

**SEC ISSUES GUIDANCE ON THE EFFECTIVE DATES OF THE  
NEW EXECUTIVE COMPENSATION DISCLOSURE RULES**

On Tuesday, December 22, 2009, the Securities and Exchange Commission (the “SEC”) published guidance in the form of Compliance and Disclosure Interpretations (“C&DIs”) regarding the effective dates of the recently released final amendments to the compensation-related disclosure requirements set forth in Items 402 and 407 of Regulation S-K. (See our memorandum of December 17, 2009, regarding the final amendments, at [http://www.willkie.com/files/tbl\\_s29Publications/FileUpload5686/3166/SEC%20Finalizes%20Amendments%20To%20Executive%20Compensation%20Rules.pdf](http://www.willkie.com/files/tbl_s29Publications/FileUpload5686/3166/SEC%20Finalizes%20Amendments%20To%20Executive%20Compensation%20Rules.pdf).) These C&DIs may be found at <http://www.sec.gov/divisions/corpfin/guidance/pdetinterp.htm>.

The final amendments generally become effective on February 28, 2010, and the revisions to the rules on disclosure of equity compensation are further limited to fiscal years ending on or after December 20, 2009. The following is a brief summary of the material clarifying guidance provided by the C&DIs.

- Interaction Between Effective Dates. Clarifying the interaction between the two effective dates in the final amendments, the C&DIs provide that both effective dates must be considered in determining whether compliance with the new rules is required. For example, a registrant need not comply with the new disclosure rules if its Form 10-K and definitive proxy statement are filed prior to February 28, 2010, even if the registrant’s fiscal year ended on or after December 20, 2009. Similarly, to the extent the registrant’s fiscal year ended prior to December 20, 2009, the new rules need not be complied with even if the filing with respect to such year is made after February 28, 2010.
- Preliminary Filings. The filing date of a registrant’s definitive proxy statement is the relevant date for determining whether compliance with the new rules is required. As such, even if a preliminary proxy statement is filed prior to February 28, 2010, if a registrant with a fiscal year ending on or after December 20, 2009, expects to file its definitive proxy statement on or following February 28, 2010, the new rules must be complied with in both the preliminary proxy statement and the definitive proxy statement.
- New Registrants Filing on or After December 20, 2009. If a new registrant first files its registration statement on or after December 20, 2009, such registration statement must comply with the new rule in order to be declared effective on or after February 28, 2010.

- Voluntary Compliance. The SEC expressly blessed voluntary compliance with the new rules even if such compliance is not required of a given registrant; however, if the registrant complies voluntarily with the revised equity award disclosure rules, it must also comply with the rest of Regulation S-K as amended by the final amendments. Registrants may choose to comply selectively with the other portions of the new rules, provided they do not comply with the new equity award disclosure rules.

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