees for director, including information supplementing the amended related person transaction disclosure that would permit qualitative assessment of those independence determinations. While one commenter suggested that we retain a revised version of paragraph (b) to Item 404 as it was stated prior to these amendments,⁴⁷² we continue to believe that disclosure focused on the determinations made regarding director independence is the appropriate approach. The comprehensive director independence disclosure requirement that we are adopting today recognizes the significant development of independence requirements since the disclosure requirements in former paragraph (b) of Item 404 were originally adopted. As directed by the Sarbanes-Oxley Act of 2002, we adopted a rule requiring national securities exchanges and national securities associations to adopt listing standards requiring independent audit committees meeting the standards of our rule.⁴⁷³ Further, in 2003 and 2004, we approved amendments to additional listing

⁴⁷² Letter from Fenwick.

⁴⁷³ See Section 10A(m) of the Exchange Act [15 U.S.C. 78j-1(m)]; Exchange Act Rule 10A-3 [17 CFR 240.10A-3]; and Standards Relating to Listed Company Audit Committees, Release No. 33-8220 (Apr. 9, 2003) (the “Audit Committee Release”) [68 FR 18788].

standards, including those of the New York Stock Exchange and Nasdaq,⁴⁷⁴ that imposed specific additional independence standards for boards of directors,

⁴⁷⁴ NASD and NYSE Listing Standards Release. The other exchanges have also adopted corporate governance listing standards. See Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Relating to Enhanced Corporate Governance Requirements Applicable to Listed Companies, Release No. 34-48863 (Dec. 1, 2003) [68 FR 68432]; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Corporate Governance, Release No. 34-49881 (June 17, 2004) [69 FR 35408]; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Governance of Issuers on the Exchange, Release No. 34-49911 (June 24, 2004) [69 FR 39989]; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. to Amend Chapter XXVII, Section 10 of the Rules of the Board of Governors by Adding Requirements Concerning Corporate Governance Standards of Exchange-Listed Companies, Release No. 34-49955 (July 1, 2004) [69 FR 41555]; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Incorporated, Relating to Enhanced Corporate Governance Requirements for Listed Companies, Release No. 34-49995 (July 9, 2004) [69 FR 42476]; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by National Stock Exchange Relating to Corporate Governance, Release No. 34-49998 (July 9, 2004) [69 FR 42788]; and Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. to Amend the Corporate Governance Requirements for PCX Listed Companies, Release No. 34-50677 (Nov. 16, 2004) [69 FR 68205]. The Commission has previously received a rulemaking petition submitted by the AFL/CIO, which requested the Commission to amend Items 401 and 404 of Regulation S-K to require disclosure about transactions with non-profit organizations (letter dated Dec. 12, 2001 from Richard Trumka, Secretary-Treasurer, AFL/CIO, File No. 4-499, available at www.sec.gov/rules/petitions/petn4-499.pdf) and a rulemaking petition submitted by the Council of Institutional Investors, which requested amendments to Item 401 of Regulation S-K to require disclosure of certain transactions between directors, executive officers and nominees (letter dated Oct. 1, 1997, as amended Oct. 19, 1998, from Sarah A.B. Teslik, Executive Director, Council of Institutional Investors, File No. 4-404). We believe these requests have in large part been addressed by revised listing standards instituted by the exchanges, so that we are not now taking additional action under these petitions.

and the compensation and nominating committees or persons performing similar functions. Each listed company (unless exempt) determines whether its directors and committee members are independent based on definitions that it adopts which, at a minimum, are required to comply with the listing standards applicable to the company.

The amendments we are adopting today, substantially as proposed, include a disclosure requirement to identify the independent directors of the company (and, in the case of disclosure in proxy or information statements relating to the election of directors, nominees for director) under the definition for determining board independence applicable to it.⁴⁷⁵ The amendments also require disclosure of any members of the compensation, nominating and audit committees that the company has not identified as independent under the definition of independence for that board committee applicable to it.⁴⁷⁶

More specifically, if the company is an issuer⁴⁷⁷ with securities listed, or for which it has applied for listing, on a national securities exchange⁴⁷⁸ or in an

⁴⁷⁵ Item 407(a).

⁴⁷⁶ Id. If the company does not have a separately designated compensation, nominating or audit committee or committee performing similar functions, it must provide this disclosure regarding independence under committee independence standards with respect to all members of the board of directors.

⁴⁷⁷ Under the amendments, “listed issuer” has the same meaning as in Exchange Act Rule 10A-3.

⁴⁷⁸ Under the amendments, “national securities exchange” means a national securities exchange registered pursuant to Section 6(a) of Exchange Act [15 U.S.C. 78f(a)].

automated inter-dealer quotation system of a national securities association⁴⁷⁹ which has requirements that a majority of the board of directors be independent, Item 407(a) requires disclosure of those directors and director nominees that the company identifies as independent (and committee members not identified as independent), using the definition for independence for directors (and for committee members) that it uses for determining compliance with the applicable listing standards. If the company is not a listed issuer, we are requiring disclosure of those directors and director nominees that the company identifies as independent (and committee members not identified as independent) using the definition for independence for directors (and for committee members) of a national securities exchange or a national securities association, specified by the company. The company will be required to apply the same definition consistently to all directors and also to use the independence standards of the same national securities exchange or national

⁴⁷⁹ Under the amendments, “inter-dealer quotation system” means an automated inter-dealer quotation system of a national securities association registered pursuant to Section 15A(a) of the Exchange Act [15 U.S.C. 78o-3(a)], and a “national securities association” means a national securities association registered pursuant to Section 15A(a) of the Exchange Act [15 U.S.C. 78o-3(a)] that has been approved by the Commission (as that definition may be modified or supplemented). Inter-dealer quotation systems such as the OTC Bulletin Board, the Pink Sheets and the Yellow Sheets, which do not maintain or impose listing standards and do not have listing agreements or arrangements with the issuers whose securities are quoted through them, are not within this definition. See Section II.F.1. in the Audit Committee Release.

securities association for purposes of determining the independence of members of the compensation, nominating and audit committees.⁴⁸⁰

One commenter pointed out the rule proposals did not make clear what disclosure would be required for listed issuers that relied upon an exemption from independence requirements, most notably a “controlled company” exemption.⁴⁸¹ To clarify the disclosure required in this situation, we added a requirement to the amendments that if the company is a listed issuer whose securities are listed on a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, and also has exemptions to those requirements (for board or committee member independence) upon which the company relied, the company must disclose the exemption relied upon and explain the basis for its conclusion that such exemption is applicable.⁴⁸² Similar disclosure is required for those companies that are not listed issuers but would qualify for an exemption under the listing standards selected. In addition, this instruction clarifies that small business issuers listed on exchanges where at least half of the members of the board of directors, rather than a majority, are required to be

⁴⁸⁰ Similar disclosure had been required pursuant to Item 7(d)(2)(ii) and Item 7(d)(3)(iv) of Schedule 14A prior to these amendments. As part of our consolidation of these provisions into new Item 407, we adopt revised language for these provisions that reflects the general approach discussed above with regard to disclosure of director independence for board and committee purposes.

⁴⁸¹ Letter from NYCBA.

⁴⁸² Instruction 1 to Item 407(a).

independent must comply with the disclosure requirements specified in Item 407(a).⁴⁸³

The amendments require as proposed that an issuer which has adopted definitions of independence for directors and committee members must disclose whether those definitions are posted on the company's Web site, and if they are not include the definitions as an appendix to the company's proxy or information statement at least once every three years or if the policies have been materially amended since the beginning of the company's last fiscal year.⁴⁸⁴ Further, if the policies are not on the company's Web site, or included as an appendix to the company's proxy or information statement, the company must disclose in which of the prior fiscal years the policies were included in the company's proxy or information statement.

In addition, the amendments require, for each director or director nominee identified as independent, a description, by specific category or type, of any transactions, relationships or arrangements not disclosed pursuant to paragraph (a) of Item 404 that were considered by the board of directors of the company in determining that the applicable independence standards were met. Under our proposals, disclosure of the specific details of each such transaction,

⁴⁸³ See Section 121.B.(2)(c) of the American Stock Exchange Company Guide; paragraph (g) of Chapter XXVII, Listed Securities, Section 10, Corporate Governance, of the Rules of the Board of Governors of the Boston Stock Exchange; and Rule 19(a)(1) of Article XXVIII, Listed Securities, of the Chicago Stock Exchange Rules.

⁴⁸⁴ Item 407(a)(2).

relationship or arrangement would have been required. Several commenters objected to providing this disclosure, given the potential for extensive detail about these types of transactions, relationships or arrangements, and some suggested instead providing disclosure by category or type of transaction.⁴⁸⁵ In response to the commenters, we have revised the disclosure requirement to permit transactions, relationships or arrangements of each director or director nominee to be described by the specific category or type. Consistent with the rule proposals, the amended rule requires that the disclosure be made on a director by director basis, with separate disclosure of categories or types of transactions, relationships or arrangements for each director and director nominee. We have also adopted an instruction indicating 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.⁴⁸⁶

As proposed, this independence disclosure is required for any person who served as a director of the company during any part of the year for which

⁴⁸⁵ See, e.g., letters from Chamber of Commerce; FSR; and Sidley Austin.

⁴⁸⁶ Instruction 3 to Item 407(a).

disclosure must be provided,⁴⁸⁷ even if the person no longer serves as director at the time of filing 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. In this regard, we believe that the independence status of a director is material while the person is serving as director, and not just as a matter of reelection.⁴⁸⁸

We also amend the disclosure requirements regarding the audit committee and nominating committee applicable prior to these amendments in order to eliminate duplicative committee member independence disclosure and to update the required audit committee charter disclosure requirements for consistency with the more recently adopted nominating committee charter disclosure requirements.⁴⁸⁹ As a result, as proposed the audit committee charter will no longer be required to be delivered to security holders if it is posted on

⁴⁸⁷ Instruction 2 to Item 407(a) has been revised to clarify this requirement. As proposed, disclosure under these amendments will not be required for persons no longer serving as a director in registration statements under the Securities Act or the Exchange Act filed at a time when the company is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d). As proposed, disclosure will not be required of anyone who was a director only during the time period before the company made its initial public offering if he or she was no longer a director at the time of the offering.

⁴⁸⁸ For this reason, we are not incorporating the concept previously found in Instruction 4 to Item 404(b) into Item 407(a) as adopted.

⁴⁸⁹ However, we are not revising the provision that the Audit Committee Report is furnished and not filed.

the company's Web site.⁴⁹⁰ We also are moving the disclosure required by Section 407 of the Sarbanes-Oxley Act regarding audit committee financial experts to Item 407, although as proposed we are not making any substantive changes to that requirement.⁴⁹¹

The amendments require new disclosures regarding the compensation committee that are similar to the disclosures required regarding audit and nominating committees of the board of directors.⁴⁹² The company must state whether the compensation committee has a charter, and if it does make the charter available through its Web site or proxy materials in one of the ways that the audit and nominating committee charters may be made available. As proposed, the company will be required to describe its processes and procedures for the consideration and determination of executive and director compensation including:

- the scope of authority of the compensation committee (or persons performing the equivalent functions);
- the extent to which the compensation committee (or persons performing the equivalent functions) may delegate any authority to other persons, specifying what authority may be so delegated and to whom;

⁴⁹⁰ Item 407(d)(1) and Instruction 2 to Item 407.

⁴⁹¹ Item 407(d)(5).

⁴⁹² These compensation committee disclosure requirements are included in Item 407(e).

- any role of executive officers in determining or recommending the amount or form of executive and director compensation; and
- any role of compensation consultants in determining or recommending the amount or form of executive and director compensation, identifying such consultants, stating whether such consultants are engaged directly by the compensation committee (or persons performing the equivalent functions) or any other person, describing the nature and scope of their assignment, and the material elements of the instructions or directions given to the consultants with respect to the performance of their duties under the engagement.

Several commenters viewed this item as redundant with the Compensation Discussion and Analysis required under Item 402, and suggested that they be combined.⁴⁹³ While this item and the Compensation Discussion and Analysis both involve the determination of executive officer compensation, they have different focuses. Item 407(e) focuses on the company's corporate governance structure that is in place for considering and determining executive and director compensation - such as the scope of authority of the compensation committee and others in making these determinations, as well as the resources utilized by the committee. In contrast, the Compensation Discussion and Analysis focuses on material information about the compensation policies and

⁴⁹³ See, e.g., letters from J. Brill 1; Hewitt; Mercer; Pearl Meyer & Partners; and SCSGP.

objectives of the company and seeks to put the quantitative disclosure about named executive officer compensation into perspective. We believe it is appropriate to discuss each of these matters separately and, accordingly, we have not combined them.

As for the required disclosure regarding compensation consultants, some commenters objected to the proposed requirements,⁴⁹⁴ while other commenters suggested expanding the requirement to include, among other things, a discussion of the work performed by the compensation consultant for the company or others.⁴⁹⁵ In addition, some commenters suggested deleting the requirement in proposed Item 407(e) that companies identify any executive officer of the company that the compensation consultants contacted in carrying out their assignment.⁴⁹⁶ We continue to believe that the involvement of compensation consultants and their interaction with the compensation committee is material information that should be required. However, we are persuaded that disclosure regarding any executive officers of the company that the compensation consultants contacted in carrying out their assignment is not

⁴⁹⁴ See, e.g., letters from Buck Consultants; Chamber of Commerce; Hewitt; Pearl Meyer & Partners; Mercer; and Steven Hall & Partners.

⁴⁹⁵ See, e.g., letters from Brian Foley & Co.; 3C-Compensation Consulting Consortium; BCIMC; CFA Centre 1; Governance for Owners; Michelle Leder; James McFadden; Institutional Investor Group; SBAF; and Theodore Schlissel.

⁴⁹⁶ See, e.g., letters from Compensia; FedEx Corporation; Hewitt; and Mercer.

necessary. Therefore, we are adopting the compensation consultant disclosure requirement in Item 407(e) as proposed, except for the required disclosure regarding contacts with executive officers, which has not been adopted.⁴⁹⁷

Further, the amendments consolidate into this compensation committee disclosure requirement the disclosure requirements regarding compensation committee interlocks and insider participation in compensation decisions, as proposed.⁴⁹⁸

Finally, for registrants other than registered investment companies, the amendments eliminate an existing proxy disclosure requirement regarding directors who have resigned or declined to stand for re-election⁴⁹⁹ which is no longer necessary since it has been superseded by a disclosure requirement in Form 8-K.⁵⁰⁰ For registered investment companies, which do not file current reports on Form 8-K, the requirement has been moved to Item 22(b) of Schedule 14A.⁵⁰¹ Also as proposed, the amendments combine various proxy

⁴⁹⁷ Under the rules as adopted, disclosure would also not be required under this Item if an employee of a consulting firm met with company management to work on matters not involving compensation. See letter from Hewitt.

⁴⁹⁸ Prior to these amendments, disclosure regarding compensation committee interlocks and insider participation in compensation decisions was required by Item 402(j).

⁴⁹⁹ Prior to these amendments, this disclosure was required by Item 7(g) of Schedule 14A.

⁵⁰⁰ Item 5.02(a) of Form 8-K.

⁵⁰¹ Item 22(b)(17) of Schedule 14A.

disclosure requirements regarding board meetings and committees into one location.⁵⁰² In addition, we are adopting as proposed two instructions to Item 407 to combine repetitive provisions, one relating to independence disclosure, and the other relating to board committee charters.⁵⁰³

E. Treatment of Specific Types of Issuers

1. Small Business Issuers

We are adopting amendments to Item 404 of Regulation S-B substantially as proposed. Amended Item 404 of Regulation S-B is substantially similar to amended Item 404 of Regulation S-K, except for the following two matters:

- paragraph (b) of Item 404 of Regulation S-K relating to policies and procedures for reviewing related person transactions is not included in Regulation S-B, and
- Regulation S-B provides for a disclosure threshold of the lesser of \$120,000 or one percent of the average of the small business issuer's total assets at year-end for the last three completed fiscal years,⁵⁰⁴ to require disclosure for small business issuers that may have material

⁵⁰² Item 407(b) includes disclosure requirements previously specified in paragraphs (d)(1), (f), and (h)(3) of Item 7 of Schedule 14A.

⁵⁰³ Instructions 1 and 2 to Item 407. Instruction 2 also includes as proposed a requirement that the charter be provided if it is materially amended.

⁵⁰⁴ We are revising Item 404(a) of Regulation S-B from the proposal to clarify that the determination of a small business issuer's total assets for purposes of this Item shall be made as of the issuer's fiscal year-end for its last three completed fiscal years.

related person transactions even though smaller than the absolute dollar amount of \$120,000.

Both amended items consist of disclosure requirements regarding related person transactions and promoters. These provisions of Item 404 of Regulation S-B are substantially identical to those of Item 404 of Regulation S-K, except for certain changes conforming amended Item 404 of Regulation S-B to former Item 404 of Regulation S-B.

These changes consist of the following:

- retaining in amended Item 404 of Regulation S-B an instruction in former Item 404 of Regulation S-B regarding underwriting discounts and commissions;⁵⁰⁵ and
- not including an instruction in amended Item 404 of Regulation S-B regarding the treatment of foreign private issuers that is included in amended Item 404 of Regulation S-K.⁵⁰⁶

The two year time period for disclosure embodied in Item 404 of Regulation S-B prior to these amendments was retained in the principle for disclosure in proposed Item 404(a) of Regulation S-B. Amended Item 404(a) of Regulation S-B continues to require two years of disclosure, but does so by including an

⁵⁰⁵ Instruction 8 to Item 404(a) of Regulation S-B.

⁵⁰⁶ This is consistent with the requirements of Regulation S-B prior to these amendments.

instruction to Item 404(a) of Regulation S-B⁵⁰⁷ requiring a second year of disclosure, rather than by including the two year time period in the principle for disclosure in Item 404(a) of Regulation S-B as was proposed. This change from the proposal clarifies that for purposes of applying the definition of “related person” to determine whether disclosure is required of a transaction that occurred prior to a person having the relationship that resulted in the person becoming a related person, a one year time period should be used rather than a two year time period.⁵⁰⁸ This change from the proposal also results in the structure of Item 404(a) of Regulation S-B more closely resembling the structure of Item 404(a) of Regulation S-K, particularly in situations where Item 404(a) of Regulation S-K applies to time periods longer than one year.

In addition, amended Item 404 of Regulation S-B retains a paragraph requiring disclosure of a list of all parents of the small business issuer showing the basis of control and as to each parent, the percentage of voting securities owned or other basis of control by the small business issuer’s immediate parent, if any.⁵⁰⁹

⁵⁰⁷ Instruction 9 to Item 404(a) of Regulation S-B.

⁵⁰⁸ For example, if an employee had a material interest in a transaction with the small business issuer which occurred in February 2005 and then became an executive officer in July 2005, disclosure would be required in the small business issuer’s Form 10-KSB for the fiscal year ended December 31, 2005. However, if the transaction had occurred in February 2004, disclosure would not be required in the small business issuer’s 2005 Form 10-KSB.

⁵⁰⁹ Item 404(b) of Regulation S-B.

One conforming change that we are not making to Regulation S-B, however, concerns the calculation of a related person's interest in a given transaction. Prior to today's amendments, Item 404(a) of Regulation S-B differed from Item 404(a) of Regulation S-K with respect to, among other things, the calculation of the dollar value of a person's interest in a related person transaction. Prior to these amendments, Instruction 4 to Item 404(a) of Regulation S-K had specifically provided that the amount of such interest was to be computed without regard to the amount of profit or loss involved in the transaction. In contrast, Item 404(a) of Regulation S-B contained no such instruction prior to these amendments. We are adopting amendments as proposed so that the method of calculation of a related person's interest in a transaction will be the same for both Regulation S-B and Regulation S-K. We believe that differences, if any, between the types of transactions that small business issuers may engage in with related persons as compared to transactions of larger issuers would not warrant a different approach for calculating a related person's interest in a transaction.

