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New York • Chicago • Los Angeles • San Francisco

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**PLANNING FOR THE NEW PROXY DISCLOSURE RULES
- PRACTICAL GUIDANCE -**

On August 11, the Securities and Exchange Commission released new rules for the disclosure of executive and non-employee director compensation. The new rules, which are significantly different than the rules that have been in place since 1992, become effective for proxy statements filed on or after December 15, 2006 for fiscal years ending on or after that date^{1,2}. Compliance with the new rules is likely to be a challenging task, requiring coordination among multiple internal and external resources. Although release of the annual proxy statements is almost six months away for calendar year companies, we are advising companies to get an early start.

The purpose of this letter is to begin identifying the issues to be addressed and the data sources that will likely be needed when preparing executive compensation disclosure under the new rules. Following are illustrative action lists for those who will be responsible for drafting the Compensation Discussion & Analysis and preparing the Summary Compensation Table, supporting tables and narratives. An overview of the new disclosure requirements of the major long-term incentive grant types is attached as an Exhibit.

Compensation Discussion & Analysis

The Compensation Discussion & Analysis (CD&A) leads off the executive compensation disclosure in the annual proxy statement. Included in the CD&A will be a general overview of the company's compensation philosophy and rationale for compensation reported in the tables and other narratives, as well as enhanced disclosure related to timing and pricing of option grants in certain circumstances³.

While the SEC has provided a list of six specific items that must be addressed and 15 additional topics that may be addressed, the SEC has made it clear that the list is not all inclusive. The "principles-based" CD&A is likely to be the most difficult and time-consuming element of the proxy statement to prepare.

¹ Refer to our letter dated August 14, 2006 http://www.fwcook.com/alert_letters/8-14-06_Heads-up_On_Executive_Compensation_Disclosure.pdf and, as well as more detailed summaries, which are available on various Internet sites such as CompensationStandards.com

² On September 6, 2006, the SEC staff announced that the SEC would allow early compliance with the new executive compensation disclosure requirements. The new rules may be applied in proxy statements filed on or after November 7, 2006.

³ For example, disclosure would be required if the company has a program, plan or practice to time the grant of stock options to executives in coordination with material non-public information

The following are suggested first steps in the drafting of the CD&A:

- Determine which department will be primarily responsible for drafting the CD&A
 - In most companies, preparation of the CD&A will be the responsibility of the human resources/executive compensation and/or legal departments
 - Coordination among HR, legal and finance staff will be needed
- Review the company's statement of executive compensation philosophy to ensure that it is current and revise as appropriate to reflect changes
 - A well-crafted executive compensation philosophy statement should include the following:
 - Objectives of the executive compensation program
 - Elements that the compensation program is designed to reward (e.g., improvements in short- and long-term operating performance and increases in company stock price)
 - Comparison group(s) used to benchmark executive compensation levels and opportunities
 - Targeted competitive positioning relative to the comparison group at various levels of performance (e.g., median pay for median performance, below-median pay for below-median performance, and above-median pay for above-median performance)
 - Elements of the compensation program (e.g., salary, bonus, long-term incentives, and benefits and perquisites) and the objectives of each element
 - Executive stock ownership philosophy (e.g., share retention and ownership expectations, and policies on hedging or engaging in derivative transactions involving company stock)
- Review compensation committee meeting minutes and presentations to the committee for background and insight on compensation actions relating to the named executive officers (NEOs). For example:
 - What benchmarking activities were undertaken during the past year and which companies were used in the benchmarking exercise?

