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**SEC PROPOSALS ON
EXECUTIVE COMPENSATION DISCLOSURE**

On, January 27th, the SEC issued proposed rules that would make significant revisions to the public disclosure of executive and director compensation. Under the proposal, substantial additional information would be required to be disclosed, including new columns in the summary compensation table for total compensation and the dollar value of stock options; new tables relating to equity compensation, retirement benefits and deferred compensation; and increased narrative disclosure of potential severance and change in control payments. The proposed rules, which include many details that were not in the press release issued by the SEC on January 17th announcing the decision to propose the rules, are expected to be effective for the 2007 proxy season.

As SEC Chairman Cox stated in his introductory remarks at the SEC meeting on January 17th at which the Commission approved proceeding with the rules by a unanimous vote, the purpose of the proposal is “wage clarity not wage controls” (i.e., improving the clarity of compensation disclosure, not imposing limits on the compensation of top executives). By improving disclosure, the SEC believes that shareholders, as well as the compensation committee and board of directors of public companies, will be better able to assess the compensation provided and make decisions on its appropriateness. The proposal is also intended to update the SEC’s current rules to reflect developments in executive compensation since the rules were adopted in 1992.

This alert letter highlights the major aspects of the proposed rules which also:

- Combine the current tabular approach with broader narrative requirements
- Replace the Compensation Committee Report and stock performance graph with a new Compensation Discussion and Analysis section
- Change the determination of the executives whose compensation must be disclosed (“Named Executive Officers”) and require limited disclosure for up to three other employees
- Expand the disclosure of perquisites
- Require a new table showing compensation paid to directors
- Add new disclosure regarding the compensation committee

COMPENSATION DISCUSSION AND ANALYSIS

A new section, Compensation Discussion and Analysis, would begin the compensation disclosure of Named Executive Officers and would replace the Compensation Committee Report as well as the stock performance graph. Analogous to the Management Discussion and Analysis for financial reporting purposes, the Compensation Discussion and Analysis would be a narrative providing a general overview and would discuss the compensation awarded to, earned by, or paid to, the Named Executive Officers and explain all elements of the company's compensation of Named Executive Officers. It would have to address many aspects including the objectives of the company's compensation program, each element of compensation and its role, and how the company determines the amount for each element. The Compensation Discussion and Analysis would be treated as filed with the SEC, unlike the Compensation Committee Report which is only furnished, and would be subject to the disclosure and liability provisions of the securities laws, including certification by the CEO and CFO. As under the current rules, confidential and business-sensitive information would not be required to be disclosed if it would have an adverse effect on the company.

COMBINED TABULAR/NARRATIVE APPROACH

As a fundamental underpinning of the proposed rules, the SEC has extended the current "rules-based" approach of highly-formatted and rigid tables adopted in 1992 with a "principles-based" approach requiring additional narrative explanation of the various tables. The SEC believes this combined approach will better ensure that all compensation is reported now and in future years as compensation practices continue to evolve.

SUMMARY COMPENSATION TABLE

The Summary Compensation Table would be retained under the proposed rules, but streamlined and reorganized with additional narrative (different from the Compensation Disclosure and Analysis) required. The current distinction between annual compensation and long-term compensation would be eliminated.

New Total Compensation Column. The first compensation column in the Summary Compensation Table would be a total of the compensation received by each Named Executive Officer during the year. This column would represent the sum of the columns that follow it in the Summary Compensation Table.

Salary and Bonus. These columns would be essentially unchanged except that all amounts deferred must be footnoted, not just amounts voluntarily deferred by the Named Executive Officer as under the current rules.

Revised Equity Award Value Columns. A revised column would show the dollar value of all stock options and stock appreciation rights ("SARs") granted during the year (instead of the number of shares). The dollar value of all stock awards without option-like features (e.g., restricted stock, restricted stock units and phantom stock), including stock awards subject to performance-based conditions, would be shown in a stock awards column. The dollar values for

both columns would be computed at grant date fair value pursuant to FAS 123(R) using the same valuation model and assumptions as the company's financial statements, without regard to the vesting conditions for the grants. The current valuation alternative of showing projected future gains at 5% and 10% per year would be eliminated. Earnings on all outstanding awards (e.g., dividends) would also be included in these columns, not just preferential or above-market earnings as under the current rules.

New Non-Stock Incentive Plan Compensation Column. A new column would report the dollar value of amounts earned during the year (determined by the year in which performance criteria are satisfied) under incentive plans; i.e., plans under which the performance measure is not based on the price of the company's stock or the payment will not be made in stock (as well as earnings on all outstanding awards). This column, which would replace the LTIP payout column, would show the compensation earned during the year, regardless of whether payment is actually made in that year to the Named Executive Officer.