As proposed, new Item 407 of Regulation S-K is substantially identical to new Item 407 of Regulation S-B,⁵¹⁰ except that it would not require disclosure regarding compensation committee interlocks and insider

⁵¹⁰ The requirements that were specified in paragraphs (e), (f), and (g) of Item 401 of Regulation S-B prior to these amendments are now specified in paragraphs (d)(5), (d)(4) and (c)(3), respectively, of Item 407 of Regulation S-B.

participation in compensation decisions or the Compensation Committee Report, since Regulation S-B did not require disclosure of this information prior to adoption of these amendments.

2. Foreign Private Issuers

Before today's amendments, a foreign private issuer would be deemed to comply with Item 404 of Regulation S-K if it provided the information required by Item 7.B. of Form 20-F. The amendments retain this approach, but require that if more detailed information is otherwise made publicly available or 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 404.⁵¹¹

3. Registered Investment Companies

We are revising Items 7 and 22(b) of Schedule 14A, substantially as proposed, to reflect the reorganization that we have undertaken with respect to operating companies. Under the amendments, information that was required to be provided by registered investment companies under Item 7 prior to the amendments is instead required by Item 22(b).⁵¹² The requirements of Item 7 that prior to the amendments applied to registered investment companies

⁵¹¹ Instruction 2 to Item 404 of Regulation S-K.

⁵¹² Amendments to Item 7(e) of Schedule 14A. Business development companies will furnish the information required by Item 7 of Schedule 14A, in addition to the information required by Items 8 and 22(b) of Schedule 14A. See amendments to Items 7, 8, and 22(b) of Schedule 14A.

regarding the nominating and audit committees, board meetings, the nominating process, and shareholder communications generally will be included in Item 22(b) by cross-references to the appropriate paragraphs of new Item 407 of Regulation S-K.⁵¹³ The substance of these requirements has not been altered. In addition, the revisions to Item 22(b) directly incorporate disclosures relating to the independence of members of nominating and audit committees that are similar to those contained in new Item 407(a) of Regulation S-K and contained in Item 7 prior to the amendments.⁵¹⁴ We are also adding instructions that are similar to new Instruction 1 to Item 407(a).⁵¹⁵

⁵¹³ Amendments to Items 22(b)(15)(i) and (ii)(A) and 22(b)(16)(i) of Schedule 14A. Amended Item 22(b)(15)(i) requires the information required by new Items 407(b)(1) and (2) and (f), corresponding to the information that registered investment companies have been required to provide pursuant to Items 7(f) and 7(h) prior to today's amendments. Amended Item 22(b)(15)(ii)(A) requires the information required by new Items 407(c)(1) and (2), corresponding to the information that registered investment companies have been required to provide pursuant to Items 7(d)(2)(i) and 7(d)(2)(ii) (other than the nominating committee independence disclosures required prior to today's amendments by Item 7(d)(2)(ii)(C)). Amended Item 22(b)(16)(i) requires closed-end investment companies to provide the information required by new Items 407(d)(1) through (3), corresponding to the information that closed-end investment companies have been required to provide prior to today's amendments pursuant to Item 7(d)(3) (other than the audit committee independence disclosures required prior to today's amendments by Items 7(d)(3)(iv)(A)(1) and (B)).

⁵¹⁴ Amendments to Items 22(b)(15)(ii)(B) and (16)(ii) of Schedule 14A. Amended Item 22(b)(15)(ii)(B) requires disclosure about the independence of nominating committee members that is similar to those required by Item 7(d)(2)(ii)(C) prior to today's amendments and amended Item 22(b)(16)(ii) requires disclosure about the independence of audit committee members that is similar to those required by Items 7(d)(3)(iv)(A)(1) and (B) prior to today's amendments.

⁵¹⁵ Instruction to Item 22(b)(15)(ii)(B) of Schedule 14A; Instruction to Item 22(b)(16)(ii) of Schedule 14A.

As proposed, we are also raising from \$60,000 to \$120,000 the threshold for disclosure of certain interests, transactions, and relationships of each director or nominee for election as director who is not or would not be an “interested person” of an investment company within the meaning of Section 2(a)(19) of the Investment Company Act.⁵¹⁶ This disclosure is required in investment company proxy and information statements and registration statements. The increase in the disclosure threshold corresponds to the increase in the disclosure threshold for amended Item 404 from \$60,000 to \$120,000.

F. Conforming Amendments

The changes to Item 404 necessitate conforming amendments to other rules that refer specifically to Item 404.

1. Regulation Blackout Trading Restriction

We are adopting, as proposed, conforming changes to Regulation Blackout Trading Restriction,⁵¹⁷ also known as Regulation BTR, which we originally adopted to clarify the scope and operation of Section 306(a)⁵¹⁸ of the Sarbanes-Oxley Act of 2002 and to prevent evasion of the statutory trading

⁵¹⁶ Amendments to Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A; amendments to Items 12(b)(6), 12(b)(7), and 12(b)(8) of Form N-1A; amendments to Items 18.9, 18.10, and 18.11 of Form N-2; amendments to Items 20(h), 20(i), and 20(j) of Form N-3.

⁵¹⁷ 17 CFR 245.100-104.

⁵¹⁸ 15 U.S.C. 7244(a), entitled “Prohibition of Insider Trading During Pension Fund Blackout Periods.”

restriction.⁵¹⁹ Rule 100 of Regulation BTR defines terms used in Section 306(a) and Regulation BTR, including the term “acquired in connection with service or employment as a director or executive officer.”⁵²⁰ Under this definition as originally adopted, one of the specified methods by which a director or executive officer directly or indirectly acquires equity securities in connection with such service is an acquisition “at a time when he or she was a director or executive officer, as a result of any transaction or business relationship described in paragraph (a) or (b) of Item 404 of Regulation S-K.”⁵²¹ To conform this provision of Regulation BTR to the Item 404 amendments, we are amending Rule 100(a)(2) so that it references only transactions described in paragraph (a) of Item 404, as we proposed.

⁵¹⁹ Insider Trades During Pension Fund Blackout Periods, Release No. 34-47225 (Jan. 22, 2003) [68 FR 4337]. Section 306(a) makes it unlawful for any director or executive officer of an issuer of any equity security (other than an exempted security), directly or indirectly, to purchase, sell, or otherwise acquire or transfer any equity security of the issuer (other than an exempted security) during any pension plan blackout period with respect to such equity security, if the director or executive officer acquires the equity security in connection with his or her service or employment as a director or executive officer. This provision equalizes the treatment of corporate executives and rank-and-file employees with respect to their ability to engage in transactions involving issuer equity securities during a pension plan blackout period if the securities were acquired in connection with their service to, or employment with, the issuer.

⁵²⁰ This term is defined in Rule 100(a) of Regulation BTR.

⁵²¹ Rule 100(a)(2) of Regulation BTR.

2. Rule 16b-3 Non-Employee Director Definition

We also are adopting conforming amendments to the definition of Non-Employee Director in Exchange Act Rule 16b-3.⁵²² Section 16(b) provides an issuer (or shareholders suing on its behalf) the right to recover from an officer, director, or ten percent shareholder profits realized from a purchase and sale of issuer equity securities within a period of less than six months. However, Rule 16b-3 exempts transactions between issuers of securities and their officers and directors if specified conditions are met. In particular, acquisitions from and dispositions to the issuer are exempt if the transaction is approved in advance by the issuer’s board of directors, or board committee composed solely of two or more Non-Employee Directors.⁵²³

Before adoption of these amendments, the definition of “Non-Employee Director,” among other things, limited these directors to those who:

- do not directly or indirectly receive compensation from the issuer, its parent or subsidiary for consulting or other non-director services, except for an amount that does not exceed the Item 404(a) dollar disclosure threshold;

⁵²² Exchange Act Rule 16b-3(b)(3)(ii), which defines a Non-Employee Director of a closed-end investment company as “a director who is not an ‘interested person’ of the issuer, as that term is defined in Section 2(a)(19) of the Investment Company Act of 1940,” is not amended.

⁵²³ Exchange Act Rules 16b-3(d)(1) and 16b-3(e).

- do not possess an interest in any other transaction for which Item 404(a) disclosure would be required; and
- are not engaged in a business relationship required to be disclosed under Item 404(b).

As described above, the Item 404 amendments substantially revise or rescind the Item 404 provisions on which the Non-Employee Director definition was based. To minimize potential disruptions and because no problems were brought to our attention regarding any aspect of the definition as it was stated before adoption of these amendments, we proposed a conforming amendment that would delete the provision referring to business relationships subject to disclosure under Item 404(b) as it was stated prior to today's amendments, without otherwise revising the text of the rule.

In the interest of providing certainty regarding Non-Employee Director status and to recognize corporate governance changes since the definition was adopted, one commenter suggested basing the definition instead on whether a director meets the independence standards under the rules of the principal national securities exchange where the company's securities are traded.⁵²⁴ If the company has no securities traded on an exchange, the commenter suggested relying on the director's eligibility to serve on the issuer's audit committee

⁵²⁴ See letter from Sullivan.

under Exchange Act Section 10A(m) and Exchange Act Rule 10A-3.⁵²⁵ We are not following the suggested approach. As we stated in the Proposing Release, the standards for an exemption from Section 16(b) liability should be readily determinable by reference to the exemptive rule, and not variable depending upon where the issuer's securities are listed.⁵²⁶ Further, basing the Non-Employee Director definition on eligibility to serve on the issuer's audit committee could burden the audit committee with a compensation committee function.

As proposed and adopted, the Non-Employee Director definition continues to permit consulting and similar arrangements subject to limits measured by reference to the revised Item 404(a) disclosure requirements. Because the disclosure threshold of Item 404(a) is raised from \$60,000 to \$120,000, however, the effect in some cases may be to permit previously ineligible directors to be Non-Employee Directors. In other cases, where revised Item 404(a) may require disclosure of director indebtedness and disclosure of business relationships not subject to disclosure under former Item 404(b), some formerly eligible directors may become ineligible.

⁵²⁵ 15 U.S.C. 78j-1(m) and 17 CFR 240.10A-3.

⁵²⁶ Proposing Release at n. 309.

In response to concerns of commenters about the potential difficulty of making a determination,⁵²⁷ we have revised the rule as it was proposed to include an additional note to Rule 16b-3.⁵²⁸ The Non-Employee Director definition contemplates that the director must satisfy the definition's tests at the time he or she votes to approve a transaction. For purposes of determining a director's status under those tests that are based on Item 404(a), a company may rely on the disclosure provided under Item 404 of Regulation S-K for the issuer's most recent fiscal year contained in the most recent filing in which Item 404 disclosure is presented.⁵²⁹ Where a transaction disclosed in that filing was terminated before the director's proposed service as a Non-Employee Director, that transaction will not bar such service. The issuer must believe in good faith that any current or contemplated transaction in which the director participates will not require Item 404(a) disclosure, based on information readily available to the issuer and the director at the time such director proposes to act as a Non-Employee Director. At such time as the issuer believes in good faith, based on readily available information, that a current (or contemplated) transaction with a director will require Item 404(a) disclosure in a future filing, the director no longer is eligible to serve as a Non-Employee

⁵²⁷ See, e.g., letter from SCSGP.

⁵²⁸ Note 4 to Rule 16b-3.

⁵²⁹ As under Rule 16b-3 prior to these amendments, each test referring to Item 404 is measured by reference to Regulation S-K, even if the disclosure requirements applicable to the company are governed by Regulation S-B.

Director. However, this determination does not result in retroactive loss of a Rule 16b-3 exemption for a transaction previously approved by the director while serving as a Non-Employee director consistent with the note. In making determinations under the note, an issuer may rely on information it obtains from the director, for example pursuant to a response to an inquiry.

3. Other Conforming Amendments

The changes to Item 404, along with the consolidation of provisions into Item 407, necessitate conforming amendments to various forms and schedules under the Securities Act and the Exchange Act. The amendments modify:

- forms that prior to these amendments required disclosure of the information required by Item 404 to instead require disclosure of the information required by amended Item 404 and new Item 407(a);⁵³⁰
- some forms that prior to these amendments required disclosure of the information required by Item 404(a) or by Items 404(a) and (c), to

⁵³⁰ See amendments to Item 15 of Form SB-2, Item 11(n) of Form S-1, Item 18(a)(7)(iii) and Item 19(a)(7)(iii) of Form S-4, Item 23 of Form S-11, Item 7 of Form 10, Item 13 of Form 10-K, Item 7 of Form 10-SB and Item 12 of Form 10-KSB. The amendments to Forms SB-2, 10-SB and 10-KSB require disclosure of the information required by amended Item 404 and new Item 407(a) of Regulation S-B.

instead require disclosure of the information required by Items 404(a) and (b) as amended, or amended Item 404(a), as appropriate;⁵³¹

- a form that prior to these amendments cross-referenced an instruction in Item 404 which we are eliminating to instead include the text of this instruction;⁵³²
- Item 7 of Schedule 14A, to require disclosure of the information required by new Item 407(a) rather than the disclosure that was required prior to these amendments by Item 404(b), to eliminate paragraphs (d)-(h) of Item 7 that were duplicative of new Item 407 and replace them with a requirement to disclose information specified by corresponding paragraphs of new Item 407;
- forms that prior to these amendments required disclosure of the information required by Item 402 to instead require disclosure of the information required by amended Item 402 and new Item 407(e)(4), and, in the case of proxy statements and annual reports on Form 10-K, new Item 407(e)(5);⁵³³

⁵³¹ See amendment to Item 7(b) of Schedule 14A, which refers to amended Items 404(a) and (b), and Item 22(b)(11) and the Instruction to Item 22(b)(11) of Schedule 14A, and Item 5.02(c)(2) of Form 8-K, which refer to amended Item 404(a). The amendments to Form 8-K that reference Regulation S-B require disclosure of the information required by amended Item 404(a) of Regulation S-B.

⁵³² See amendments to Item 23 of Form S-11.

⁵³³ See amendments to Item 8 of Schedule 14A, Item 11(l) of Form S-1, General Instruction I.B.4.(c) of Form S-3, Items 18(a)(7)(ii) and 19(a)(7)(ii) of Form S-4, Item 22 of Form S-11, Item 6 of Form 10 and Item 11 of Form 10-K.

- some forms that prior to these amendments required disclosure of the information required by Item 401 to instead require disclosure of the information required by Item 401 as amended and paragraphs (c)(3), (d)(4) and/or (d)(5) of new Item 407, as appropriate;⁵³⁴
- forms that prior to these amendments required disclosure of the information required by Item 401(j), to instead require disclosure of the information required by new Item 407(c)(3);⁵³⁵ and
- Item 10 of Form N-CSR to include a cross reference to new Item 407(c)(2)(iv) of Regulation S-K and new Item 22(b)(15) of Schedule 14A, in lieu of the former reference to Item 7(d)(2)(ii)(G) of Schedule 14A.

In addition, conforming amendments have been made to a provision in Regulation AB, which prior to these amendments required disclosure of the information required by Items 401, 402 and 404, so that instead it will require

⁵³⁴ See amendments to General Instruction I.B.4.(c) of Form S-3, and Item 10 of Form 10-K, which refer to Item 401 and paragraphs (c)(3), (d)(4) and (d)(5) of new Item 407, and Item 7(b) of Schedule 14A, which refers to Item 401 and paragraphs (d)(4) and (d)(5) of new Item 407. The amendments to Form 10-KSB require disclosure of the information required by amended Item 401 and new Item 407(c)(3), (d)(4) and (d)(5) of Regulation S-B. We are not making any changes to the reference to Item 401 in Note G to Form 10-K, however, because the portion of Item 401 applicable in Note G (certain disclosure regarding executive officers) does not include the part of Item 401 that we are combining into new Item 407.

⁵³⁵ See amendments to Item 5 in Part II of Form 10-Q, and Item 5 in Part II of Form 10-QSB. The amendments to Item 5 in Part II of Form 10-QSB require disclosure of the information required by new Item 407(c)(3) of Regulation S-B.

disclosure of the information required by amended Items 401, 402, 404 and paragraphs (a), (c)(3), (d)(4), (d)(5) and (e)(4) of new Item 407.⁵³⁶

VI. Plain English Disclosure

We are adopting as proposed a requirement that most of the disclosure called for by amended Items 402, 403, 404 and 407 be provided in plain English. This plain English requirement will apply when information responding to these items is included (whether directly or through incorporation by reference) in reports required to be filed under Exchange Act Sections 13(a) or 15(d). Commenters were generally supportive of the plain English requirement,⁵³⁷ and some commenters suggested extending the plain English requirements to the proxy statement as a whole and to other Commission filings.⁵³⁸

In 1998, we adopted rule changes requiring issuers preparing prospectuses to write the cover page, summary and risk factors section of prospectuses in plain English and apply plain English principles to other

⁵³⁶ See amendments to Item 1107(e) of Regulation AB.

⁵³⁷ See, e.g., letters from SCSGP; jointly, Angela Chappa, Annie Gabel and Michelle Prater; SBAF; and Standard Life.

⁵³⁸ See, e.g., letters from SCSGP; Foley; and Mercer.

portions of the prospectus.⁵³⁹ These rules transformed the landscape of public offering disclosure and made prospectuses more accessible to investors. We believe that plain English principles should apply to the disclosure requirements that we are adopting, so disclosure provided in response to those requirements is easier to read and understand. Clearer, more concise presentation of executive and director compensation, related person transactions, beneficial ownership and corporate governance matters can facilitate more informed investing and voting decisions in the face of complex information about these important areas.

We are adding Exchange Act Rules 13a-20 and 15d-20 to require that companies prepare their executive and director compensation, related person transaction, beneficial ownership and corporate governance disclosures included in Exchange Act reports using plain English, including the following principles:

- present information in clear, concise sections, paragraphs and sentences;
- use short sentences;
- use definite, concrete, everyday words;
- use the active voice;

⁵³⁹ Plain English Disclosure, Release No. 33-7497 (Jan. 28, 1998) [63 FR 6369] (adopting revisions to Securities Act Rule 421 [17 CFR 230.421]). We have also required that risk factor disclosure included in annual reports and Summary Term Sheets in business combination filings be in plain English. See Item 1A. to Form 10-K and Item 1001 of Regulation M-A [17 CFR 229.1001], respectively.

- avoid multiple negatives;
- use descriptive headings and subheadings;
- use a tabular presentation or bullet lists for complex material, wherever possible;
- avoid legal jargon and highly technical business and other terminology;
- avoid frequent reliance on glossaries or defined terms as the primary means of explaining information;
- define terms in the glossary or other section of the document only if the meaning is unclear from the context;
- use a glossary only if it facilitates understanding of the disclosure; and
- in designing the presentation of the information, include pictures, logos, charts, graphs, schedules, tables or other design elements so long as the design is not misleading and the required information is clear, understandable, consistent with applicable disclosure requirements and any other included information, drawn to scale and not misleading.

The new rule also provides additional guidance on drafting the disclosure that would comply with plain English principles, including guidance as to the following practices that companies should avoid:

- legalistic or overly complex presentations that make the substance of the disclosure difficult to understand;
- vague “boilerplate” explanations that are overly generic;

- complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and
- disclosure repeated in different sections of the document that increases the size of the document but does not enhance the quality of the information.