- Why were specific compensation elements selected (e.g., restricted stock vs. stock options)?
- Why were various compensation decisions made (e.g., what factors determined amounts earned under the annual bonus plan) and why were various design features selected (e.g., single- vs. double-trigger vesting on LTI awards in the event of a change in control)?
- Was discretion used by the committee to increase or decrease compensation amounts based on company and/or individual performance? If so, how and why?
- Do past actions or actions taken after the close of the fiscal year provide a context for current year disclosure?
- Are there material differences in compensation policies and decisions among the NEOs?
- What is the role of executive officers in the executive compensation decision process?
- Review accounting and tax implications of material compensation elements and revisit the company's policy with respect to compliance with Section 162(m) of the Internal Revenue Code (i.e., the \$1 million annual cap on non-performance-based pay)
 - Determine whether all potential NEOs are covered under Section 162(m) plans. If potential NEOs were not included in current-year Section 162(m) plans, quantify the impact of non-compliance
 - To maximize company tax deductions in future years, consider including all executive officers in Section 162(m)-compliant compensation plans
 - Additionally, work with legal counsel to determine whether any additional disclosure may be required regarding strategies for maximizing the company's deductions under Section 162(m) (e.g., deferral of amounts earned until executive is no longer subject to Section 162(m))
- Work with legal counsel to determine which performance standards will need to be disclosed and which can be kept confidential
 - To the extent that performance goals for Section 162(m) compliance differ from goals used by the committee in applying negative discretion, determine whether disclosure standards relate to the Section 162(m) goals or the goals used in applying negative discretion
- Determine whether a recapture policy is in place or whether any of the compensation programs provide for recapture of payments in the event of a financial restatement

- If no recapture provisions are currently in place, consider whether a policy should be developed for future awards
- Review policies and procedures relating to stock option granting practices (e.g., determination of grant date of annual, new hire and special awards, definition of fair market value, etc.)
 - Additionally, review stock option grant delegation policies and procedures to ensure that adequate internal controls are in place with regard to awards made by anyone other than the compensation committee

Summary Compensation Table

The Summary Compensation Table (SCT) highlights information on compensation earned and/or granted during the past three years⁴. Following is an illustrative action list for preparing the SCT:

- Identify executives who could be included in the SCT by virtue of role (i.e., CEO and CFO) or “total compensation⁵” level to facilitate data collection and track future decisions
 - Note that greater year-over-year variability in the three NEOs other than the CEO and CFO is expected⁶, and as a result, companies should treat each executive officer as if he will be one of the three other NEOs when making compensation decisions
- Inventory compensation plans and programs, including direct (e.g., salary, bonus and long-term incentives), as well as indirect compensation (e.g., special benefits, perquisites, tax reimbursements, defined benefit plan accruals and company contributions, payouts under severance plans, etc.)
 - The new rules specifically state that all compensation must be disclosed; therefore, special attention should be paid to identifying “perquisites” and determining their incremental cost to the company

⁴ Under the new rules, companies will be permitted to “build forward” compensation disclosed in the SCT (i.e., for 2007 proxies, companies will disclose 2006 compensation only; there is no need to reformat compensation previously disclosed for 2004 and 2005 under the old rules).

⁵ Total compensation for this purpose includes all forms of compensation (salary, bonus, value of equity awards, perquisites, etc.) other than change in actuarial present value of pension benefits and above-market or preferential interest on nonqualified deferred compensation.

⁶ Greater variability in the three other NEOs is expected since total compensation, inclusive of equity awards, will be used to determine the executives included in the SCT. For example, a new hire sign-on grant of restricted stock to buy-out forfeited amounts from a prior employer could result in an executive officer who would not be among the other three highest-paid based on the company’s compensation structure being one of the other three highest-paid executives in the year of hire.

- Coordinate with finance to obtain (1) grant date fair values for all equity grants to NEOs and (2) information on incremental compensation expense if any outstanding equity awards have been modified or repriced during the year
- Identify whether any compensation includible in the SCT has been deferred
- Identify whether any deferred compensation plans provide above-market or preferential returns
- Note that the SCT and the other tables described on the following pages must be followed by a narrative description of material factors necessary to understand the information in the table
 - Many of the specifics to be covered in the narratives will also require the gathering of additional information

Grants of Plan-Based Awards Table

The Grants of Plan-Based Awards table provides additional information on compensation reported in the “stock awards,” “option awards” and “non-equity plan compensation” columns of the SCT. Following is an illustrative action list for preparing this table:

- Prepare a summary of the material terms of all plan-based awards (i.e., dividend eligibility, vesting schedule, performance period and performance criteria)
 - Plan-based awards include equity and cash awards under annual and multi-year incentive plans
 - Note that most annual bonus plans for NEOs will be covered in this table, unless the SEC issues additional guidance to the contrary
- Review with legal counsel the required disclosure of threshold, target and maximum awards
 - To the extent that award opportunities for Section 162(m) compliance differ from award opportunities used by the Committee in applying negative discretion, determine whether disclosure standards relate to the Section 162(m) opportunities or the opportunities used in applying negative discretion
- Review option grants made during the past year to determine whether any options were granted on a date that does not coincide with the date of compensation committee approval (i.e., “back-dating”) and/or have an exercise price that is less than the closing price on grant date (which could occur if “fair market value” for option awards is defined in any manner other than closing price on the date of grant – for example, the average of the high and low price on grant date, the prior day closing price, etc.)

- Companies that define “fair market value” in a manner other than closing stock price on grant date, should consider changing the definition⁷

Outstanding Equity Awards at Fiscal Year-End and Option Exercises and Stock Vested Tables

The Outstanding Equity Awards and Option Exercises and Stock Vested tables provide information on compensation that may be realized in the future and amounts realized from prior equity awards during the past year. Following is an illustrative action list for preparing these tables:

- Coordinate with the company’s corporate secretary or external stock plan administrator to establish a process for:
 - Providing fiscal year-end information on the number of stock options (on a grant-by-grant basis) and aggregate restricted shares and performance shares outstanding for each executive
 - Tracking the number of options exercised and related gains, as well as number and value of restricted/performance shares that vested/were earned during the year
- Work with finance to determine the number of performance-based shares or options reportable in the Outstanding Equity Awards table based on performance to date

Pension Benefits Table

The Pension Benefits table presents the actuarial present value of each of the NEO’s accumulated benefits from qualified and non-qualified defined benefit plans. Following is an illustrative action list for preparing this table:

- Inventory all defined benefit and cash balance retirement plans, including tax-qualified plans, “restoration” plans, supplemental executive retirement plans (SERPs) and executive employment agreements
 - Prepare a summary of the material terms of each plan (e.g., normal and early retirement payment and benefit formulas and eligibility standards, elements of compensation included in the formulas, purposes of each plan, etc.)
 - Note that a break-out of each defined benefit program, including number of years of credited service, present value of accumulated benefit and any payments during the last fiscal year, must be disclosed

⁷ Legal counsel should be consulted prior to amending any stock incentive plans

- Identify instances where the executive’s credited service differs from actual years of service with the company and quantify the increase in accumulated pension benefits due to the extra years of credited service
- Coordinate with actuaries to determine assumptions needed for the year-end calculation of the present value of accumulated benefits

Nonqualified Deferred Compensation Table

The Nonqualified Deferred Compensation table presents year-end balances and executive contributions, company contributions, all earnings (whether above-market interest, preferential earnings or “regular” interest and earnings) and withdrawals for the year. Following is an illustrative action list for preparing this table:

- Inventory all nonqualified defined contribution and deferred compensation and prepare a summary of the material terms of each plan (e.g., compensation eligible for deferral, interest crediting methods, and terms relating to payout, withdrawals and other distributions)
- Work with internal or external administrators to establish a process for tracking and quantifying all executive and company contributions, aggregate earnings over the last fiscal year, aggregate withdrawals/distributions and aggregate balance at year end
- Consult with legal counsel as to the time period covered by the footnote disclosure requirement relating to amounts included in the aggregate balance at year-end that were previously disclosed in the SCT
 - I.e., is this a build-forward approach similar to the SCT or does this apply to amounts disclosed in the SCT prior to the new rules?

Potential Termination and Change in Control Narrative

Information on estimated amounts, including benefits and perquisites, that each NEO would receive on termination (i.e., resignation, severance, retirement or constructive termination, or in connection with a change in control (CIC)) will be included in the Potential Termination and Change in Control Payments narrative. Following is an illustrative action list for preparing this narrative:

- Inventory all CIC and non-CIC severance plans and policies, as well as executive employment agreements, and prepare a summary of the material terms of each plan or arrangement (e.g., circumstances that trigger payments, payments and benefits under various termination scenarios, existence of restrictive covenants)
- Quantify estimated payouts under various termination scenarios. Coordination with external parties will likely be necessary to estimate CIC-related excise tax payments and pension benefits (if applicable)

Summary

Preparation of executive compensation disclosure under the new rules is expected to be a time- and labor-intensive project, particularly for 2007 proxy statements. Companies should begin preparing as soon as possible. The action lists on the preceding pages are intended to help guide the data collection process, but are not all inclusive.

