

**SEC UPDATES GUIDANCE ON EXECUTIVE COMPENSATION DISCLOSURE**

The Securities and Exchange Commission (the “SEC”) has updated its interpretive guidance on the executive compensation disclosure required by Item 402 of Regulation S-K, in the form of both new and revised Q&A-based Compliance & Disclosure Interpretations (“C&DIs”). (These C&DIs may be found at <http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm>.) While the updated guidance deals primarily with technical issues, the following principles seemed most notable:

- *Compensation Years Subject to Disclosure* – Notwithstanding the general rule that a “new” named executive officer’s compensation for prior years during which he was not a named executive officer need not be disclosed, the updated C&DIs provide that where an individual was a named executive officer in Years 1 and 3, but not in Year 2, his Year 2 compensation must nonetheless be disclosed in the Year 3 proxy.
- *Timing of Tax Gross-up Payments Relating to Perquisites* – Similar to the treatment of bonuses, where a named executive officer receives a tax reimbursement payment in connection with perquisites received during a given year, such tax reimbursement payment is reportable as “all other compensation” in the same year as the perquisites to which such payment relates, even if such payment is made in the following year.
- *Grant Date Fair Value Determination (Different Performance Levels)* – The last column in the Grants of Plan-Based Awards Table requires disclosure of a stock or option award’s grant date fair value. In the updated C&DIs, the SEC clarified that for a performance-based award that pays out at different levels based upon actual performance results, calculation of the grant date fair value should assume maximum performance.
- *Grant Date Fair Value Determination (Timing of Establishment of Performance Targets)* – An award’s grant date and grant date fair value are determined as provided under FAS 123(R). The SEC clarified that where the target number of shares is allocated among several performance periods of a long-term award, the grant date may be different depending on when the target number of shares is established. Where each performance period’s target is established up front, the initial grant date is the grant date for the entire award, and the grant date fair value is measured at that time. If each performance period’s target is established at the start of each such respective performance period, the first date of each such performance period will be deemed the grant date for the respective tranche.
- *Disclosure of Life Insurance Proceeds* – The disclosure rules require that company-funded premiums for a life insurance policy on behalf of a named executive officer be reported in the All Other Compensation column of the Summary Compensation Table. Furthermore, a description and quantification of the estimated insurance proceeds paid upon a named executive officer’s death must be reported in the section on potential payments upon a termination of employment or a change in control. To avoid duplicative disclosure, however, the updated C&DIs provide that actual life insurance proceeds received need not be taken into account in determining the compensation to be reported in the Summary Compensation Table for the year of the executive’s death (or in determining whether the executive is a named executive officer for such year).

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If you have any questions concerning the foregoing or would like additional information, please contact David E. Rubinsky (212-728-8635, drubinsky@willkie.com), J. Pasco Struhs (212-728-8109, pstruhs@willkie.com), Jason R. Ertel (212-728-8120, jertel@willkie.com), or the Willkie attorney with whom you regularly work.

Willkie Farr & Gallagher LLP is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our facsimile number is (212) 728-8111. Our website is located at [www.willkie.com](http://www.willkie.com).

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