Under the new rules, if disclosures about executive compensation, beneficial ownership, related person transaction or corporate governance matters are incorporated by reference into an Exchange Act report from a company's proxy or information statement, the disclosure is required to be in plain English in the proxy or information statement.⁵⁴⁰ The plain English rules are part of the disclosure rules applicable to filings required under Sections 13(a) and 15(d) of the Exchange Act. We believe that these plain English requirements are best administered by the Commission under these rules, and therefore we are not at this time extending plain English requirements to the entire proxy statement or to other Commission filings.

We believe that several areas where commenters requested that information be required in a specific format, such as tables, are best addressed by application of our plain English principles. The plain English rules adopted today specifically provide that, in designing the presentation of the information,

⁵⁴⁰ See, e.g., General Instruction G(3) to Form 10-K and General Instruction E.3. to Form 10-KSB (specifying information that may be incorporated by reference from a proxy or information statement in an annual report on Form 10-K or 10-KSB).

companies may include tables or other design elements, so long as the design is not misleading and the required information is clear, understandable, consistent with applicable disclosure requirements, consistent with any other included information, and not misleading.⁵⁴¹ In response to our request for comment, several commenters recommended using a separate supplemental table, rather than footnotes, to identify the components of All Other Compensation, including individual perquisites, reported in the Summary Compensation Table.⁵⁴² While we have not mandated such a separate table, we encourage companies to use additional tables wherever tabular presentation facilitates clearer, more concise disclosure. Several commenters also requested that we specifically permit tabular disclosure of the required potential post-employment payments disclosure.⁵⁴³ Because of the difficulty of prescribing a single format that would cover all circumstances, the rule as proposed and adopted does not mandate tabular disclosure. However, consistent with the plain English principles that we adopt today, we encourage companies to develop their own tables to report post-termination compensation if such tabular presentation

⁵⁴¹ Of course, the tables required under the rules we adopt today must be included and cannot be modified except as specifically allowed for in the rules. See Item 402(a)(5) of Regulation S-K and Item 402(a)(4) of Regulation S-B.

⁵⁴² See, e.g., letters from Amalgamated; CFA Centre 1; CII; IUE-CWA; Mercer; and SBAF.

⁵⁴³ See, e.g., letters from Buck Consultants; Frederic W. Cook & Co.; HRP; ISS; Mercer; and The Value Alliance and Corporate Governance Alliance.

facilitates clearer, more concise disclosure. Similarly, while we do not require tabular presentation of the narrative disclosure following the director compensation table, such as a breakdown of director fees, consistent with the plain English rules we adopt today, we encourage tabular presentation where it facilitates an understanding of the disclosure. Companies should also consider ways in which design elements such as tables can facilitate the presentation of the related person transaction disclosure and corporate governance disclosures.

VII. Transition

A number of commenters recommended that we adopt the rules by September or October 2006 in order for companies to have sufficient time to implement them for the 2007 proxy season.⁵⁴⁴ One commenter expressed concern on how the transition would apply to Securities Act registration statements.⁵⁴⁵ In keeping with these comments, we believe we have adopted the new rules and amendments in sufficient time for compliance in the 2007 proxy season. Therefore, the compliance dates are as follows:

- for Forms 8-K, compliance is required for triggering events that occur 60 days or more after publication in the Federal Register;

⁵⁴⁴ See, e.g., letters from ABA; ACC; Brian Foley & Co.; Jesse Brill, Chair of CompensationStandards.com and Chair of the National Association of Stock Plan Professionals, dated April 28, 2006; Buck Consultants; Foley; Frederic W. Cook & Co.; Fried Frank; Mercer; and Sullivan.

⁵⁴⁵ See letter from BDO Seidman.

- for Forms 10-K and 10-KSB, compliance is required for fiscal years ending on or after December 15, 2006;
- for proxy and information statements covering registrants other than registered investment companies, compliance is required for any proxy or information statements filed on or after December 15, 2006 that are required to include Item 402 and 404 disclosure for fiscal years ending on or after December 15, 2006;
- for Securities Act registration statements covering registrants other than registered investment companies and Exchange Act registration statements (including pre-effective and post-effective amendments, as applicable), compliance is required for registration statements that are filed with the Commission on or after December 15, 2006 that are required to include Item 402 and 404 disclosure for fiscal years ending on or after December 15, 2006;
- for initial registration statements and post-effective amendments that are annual updates to effective registration statements that are filed on Forms N-1A, N-2 and N-3 (except those filed by business development companies), compliance is required for registration statements and post-effective amendments that are filed with the Commission on or after December 15, 2006; and

- for proxy and information statements covering registered investment companies, compliance is required for any new proxy or information statement filed on or after December 15, 2006.⁵⁴⁶

Commenters expressed some confusion concerning the periods for which disclosure under the new rules and amendments will be required during the transition from the former rules. As we noted in the Proposing Release, companies will not be required to “restate” compensation or related person transaction disclosure for fiscal years for which they previously were required to apply our rules prior to the effective date of today’s amendments. This means, for example, that only the most recent fiscal year will be required to be reflected in the revised Summary Compensation Table when the new rules and amendments applicable to the Summary Compensation Table become effective, and therefore the information for years prior to the most recent fiscal year will not have to be presented at all. For the subsequent year’s Summary Compensation Table, companies will be required to present only the most recent two fiscal years in the Summary Compensation Table, and for the next and all subsequent years will be required to present all three fiscal years in the

⁵⁴⁶ The amendments to the cross-references in Item 10 of Form N-CSR will appear in the Form concurrent with the effective date of the amendments to our proxy rules, and will be effective for a particular registrant’s Forms N-CSR that are filed after the filing of any proxy statement that includes a response to new Item 407(c)(2)(iv) of Regulation S-K (as required by new Item 22(b)(15) of Schedule 14A). The substance of the information required by the Item has not been changed.

Summary Compensation Table.⁵⁴⁷ As another example, if a calendar year-end company files its initial public offering on Form S-1 in November, the initial filing will contain compensation disclosure regarding 2005 following the prior rules. If the registration statement does not become effective until after the Item 402 disclosure must be updated, then an amendment will have to be filed that includes the 2006 compensation information that complies with the rules we adopt today. The Summary Compensation Table, however, will only contain the information for 2006 and will not need to contain the information restated from 2005.

This transition approach will result in phased-in implementation of the amended Summary Compensation Table and amended Item 404(a) disclosure over a three-year period for Regulation S-K companies, and a two-year period for Regulation S-B companies. During this phase-in period, companies will not be required to present prior years' compensation disclosure or Item 404(a) disclosure under the former rules.

⁵⁴⁷ The other amended executive and director compensation disclosure requirements which relate to the last completed fiscal year will not be affected by this transition approach. The Summary Compensation Table will be treated differently because, as amended, it requires disclosure of compensation to the named executive officers for the last three fiscal years.

[remainder of document omitted]

Appendix D
Applicable SEC Compliance and Disclosure Interpretations
(through March 12, 2010)

Regulation S-K

Last Update: March 12, 2010

These Compliance & Disclosure Interpretations (“C&DIs”) comprise the Division’s interpretations of Regulation S-K. They replace the interpretations of Regulation S-K and Regulation S-B published in:

- the July 1997 Manual of Publicly Available Telephone Interpretations;
- the March 1999 Interim Supplement to the Manual of Publicly Available Telephone Interpretations;
- the November 2000 Current Issues and Rulemaking Projects Outline;
- the 2007 C&DIs on Items 201, 402, 403, 404 and 407; and
- the March 2008 C&DIs on smaller reporting companies.

The bracketed date following each C&DI is the latest date of publication or revision. A number of new C&DIs have been added. For C&DIs relating to Items 201, 402, 403, 404 and 407, as well as to smaller reporting companies, unless the C&DI has been revised or is a new C&DI, the bracketed date is the date on which the C&DI was last published in the sources noted above. All other C&DIs have been reviewed and, if necessary, updated, and are now republished as of July 3, 2008.

QUESTIONS AND ANSWERS OF GENERAL APPLICABILITY

[...]

Section 117. Item 402(a)—Executive Compensation; General

Question 117.01

Question: When a company that is in the process of restating its financial statements has not filed its Form 10-K for the fiscal year ended December 31, 2005, must the company comply with the 2006 Executive Compensation Rules when it ultimately files the Form 10-K for the fiscal year ended December 31, 2005?

Answer: The company is not required to comply with the 2006 Executive Compensation rules in the Form 10-K for the fiscal year ended December 31, 2005. [Jan. 24, 2007]

RR DONNELLEY

Question 117.02

Question: If a company files a preliminary proxy statement under Exchange Act Rule 14a-6 which omits the executive and director compensation disclosure required by Item 402 of Regulation S-K, would the staff request a revised preliminary proxy statement and deem that the 10-calendar day waiting period specified in Rule 14a-6 does not begin to run until the required information is filed?

Answer: Yes. However, given that the executive and director compensation rules were substantially revised in 2006, in a situation where a company that is complying with the 2006 rules for the first time files a preliminary proxy statement excluding the required executive and director compensation disclosure, the staff will not request a revised preliminary proxy statement nor deem the 10-calendar day waiting period specified in Rule 14a-6 to be tolled, so long as: (1) the omitted executive and director compensation disclosure is included in the definitive proxy statement; (2) the omitted disclosure does not relate to the matter or matters that caused the company to have to file preliminary proxy materials; and (3) the omitted disclosure is not otherwise made available to the public prior to the filing of the definitive proxy statement. [Feb. 12, 2007]

Question 117.03

Question: During 2009, a company recovers (or “claws-back”) a portion of an executive officer’s 2008 bonus. How does this affect the company’s 2009 Item 402 disclosure for that executive officer?

Answer: The portion of the 2008 bonus recovered in 2009 should not be deducted from 2009 bonus or total compensation for purposes of determining, pursuant to Items 402(a)(3)(iii) and (iv), whether the executive is a named executive officer for 2009. If the executive is a named executive officer for 2009, the Summary Compensation Table should report for the 2008 year, in the Bonus column (column (d)) and Total column (column (j)), amounts that are adjusted to reflect the “claw-back,” with footnote disclosure of the amount recovered. As the instruction to Item 402(b) provides, if “necessary to an understanding of the registrant’s compensation policies and decisions regarding the named executive officers,” the Compensation Discussion and Analysis should discuss the reasons for the “claw-back” and how the amount recovered was determined. [Aug. 14, 2009]

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Question 117.04

Question: During 2009, a company grants an equity award to an executive officer. The same award is forfeited during 2009 because the executive officer leaves the company. Should the grant date fair value of this award be included for purposes of determining 2009 total compensation and identifying 2009 named executive officers?

Answer: Yes. [Jan. 20, 2010]

Question 117.05

Question: A registrant with a calendar fiscal year end has filed a Securities Act registration statement (or post-effective amendment) for which it seeks effectiveness after December 31, 2009 but before its 2009 Form 10-K is due. Must it include Item 402 disclosure for 2009 in the registration statement before it can be declared effective?

Answer: If the registration statement is on Form S-1, then it must include Item 402 disclosure for 2009 before it can be declared effective. This is because 2009 is the last completed fiscal year. Part I, Item 11(1) of Form S-1 specifically requires Item 402 information in the registration statement, which includes Summary Compensation Table disclosure for each of the registrant's last three completed fiscal years and other disclosures for the last completed fiscal year. General Instruction VII of Form S-1, which permits a registrant meeting certain requirements to incorporate by reference the Item 11 information, does not change this result because the registrant has not yet filed its Form 10-K for the most recently completed fiscal year.

On the other hand, Form S-3's information requirements are satisfied by incorporating by reference filed and subsequently filed Exchange Act documents; for example, there is no specific line item requirement in Form S-3 for Item 402 information. Accordingly, a non-automatic shelf registration statement on Form S-3 can be declared effective before the Form 10-K is due. Securities Act Forms C&DI 123.01 addresses the situation in which a company requests effectiveness for a non-automatic shelf registration statement on Form S-3 during the period between the filing of the Form 10-K and the definitive proxy statement. [Feb. 16, 2010]

Section 118. Item 402(b)—Executive Compensation; Compensation Discussion and Analysis

Question 118.01

Question: Is the guidance regarding Compensation Discussion and Analysis disclosure concerning option grants that is provided in Section II.A.2 of Securities Act Release No. 8732A applicable to other forms of equity compensation?

Answer: The same disclosure provisions governing required disclosure about option grants also govern disclosure about restricted stock and other non-option equity awards. This includes the example of potential material information identified in Item 402(b)(2)(iv) of Regulation S-K, which indicates that it may be appropriate to discuss how the determination is made as to when awards are granted, including awards of equity-based compensation such as options. [Jan. 24, 2007]

Question 118.02

Question: In presenting Compensation Discussion and Analysis disclosure about prior option grant programs, plans or practices, are companies required to provide disclosures about programs, plans or practices that occurred outside the scope of the information contained in the tables and otherwise disclosed pursuant to Item 402 (including periods before and after the information contained in the tables and otherwise disclosed pursuant to Item 402)?

Answer: Yes, in certain cases, depending on a company's particular circumstances, disclosure may be required as contemplated by Instruction 2 to Item 402(b) of Regulation S-K. [Jan. 24, 2007]

Question 118.03

Question: Are companies required to include disclosure about programs, plans or practices relating to option grants in the Compensation Discussion and Analysis disclosure for their first fiscal year ending on or after December 15, 2006, or is this disclosure only required for future fiscal periods?

Answer: Companies are required to include disclosure about programs, plans or practices relating to option grants in the Compensation Discussion and Analysis disclosure for fiscal years ending on or after December 15, 2006, as well as any other periods where necessary as contemplated by Instruction 2 to Item 402(b) of Regulation S-K. [Jan. 24, 2007]

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Question 118.04

Question: How does a company determine if it may omit disclosure of performance target levels or other factors or criteria under Instruction 4 to Item 402(b)?

Answer: A company should begin its analysis of whether it is required to disclose performance targets by addressing the threshold question of materiality in the context of the company's executive compensation policies or decisions. If performance targets are not material in this context, the company is not required to disclose the performance targets. Whether performance targets are material is a facts and circumstances issue, which a company must evaluate in good faith.

A company may distinguish between *qualitative/subjective* individual performance goals (e.g., effective leadership and communication) and *quantitative/objective* performance goals (e.g., specific revenue or earnings targets). There is no requirement that a company provide quantitative targets for what are inherently subjective or qualitative assessments—for example, how effectively the CEO demonstrated leadership.

When performance targets are a material element of a company's executive compensation policies or decisions, a company may omit targets involving confidential trade secrets or confidential commercial or financial information *only if* their disclosure would result in competitive harm. A company should use the same standard for evaluating whether target levels (and other factors or criteria) may be omitted as it would use when making a confidential treatment request under Securities Act Rule 406 or Exchange Act Rule 24b-2; however, no confidential treatment request is required to be submitted in connection with the omission of a performance target level or other factors or criteria.

To reach a conclusion that disclosure would result in competitive harm, a company must undertake a competitive harm analysis taking into account its specific facts and circumstances and the nature of the performance targets. In the context of the company's industry and competitive environment, the company must analyze whether a competitor or contractual counterparty could extract from the targets information regarding the company's business or business strategy that the competitor or counterparty could use to the company's detriment. A company must have a reasoned basis for concluding, after consideration of its specific facts and circumstances, that the disclosure of the targets would cause it competitive harm. The company must make its determination

RR DONNELLEY

based on the established standards for what constitutes confidential commercial or financial information, the disclosure of which would cause competitive harm. These standards have largely been addressed in case law, including *National Parks and Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); *National Parks and Conservation Association v. Kleppe*, 547 F.2d 673 (D.C. Cir. 1976); and *Critical Mass Energy Project v. NRC*, 931 F.2d 939 (D.C. Cir. 1991), *vacated & reh'g en banc granted*, 942 F.2d 799 (D.C. Cir. 1991), *grant of summary judgment to agency aff'd en banc*, 975 F.2d 871 (D.C. Cir. 1992). To the extent that a performance target level or other factor or criteria otherwise has been disclosed publicly, a company cannot rely on Instruction 4 to withhold the information.

The competitive harm standard is the only basis for omitting performance targets if they are a material element of the registrant's executive compensation policies or decisions.

Because Compensation Discussion and Analysis will be subject to staff review, a company may be required to demonstrate that withholding target information meets the confidential treatment standard, and will be required to disclose the information if that standard is not met. Finally, a company that relies on Instruction 4 to omit performance targets is required by the instruction to discuss how difficult it will be for the executive or how likely it will be for the company to achieve the undisclosed target level or other factor or criteria. [July 3, 2008]

Question 118.05

Question: Item 402(b)(2)(xiv) provides, as an example of material information to be disclosed in the Compensation Discussion and Analysis, depending on the facts and circumstances, “[w]hether the registrant engaged in any benchmarking of total compensation, or any material element of compensation, identifying the benchmark and, if applicable, its components (including component companies).” What does “benchmarking” mean in this context?

Answer: In this context, benchmarking generally entails using compensation data about other companies as a reference point on which—either wholly or in part—to base, justify or provide a framework for a compensation decision. It would not include a situation in which a company reviews or considers a broad-based third-party survey for a more general purpose, such as to obtain a general understanding of current compensation practices. [July 3, 2008]

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Question 118.06 [*same as Question 133.08*]

Question: Regarding the role of compensation consultants in determining or recommending the amount or form of executive and director compensation, on what basis should a company differentiate between the requirements of Item 407(e)(3)(iii) and Item 402(b)'s Compensation Discussion and Analysis disclosure?

Answer: The information regarding “any role of compensation consultants in determining or recommending the amount or form of executive and director compensation” required by Item 407(e)(3)(iii) is to be provided as part of the company’s Item 407(e)(3) compensation committee disclosure. See [Release 33-8732A](#) at Section V.D, Corporate Governance Disclosure. If a compensation consultant plays a material role in the company’s compensation-setting practices and decisions, then the company should discuss that role in the Compensation Discussion and Analysis section. [July 3, 2008]

Section 119. Item 402(c)—Executive Compensation; Summary Compensation Table

Question 119.01

Question: If a person that was not a named executive officer in fiscal years 1 and 2 became a named executive officer in fiscal year 3, must compensation information be disclosed in the Summary Compensation Table for that person for all three fiscal years?

Answer: No, the compensation information only for fiscal year 3 need be provided in the Summary Compensation Table. [Jan. 24, 2007]

Question 119.02

Question: Should a discretionary cash bonus that was not based on any performance criteria be reported in the Bonus column (column (d)) of the Summary Compensation Table pursuant to Item 402(c)(2)(iv) or in the Non-equity Incentive Plan Compensation column (column (g)) pursuant to Item 402(c)(2)(vii)?

Answer: The bonus should be reported in the Bonus column (column (d)). In order to be reported in the Non-equity Incentive Plan Compensation column (column (g)) pursuant to Item 402(c)(2)(vii), the bonus would have to be pursuant to a plan providing for compensation intended to serve as incentive for performance to occur over a specified period that does not fall within the scope of Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment* (“FAS 123R”). The

RR DONNELLEY

outcome with respect to the relevant performance target must be substantially uncertain at the time the performance target is established and the target is communicated to the executives. The length of the performance period is not relevant to this analysis, so that a plan serving as an incentive for a period less than a year would be considered an incentive plan under Item 402(a)(6)(iii). Further, amounts earned under a plan that meets the definition of a non-equity incentive plan, but that permits the exercise of negative discretion in determining the amounts of bonuses, generally would still be reportable in the Non-equity Incentive Plan Compensation column (column (g)). The basis for the use of various targets and negative discretion may be material information to be disclosed in the Compensation Discussion and Analysis. If, in the exercise of discretion, an amount is paid over and above the amounts earned by meeting the performance measure in the non-equity incentive plan, that amount should be reported in the Bonus column (column (d)). [Jan. 24, 2007]

Question 119.03

Question: Instruction 2 to Item 402(c)(2)(iii) and (iv) provides that companies are to include in the Salary column (column (c)) or the Bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer under which stock, equity-based, or other forms of non-cash compensation have been received instead by the named executive officer. In a situation where the value of the stock, equity-based or other form of non-cash compensation is the same as the amount of salary or bonus foregone at the election of the named executive officer, does this mean the amounts are only reported in the Salary or Bonus column and not in any other column of the Summary Compensation Table?