Given the magnitude of the changes in the proxy disclosure rules, we suggest beginning compensation committee education during the fourth quarter of 2006 and we are aware of many companies that have already initiated the process. Possible agenda items include an overview presentation of the new rules, as well as review of a draft CD&A and mock-ups of the tables. Additional compensation committee meetings may be necessary for education, discussion and finalization of the proxy disclosure materials.

This letter is intended to alert compensation professionals about developments that may affect their companies, and should not be considered or relied upon as legal advice. Specific questions about the applicability of the final SEC rules to proxy disclosure of compensation of executives and directors should be discussed with appropriate counsel. General questions applicable to the final rules on proxy disclosure of executive and director compensation may be directed to Erin Bass-Goldberg at (610) 527-1049 or by email at ebassgold@fwcook.com. This letter and other published materials are available on our website, www.fwcook.com.

OVERVIEW OF NEW PROXY DISCLOSURE RULES FOR MAJOR LONG-TERM INCENTIVE GRANT TYPES

Award Type	Proxy Disclosure			
	At Grant	Prior to Vesting /Earnout	Upon Completion of Requirements	
			Performance	Service
Time-Vesting Stock Options	<p><u>Summary Compensation Table (SCT)</u> - “fair value” on grant date as determined under FAS 123R.</p> <p><u>Grants of Plan-Based Awards Table</u> - # of option awards and exercise price.</p> <ul style="list-style-type: none"> • If exercise price is less than closing price on grant date, disclosure of closing price on grant date will also be reported, along with a description of the methodology used for determining the exercise price. • If grant date is different than the date that the options were approved by the committee/board, disclosure of the date that the options were approved will also be required. <p>Narrative disclosure of vesting schedule and dividend-eligibility is also required.</p>	<p><u>Outstanding Equity Awards Table</u> - # of unexercised, <i>unvested</i> option awards, along with option exercise price and expiration date (on an award-by-award basis).</p> <p>Narrative disclosure of vesting schedule is also required.</p>	Not Applicable	<p><i>Prior to Exercise:</i> <u>Outstanding Equity Awards Table</u> - # of unexercised, <i>vested</i> option awards, along with option exercise price and expiration date (on an award-by-award basis).</p> <p>Narrative disclosure of vesting schedule is also required.</p> <p><i>After Exercise:</i> <u>Option Exercises and Stock Vested Table</u> - # of options exercised and value realized upon exercise.</p>

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Award Type	Proxy Disclosure			
	At Grant	Prior to Vesting /Earnout	Upon Completion of Requirements	
			Performance	Service
Performance-Vesting Stock Options	<p><u>SCT</u> - “fair value” on grant date as determined under FAS 123R.</p> <p><u>Grants of Plan-Based Awards Table</u> - # of option awards that may be earned at threshold, target and maximum, as well as exercise price⁸.</p> <ul style="list-style-type: none"> • If award provides for a single payout, report as target. • If target is not determinable, a representative amount based on the prior fiscal year’s performance must be disclosed. <p>Narrative disclosure of earn-out schedule/formula, vesting conditions, and dividend eligibility is also required.</p> <p>Note that a description of the target performance goals or, if goals are considered to be confidential, the difficulty of achieving target performance, will be required in the CD&A.</p>	<p><u>Outstanding Equity Awards Table</u> – # of unexercised, <i>unearned</i> option awards, along with option exercise price and expiration date (on an award-by-award basis).</p> <ul style="list-style-type: none"> • # of unearned awards based on achieving threshold or next highest performance level (target or maximum) that exceeds prior year performance. • If award provides for a single payout, report that amount. • If target is not determinable, a representative amount based on the prior fiscal year’s performance must be disclosed. <p>Narrative disclosure of vesting schedule is also required.</p>	<p><u>Outstanding Equity Awards Table</u> – for awards with service requirements following completion of performance requirements, # of unexercised, <i>unvested</i> option awards, along with option exercise price and expiration date (on an award-by-award basis).</p> <p>Narrative disclosure of vesting schedule is also required.</p>	Same as Time-Vesting Options

