

**SEC TO OVERHAUL EXECUTIVE COMPENSATION DISCLOSURE RULES**

On January 17, 2006, the Securities and Exchange Commission voted unanimously to propose for public comment new disclosure requirements for executive compensation and related matters. The proposed regulations will likely not be published for a week or so, and following their release there will be a 60-day comment period. The proposed regulations would refine and reorganize the current tabular disclosure and combine it with improved narrative disclosure to produce a more understandable, transparent and comprehensive discussion of executive compensation practices for public companies.

The following is a preliminary outline and discussion of certain new disclosure requirements expected to be included in the proposed regulations based on statements made by the SEC Commissioners and staff and a press release issued by the SEC. A more detailed analysis of the proposed regulations will follow once they are published.

**Impact on 2006 Proxy Season.**

Although the proposed regulations will not be effective until next proxy season, the proposing release is expected to provide interpretive guidance for this season and encourage early adoption of some of the new narrative disclosure requirements.

**Revisions to Executive Compensation Disclosure.****1. New Compensation Discussion and Analysis Section.**

This section will require a narrative discussion of a company's compensation programs and objectives. Companies will be required to (i) indicate specifically what their compensation programs are intended to reward, (ii) identify the elements of compensation included in their compensation programs, and (iii) indicate why they chose to pay each element, how they determined the amount for each element, and how each element fits into their overall objective. This section will replace the Compensation Committee Report on Executive Compensation and the Performance Graph currently required. The new discussion and analysis will be considered disclosure by the reporting company, not the company's compensation committee. Another change from prior practice is that this new section will be deemed "filed" rather than "furnished" to the SEC, which means that it will be subject to the same securities law liability as other documents and statements filed with the SEC, and will be covered by the CEO and CFO certifications required for periodic filings.

**2. Summary Compensation Table and Supplemental Tables.**

The composition of the named executive officers will change to include the CFO, regardless of his or her compensation level. The named executive officers will consist of the CEO, the CFO

and the three other most highly compensated executive officers, based on *total* compensation.\* Compensation disclosure will also be required for up to three other employees whose compensation exceeds that of any of the named executive officers. The disclosure for these three additional employees is expected to include compensation amounts and job descriptions but not the identity of the individuals.

The Summary Compensation Table will be revised as follows and will require disclosure for each of the last three fiscal years.

- A new total compensation column will be required, which will aggregate the amounts in all other columns in the Summary Compensation Table.
- Annual Salary and Bonus columns (as currently required) will remain.
- A new column will be required indicating the grant date dollar value for all equity-based awards, including options and similar instruments, computed pursuant to FAS 123R.
- A new column disclosing cash incentive awards (not tied to the value of the company's stock) will require disclosure of the dollar value of such awards in the year the performance measures are satisfied and payment earned.
- The "Other Annual Compensation" column will be deleted and collapsed into the "All Other Compensation" column, pursuant to which *all* other compensation not required to be reported in any of the other columns will be reported. This "catch-all" column will include disclosure of the yearly increase in the actuarial value of compensation under all defined benefit plans, perquisites, gross-up payments, and all earnings on non-qualified deferred compensation (rather than just the above-market earnings, as is currently required). The perquisites threshold will be lowered to an aggregate of \$10,000 before disclosure is required and all perquisites must be itemized, rather than only those that exceed 25% of all perquisites, as currently required.

Two new supplemental tables to the Summary Compensation Table will be required. The "Grants of Performance-Based Awards Table" will cover grants of performance-based awards, whether or not equity-based, and the "Grants of All Other Equity Awards Table" will cover grants of equity-based awards that are not performance-based.

### 3. New Disclosure for Outstanding Equity Holdings.

Two additional tables will be required for disclosure of outstanding equity-based awards. The "Outstanding Equity Awards at Fiscal Year-End Table" will require disclosure of outstanding equity awards, representing amounts that may be received by the named executive officers in the future. This table is likely to require prominent disclosure of restricted stock holdings in a tabular format, rather than footnote disclosure as is currently required. The "Option Exercises and Stock Vested Table" will require disclosure of amounts realized on equity compensation during the last fiscal year, including the value realized upon the exercise of options and the vesting of restricted stock.

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\* Currently, determination of the most highly compensated executive officers is based solely on salary and bonus.

4. Retirement and Post-Employment Compensation Disclosure.

- New Retirement Plan and Benefits Table. The existing Pension Plan Table will be replaced with a new table requiring disclosure of potential payments to named executive officers under all retirement plans. Companies will be required to quantify such payments in this table rather than referring the reader back to the annual compensation of the named executive officers set forth in the Summary Compensation Table, as is currently required, to calculate the value of potential future payments.
- New Nonqualified Defined Contribution and Other Deferred Compensation Plans Table. A new table will be required to disclose nonqualified deferred compensation, including year-end balances, executive contributions, company contributions, earnings and withdrawals for the last fiscal year.
- Other Post-Employment Benefits. The current narrative disclosure of payments and benefits on termination of employment or in connection with a change in control will be enhanced to require quantification of all such payments, including estimates based on disclosed assumptions where necessary, and to require specific disclosure of perquisites.

5. Director Compensation Table.

A new table will be required to disclose all director compensation in a tabular format similar to the Summary Compensation Table. This table will require disclosure of compensation for the last fiscal year only.

**Related Party Transactions; Board and Committee Composition and Meetings; Director Independence Disclosure.**

1. Related Party Transactions.

Changes to related party transaction disclosure will attempt to simplify current disclosure by using a more principles-based approach. Additional disclosure will be required regarding company policies and procedures for approving related party transactions. The threshold for disclosure will be raised from \$60,000 to \$120,000.

2. Board and Committee Composition and Meetings.

A new Regulation S-K Item 407 will consolidate current corporate governance-related disclosure regarding board meetings and committees, and specific disclosure about nominating and audit committees, into one item. Similar disclosure will also be required regarding compensation committees and a narrative description of their procedures for determining director and executive compensation.

3. Director Independence.

New Item 407 will also require (i) disclosure of the independent status of the company's directors and nominees for director, including any relationships that were considered when determining a director's independent status and (ii) identification of the members of the audit, nominating and compensation committees who are not independent.

**Changes to Form 8-K.**

The proposed regulations will modify and clarify the disclosure of compensation arrangements and disclosure relating to resignations and terminations of executive officers required pursuant to Form 8-K. The proposed regulations will also consolidate all Form 8-K disclosure regarding employment arrangements under a single item.

**Plain English.**

Executive compensation disclosure will now be required to conform to the SEC's Plain English principles in organization, language and design.

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The foregoing is a summary of the principal provisions of the proposed rules. If you wish to obtain additional information regarding these proposed rules, please contact Frank A. Daniele (212-728-8216, fdaniele@willkie.com), Stephen T. Lindo (212-728-8242, slindo@willkie.com), J. Pasco Struhs (212-728-8109, pstruhs@willkie.com), Peter J. Allman (212-728-8101, pallman@willkie.com), Peter E. Haller (212-728-8524, phaller@willkie.com), David E. Rubinsky (212-728-8635, drubinsky@willkie.com) or the partner with whom you regularly work.

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