Answer: Yes, under Instruction 2 to Item 402(c)(2)(iii) and (iv) the amounts should be disclosed in the Salary or Bonus column, as applicable. The result would be different if the amount of salary or bonus foregone at the election of the named executive officer was less than the value of the equity-based compensation received instead of the salary or bonus, or if the agreement pursuant to which the named executive officer had the option to elect settlement in stock or equity-based compensation was within the scope of FAS 123R (e.g., the right to stock settlement is embedded in the terms of the award). In the former case, the incremental value of an equity award would be reported in the Stock Awards or Option Awards columns, and in the latter case the award would be reported in the Stock Awards or Option Awards columns. In both of these special cases, the amounts reported in the Stock Awards and Option Awards

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

columns would be the dollar amounts recognized for financial statement reporting purposes with respect to the applicable fiscal year, and footnote disclosure should be provided regarding the circumstances of the awards. Appropriate disclosure about equity-based compensation received instead of salary or bonus must be provided in the Grants of Plan-Based Awards Table, the Outstanding Equity Awards at Fiscal Year End Table and the Option Exercises and Stock Vested Table. [Aug. 8, 2007]

Question 119.04

Withdrawn Mar. 1, 2010

Question 119.05

Withdrawn Mar. 1, 2010

Question 119.06

Question: Instruction 3 to Item 402(c)(2)(viii) provides that where the amount of the change in the actuarial present value of the accumulated pension benefit computed pursuant to Item 402(c)(2)(viii)(A) is negative, the amount should be disclosed by footnote but should not be reflected in the sum reported in the Change in Pension Value and Nonqualified Deferred Compensation Earnings column (column (h)). When a company aggregates all of the decreases and increases in the value of a named executive officer's individual pension plans, should the company subtract negative values from positive values or should any individual plan decreases be treated as a zero?

Answer: In applying this instruction, a company may subtract negative values when aggregating the changes in the actuarial present values of the accumulated benefits under the plans, and apply the "no negative number" position of the instruction for the final number after aggregating all plans. Under this approach, if one plan had a \$500 increase and another plan had a \$200 decrease, then the net change in the actuarial present value of the accumulated pension benefits would be \$300. [Jan. 24, 2007]

Question 119.07

Question: Item 402(c)(2)(ix)(A) and Instruction 4 to that item require a company to report as "All Other Compensation" perquisites and personal benefits if the total amount exceeds \$10,000, and to identify each such item by type, regardless of the amount. If the \$10,000 threshold is otherwise exceeded, must a company list by type those perquisites and personal benefits as to which there

RR DONNELLEY

was no aggregate incremental cost to the company, or as to which the executive officer fully reimbursed the company for such cost?

Answer: If a perquisite or other personal benefit has no aggregate incremental cost, it must still be separately identified by type. Any item for which an executive officer has actually fully reimbursed the company should not be considered a perquisite or other personal benefit and therefore need not be separately identified by type. In this regard, for example, if a company pays for country club annual dues as well as for meals and incidentals and an executive officer reimburses the cost of meals and incidentals, then the company need not report meals and incidentals as perquisites, although it would continue to report the country club annual dues. If there was no such reimbursement, then the company would need to also report the meals and incidentals as perquisites. [July 3, 2008]

Question 119.08

Question: Item 402(c)(2)(ix)(C) indicates that stock purchased at a discount needs to be disclosed unless that discount is available generally to all security holders or to all salaried employees. The compensation cost, if any, is computed in accordance with FAS 123R. Footnote 221 to Securities Act Release No. 8732A seems to indicate that sometimes under FAS 123R there is no compensation cost. Does the footnote indicate that 423 plans must be disclosed?

Answer: No. Typically 423 plans need to be broad based and non-discriminatory to qualify for preferential tax treatment, which would be within the exception, even if they require some minimum of work hours—such as 10 hours a week—in order to be in the plan or the discount is larger than the 5% example in the footnote. The footnote explains that even if there is some discount, there may not be compensation cost under the accounting standard. [Jan. 24, 2007]

Question 119.09

Question: Item 402(c)(2)(ix)(G) requires disclosure of the dollar value of any dividends when those amounts were not factored into the grant date fair value required to be reported in the Grants of Plan-Based Awards Table. With regard to the treatment of dividends, dividend equivalents or other earnings on equity awards, is disclosure required in the All Other Compensation column (column (i)) if disclosure was not previously provided in the Grants of Plan-Based Awards Table for that named executive officer?

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Answer: The company should analyze whether the dividends, dividend equivalents or other earnings would have been factored into the grant date fair value in accordance with FAS 123R. In this regard, the disclosure turns on how the rights to the dividends are structured and whether or not that brings them within the scope of FAS 123R for the purpose of the grant date fair value calculation. [Jan. 24, 2007]

Question 119.10

Question: Are deferred compensation payouts, lump sum distributions under Section 401(k) plans and earnings on 401(k) plans required to be disclosed in the Summary Compensation Table?

Answer: Non-qualified deferred compensation payouts are not disclosed in the Summary Compensation Table, but are rather disclosed in the Aggregate Withdrawals/ Distributions column (column (e)) of the Nonqualified Deferred Compensation Table. Lump sum distributions from 401(k) plans are not disclosed in the Summary Compensation Table, because the compensation that was deferred into the 401(k) plan was already disclosed in the Summary Compensation Table, as would be any company matching contributions. Earnings on 401(k) plans are not disclosed in the Summary Compensation Table because the disclosure requirement only extends to above-market or preferential earnings on non-qualified deferred compensation. [Jan. 24, 2007]

Question 119.11

Withdrawn Mar. 1, 2010

Question 119.12

Withdrawn Mar. 1, 2010

Question 119.13

Question: Item 402(c)(2)(ix)(D) requires disclosure in the “All Other Compensation” column of the amount paid or accrued to any named executive officer pursuant to any plan or arrangement in connection with any termination of such executive officer’s employment with the company or its subsidiaries, or a change in control of the company. For this purpose, what standard applies for determining whether such an amount is reportable because it is accrued?

Answer: Instruction 5 to Item 402(c)(2)(ix) states that for purposes of Item 402(c)(2)(ix)(D) an accrued amount is an amount for which payment has become due. If the named executive officer’s performance necessary to earn an

RR DONNELLEY

amount is complete, it is an amount that should be disclosed. For example, if the named executive officer has completed all performance to earn an amount, but payment is subject to a six-month deferral in order to comply with Internal Revenue Code Section 409A, the amount would be an accrued amount subject to Item 402(c)(2)(ix)(D) disclosure. In contrast, if an amount will be payable two years after a termination event if the named executive officer cooperates with (or complies with a covenant not to compete with) the company during that period, the amount is not reportable under Item 402(c)(2)(ix)(D) because the executive officer's performance is still necessary for the payment to become due. As noted in Footnote 217 to Securities Act Release No. 8732A, such amounts that are payable in the future, as well as amounts reportable under Item 402(c)(2)(ix)(D), are reportable under Item 402(j). [Aug. 8, 2007]

Question 119.14

Question: Where the instructions to the Summary Compensation Table requiring footnote disclosure do not specifically limit the footnote disclosure to compensation for the company's last fiscal year, as do Instructions 3 and 4 to Item 402(c)(2)(ix), must the footnote disclosure cover the other years reported in the Summary Compensation Table?

Answer: If the instruction does not specifically limit footnote disclosure to compensation for the company's last fiscal year, footnote disclosure for the other years reported in the Summary Compensation Table would be required only if it is material to an investor's understanding of the compensation reported in the Summary Compensation Table for the company's last fiscal year. [July 3, 2008]

Question 119.15

Withdrawn Mar. 1, 2010

Question 119.16

Question: May a company provide the assumption information required by Instruction 1 to Item 402(c)(2)(v) and (vi) for equity awards granted in the company's most recent fiscal year by reference to the Grants of Plan-Based Awards Table if the company chooses to report that assumption information in that table?

Answer: Yes. [Mar. 1, 2010]

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Question 119.17

Question: In 2008, a company enters into a retention agreement in which it agrees to pay the CEO a cash retention bonus, conditioned on the CEO remaining employed by the company through December 31, 2010. The cash retention bonus is not a non-equity incentive plan award, as defined in Item 402(a)(6)(iii). When is the cash retention bonus reportable in the company's Summary Compensation Table? When should it be discussed in Compensation Discussion and Analysis?

Answer: The cash retention bonus is reportable in the Summary Compensation Table for the year in which the performance condition has been satisfied. The same analysis applies to any interest the company is obligated to pay on the cash retention bonus, assuming the interest is not payable unless and until the performance condition has been satisfied. Before the performance condition has been satisfied, Instruction 4 to Item 402(c) would not require it to be reported in the Summary Compensation Table as a bonus that has been earned but deferred, and the bonus would not be reportable in the Nonqualified Deferred Compensation Table. However, the company should discuss the cash retention bonus in its Compensation Discussion and Analysis for 2008 and subsequent years through completion of the performance necessary to earn it. [July 3, 2008]

Question 119.18

Question: A person who was a named executive officer in year 1, but not in year 2, will again be a named executive officer in year 3. Must compensation information for this person be disclosed in the Summary Compensation Table for all three fiscal years?

Answer: Yes. [May 29, 2009]

Question 119.19

Question: A person who is a named executive officer for year 1 is entitled to a gross-up payment in respect of taxes on perquisites or other compensation provided during the year. The tax gross-up payment is not payable by the company until year 2. Is the tax gross-up payment reportable in the Summary Compensation Table in year 1?

Answer: Yes. To provide investors with a clearer view of all costs to the company associated with providing the perquisites or other compensation for which tax gross-up payments are being made, Item 402(c)(2)(ix)(B) disclosure of the

RR DONNELLEY

tax gross-up payment should be included in the Summary Compensation Table for the same year as the related perquisites or other compensation. [May 29, 2009]

Question 119.20

Question: Instruction 3 to the Stock Awards and Option Awards columns specifies that the value reported for awards subject to performance conditions excludes the effect of estimated forfeitures. Does the grant date fair value reported for awards subject to time-based vesting also exclude the effect of estimated forfeitures?

Answer: Yes. The amount to be reported is the grant date fair value. FASB ASC Paragraph 718-10-30-27 provides, in relevant part, that “service conditions that affect vesting are not reflected in estimating the fair value of an award at the grant date because those conditions are restrictions that stem from the forfeitability of instruments to which employees have not yet earned the right.” [Jan. 20, 2010]

Question 119.21

Question: In April 2010, a company grants an equity award to an executive officer, and the terms of the award do not provide for acceleration of vesting if the executive officer leaves the company. The grant date fair value of the award is \$1,000. In November 2010, the executive officer will leave the company, and the company modifies the officer’s same equity award to provide for acceleration of vesting upon departure. The fair value of the modified award, computed under FASB ASC Topic 718, is \$800, reflecting a decline in the company’s stock price. What dollar amount is included in 2010 total compensation for purposes of identifying 2010 named executive officers and reported in the executive officer’s 2010 stock column with respect to this award if he will be a named executive officer? How would the company report the equity award if the award modification and executive’s departure occur in 2011?

Answer: Consistent with Instruction 2 to Item 402(c)(2)(v) and (vi), the incremental fair value of the modified award, computed as of the modification date in accordance with FASB ASC Topic 718, as well as the grant date fair value of the original award must be reported in the 2010 stock column. Applying the guidance in paragraph 55-116 of FASB ASC Section 718-20-55, incremental fair value is computed as follows: the fair value of the modified award at the date of modification minus the fair value of the original award at the date of modification equals the incremental fair value of the modified

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

award. In this fact pattern, the fair value of the original award at the date of modification is zero, because the executive officer left the company in November and the original award would not have vested. Therefore, the incremental fair value of the modified award is \$800. As a result, the total amount reported is \$1,800, which reflects the two compensation decisions the company made for this award in 2010. The same amount is included in 2010 total compensation for purposes of identifying the company's 2010 named executive officers pursuant to Items 402(a)(3)(iii) and (iv).

If the award modification and executive's departure occur in 2011, the company would report \$1,000 in the 2010 stock column for the grant date fair value of the original award. In the 2011 stock column, the company would report \$800 for the incremental fair value of the modified award. [Feb. 16, 2010]

Question 119.22

Question: During 2010, a company grants an annual incentive plan award to a named executive officer. Because no right to stock settlement is embedded in the terms of the award, the award is not within the scope of FASB ASC Topic 718. Therefore, it is a non-equity incentive plan award as defined in Rule 402(a)(6)(iii). The named executive officer elects to receive the award in stock. Instruction 2 to Item 402(c)(2)(iii) and (iv) does not apply because the award is an incentive plan award rather than a bonus. Should the company report the award in the stock awards column (column (e)) or in the non-equity incentive plan award column (column (g)) in its 2010 Summary Compensation Table? How should the award be reported in the Grants of Plan-Based Awards Table?

Answer: The company should report the award in the non-equity incentive plan award column (column (g)) of the Summary Compensation Table, reflecting the compensation the company awarded, with footnote disclosure of the stock settlement. Similarly, in the Grants of Plan-Based Awards Table, the company should report the award in the estimated future payouts under non-equity incentive plan awards columns (columns (c)-(e)). The stock received upon settlement should not also be reported in the Grants of Plan-Based Awards Table because that would double count the award. [Feb. 16, 2010]

Question 119.23

Question: During 2010, a company grants annual incentive plan awards to its named executive officers. The awards permit the named executive officers to elect payment of the award for 2010 performance in company stock rather than cash, with the election to be made during the first 90 days of 2010. Such

RR DONNELLEY

company stock will have a grant date fair value equal to 110% of the award that would be paid in cash. One named executive officer elects stock payment, and the others do not. How is the award reported for the named executive officer who elects stock payment? How is the award reported for the named executive officers who receive cash payment?

Answer: For the named executive officer who elects stock payment, the award is reported in the 2010 Summary Compensation Table and Grants of Plan-Based Awards Table as an equity incentive award. This is the case even if the amount of the award is not determined until early 2011 because all company decisions necessary to determine the value of the award are made in 2010. For the named executive officers who receive cash payment, the award is reported in the 2010 Summary Compensation Table and Grants of Plan-Based Awards Table as a non-equity incentive plan award. [Feb. 16, 2010]

Question 119.24

Question: In 2010, a company grants an executive officer an equity incentive plan award with a three-year performance period that begins in 2010. The equity incentive plan allows the compensation committee to exercise its discretion to reduce the amount earned pursuant to the award, consistent with Section 162(m) of the Internal Revenue Code. Under FASB ASC Topic 718, the fact that the compensation committee has the right to exercise “negative” discretion may cause, in certain circumstances, the grant date of the award to be deferred until the end of the three-year performance period, after the compensation committee has determined whether to exercise its negative discretion. If so, when and how should this award be reported in the Summary Compensation Table and Grants of Plan-Based Awards Table? In what year should this award be included in total compensation for purposes of determining if the executive officer is a named executive officer?

Answer: Use of grant date fair value reporting in Item 402 generally assumes that, as stated in FASB ASC Topic 718, “[t]he service inception date usually is the grant date.” The service inception date may precede the grant date, however, if the equity incentive plan award is authorized but service begins before a mutual understanding of the key terms and conditions is reached. In a situation in which the compensation committee’s right to exercise “negative” discretion may preclude, in certain circumstances, a grant date for the award during the year in which the compensation committee communicated the terms of the award and performance targets to the executive officer and in which the

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

service inception date begins, the award should be reported in the Summary Compensation Table and Grants of Plan-Based Awards Table as compensation for the year in which the service inception date begins. Notwithstanding the accounting treatment for the award, reporting the award in this manner better reflects the compensation committee's decisions with respect to the award. The amount reported in both tables should be the fair value of the award at the service inception date, based upon the then-probable outcome of the performance conditions. This same amount should be included in total compensation for purposes of determining whether the executive officer is a named executive officer for the year in which the service inception date occurs. [Mar. 1, 2010]

Question 119.25

Question: A company grants annual non-equity incentive plan awards to its executive officers in January 2010. The awards' performance criteria are communicated to the executives at that time and are based on the company's financial performance for the year. Executives will not know the total amount earned pursuant to the award until the end of the year, when the compensation committee can determine whether or to what extent the performance criteria have been satisfied.

After the end of the year, the amounts earned pursuant to the awards are determined and communicated to the executive officers. One executive decides not to receive any payment of earnings pursuant to the award. For that executive, should the award be included in total compensation for purposes of determining if the executive is a named executive officer for 2010? Should the award be reported in the Grants of Plan-Based Awards Table and the Summary Compensation Table for 2010?

Answer: Yes. The executive officer's decision not to accept payment of the award does not change the fact that award was granted in and earned for services performed during 2010. Accordingly, the grant of the award should be included in the Grants of Plan-Based Awards Table, which will reflect the compensation committee's decision to grant the award in 2010. The earnings pursuant to the award, even though declined, should be included in total compensation for purposes of determining if the executive is a named executive officer for 2010 and reported in the Summary Compensation Table. The company should disclose the executive's decision not to accept payment of the award, which it can do either by adding a column to the Summary Compensation Table next to column (g), "Nonequity Incentive Plan Compensation,"

RR DONNELLEY

reporting the amount of nonequity incentive plan compensation declined, or by providing footnote disclosure to the Summary Compensation Table. Moreover, in Compensation Discussion and Analysis, the company should consider discussing the effect, if any, of the executive's decision on how the company structures and implements compensation to reflect performance. [Mar. 12, 2010]

Question 119.26

Question: A company has a practice of granting discretionary bonuses to its executive officers. Before the board of directors takes action to grant such bonuses for 2010, an executive officer advises the board that she will not accept a bonus for 2010. Should the company report in column (d) of the Summary Compensation Table the bonus award it would have granted her and include that amount in total compensation for purposes of determining if she is a named executive officer for 2010?

Answer: No, because the executive declined the bonus before it was granted, and therefore, no bonus was granted. [Mar. 12, 2010]

Section 120. Item 402(d)—Executive Compensation; Grants of Plan-Based Awards Table

Question 120.01

Question: If an equity incentive plan award is denominated in dollars, but payable in stock, how is it disclosed in the Grants of Plan-Based Awards Table since the headings for equity-based awards (columns (f), (g) and (h)) only refer to numbers and not dollars?

Answer: The award should be disclosed in the Grants of Plan-Based Awards Table by including the dollar value and a footnote to explain that it will be paid out in stock in the form of whatever number of shares that amount translates into at the time of the payout. In this limited circumstance, and if all the awards in this column are structured in this manner, it is acceptable to change the captions for columns (f) through (h) to show “(\$)” instead of “(#).” [Aug. 8, 2007]

Question 120.02

Question: If all of the non-equity incentive plan awards were made for annual plans, where the awards have already been earned, may the company change the heading over columns (c), (d) and (e) of the Grants of Plan-Based Awards Table that refers to “Estimated future payouts under non-equity incentive plan awards?”