⁸ Refer to Time-Vesting Options for disclosure if exercise price is less than closing stock price on grant date or options were granted subsequent to committee/board approval

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Award Type	Proxy Disclosure			
	At Grant	Prior to Vesting /Earnout	Upon Completion of Requirements	
			Performance	Service
Restricted Stock (Units)	<p><u>SCT</u> - “fair value” on grant date as determined under FAS 123R.</p> <p><u>Grants of Plan-Based Awards Table</u> - # of stock awards granted.</p> <p>Narrative disclosure of vesting schedule and dividend-eligibility is also required.</p>	<p><u>Outstanding Equity Awards Table</u> – total # of unvested shares (units) and aggregate market value of such shares (units) as of fiscal year end.</p> <p>Narrative disclosure of vesting schedule is also required.</p>	Not Applicable	<p><u>Option Exercises and Stock Vested Table</u> - # of shares that vested and the aggregate value realized upon vesting.</p> <p>Narrative disclosure of amounts deferred and terms of deferral is also required.</p>

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Award Type	Proxy Disclosure			
	At Grant	Prior to Vesting /Earnout	Upon Completion of Requirements	
			Performance	Service
<p>Stock-Denominated Multi-Year Performance Award (“performance shares”)</p>	<p><u>SCT</u> - “fair value” on grant date as determined under FAS 123R.</p> <p><u>Grants of Plan-Based Awards Table</u> - # of stock awards that may be earned at threshold, target and maximum.</p> <ul style="list-style-type: none"> • If award provides for a single payout, report as target. • If target is not determinable, a representative amount based on the prior fiscal year’s performance must be disclosed. <p>Narrative disclosure of earn-out schedule/formula, vesting conditions, and dividend eligibility is also required.</p> <p>Note that a description of the target performance goals or, if goals are considered to be confidential, the difficulty of achieving target performance, will be required in the CD&A.</p>	<p><u>Outstanding Equity Awards Table</u> – # of <i>unearned</i> stock awards and aggregate market value of such shares as of fiscal year end.</p> <ul style="list-style-type: none"> • # of unearned awards based on achieving threshold or next highest performance level (target or maximum) that exceeds prior year performance. • If award provides for a single payout, report that amount. • If target is not determinable, a representative amount based on the prior fiscal year’s performance must be disclosed. <p>Narrative disclosure of vesting schedule is also required.</p>	<p><u>Outstanding Equity Awards Table</u> - for awards with service requirements following completion of performance requirements, total # of unvested restricted shares and aggregate market value of such shares as of fiscal year end.</p> <p>Narrative disclosure of vesting schedule is also required.</p>	<p><u>Option Exercises and Stock Vested Table</u> - # of shares that vested and the aggregate value realized upon vesting.</p> <p>Narrative disclosure of amounts deferred and terms of deferral is also required.</p>

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Award Type	Proxy Disclosure			
	At Grant	Prior to Vesting /Earnout	Upon Completion of Requirements	
			Performance	Service
Cash-Denominated Multi-Year Performance Award (“performance units”)	<p><u>Grants of Plan-Based Awards Table</u> – dollar value of awards that may be earned at threshold, target and maximum.</p> <ul style="list-style-type: none"> • If award provides for a single payout, report as target. • If target is not determinable, a representative amount based on the prior fiscal year’s performance must be disclosed. <p>Narrative disclosure of earn-out schedule/formula and vesting conditions is also required.</p> <p>Note that a description of the target performance goals or, if goals are considered to be confidential, the difficulty of achieving target performance, will be required in the CD&A.</p>	Not required.	<p><u>SCT</u> – dollar value of amounts <u>earned</u>, regardless of whether actually paid or subject to additional service requirements.</p> <p>If amounts reported in the SCT are subsequently forfeited, narrative disclosure is suggested.</p>	<p><u>SCT</u> - forfeiture of amounts previously reported in the SCT may be included as narrative disclosure to the SCT in year of forfeiture.</p>