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Answer: Yes, if the awards were made in the same year they were earned and the earned amounts are therefore disclosed in the Summary Compensation Table, the heading over columns (c), (d) and (e) may be changed to “Estimated possible payouts under non-equity incentive plan awards.” [Jan. 24, 2007]

Question 120.03

Renumbered as Question 122.04

Question 120.04

Renumbered as Question 122.05

Question 120.05

Withdrawn Mar. 1, 2010

Question 120.06

Question: Under a long-term incentive plan, a named executive officer receives an award for a target number of shares at the start of a three-year period, with one-third of this amount allocated to each of three single-year performance periods. How is grant date fair value determined for purposes of the disclosure required in column (I) of the table?

Answer: The grant date and grant date fair value are determined as provided in FAS 123R. Under paragraph A. 67 of FAS 123R, if all of the annual performance targets are set at the start of the three-year period, that is the grant date for the entire award. The grant date fair value for all three tranches of the award would be measured at that time, and would be reported in column (I). If each annual performance target is set at the start of each respective single-year performance period, however, paragraph A.68 of FAS 123R provides that each of those dates is a separate grant date for purposes of measuring the grant date fair value of the respective tranche. In this circumstance, only the grant date fair value for the first year’s performance period would be measured and reported in column (I). [May 29, 2009]

Question 120.07

Question: During the fiscal year, an outstanding equity incentive plan award held by a named executive officer is amended or otherwise modified, resulting in incremental fair value under FAS 123R. Must the incremental fair value be reported in column (I) of the table?

Answer: Yes. This is required by Item 402(d)(2)(viii) and Instruction 7 to Item 402(d). [May 29, 2009]

Section 121. Item 402(e)—Executive Compensation; Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards Table

None

Section 122. Item 402(f)—Executive Compensation; Outstanding Equity Awards at Fiscal Year-End Table

Question 122.01

Question: A company has an equity incentive plan pursuant to which it grants awards that will vest, if at all, based on total shareholder return over a 3-year period. Awards were granted in 2005 (“2005 Awards”) and will vest based on the company’s total shareholder return from 1/1/05 through 12/31/07. 2006 was the second year of the 3-year performance period. Performance during 2005 was well above the maximum level. Performance during 2006 was below the threshold level. The combined performance for 2005 and 2006 would result in a payout at target if the performance period had ended on 12/31/06. Is it permissible to base disclosure on the actual multi-year performance to date (through the end of the last completed fiscal year)?

Answer: Yes. The number of shares or units reported in columns (d) or (i), and the payout value reported in column (j), should be based on achieving threshold performance goals, except that if performance during the last completed fiscal year (or, if the payout is based on performance to occur over more than one year, the last completed fiscal years over which performance is measured) has exceeded the threshold, the disclosure shall be based on the next higher performance measure (target or maximum) that exceeds the last completed fiscal year’s performance (or, if the payout is based on performance to occur over more than one year, the last completed fiscal years over which performance is measured). [Aug. 8, 2007]

Question 122.02

Question: Instruction 2 to Item 402(f)(2) requires footnote disclosure of the vesting dates of the awards reported in the Outstanding Equity Awards at Fiscal Year-End Table. Can a company comply with this instruction by including a column in this table showing the grant date of each award reported and including a statement of the standard vesting schedule that applies to the reported awards?

Answer: Yes, provided, however, that if there is any different vesting schedule applicable to any of the awards, then the table would also need to include disclosure about any such vesting schedule. [July 3, 2008]

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Question 122.03

Question: A company's performance-based restricted stock unit ("RSU") plan measures performance over a three-year period. After the end of the three-year performance period (2007-2009), the compensation committee will evaluate performance to determine the number of RSUs earned by the named executive officers. The named executive officers must remain employed by the company for a subsequent two-year service-based vesting period (2010-2011). Upon completion of service-based vesting, the company will pay the named executive officers the shares underlying the RSUs. In the Outstanding Equity Awards at Fiscal Year-End Table for fiscal year 2009, how should information about the shares underlying the RSUs be reported?

Answer: The number of shares reported should be based on the actual number of shares underlying the RSUs that were earned at the end of the three-year performance period. This is the case even if this number will be determined after the 2009 fiscal year end. The shares should not be reported in columns (i) and (j) because they are no longer subject to performance-based conditions. Instead, the shares should be reported in columns (g) and (h) because they are subject to service-based vesting. [May 29, 2009]

Question 122.04

Question: Should a company include in the Outstanding Equity Awards at Fiscal Year-End Table in-kind earnings on restricted stock awards that have earned share dividends or share dividend equivalents?

Answer: Yes. Outstanding in-kind earnings at the end of the fiscal year should be included in the table. However, in-kind earnings that vested during the fiscal year, or in-kind earnings that are already vested when the dividends are declared, instead should be reported in the Option Exercises and Stock Vested Table under Item 402(g) of Regulation S-K. [Jan. 24, 2007]

Question 122.05

Question: Instruction 3 to Item 402(f)(2) states that the issuer should report the market value of equity incentive plan awards using the closing market price at the end of the last completed fiscal year. The next sentence, however, states that the number of shares or units reported should be based on achieving threshold performance goals, "except that if the previous fiscal year's performance" has exceeded the threshold, disclosure is based on the next higher measure. Is the "previous fiscal year" the same year as the last completed fiscal year, or the year that preceded the last completed fiscal year?

Answer: For this purpose, the “previous fiscal year” means the same year as the “last completed fiscal year.” [Aug. 8, 2007]

Section 123. Item 402(g)—Executive Compensation; Option Exercises and Stock Vested Table

Question 123.01

Question: When reporting on the exercise or settlement of a stock appreciation right in the Number of Shares Acquired on Exercise column (column (b)) of the Option Exercises and Stock Vested Table, should a company report the net number of shares received upon exercise, or the gross number of shares underlying the exercised stock appreciation right?

Answer: As would be the case with the cashless exercise of options, the total number of shares underlying the exercised stock appreciation right should be reported in column (b), rather than just the amount representing the increase of the stock price since the grant of the award. A footnote or narrative accompanying the table could explain and quantify the net number of shares received. [Jan. 24, 2007]

Section 124. Item 402(h)—Executive Compensation; Pension Benefits

Question 124.01

Question: Instruction 2 to Item 402(h)(2) indicates that the company must use the same assumptions used for financial reporting purposes under generally accepted accounting principles, except for the retirement age assumption, when computing the actuarial present value of a named executive officer’s accumulated benefit under each pension plan. May the company deviate from the assumptions used for accounting purposes given the individual circumstances of the named executive officer or the plan?

Answer: No. [Jan. 24, 2007]

Question 124.02

Question: Instruction 2 to Item 402(h)(2) specifies that in calculating the actuarial present value of a named executive officer’s accumulated pension benefits, the assumed retirement age is to be the normal retirement age as defined in the plan, or, if not defined, the earliest time at which the named executive officer may retire without any benefit reduction. While many plans have a specifically defined retirement age, some plans also have a provision that allows participants to retire at an earlier age without any benefit reduction. In this case, which age should the company use in making its calculation?

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Answer: When a plan has a stated “normal” retirement age and also a younger age at which retirement benefits may be received without any reduction in benefits, the younger age should be used for determining pension benefits. The older age may be included as an additional column. [Jan. 24, 2007]

Question 124.03

Question: How do you measure the actuarial present value of the accumulated benefit of a pension plan in the situation where a particular benefit is earned at a specified age? For instance, if a named executive officer at age 40 is granted an award if he stays with his company until age 60, how should the company measure this benefit when the executive is age 50 and the normal retirement age under the plan is age 65?

Answer: The computation should be based on the accumulated benefit as of the pension measurement date, assuming that the named executive continues to live and will work at the company until retirement and thus will reach age 60 and receive the award. [Jan. 24, 2007]

Question 124.04

Question: Should assumptions regarding pre-retirement decrements be factored into the calculation of the actuarial present value of a named executive officer’s accumulated benefit under a pension plan?

Answer: For purposes of calculating the actuarial present value for the Pension Benefits Table, the registrant should assume that each named executive officer will live to and retire at the plan’s normal retirement age (or the earlier retirement age if the named executive officer may retire with unreduced benefits) and ignore for the purposes of the calculations what actuaries refer to as pre-retirement decrements. Therefore, the assumptions used for financial statement reporting purposes that should be used for calculating the actuarial present value are the discount rate, the lump sum interest rate (if applicable), post-retirement mortality, and payment distribution assumptions. Any contingent benefits arising upon death, early retirement or other termination of employment events should be disclosed in the post-employment narrative disclosure required under Item 402(j) of Regulation S-K. [Jan. 24, 2007]

Question 124.05

Question: A cash balance pension plan is a defined benefit plan in which the retiree’s benefits may be determined by the amount represented in a hypothetical “account” for that participant. The “accrued benefit” is the amount

credited to a participant's cash balance account as of any date, which the participant has the right to receive as a lump sum upon termination of employment. Can a company report, as the present value of the accumulated benefit for a cash balance plan, the "accrued benefit"?

Answer: No. The same as for other defined benefit plans, the amount disclosable in the Pension Benefits Table as the present value of accumulated benefit for a cash balance plan is the actuarial present value of the named executive officer's accumulated benefit under the plan, computed as of the same plan measurement date used for purposes of the company's audited financial statements for the last completed fiscal year. [Aug. 8, 2007]

Section 125. Item 402(i)—Executive Compensation; Nonqualified Defined Contribution and Other Nonqualified Deferred Compensation Plans

Question 125.01

Question: The instruction to Item 402(i)(2) of Regulation S-K requires footnote disclosure quantifying the extent to which amounts reported in the table were reported as compensation in the Summary Compensation Table in the last completed fiscal year and in previous fiscal years. What should be noted by footnote when amounts were not previously reported (either because of the transition guidance in Securities Act Release No. 8732A or when a named executive officer appears in the table for the first time)?

Answer: The purpose of the instruction is to facilitate an understanding that non-qualified deferred compensation is reported elsewhere within the executive compensation disclosure over time. Amounts only need to be disclosed by footnote if they were actually previously reported in the Summary Compensation Table. [Jan. 24, 2007]

Question 125.02

Question: Item 402(i)(2)(iv) requires disclosure of the dollar amount of aggregate interest or other earnings accrued during the registrant's last fiscal year. What items, other than interest, are "earnings" for this purpose?

Answer: "Earnings" include dividends, stock price appreciation (or depreciation), and other similar items. The purpose of the table is to show changes in the aggregate account balance at fiscal year end for each named executive officer. Thus, "earnings" should encompass any increase or decrease in the account balance during the last completed fiscal year that is not attributable to contributions, withdrawals or distributions during the year. [Aug. 8, 2007]

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Question 125.03

Question: Item 402(i)(1) calls for the Nonqualified Deferred Compensation Plan Table to provide the specified information “with respect to each defined contribution or other plan that provides for the deferral of compensation on a basis that is not tax-qualified.” Does this item mean that this information should be provided on a plan-by-plan basis?

Answer: Yes. [July 3, 2008]

Question 125.04

Question: Item 402(i)(2)(iii) calls for disclosure of aggregate company contributions to each nonqualified deferred compensation plan during the company’s last fiscal year. For an excess plan related to a qualified plan, the contributions earned in 2008, which are reportable in the All Other Compensation column of the 2008 Summary Compensation Table, are not credited to the executive’s account until January 2009. Are those contributions considered company contributions “during” 2008?

Answer: Yes. [July 3, 2008]

Question 125.05

Question: An equity award has vested, and the plan under which it was granted provides for the deferral of its receipt. Item 402(i)(1) calls for the Nonqualified Deferred Compensation Plan Table to provide the specified information “with respect to each defined contribution or other plan that provides for the deferral of compensation on a basis that is not tax-qualified.” Does this item require the deferred receipt of the vested equity award to be included in the Nonqualified Deferred Compensation Plan Table?

Answer: Yes. This is the case whether the deferral is at the election of the named executive officer or pursuant to the terms of the equity award or plan. [Aug. 14, 2009]

Section 126. Item 402(j)—Executive Compensation; Potential Payments Upon Termination or Change-in-Control

Question 126.01

Question: In the event that options are accelerated upon a termination or change-in-control, for purposes of Item 402(j) disclosure should the value of the accelerated options be calculated using the “spread” between exercise and market price (as of fiscal year end) or the FAS 123R value recognized in connection with the acceleration?

RR DONNELLEY

Answer: For purposes of Item 402(j), the company should use the “spread” to calculate the value of the award. Since Item 402(j) requires quantification of what a named executive officer would have received assuming the event took place on the last business day of the registrant’s last completed fiscal year, disclosure of the “spread” at that date is consistent with Instruction 1 to 402(j), which prescribes using the closing market price per share of the registrant’s securities on last business day of the registrant’s last completed fiscal year. [Aug. 8, 2007]

Question 126.02

Question: A company’s employee stock option plan provides for full and immediate vesting of all outstanding unvested awards upon a change-in-control of the company and this provision is included in each option recipient’s award agreement (whether the recipient is an executive officer or an employee). Instruction 5 to Item 402(j) provides that a company need not provide information with respect to contracts, agreements, plans, or arrangements to the extent they are available generally to all salaried employees and do not discriminate in scope, terms, or operation, in favor of executive officers of the company. Can the company rely on Instruction 5 to omit disclosure of these awards when quantifying the estimated payments and benefits that would be provided to named executive officers upon a change-in-control?

Answer: No. The Instruction 5 standard that the “scope” of arrangements not discriminate in favor of executive officers would not be satisfied where the option awards to executives are in amounts greater than those provided to all salaried employees. [Aug. 8, 2007]

Section 127. Item 402(k)—Executive Compensation; Compensation of Directors

Question 127.01

Question: Is director compensation disclosure required under Item 402(k) of Regulation S-K for a person who served as a director for part of the last completed fiscal year, even if the person was no longer a director at the end of the last completed fiscal year?

Answer: Yes. If a person served as a director during any part of the last completed fiscal year the person must be included in the Director Compensation Table. [Jan. 24, 2007]

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Question 127.02

Question: Is director compensation disclosure required under Item 402(k) of Regulation S-K for a person who served as a director during the last completed fiscal year but will not stand for re-election the next year?

Answer: Yes. If a person served as a director during any part of the last completed fiscal year the person must be included in the Director Compensation Table. [Jan. 24, 2007]

Question 127.03

Question: Does the Instruction to Item 402(k)(2)(iii) and (iv) require footnote disclosure, for each director, of the grant date fair value of each equity award outstanding or only of the awards granted during the company's last completed fiscal year?

Answer: Like the corresponding disclosure for named executive officers in the Grants of Plan-Based Awards Table, this Director Compensation Table requirement applies only to stock and option awards granted during the company's last completed fiscal year. [Aug. 8, 2007]

Question 127.04

Question: Does the Instruction to Item 402(k)(2)(iii) and (iv) requirement to provide footnote disclosure, for each director, of the aggregate number of stock awards and the aggregate number of option awards outstanding at fiscal year end include exercised options or vested stock awards?

Answer: No. Like the corresponding disclosure for named executive officers in the Outstanding Equity Awards at Fiscal Year-End Table, this Director Compensation Table requirement applies only to unexercised option awards (whether or not exercisable) and unvested stock awards (including unvested stock units). [Aug. 8, 2007]

Question 127.05

Question: Can a charitable matching program that is available to all employees be excluded from the disclosure required of "director legacy or charitable awards programs" under Item 402(k)(2)(vii)(G) based on the exclusion for "information regarding group life, health, hospitalization, or medical reimbursement plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees" in the Item 402(a)(6)(ii) definition of "plan"?

Answer: No. A charitable matching program available to all employees must be included in the Director Compensation Table. The Director Compensation Table disclosure applies to “the annual costs of payments and promises of payments pursuant to director legacy programs and similar charitable award programs.” Any company-sponsored charitable award program in which a director can participate would be a “similar charitable award program.” [Aug. 8, 2007]

Section 128. Items 402(1) to (r)—Executive Compensation; Smaller Reporting Companies

None

Section 128A—Item 402(s) Narrative disclosure of the registrant’s compensation policies and practices as they relate to the registrant’s risk management

Question 128A.01

Question: The requirement to provide narrative disclosure of the registrant’s compensation policies and practices as they relate to the registrant’s risk management is in Item 402(s), rather than included as part of Compensation Discussion and Analysis in Item 402(b). Where should a registrant present Item 402(s) disclosure in its filings?

Answer: The new rules do not specify where the disclosure should be presented. However, to ease investor understanding, the staff recommends that Item 402(s) disclosure be presented together with the registrant’s other Item 402 disclosure. The staff would have concerns if the Item 402(s) disclosure is difficult to locate or is presented in a fashion that obscures it. [Jan. 20, 2010]

Section 129. Item 403—Security Ownership of Certain Beneficial Owners and Management

Question 129.01

Question: If a director’s term will not continue beyond the annual meeting, must that director’s equity security holdings be disclosed pursuant to Item 403(b)?

Answer: Item 403(b), by its terms, requires the disclosure of shareholdings of all directors named in the registrant’s proxy statement, including directors’ qualifying shares, even if the terms of some directors will not continue beyond the annual meeting. [Mar. 13, 2007]

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Question 129.02

Question: Are phantom stock units held in a nonqualified deferred compensation plan reportable in the table required by Item 403(b)?

Answer: If the units could be settled in stock at the holder's election, so that if the holder were terminated currently he or she would get the underlying stock without the need to satisfy any additional vesting requirements, the registrant should report the total number of shares and percent of class beneficially owned, including the shares and percent of class beneficially owned due to the potential exercise of rights acquired under the phantom stock units. This is because the holder would have the right to acquire the underlying stock within 60 days (see Exchange Act Rule 13d-3). In addition to including the shares underlying the units in the total number of shares and percent of class beneficially owned, the phantom stock units also should be presented in a manner that distinguishes them from stock owned outright—e.g., pursuant to a clear and succinct footnote explanation. In contrast, if the phantom stock units can be settled in stock only at the company's discretion, they should not be reported in the total number of shares and percent of class beneficially owned, because the holder does not have a right to acquire the underlying stock within 60 days. Similarly, if the phantom stock units can be settled solely in cash, they should not be reported because the holder has no right to acquire the underlying stock. [Mar. 13, 2007]

Question 129.03

Question: If a named executive officer died since the beginning of the registrant's last fiscal year, must the deceased named executive officer be included in the Item 403(b) ownership table?

Answer: No. Although Item 403(b) requires disclosure for each of the named executive officers, as defined in Item 402(a)(3), a named executive officer who died since the beginning of the registrant's last fiscal year would not need to be included in the Item 403(b) ownership table. [Mar. 13, 2007]

Question 129.04

Question: Does the Item 403(b) requirement to indicate, by footnote or otherwise, the amount of shares that are pledged as security apply to a "negative pledge" of the company's stock by a director, nominee or named executive officer? (A "negative pledge" is a covenant granted by a borrower to a lender in which a promise is made not to convey the shares to a third party or to otherwise encumber them. Assuming a default by the borrower, the "negative

pledge” would not transfer title by operation of law, but would instead require a foreclosure.)

Answer: Yes, because shares subject to a “negative pledge” may be subject to material risk or contingencies that do not apply to other shares beneficially owned by these persons, and such shares are pledged as security by operation of the negative pledge covenant. [Mar. 13, 2007]

Question 129.05

Question: Does the requirement in Item 403(c) to disclose “any arrangement . . . including any pledge . . . which may at a subsequent date result in a change in control of the registrant” apply to a “negative pledge” of the company’s stock by a principal shareholder, as described in Question 129.04 above?

Answer: In the ordinary course, such an arrangement would not be disclosable under Item 403(c). However, the registrant should consider whether any circumstances, such as insolvency of the borrower or takeover activity with respect to the registrant, would render a change in control arising from such an arrangement foreseeable and, hence, disclosable under Item 403(c). [Mar. 13, 2007]

Section 130. Item 404—Transactions with Related Persons, Promoters and Certain Control Persons

Question 130.01

Question: If a company with a class of securities registered under the Exchange Act that is current in its Exchange Act reports files a Form S-1 that does not incorporate information by reference, must Item 404(a) disclosure be provided for fiscal years ending before December 15, 2006 if the company already provided Item 404 disclosure for these years under the pre-2006 Item 404 requirements in a Commission filing?

Answer: No. Companies do not have to “restate” Item 404(a) disclosure under the 2006 Item 404 requirements if it was previously reported under the pre-2006 requirements. [Mar. 13, 2007]

Question 130.02

Question: If a company files a registration statement for an initial public offering on Form S-1, or files a Form 10 to register a class of securities under the Exchange Act, must the company provide Item 404(a) disclosure pursuant to the 2006 Item 404 requirements for fiscal years ending before December 15, 2006?

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Answer: Yes. Disclosure must be provided in these filings pursuant to the 2006 Item 404 requirements for the period specified in Instruction 1 to Item 404. [Mar. 13, 2007]

Question 130.03

Question: Item 404(a) requires, in pertinent part, disclosure of any transaction since the beginning of the registrant's last fiscal year between the registrant and any 5 percent shareholder where the amount involved exceeds \$120,000 and the 5 percent shareholder has a direct or indirect material interest in the transaction. Is disclosure required of such a transaction that occurred since the beginning of the registrant's last fiscal year, but prior to the date the person became a 5 percent shareholder?

Answer: Disclosure is required if the transaction: (a) was continuing (such as through the ongoing receipt of payments) after the date the person became a 5 percent shareholder; or (b) resulted in the person becoming a 5 percent shareholder. If the transaction concluded before the person became a 5 percent shareholder, disclosure would not be required. [Mar. 13, 2007]

Question 130.04

Question: How does a company value unexercised, in-the-money stock options for purposes of determining whether the \$120,000 threshold of Item 404(a) has been met?

Answer: The value of unexercised, in-the-money options should be determined for Item 404(a) purposes by determining the difference between the fair market value of the securities underlying the options and the exercise or base price of the options. Use of the Black-Scholes or binomial option pricing method also would be appropriate, provided that such use and the underlying assumptions are clearly disclosed and the value thus calculated is greater than zero and is otherwise reasonably related to the unrealized gain. [Mar. 13, 2007]

Question 130.05

Question: Is the condition that loans be made on substantially the same terms as for "comparable loans with persons not related to the lender" in Instruction 4.c.ii. to Item 404(a) satisfied if a bank makes loans available on the same terms to all of its employees, the vast majority of whom are not "related persons" as defined in Item 404, but the same terms are not offered to non-employees?

Answer: No. The term "persons not related to the lender" means persons with no relationship at all with the lender other than the lending relationship, such as

RR DONNELLEY

regular customers. Employees are considered related to the lender by virtue of their employment relationship. [Mar. 13, 2007]

Question 130.06

Question: Must a company include disclosure regarding policies for the review, approval or ratification of related person transactions under Item 404(b)(1) even when the company does not have to report any transactions under Item 404(a)?

Answer: Yes. Item 404(b)(1) requires disclosure regarding policies for the review, approval or ratification of the types of related person transactions that would be disclosed under Item 404(a). [Mar. 13, 2007]

Question 130.07

Question: Is a smaller reporting company required to describe its policies and procedures for review, approval or ratification of transactions with related persons as specified by Item 404(b) of Regulation S-K if a schedule or form being used for a filing requires the company to furnish the information required by Item 404(b)?

Answer: No. Smaller reporting companies are not required to furnish Item 404(b) disclosure in these circumstances. Smaller reporting companies comply with the requirements of Item 404 by furnishing the information called for by Item 404(d) of Regulation S-K, the paragraph of Item 404 labeled “Smaller reporting companies,” which does not require Item 404(b) disclosure. [July 3, 2008]

Section 131. Item 405—Compliance with Section 16(a) of the Exchange Act

None

Section 132. Item 406—Code of Ethics

None

Section 133. Item 407—Corporate Governance

Question 133.01

Question: If a non-listed issuer has independence definitions that are more stringent than those of a national securities exchange, may that issuer provide disclosure based on its own independence definitions in accordance with Item 407(a)(1)(i), rather than provide the disclosure required by Item 407(a)(1)(ii)?

Answer: The non-listed issuer must provide the disclosure required by Item 407(a)(1)(ii). If the non-listed issuer believes that its own independence

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

definitions are more stringent than those of the exchange identified in the required Item 407(a)(1)(ii) disclosure, it may, in addition, disclose that belief and provide the disclosures called for by Item 407(a)(1)(i) based on its own definitions, provided that it also complies with Item 407(a)(2) regarding disclosure of its own definitions of independence. [Mar. 13, 2007]

Question 133.02

Question: May a company indicate that the nominating committee's processes, policies, or minimum director nominee qualifications are included in the company's governance policies posted on the company's website, rather than including descriptions of the nominating committee's processes, policies, or minimum nominee qualifications in the proxy statement?

Answer: No. Item 407(c)(2) requires that the descriptions of the processes, policies, and nominee qualifications be included in the proxy statement, and no mechanism for reference to website posting of this information is provided for with respect to the Item 407(c)(2) disclosure. [Mar. 13, 2007]

Question 133.03

Question: Item 407(c)(2)(vii) requires the identification of the category of persons or entities that recommended each nominee for director, other than executive officers or nominees that are directors who are standing for re-election. If a director who did not stand for election by shareholders last year (but rather had been named as a director by the board during the year) is to be nominated for election by shareholders for the first time, is disclosure under Item 407(c)(2)(vii) required for that nominee?

Answer: Yes. The nominee for director would not be considered as standing for "re-election"; therefore, disclosure of the category of persons or entities that recommended the nominee is required by Item 407(c)(2)(vii). [Mar. 13, 2007]

Question 133.04

Question: Does Item 407(d)(3)(i)(D) require the audit committee to state whether it recommended inclusion of the audited financial statements in the Form 10-K for periods prior to the last completed fiscal year?

Answer: No. Item 407(d)(3)(i)(D) requires the audit committee to state whether it recommended inclusion of the audited financial statements in the Form 10-K. This statement need not cover financial statements for periods prior to the last completed fiscal year. [Mar. 13, 2007]

Question 133.05

Question: Should all compensation consultants engaged by the company that played a role in determining or recommending the amount or form of executive or director compensation be disclosed, or only those that consulted with the board of directors or the compensation committee?

Answer: All compensation consultants with any role in determining or recommending the amount or form of executive or director compensation must be disclosed under Item 407(e)(3)(iii). [Mar. 13, 2007]

Question 133.06

Question: Is the consent of a compensation consultant required under Securities Act Rule 436 if a compensation consultant is identified in accordance with Item 407(e)(3)(iii) in a filing that is incorporated by reference into a Securities Act registration statement?

Answer: No. Item 407(e)(3) requires a “narrative description of the registrant’s processes and procedures for the consideration and determination of executive and director compensation including ... (iii) [a]ny role of compensation consultants in determining or recommending the amount or form of executive and director compensation.” Identifying a compensation consultant and the role that the compensation consultant had in determining or recommending the amount or form of executive and director compensation does not result in the compensation consultant being deemed an “expert” for the purposes of the Securities Act, or mean that the compensation consultant has expertized any portion of the disclosure regarding executive and director compensation or compensation committee processes. Therefore, a consent would not be required. [Mar. 13, 2007]

Question 133.07

Question: Which names of directors must be included below the disclosure required in the Compensation Committee Report by Item 407(e)(5)?

Answer: Item 407(e)(5)(ii) requires that the name of each member of the compensation committee (or other board committee performing equivalent functions, or in the absence of any such committee, the entire board of directors) must appear below the required disclosure in the Compensation Committee Report. The members of the compensation committee (or the full board) who participated in the review, discussions and recommendation with respect to the Compensation Discussion and Analysis must be identified. New members who did not participate in such activities and departed members who are no

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

longer directors need not be included. Members who resigned from the compensation committee during the course of the year, but remain directors of the issuer, may need to be named under the disclosure in the Compensation Committee Report pursuant to Item 407(e)(5)(ii). [Mar. 13, 2007]

Question 133.08 [*same as Question 118.06*]

Question: Regarding the role of compensation consultants in determining or recommending the amount or form of executive and director compensation, on what basis should a company differentiate between the requirements of Item 407(e)(3)(iii) and Item 402(b)'s Compensation Discussion and Analysis disclosure?

Answer: The information regarding “any role of compensation consultants in determining or recommending the amount or form of executive and director compensation” required by Item 407(e)(3)(iii) is to be provided as part of the company's Item 407(e)(3) compensation committee disclosure. See Release 33-8732A at Section V.D, Corporate Governance Disclosure. If a compensation consultant plays a material role in the company's compensation-setting practices and decisions, then the company should discuss that role in the Compensation Discussion and Analysis section. [July 3, 2008]

Question 133.09

Question: When is a smaller reporting company required to provide the audit committee financial expert disclosure as required by Item 407(d)(5)?

Answer: While all smaller reporting companies are required to provide the audit committee report required by Item 407(d)(3), pursuant to Item 407(g), smaller reporting companies are not required to provide the audit committee financial expert disclosure required by Item 407(d)(5) until their first annual report after their initial registration statement under the Securities Act or Exchange Act becomes effective. The statement in the original version of the adopting release for Item 407(g) (Release No. 33-8876, Dec. 19, 2007) that smaller reporting companies are not required to provide an audit committee report was incorrect. [July 3, 2008]

Question 133.10

Question: Are the “additional services” provided by executive compensation consultants that are subject to the disclosure requirements of Items 407(e)(3)(iii)(A) and (B) limited to services for non-executives?

Answer: No. [Jan. 20, 2010]

RR DONNELLEY

Question 133.11

Question: If a compensation consultant's role is limited to consulting on broad-based plans that do not discriminate in favor of executive officers or directors and to providing information that either is not customized for a particular registrant or is customized based on parameters that are not developed by the compensation consultant, and about which the consultant does not provide advice, then such services do not need to be disclosed under Item 407(e)(3)(iii), so long as these are the *only* services provided by the consultant. If the consultant's role extends beyond these two types of services, then disclosure of all of the consultant's services, including consulting on broad-based plans and providing non-customized information, will be required under Item 407(e)(3)(iii), subject to the disclosure threshold in this item. Are the fees for these two types of services considered to be for "determining or recommending the amount or form of executive and director compensation" or are such fees considered to be for "additional services"?

Answer: The answer depends on the facts and circumstances of each service. Fees for consulting on broad-based, non-discriminatory plans in which executive officers or directors participate and for providing information relating to executive and director compensation, such as survey data (in each case, that would otherwise qualify for the exclusion from disclosure if they are the only services provided), are considered to be fees for "determining or recommending the amount or form of executive and director compensation" for purposes of reporting fees under the rule. However, "consulting" on broad-based non-discriminatory plans does not also include any related services, such as benefits administration, human resources services, actuarial services and merger integration services, all of which are "additional services" subject to the disclosure requirements of Items 407(e)(3)(iii)(A) and (B). In addition, if the non-customized information relates to matters other than executive and director compensation, then the fees for such information would be for "additional services." [Jan. 20, 2010]

Question 133.12

Question: Under Item 407(e)(3)(iii)(A)-(B), compensation consultant fees are required to be disclosed if the consultant provides advice on executive and director compensation and also provides "additional services" in an amount in excess of \$120,000 during the last completed fiscal year. Is there any limitation on the types of services that are included as "additional services"? If, in addition

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

to services, the consultant also sells products to the company, do the revenues generated from such sales also have to be disclosed?

Answer: There is no limitation on the types of services that are included in “additional services.” If the consultant also sells products to the company, then the revenues generated from such sales should be included in “aggregate fees for any additional services provided by the compensation consultant or its affiliates.” [Mar. 12, 2010]

[...]

Section 146. Item 601—Exhibits

[...]

Question 146.04

Question: If a registrant is party to an oral contract that would be required to be filed as an exhibit pursuant to Item 601(b)(10) if it were written, should the registrant provide a written description of the contract similar to that required for oral contracts or arrangements pursuant to Item 601(b)(10)(iii)?

Answer: Yes. [July 3, 2008]

Question 146.05

Question: If a company enters into a new material contract, when should the contract be filed as an exhibit to a Form 10-Q or Form 10-K?

Answer: Instruction 2 to Item 601(b)(10) indicates that Exhibit 10 material contracts need to be filed with the periodic report covering the period during which the contract is executed or becomes effective. [July 3, 2008]

Question 146.06

Question: A company entered into a material agreement. However, the agreement was no longer material to the company by the end of the reporting period during which the contract was entered into. Must the agreement be filed as an exhibit to the periodic report?

Answer: Yes. Item 601(a)(4) provides that if a material contract “is executed or becomes effective during the reporting period,” then it shall be filed as an exhibit. [July 3, 2008]

[...]

Question 146.09

Question: Does Item 601(b)(10)(iii)(A) of Regulation S-K, which describes management contracts and compensatory plans, contracts and arrangements in

RR DONNELLEY

which named executive officers participate that must be filed as exhibits to registration statements and reports, require a smaller reporting company to define the term “named executive officer” by referring to the definition of that term in Item 402(a)(3) of Regulation S-K instead of the definition of that term available to smaller reporting companies in Item 402(m)(2)?

Answer: No. If a smaller reporting company has chosen to use the definition of “named executive officer” in Item 402(m)(2) in its registration statement or report, by providing the disclosure permitted under Items 402(m) through 402(r) instead of the disclosure required under Items 402(a) through 402(k), the staff will interpret Item 601(b)(10)(iii)(A) to refer to the definition of “named executive officer” in Item 402(m)(2) and only require the filing as exhibits of plans, contracts and arrangements in which named executive officers as defined under Item 402(m)(2) participate. [July 3, 2008]

Question 146.10

Question: Should a copy of the employee benefit plan under which the registered securities will be issued be filed as an exhibit to the registration statement on Form S-8?

Answer: Yes. [July 3, 2008]

Question 146.11

Question: Does a written arrangement whereby officers are provided company cars and other perquisites have to be filed as a “material contract”?

Answer: If the perquisite is separately identified and quantified in the proxy statement, then the written arrangement pursuant to which the officer receives the perquisite need not be filed as a “material contract.” [July 3, 2008]

[...]

INTERPRETIVE RESPONSES REGARDING PARTICULAR SITUATIONS

[...]

Section 217. Item 402(a)—Executive Compensation; General

217.01 Whether a spin-off is treated like the IPO of a new “spun-off” registrant for purposes of Item 402 disclosure depends on the particular facts and circumstances. When determining whether disclosure of compensation before the spin-off is necessary, the “spun-off” registrant should consider whether it was a reporting company or a separate division before the spin-off, as well as

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

its continuity of management. For example, if a parent company spun off a subsidiary which conducted one line of the parent company's business, and before and after the spin-off the executive officers of the subsidiary: (1) were the same; (2) provided the same type of services to the subsidiary; and (3) provided no services to the parent, historical compensation disclosure likely would be required. In contrast, if a parent company spun off a newly formed subsidiary consisting of portions of several different parts of the parent's business and having new management, it is more likely that the spin-off could be treated as the IPO of a new "spun-off" registrant. [Jan. 24, 2007]

217.02 Following a merger among operating companies, there is no concept of "successor" compensation. Therefore, the surviving company in the merger need not report on compensation paid by predecessor corporations that disappeared in the merger. Similarly, a parent corporation would not pick up compensation paid to an employee of its subsidiary prior to the time the subsidiary became a subsidiary (*i.e.*, when it was a target). Moreover, income paid by such predecessor companies need not be counted in computing whether an individual is a named executive officer of the surviving corporation. A different result may apply, however, in situations involving an amalgamation or combination of companies. A different result also applies where an operating company combines with a shell company, as defined in Securities Act Rule 405, as provided in Interpretive Response 217.12, below. [Aug. 8, 2007]

217.03 A subsidiary of a public company is going public. The officers of the subsidiary previously were officers of the parent, and in some cases all of the work that they did for the parent related to the subsidiary. The registration statement of the subsidiary would not be required to include compensation previously awarded by the parent corporation. The subsidiary would start reporting as of the IPO date. [Jan. 24, 2007]

217.04 Instruction 1 to Item 402(a)(3) states that the generally required compensation disclosure regarding highly compensated executive officers need not be set forth for an executive officer (other than the principal executive officer or principal financial officer) whose total compensation for the last fiscal year, reduced by the amount required to be disclosed by Item 402(c)(2)(viii), did not exceed \$100,000. A reporting company that recently changed its fiscal year end from December 31st to June 30th is preparing its transition report for the 6-month period ended June 30th, having filed its Form 10-K for the fiscal year ended 6 months earlier on December 31st. The reporting company generally has a group of executive officers that earn in

RR DONNELLEY

excess of \$100,000 each year. In addition, during the 6-month period, the company made an acquisition that resulted in new executive officers that, on an annual basis, will earn more than \$100,000. During the 6-month period, however, none of these existing or new officers earned more than \$100,000 in total compensation. The company asked whether disclosure under Item 402 regarding these officers therefore would not be required in the report being prepared for the 6-month period. The Division staff advised that no disclosure need be provided with respect to executive officers that started employment with the company during the 6-month period and did not, during that period of employment, earn more than \$100,000. With respect to executive officers that were employed by the company both during and before the 6-month period, however, Item 402 disclosure would have to be provided for those who earned in excess of \$100,000 during the one-year period ending June 30th (the same ending date as the six-month period, but extending back over 6 months of the preceding fiscal year). [Jan. 24, 2007]

217.05 If a company changes its fiscal year, report compensation for the “stub period,” and do not annualize or restate compensation. In addition, report compensation for the last three full fiscal years, in accordance with Item 402 of Regulation S-K. For example, in late 1997 a company changed its fiscal year end from June 30 to December 31. In the Summary Compensation Table, provide disclosure for each of the following four periods: July 1, 1997 to December 31, 1997; July 1, 1996 to June 30, 1997; July 1, 1995 to June 30, 1996; and July 1, 1994 to June 30, 1995. Continue providing such disclosure for four periods (three full fiscal years and the stub period) until there is disclosure for three full fiscal years after the stub period (December 31, 2000 in the example). If the company was not a reporting company and was to do an IPO in February 1998, it would furnish disclosure for both of the following periods in the Summary Compensation Table: July 1, 1997 to December 31, 1997; and July 1, 1996 to June 30, 1997. [Jan. 24, 2007]

217.06 Compensation of both incoming and departing executives should not be annualized. [Jan. 24, 2007]

217.07 A caller asked whether an executive officer, other than the principal executive officer or principal financial officer, could be considered a “named executive officer” if the executive officer became a non-executive employee during the last completed fiscal year and did not depart from the registrant. If an executive officer becomes a non-executive employee of a registrant during the preceding fiscal year, consider the compensation the person received dur-

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

ing the entire fiscal year for purposes of determining whether the person is a named executive officer for that fiscal year. If the person thus would qualify as a named executive officer, disclose all of the person's compensation for the full fiscal year, i.e. compensation for when the person was an executive officer and for when the person was a non-executive employee. [Jan. 24, 2007]

217.08 A parent and its subsidiary are both Exchange Act reporting companies. Some of the executive officers of the parent may receive a portion of their compensation from the subsidiary corporation. The Division staff advised that if an executive spends 100% (or near 100%) of the executive's time for the subsidiary but is paid by the parent, then the compensation paid by the parent has to be reported in the executive compensation table of the subsidiary. However, if an allocation of the monies paid by the parent would be necessary because the executive officer splits time between the parent and the subsidiary, the payments allocable to services to the parent need not be included in the subsidiary's executive compensation table. In addition, in the event that the subsidiary pays a management fee to the parent for use of the executives, disclosure of the structure of the management agreement and fees would have to be reported under Item 404. Compensation paid by the subsidiary to executives of the parent company must be included in the parent's executive compensation table if such payments are paid directly by the subsidiary. If the payments are part of a management contract, disclosure of the structure of the management agreement and fees would have to be reported under Item 404. [July 3, 2008] *[same as C&DI 230.11]*

217.09 Parent and its consolidated subsidiary are public companies. X was CEO of parent for all of 2007, and was CEO of subsidiary for part of 2007. Y was an executive officer of the parent for 2007, and was CFO of the subsidiary for 2007. Even though parent made all salary and bonus payments to X and to Y, pursuant to intercompany accounting: 60% of X's 2007 salary and bonus was allocated to the subsidiary; and 85% of Y's 2007 salary and bonus was allocated to the subsidiary. If 100% of Y's salary and bonus are included, Y would be one of parent's three most highly compensated executive officers for 2007, but if the 85% allocable to subsidiary is excluded, Y would not be a parent NEO.

On these facts, the staff takes the view that 100% of the salary and bonus of each of X and Y should be counted in determining the parent's three most highly compensated executive officers and disclosed in the parent's Summary Compensation Table. Parent's NEO determinations and compensation disclosures should not be affected by whether its subsidiary is public or private.

RR DONNELLEY

The staff also takes the view that subsidiary's Summary Compensation Table should report the respective percentages (60% for X and 85% for Y) of salary and bonus allocated to the subsidiary's books. Each Summary Compensation Table should include footnote disclosure noting the extent to which the same compensation is reported in both tables. [July 3, 2008]

217.10 A company's reimbursement to an officer of legal expenses with respect to a lawsuit in which the officer was named as a defendant, in her capacity as an officer, is not disclosable pursuant to Item 402 of Regulation S-K. [Jan. 24, 2007]

217.11 A caller inquired whether a filing that is made on January 2 must include compensation for the previous year ended December 31 when compensation information may not be incorporated by reference into the filing. The Division staff's position is that compensation must be included for such year because registrants should have those numbers available. However, if bonus or other amounts for the prior year have not yet been determined, this should be noted in a footnote together with disclosure regarding the date the bonus will be determined, any formula or criteria that will be used and any other pertinent information. When determined, the bonus or other amount must be disclosed in a filing under Item 5.02(f) of Form 8-K. Further, where the compensation disclosure depends upon assumptions used in the financial statements and those financial statements have not yet been audited, it is permissible for the company to note this fact in the compensation disclosure. [Jan. 24, 2007]

217.12 Shareholders of a shell company, as defined in Securities Act Rule 405, will vote on combining the shell company with an operating company. The combination will have the effect of making the operating company subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act. The disclosure document soliciting shareholder approval of the combination (whether a proxy statement, Form S-4, or Form F-4) needs to disclose: (1) Item 402 disclosure for the shell company before the combination; (2) Item 402 disclosure regarding the operating company that the operating company would be required to make if filing a 1934 Act registration statement, including Compensation Discussion and Analysis disclosure; and (3) Item 402 disclosure regarding each person who will serve as a director or an executive officer of the surviving company required by Item 18(a)(7)(ii) or 19(a)(7)(ii) of Form S-4, including Compensation Discussion and Analysis disclosure that may emphasize new plans or policies (as provided in the Release 33-8732A text at n.

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

97). The Form 10-K of the combined entity for the fiscal year in which the combination occurs would provide Item 402 disclosure for the named executive officers and directors of the combined entity, complying with Item 402(a)(4) of Regulation S-K and Instruction 1 to Item 402(c) of Regulation S-K. [Aug. 8, 2007]

217.13 Options or other rights to purchase securities of the parent or a subsidiary of the registrant should be reported in the same manner as compensatory options to purchase registrant securities. [Jan. 24, 2007]

217.14 Item 402(c)(2)(ix)(G) requires Summary Compensation Table disclosure of the dollar value of any insurance premiums paid by, or on behalf of, the registrant during the covered fiscal year with respect to life insurance for the benefit of a named executive officer. Item 402(j) requires description and quantification of the estimated payments and benefits that would be provided in each covered termination circumstance, including the proceeds of such life insurance payable upon a named executive officer's death. However, if an executive officer dies during the last completed fiscal year, the proceeds of a life insurance policy funded by the registrant and paid to the deceased executive officer's estate need not be taken into consideration in determining the compensation to be reported in the Summary Compensation Table, or in determining whether the executive is among the registrant's up to two additional individuals for whom disclosure would be required under Item 402(a)(3)(iv). [May 29, 2009]

Section 218. Item 402(b)—Executive Compensation; Compensation Discussion and Analysis

None

Section 219. Item 402(c)—Executive Compensation; Summary Compensation Table

219.01 A registrant need not report earnings on compensation that is deferred on a basis that is not tax qualified as above-market or preferential earnings within the meaning of Item 402(c)(2)(viii)(B) where the return on such earnings is calculated in the same manner and at the same rate as earnings on externally managed investments to employees participating in a tax-qualified plan providing for broad-based employee participation. See n. 43 to Release No. 34-31327 (Oct. 16, 1992); American Society of Corporate Secretaries (Jan. 6, 1993). For example, many issuers provide for deferral of salary or bonus amounts not covered by tax-qualified plans where the return on such amounts is the same as the return paid on amounts invested in an externally managed investment fund, such as an equity mutual fund, available to all employees par-

RR DONNELLEY

ticipating in a non-discriminatory, tax-qualified plan (e.g., 401(k) plan). Although this position generally will be available for so-called “excess benefit plans” (as defined for Rule 16b-3(b)(2) purposes), it may not be appropriately applied in the case of a pure “top-hat” plan or SERP (Supplemental Employee Retirement Plan) that bears no relationship to a tax-qualified plan of the issuer. When in doubt, consult the staff. For a deferred compensation plan with a cash-based, interest-only return, earnings would not be reportable as “above-market” unless the rate of interest exceeded 120% of the applicable federal long-term rate, as stated in Instruction 2 to Item 402(c)(2)(viii). Non-qualified deferred compensation plan earnings that are “above-market or preferential” are reportable even if the deferred compensation plan is unfunded and thus subject to risk of loss of principal. [Jan. 24, 2007]

219.02 Item 402(c)(2)(ix)(G) requires disclosure in the “All Other Compensation” column of the dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award. If a company credits stock dividends on unvested restricted stock units, but does not actually pay them out until the restricted stock units vest, those dividends should be reported in the year credited, rather than the year vested (and actually paid). [Aug. 8, 2007]

219.03 Item 402(c)(2)(viii) of Regulation S-K and Item 402(h)(2)(iii) and (iv) of Regulation S-K require amounts that are computed as of the same pension plan measurement date used for financial reporting purposes with respect to the company’s audited financial statements for the last completed fiscal year. The rules reference the same pension plan measurement date as is used for financial statement reporting purposes so that the company would not have to use different assumptions when computing the present value for executive compensation disclosure and financial reporting purposes. The pension plan measurement date for most pension plans is September 30, which, in the case of calendar-year companies, does not correspond with the company’s fiscal year. This means that the pension benefit information will be presented for a period that differs from the fiscal year period covered by the disclosure. Under recent changes in pension accounting standards, the pension measurement date will be changed to be the same as the end of the company’s fiscal year. In the year in which companies change their pension measurement date, they may use an annualized approach for the disclosure of the change in the value of the accumulated pension benefits in the Summary Compensation Table (thereby

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

adjusting the 15 month period to a 12 month period) when the transition in pension plan measurement date occurs, so long as the company includes disclosure explaining it has followed this approach. The actuarial present value computed on the new measurement date should be reported in the Pension Benefits Table. [Jan. 24, 2007]

219.04 If the actuarial present value of the accumulated pension benefit for a named executive officer on the pension measurement date of the prior fiscal year was \$1,000,000, and the present value of the accumulated pension benefit on the pension measurement date of the most recently completed fiscal year is \$1,000,000, but during the most recently completed fiscal year the named executive officer earned and received an in-service distribution of \$200,000, then \$200,000 should be reported as the increase in pension value in the Change in Pension Value and Nonqualified Deferred Compensation Earnings column (column (h)) of the Summary Compensation Table. [Jan. 24, 2007]

Section 220. Item 402(d)—Executive Compensation; Grants of Plan-Based Awards Table

220.01 Where a named executive officer exercises “reload” options and receives additional options upon such exercise, the registrant is required to report the additional options as an option grant in the Grants of Plan-Based Awards Table. In the Summary Compensation Table, the registrant would include the grant date fair value of the additional options in the aggregate amount reported. [Mar. 1, 2010]

220.02 If plans do not include thresholds or maximums (or equivalent items), the registrant need not include arbitrary sample threshold and maximum amounts. For example, for a non-equity incentive plan that does not specify threshold or maximum payout amounts (for example, a plan in which each unit entitles the executive to \$1.00 of payment for each \$.01 increase in earnings per share during the performance period), threshold and maximum levels need not be shown as “0” and “N/A” because the payouts theoretically may range from nothing to infinity. Rather, an appropriate footnote should state that there are no thresholds or maximums (or equivalent items). [Jan. 24, 2007]

Section 221. Item 402(e)—Executive Compensation; Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards Table

None

Section 222. Item 402(f)—Executive Compensation; Outstanding Equity Awards at Fiscal Year-End Table

222.01 A company grants stock options that provide for immediate exercise in full as of the grant date, subject to the company's right to repurchase (at the exercise price) if the executive terminates employment with the company before a specified date. If the executive officer exercises the option before the repurchase restriction lapses, he or she effectively receives restricted stock subject to forfeiture until the repurchase restriction lapses. In this circumstance, the Outstanding Equity Awards table should show the shares received as stock awards that have not vested (columns (g) and (h)) until the repurchase restriction lapses, and the exercise should not be reported in the Option Exercises and Stock Vested Table. Instead, as the shares acquired by the executive officer cease to be subject to the repurchase provision, those shares should be reported as stock awards (columns (d) and (e)) in the Option Exercises and Stock Vested Table. If the executive officer exercises the option after the repurchase restriction lapses, it is reported in the same manner as a regular stock option. [Aug. 8, 2007]

Section 223. Item 402(g)—Executive Compensation; Option Exercises and Stock Vested Table

None

Section 224. Item 402(h)—Executive Compensation; Pension Benefits

None

Section 225. Item 402(i)—Executive Compensation; Nonqualified Defined Contribution and Other Nonqualified Deferred Compensation Plans

None

Section 226. Item 402(j)—Executive Compensation; Potential Payments Upon Termination or Change-in-Control

226.01 Item 402(j) requires quantitative disclosure of estimated payments and benefits, applying the assumptions that the triggering event took place on the last business day of the company's last completed fiscal year and the price per share of the company's securities is the closing market price as of that date. The date used for Item 402(j) quantification disclosure can affect the quantification of tax gross-ups with respect to the Internal Revenue Code Section 280G excise tax on excess parachute payments, such as by suggesting that benefits would be accelerated or by changing the five-year "base period" for computing the average annual taxable amount to which the parachute payment is compared. Where the last business day of the last completed fiscal year for a calen-

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

dar year company is not December 31, the company may calculate the excise tax and related gross-up on the assumption that the change-in-control occurred on December 31, rather than the last business day of its last completed fiscal year, using the company stock price as of the last business day of its last completed fiscal year. The company may not substitute January 1 of the current year for the last business day of the company's last completed fiscal year, which would change the five-year "base period" to include the company's last completed fiscal year. [Aug. 8, 2007]

226.02 Following the end of the last completed fiscal year (2006), but before the proxy statement is filed, a named executive officer leaves the company (in early 2007). A Form 8-K disclosing this termination is filed, as required by Item 5.02(b) of Form 8-K. This named executive officer is not the principal executive officer or the principal financial officer and will not be a named executive officer for the current fiscal year (2007) based on Item 402(a)(3)(iv). The severance package that applied to the named executive officer's termination is not newly negotiated but instead has the same terms that otherwise would apply. In these limited circumstances, it is permissible to provide Item 402(j) disclosure for the named executive officer only for the triggering event that actually occurred (even though beyond the scope of Instruction 4 to Item 402(j) because it took place after the end of the last completed fiscal year), rather than providing the disclosure for several additional scenarios that no longer can occur. [Aug. 8, 2007]

226.03 A company will file a proxy statement for its regular annual meeting that also will solicit shareholder approval of a transaction in which the company would be acquired. The company has post-termination compensation arrangements that apply generally. Assuming that the acquisition is approved, however, all the named executive officers will be covered by termination agreements that that will be specific to the acquisition. The company cannot satisfy Item 402(j) by disclosing *only* the termination agreements that are specific to the pending acquisition for the following reasons: If the company's shareholders and/or any applicable regulatory authority do not approve the acquisition, the company's generally applicable post-termination arrangements will continue to apply. In addition, comparison of the acquisition-specific agreements with the generally applicable post-termination arrangements may be material. [Aug. 8, 2007]

Section 227. Item 402(k)—Executive Compensation; Compensation of Directors

227.01 Consulting arrangements between the registrant and a director are disclosable as director compensation under Item 402(k)(2)(vii), even where such arrangements cover services provided by the director to the issuer other than as director (e.g., as an economist). [Jan. 24, 2007]

227.02 A company has an executive officer (who is not a named executive officer) who is also a director. This executive officer does not receive any additional compensation for services provided as a director, and the conditions in Instruction 5.a.ii to Item 404(a) of Regulation S-K are satisfied. The compensation that this director receives for services as an executive officer does not need to be reported in the Director Compensation Table under Item 402(k) of Regulation S-K. The director may be omitted from the table, provided that footnote or narrative disclosure explains that the director is an executive officer, other than a named executive officer, who does not receive any additional compensation for services provided as a director. [Aug. 8, 2007]

227.03 A company has a director who also is an employee (but not an executive officer). Item 404(a) requires disclosure of the transaction pursuant to which the director is compensated for services provided as an employee. (Instruction 5 to Item 404(a) does not apply because the person is not an executive officer or does not have compensation reported for services as a director in the Director Compensation Table required by Item 402(k).) However, disclosure of this employee compensation transaction in the Director Compensation Table typically would result in a clearer, more concise presentation of the information. In this situation, if the employee compensation transaction is reported in the Director Compensation Table, it need not be repeated with the other Item 404(a) disclosure. Footnote or narrative disclosure to the Director Compensation Table should explain the allocation to services provided as an employee. [Aug. 8, 2007]

227.04 A current director previously was an employee of the company and receives a pension that was earned for services rendered as a company employee. If payment of the pension is not conditioned on his or her service as a director, the pension benefits do not need to be disclosed in the Director Compensation Table, whether or not the director receives compensation for services provided as a director. If service as a director generates new accruals to the pension, disclosure would be required in column (f) of the Director Compensation Table. [Aug. 8, 2007]

[...]

Section 230. Item 404—Transactions with Related Persons, Promoters and Certain Control Persons

230.01 The term “any immediate family member,” as used in Item 404, is defined to include, among others, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and stepchildren and stepparents. For purposes of this item, such relatives are deemed to be: (1) only those persons who are currently related to the primary reporting person (e.g., a person who is divorced from a director’s daughter would no longer be a son-in-law whose transactions must be reported); and (2) only those persons who are related by blood or step relationship to the primary reporting person or his spouse (e.g., the sister of a director’s spouse is considered a sister-in-law for purposes of this item; the sister’s husband, however, is not considered a brother-in-law for purposes of this item). [Mar. 13, 2007]

[...]

230.07 X is a director of the registrant. X’s child is employed by the registrant and receives yearly compensation exceeding \$120,000. The child’s compensation is not reported under Item 402 since the child is not one of the registrant’s named executive officers, nor is the child an officer or director. The child’s compensation is required to be disclosed under Item 404(a) because the child is a related person and has a material interest in his or her yearly compensation. [Aug. 14, 2009]

230.08 An agreement by a company with a related person to repurchase company shares from the related person’s estate upon death with the proceeds of a life insurance policy paid for by the company should be disclosed pursuant to Item 404(a). [Mar. 13, 2007]

230.09 In connection with a move of company headquarters, a company purchased and resold the homes owned by all affected employees. The price paid was determined by an independent appraiser. The company was advised that the Division staff will raise no objection if the company discloses under Item 404(a) only the general features of the program (including how the price was determined) and the total amount spent by the company on the program. [Mar. 13, 2007]

[...]

230.11 A parent and its subsidiary are both Exchange Act reporting companies. Some of the executive officers of the parent may receive a portion of their compensation from the subsidiary corporation. The Division staff advised that

RR DONNELLEY

if an executive spends 100% (or near 100%) of the executive's time for the subsidiary but is paid by the parent, then the compensation paid by the parent has to be reported in the executive compensation table of the subsidiary. However, if an allocation of the monies paid by the parent would be necessary because the executive officer splits time between the parent and the subsidiary, the payments allocable to services to the parent need not be included in the subsidiary's executive compensation table. In addition, in the event that the subsidiary pays a management fee to the parent for use of the executives, disclosure of the structure of the management agreement and fees would have to be reported under Item 404. Compensation paid by the subsidiary to executives of the parent company must be included in the parent's executive compensation table if such payments are paid directly by the subsidiary. If the payments are part of a management contract, disclosure of the structure of the management agreement and fees would have to be reported under Item 404. [July 3, 2008] *[same as C&DI 217.08]*

230.12 When the transaction under consideration is an employment arrangement, "the amount involved in the transaction" includes all compensation, not just the salary of the employee. [Aug. 8, 2007]

230.13 The compensation of an executive officer who is not a named executive officer is approved by the Board's compensation committee, and the executive officer's compensation is not disclosed under Item 404(a) pursuant to Instruction 5.a to Item 404(a). An immediate family member of this executive officer also is employed by the company. The immediate family member's compensation is disclosed under Item 404(a). In this regard, Instruction 5.a to Item 404(a) does not apply to the immediate family member because she was not an executive officer. [Aug. 8, 2007]

[...]

Section 233. Item 407—Corporate Governance

[...]

233.02 If the only disclosure that a registrant is required to provide pursuant to Item 407(e)(4) is the identity of the members of the compensation committee, because the registrant has no transactions or relationships that trigger a disclosure obligation, the registrant may omit the Item 407(e)(4) caption ("Compensation Committee Interlocks and Insider Participation"). [Mar. 13, 2007]

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

233.03 The Compensation Committee Report must be separately captioned to identify it clearly as specified in Item 407(e)(5). Where there are multiple committees on the board with responsibility for different components of compensation (e.g., a stock option committee) and those committees review and discuss the Compensation Discussion and Analysis with management and, based on that review and discussion, recommend the inclusion of the Compensation Discussion and Analysis in the registrant's filings, each of these committees has a disclosure obligation under Item 407(e)(5). [Mar. 13, 2007]

[...]

Section 246. Item 601—Exhibits

[...]

246.10 For purposes of Form 10-K, Item 601(b)(10)(iii) of Regulation S-K requiring disclosure of remunerative contracts would apply to a deferred compensation plan entered into during the fiscal year, even though the officer/director retired during that fiscal year and no longer was an officer/director. [July 3, 2008]

246.11 Instruction 1 to Item 201(d) provides that no disclosure is required with respect to any employee benefit plan that is intended to meet the qualification requirements of Internal Revenue Code Section 401(a). The same treatment would apply to a foreign employee benefit plan that is similar in substance to a Section 401(a) qualified plan in terms of being broad-based, compensatory and non-discriminatory. The same analysis applies for purposes of determining whether a plan must be filed as an exhibit pursuant to Item 601(b)(10)(iii)(B) of Regulation S-K, based on the exclusion provided by Item 601(b)(10)(iii)(C)(4) of Regulation S-K. [Mar. 13, 2007] *[same as C&DI 206.03]*

246.12 A remuneration plan applicable to 300 key executives in a company with 18,000 employees would not be considered a plan available to employees generally. Therefore, it would not fall within the exemption provided by Item 601(b)(10)(iii)(C)(4) and would have to be filed as an exhibit. In this regard, if a compensatory plan, contract or arrangement is available generally to all officers and directors but is not available to all employees of the company, the plan, contract or arrangement does not fall within this exemption. [July 3, 2008]

[://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm](http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm)

Exchange Act Form 8-K

Last Update: February 16, 2010

These interpretations replace the Form 8-K interpretations in the July 1997 Manual of Publicly Available Telephone Interpretations, the June 13, 2003 Frequently Asked Questions Regarding the Use of Non-GAAP Financial Measures and the November 22, 2004 Form 8-K Frequently Asked Questions. Some of the interpretations included here were originally published in the sources noted above, and have been revised in some cases. The bracketed date following each interpretation is the latest date of publication or revision.

QUESTIONS AND ANSWERS OF GENERAL APPLICABILITY

Section 101. Form 8-K—General Guidance

Question 101.01

Question: If a triggering event specified in one of the items of Form 8-K occurs within four business days before a registrant's filing of a periodic report, may the registrant disclose the event in its periodic report rather than a separate Form 8-K? If so, under what item of the periodic report should the event be disclosed? Item 5 of Part II of Form 10-Q and Item 9B of Form 10-K appear to be limited to events that were required to be disclosed during the period covered by those reports.

Answer: Yes, a triggering event occurring within four business days before the registrant's filing of a periodic report may be disclosed in that periodic report, except for filings required to be made under Item 4.01 of Form 8-K, Changes in Registrant's Certifying Accountant and Item 4.02 of Form 8-K, Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review. The registrant may disclose triggering events, other than Items 4.01 and 4.02 events, on the periodic report under Item 5 of Part II of Form 10-Q or Item 9B of Form 10-K, as applicable. All Item 4.01 and Item 4.02 events must be reported on Form 8-K. Of course, amendments to previously filed Forms 8-K must be filed on a Form 8-K/A. See also Exchange Act Form 8-K [Question 106.04](#) regarding the ability to rely on Item 2.02 of Form 8-K. [April 2, 2008]

Question 101.02

Question: Some items of Form 8-K are triggered by the specified event occurring in relation to the "registrant" (such as Items 1.01, 1.02, 2.03, 2.04). Other

items of Form 8-K refer also to majority-owned subsidiaries (such as Item 2.01). Should registrants interpret all Form 8-K Items as applying the triggering event to the registrant and subsidiaries, other than items that obviously apply only at the registrant level, such as changes in directors and principal officers?

Answer: Yes. Triggering events apply to registrants and subsidiaries. For example, entry by a subsidiary into a non-ordinary course definitive agreement that is material to the registrant is reportable under Item 1.01 and termination of such an agreement is reportable under Item 1.02. Similarly, Item 2.03 disclosure is triggered by definitive obligations or off-balance sheet arrangements of the registrant and/or its subsidiaries that are material to the registrant. [April 2, 2008]

[...]

Section 217. Item 5.02 Departure of Certain Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

217.01 Item 5.02(a) of Form 8-K requires registrants to describe the circumstances of a director's resignation when he or she resigned "because of a disagreement with the registrant ... on any matter related to the registrant's operations, policies or practices." A disagreement with the process chosen by the Chairman and other board members to address a director's alleged violation of a company's policy regarding unauthorized public disclosures and the board's related decision to ask the director to resign is a disagreement on matters "related to the registrant's operations, policies or practices." *See In the Matter of Hewlett Packard Company*, Release 34-55801 (May 23, 2007). [April 2, 2008]

217.02 When a principal financial officer temporarily turns his or her duties over to another person, a company must file a Form 8-K under Item 5.02(b) to report that the original principal financial officer has temporarily stepped down and under Item 5.02(c) to report that the replacement principal financial officer has been appointed. If the original principal financial officer returns to the position, then the company must file a Form 8-K under Item 5.02(b) to report the departure of the temporary principal financial officer and under Item 5.02(c) to report the "re-appointment" of the original principal financial officer. [April 2, 2008]

217.03 A director who is designated by an issuer's majority shareholder gives notice that he will resign if the majority shareholder sells its entire holdings of issuer stock. This notice triggers an obligation to file an Item 5.02(b) Form 8-K, which should state clearly the nature of the contingency and the extent to

RR DONNELLEY

which the resigning director can control occurrence of the contingency. [April 2, 2008]

217.04 Item 5.02(b) of Form 8-K does not require a registrant to report the death of a director or listed officer. [April 2, 2008]

217.05 If, pursuant to a contractual provision in a named executive officer's employment contract or otherwise, the registrant must notify the named executive officer of the termination of his or her employment a specified number of days prior to the date on which the named executive officer's employment would end, an Item 5.02(b) Form 8-K filing requirement is triggered on the date the registrant notifies the named executive officer of his or her termination, not on the date the named executive officer's employment actually ends. [April 2, 2008]

217.06 A registrant appoints a new principal accounting officer, which triggers an Item 5.02(c) Form 8-K filing requirement. The registrant can decide to delay the filing of the Item 5.02(c) Form 8-K until it makes a public announcement of the appointment of the new principal accounting officer, pursuant to the Instruction to paragraph (c) of Item 5.02. The new principal accounting officer replaces the old principal accounting officer, who retired, resigned, or was terminated from that position. The retirement, resignation, or termination of the old principal accounting officer triggers an Item 5.02(b) Form 8-K filing requirement. The registrant may not delay the filing of the Item 5.02(b) Form 8-K until the filing of the Form 5.02(c) Form 8-K. Rather, the Item 5.02(b) Form 8-K filing obligation is triggered by the old principal accounting officer's notice of a decision to retire or resign or by the notice of termination, whether or not such notice is written. [April 2, 2008]

217.07 A director was appointed by board vote and, at the same time, named to the audit committee. Both the appointment of the director to the board and the committee assignment were disclosed under Item 5.02(d) of Form 8-K. Three months later, the board rotates committee assignments, and the new director is moved from the audit committee to the compensation committee. No new Form 8-K or amendment to the Item 5.02(d) Form 8-K is required by Instruction 2 to Item 5.02 in this situation, provided that the change in committee assignment was not contemplated at the time of the director's initial election to the board and appointment to the audit committee. [April 2, 2008]

217.08 In the past, a named executive officer entered into an employment agreement that will, pursuant to its terms, expire after two years. The employment agreement automatically extends for an additional two-year term, unless

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

the registrant or the named executive officer affirmatively gives notice that it is not renewing the agreement. The automatic renewal of the employment agreement (*i.e.*, when the original two-year term of the employment agreement expires and neither party gives notice that it does not wish to renew the agreement) does not trigger an Item 5.02(e) Form 8-K filing requirement. [April 2, 2008]

217.09 Foreign private issuers that satisfy the Item 402 of Regulation S-K disclosure requirement by providing compensation disclosure in accordance with Item 402(a)(1) should refer to Instruction 4 to Item 5.02 to determine who is a “named executive officer.” The named executive officers will be those individuals for whom disclosure was provided in the last Securities Act or Exchange Act filing pursuant to Item 6.B or 6.E.2 of Form 20-F. [April 2, 2008]

<http://www.sec.gov/divisions/corpfin/guidance/8-kinterp.htm>

Proxy Disclosure Enhancements Transition

Last Update: January 20, 2010

Proxy Disclosure Enhancements, Release Nos. 33-9089, 34-61175, IC-29092 (Dec. 16, 2009), amends Regulation S-K Items 401, 402 and 407, effective February 28, 2010. These Compliance and Disclosure Interpretations comprise the Division’s interpretations of how this effective date applies to the filing of proxy statements, Form 10-Ks, Form 8-Ks, Securities Act registration statements and Exchange Act registration statements at or around the time of the effective date. The bracketed date following each C&DI is the latest date of publication or revision.

Question 1

Question: The Proxy Disclosure Enhancements Release amends Regulation S-K Items 401, 402 and 407, effective February 28, 2010. How does this effective date apply to an issuer’s Form 10-K for fiscal year 2009 and its proxy statement containing Form 10-K Part III information for 2009?

Answer: If the issuer’s fiscal year ends on or after December 20, 2009, its Form 10-K and proxy statement must be in compliance with the new proxy disclosure requirements if filed on or after February 28, 2010. If such an issuer is required to file a preliminary proxy statement and expects to file its definitive proxy statement on or after February 28, 2010, then the preliminary proxy statement must be in compliance with the new proxy disclosure requirements, even if filed before February 28, 2010. If such an issuer files its 2009 Form 10-K

RR DONNELLEY

before February 28, 2010 and its proxy statement on or after February 28, 2010, the proxy statement must be in compliance with the new proxy disclosure requirements.

If the issuer's fiscal year ends before December 20, 2009, its 2009 Form 10-K and related proxy statement are not required to be in compliance with the new proxy disclosure requirements, even if filed on or after February 28, 2010. [Dec. 22, 2009]

Question 2

Question: If an issuer is not required to comply with the new disclosure requirements for its 2009 Form 10-K and related proxy statement, may it do so on a voluntary and discretionary basis?

Answer: Yes; provided, however, that an issuer may voluntarily comply with the Summary Compensation Table and Director Compensation Table amendments only if it also complies with all other Regulation S-K amendments adopted in the Proxy Disclosure Enhancements Release that apply to the form filed. An issuer may provide the other new disclosures without having to comply with all of the new requirements. [Dec. 22, 2009]

Question 3

Question: How does the February 28, 2010 effective date for the Regulation S-K amendments affect Securities Act and Exchange Act registration statements filed by a reporting issuer with a 2009 fiscal year that ends before December 20, 2009?

Answer: A reporting issuer with a 2009 fiscal year that ends before December 20, 2009 will not be required to comply with the Regulation S-K amendments until the filing of its Form 10-K for fiscal year 2010. As a result, any Securities Act or Exchange Act registration statements for such registrant filed before the 2010 Form 10-K is required to be filed would not be subject to the Regulation S-K amendments. [Dec. 22, 2009]

Question 4

Question: How does the February 28, 2010 effective date for the Regulation S-K amendments affect a new registrant, such as for an initial public offering or a first registration on Form 10?

Answer: If the new registrant first files its registration statement on or after December 20, 2009, compliance with the Regulation S-K amendments would be required for such registration statement in order for it to be declared effective on or after February 28, 2010. [Dec. 22, 2009]

EXECUTIVE COMPENSATION DISCLOSURE HANDBOOK

Question 5

Question: New Item 5.07 of Form 8-K is effective February 28, 2010. If the annual meeting of shareholders takes place on or after February 28, 2010, but the proxy statement for the meeting was mailed to shareholders before that date, are the results of the meeting subject to reporting pursuant to Item 5.07?

Answer: Yes. Any shareholder meeting that takes place on or after February 28, 2010 is subject to the new Form 8-K Item 5.07 reporting requirement. If the meeting takes place before February 28, 2010, an Item 5.07 Form 8-K is not required. [Dec. 22, 2009]

Question 6

Question: If the annual meeting of shareholders takes place before February 28, 2010, how should the results of the meeting be reported on Form 10-K or Form 10-Q, as applicable, if such form is due on or after February 28, 2010?

Answer: If the Form 10-K or Form 10-Q is due on or after February 28, 2010, the results of the meeting should be reported in the “Other Information” Item of each form, rather than in the “Submission of Matters to a Vote of Security Holders” Item, which will be rescinded from Form 10-K and Form 10-Q on February 28, 2010. [Jan. 20, 2010]

Question 7

Question: A reporting issuer with a fiscal year ending on or after December 20, 2009 files a Securities Act or Exchange Act registration statement on or after December 20, 2009. How does the February 28, 2010 effective date for the Regulation S-K amendments affect the registration statement?

Answer: In general, compliance with the Regulation S-K amendments would be required for such registration statement in order for it to be declared effective on or after February 28, 2010. However, if the registration statement is on Form S-3, it will incorporate by reference the issuer’s 2009 Form 10-K, for which compliance with the Regulation S-K amendments is addressed by Question 1. [Jan. 20, 2010]

<http://www.sec.gov/divisions/corpfin/guidance/pdetinterp.htm>

[THIS PAGE INTENTIONALLY LEFT BLANK]

Appendix E

Executive and Director Compensation Tables (including examples of optional supplemental compensation tables)

Required Executive and Director Compensation Tables

[FISCAL YEAR] 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 (\$)
PEO									
PFO									
A									
B									
C									

[FISCAL YEAR] GRANTS OF PLAN-BASED AWARDS TABLE

Name	Grant Date	Approval Date	Number of Non-Equity Incentive Plan Units Granted (#)	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 of Securities Underlying Options (#)	Exercise or Base Price of Option Awards (\$/ Sh)	Closing Price on Grant Date (\$/ Sh)
				Threshold (\$)	Target (\$)	Maximum (\$)	Threshold (#)	Target (#)	Maximum (#)				
PEO													
PFO													
A													
B													
C													

* Columns indicated by dashes are supplementary columns that companies must include to the extent applicable.

[FISCAL YEAR] OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END TABLE

Name	Option Awards					Stock Awards			
	Number of Securities Underlying Unexercised Options (#)	Number of Securities Underlying Unexercised Options (#)	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 (\$)
	Exercisable	Unexercisable							
PEO									
PFO									
A									
B									
C									

[FISCAL YEAR] OPTION EXERCISES AND STOCK VESTED TABLE

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 (\$)
PEO				
PFO				
A				
B				
C				

[FISCAL YEAR] PENSION BENEFITS TABLE

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

[FISCAL YEAR] NONQUALIFIED DEFERRED COMPENSATION TABLE

Name	Executive Contributions in Last Fiscal Year (\$)	Registrant Contributions in Last Fiscal Year (\$)	Aggregate Earnings in Last Fiscal Year (\$)	Aggregate Withdrawals / Distributions (\$)	Aggregate Balance at Last Fiscal Year-End (\$)
PEO					
PFO					
A					
B					
C					

[FISCAL YEAR] DIRECTOR COMPENSATION TABLE

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							

Optional Supplemental Compensation Tables

[FISCAL YEAR] ALL OTHER COMPENSATION TABLE

Name	Year	Perquisites and Other Personal Benefits (\$)	Tax Reimbursements (\$)	Insurance Premiums (\$)	Company Contributions to Retirement and 401(k) Plans (\$)	Severance Payments / Accruals (\$)	Change in Control Payments / Accruals (\$)	Total (\$)
PEO								
PFO								
A								
B								
C								

[FISCAL YEAR] PERQUISITES TABLE

Name	Year	Personal Use of Company Car/Parking	Financial Planning/ Legal Fees	Club Dues	Executive Relocation	Total Perquisites and Other Personal Benefits
PEO						
PFO						
A						
B						
C						

[FISCAL YEAR] POTENTIAL PAYMENTS UPON TERMINATION OR CHANGE IN CONTROL TABLE

Name	Benefit	Before Change in Control Termination w/o Cause or for Good Reason	After Change in Control Termination w/o Cause or for Good Reason	Voluntary Termination	Death	Disability	Change in Control
PEO	[type of benefit]* Total value:						
PFO	[type of benefit]* Total value:						
A	[type of benefit]* Total value:						
B	[type of benefit]* Total value:						
C	[type of benefit]* Total value:						

* List each applicable type of benefit in a separate row, e.g., severance pay, bonus payment, stock option vesting acceleration, health care benefits continuation, relocation benefits, outplacement services, financial planning services or tax gross-ups.

[THIS PAGE INTENTIONALLY LEFT BLANK]

Appendix F

Information Regarding Confidential Treatment

As discussed in this handbook, companies must generally disclose in the CD&A, and in the narrative following the Summary Compensation Table and the Grants of Plan-Based Awards Table, any performance target levels or other factors or criteria that constitute material terms of compensation arrangements for named executive officers. However, a company may omit the specific performance target levels or other factors or criteria if:

- the specific performance target levels or other factors or criteria involve confidential and sensitive information;
- disclosing such information will result in competitive harm to the company; and
- the company has not publicly disclosed the target levels elsewhere.

In evaluating whether disclosure of specific performance target levels or other factors or criteria will result in competitive harm, companies must apply the same standard that applies to requests for confidential treatment of confidential trade secrets or confidential commercial or financial information that is otherwise required to be disclosed in documents filed with the SEC. Companies do not have to actually make a confidential treatment request to the SEC to omit specific performance target levels or other factors or criteria.

Rule 80, adopted under the FOIA, sets forth the standards applicable to the SEC's consideration of a request for confidential treatment. Subsection (b)(4) of Rule 80 states that the SEC will generally not publish or make available "trade secrets and commercial or financial information obtained from a person and privileged or confidential . . ." 17 C.F.R. §200.80(b)(4) (2002). In a nutshell, to support a company's position that the specific performance target levels or other factors or criteria should be kept confidential, the company must be able to show that it has otherwise kept that information confidential, that disclosing the information would cause competitive harm to the company and that this risk of harm outweighs investors' need to know the information. See the SEC Division of Corporation Finance Staff Legal Bulletin No. 1 (with Addendum) "Confidential Treatment Requests," which is located on the SEC's Web site at <http://www.sec.gov/interp/legalslbcflr.htm>, for the full text of the SEC's requirements for confidential treatment of information otherwise required to be disclosed in SEC filings.

RR DONNELLEY

If a company omits specific performance target levels or other factors or criteria, the SEC may request by comment letter that the company demonstrate that the omitted information meets both the competitive harm and confidentiality tests. A company's response to the SEC's comment letter must request that the company's response letter be kept confidential. See the SEC's Confidential Treatment Procedure Under Rule 83, which is located on the SEC's Web site at <http://www.sec.gov/foia/confcreat.htm>, for the SEC's procedures for requesting confidential treatment of comment letter responses.

If the SEC ultimately determines that the omitted information does not meet the competitive harm and confidentiality tests, the company will be required to publicly disclose the information.

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

Printed by RR Donnelley

GLOBAL PRODUCTS AND SERVICES

books . business communication services . business process outsourcing . catalogs . commercial print . direct mail
directories . distribution, logistics, print fulfillment, and kitting . document outsourcing and management . e-business solutions
financial printing and communications . forms, labels and office products . global print and packaging supply chain services
magazines . premedia technologies . proprietary digital print technologies . real estate services . retail inserts
RFID and barcoding . supply chain management solutions . translation services

RR DONNELLEY

Corporate Headquarters
111 South Wacker Drive
Chicago, IL 60606-4301
U.S.A.

1.800.424.9001

www.financial.rrd.com
www.venue.rrd.com
HBEXCOMP0610
Copyright © 2010 R. R. Donnelley & Sons Company.
All rights reserved.