New All Other Compensation Column. Consistent with the SEC's key objective of ensuring that all compensation is disclosed, a new column would expand and combine the "current other annual compensation" and "all other compensation" columns. A tabular format is not included under the proposed rules, although the SEC included an example of a table for reporting all other compensation in its discussion of the proposed rules, and requested comments on its inclusion in the final rules. The types of other compensation to be included in this column are as follows:

Perquisites. The threshold for disclosure of perquisites and other personal benefits, which would be reported in the All Other Compensation Column, would be reduced to an aggregate value of \$10,000 from the current \$50,000. Each perquisite and other personal benefit must be identified by type in a footnote. If a perquisite or personal benefit exceeds the greater of \$25,000 or 10% of the total amount of perquisites and personal benefits, it must also be quantified in footnote disclosure. Guidance was also provided on what is a perquisite or personal benefit. The proposed rules would make clear that providing a personal benefit for security purposes would not affect its characterization for disclosure purposes, and that perquisites and personal benefits should be valued based on their aggregate incremental cost to the company and not the cost attributed for federal income tax purposes.

Pension Plan Accrual and Deferred Compensation Earnings. The All Other Compensation column would also include the aggregate increase in the actuarial value of defined benefit pension plan benefits accrued during the year. It would also include all earnings on non-qualified deferred compensation. If the amount of either item exceeded \$10,000, it would be required to be separately identified and quantified in a footnote.

Other Items. Other items that would be disclosed in the All Other Compensation column would include severance payments, the dollar value of insurance premiums paid by the Company, and tax reimbursements and "gross-ups." If the amount of any of the other items exceeded \$10,000, it would also be required to be separately identified and quantified in a footnote.

SUPPLEMENTAL TABLES

The Summary Compensation Table would be followed by two supplemental tables that would report information relating to grants of performance-based awards and equity-based compensation awards.

Grants of Performance-Based Awards Table. This table would set forth details of incentive plan awards of non-stock grants, options, restricted stock, phantom stock and units or other rights if they were performance-based. An award would be considered performance-based if it had a performance condition or market condition as defined in FAS 123(R).

Grants of All Other Equity Awards Table. The second supplemental table would show details of equity-based compensation awards that are not performance-based. These awards would consist of stock options, restricted stock, restricted stock units and similar awards under which future value or payment is based on the price of the company's stock rather than performance criteria.

OTHER NEW TABLES

Equity Award Tables. Two new equity award tables would be required, replacing the current tables related to stock options and SARS, and expanding them to include non-option awards (e.g., restricted stock and performance awards). One table would set forth the outstanding equity awards held by Named Executive Officers at the end of the year, including the number of unexercised stock options and SARs, the intrinsic value of in-the-money stock options and SARs (i.e., the difference between the market price and the exercise or base price) and the number of unvested shares of stock and restricted stock units and their market value. The other table would show the amounts realized by executive officers during the year from the exercise of stock options and the vesting of restricted stock and other equity awards, along with the grant date fair value of that portion of the award as previously reported in the summary compensation table.

Retirement Benefits. The current pension plan table would be replaced by a new table that would show the annual retirement benefits of Named Executive Officers under defined benefit retirement plans (both tax-qualified and non-qualified). The table would include for each Named Executive Officer, the name of the plan in which the Named Executive Officer participates, the years of credited service, the plan's normal retirement age and early retirement age, and the estimated annual retirement benefit payable at normal retirement age and early retirement age. The table would be followed by a narrative description of related material factors which might include the lump sum distribution payable at the end of the last fiscal year, what pay elements are considered in formulating the benefit, and the company's policy on granting additional years of credited service.

Deferred Compensation. Another new table would disclose information relating to non-qualified defined contribution retirement plans and other deferred compensation plans. Included in the table would be contributions during the year by the Named Executive Officers and the company, earnings and withdrawals during the year, and the aggregate balance credited to each Named Executive Officer at the end of the year.

NAMED EXECUTIVE OFFICERS

Under the proposed rules, several changes would be made to the definition of Named Executive Officers. In addition to the company's principal executive officer (the term replacing chief executive officer), the principal financial officer of the company (usually the chief financial officer) would automatically be a Named Executive Officer. The three other highest-paid executive officers would also be Named Executive Officers.

The determination of the other executive officers included would be made based on total compensation reportable in the summary compensation table for the year, instead of salary and bonus only as is currently the case, subject to the current \$100,000 threshold.

In addition, narrative disclosure of total compensation for the last year and a description of the job positions (not names) would be required for up to three employees who were not executive officers during that year. Disclosure would be required if the employee's compensation was higher than any of the Named Executive Officers.

TERMINATION AND CHANGE IN CONTROL PAYMENTS

Although a table would not be required, narrative disclosure would be required with respect to each contract, plan or arrangement (whether written or unwritten) providing for payment to a Named Executive Officer upon termination of employment (including resignation or retirement), change in responsibilities or a change in control of the company. The disclosure would have to include descriptions of the circumstances that would trigger payments (or other benefits), estimated annual payments and benefits (including qualification of the amount), the factors used to determine payment and benefits under the various circumstances that trigger payment or benefits, and material conditions applicable to the payments and benefits (e.g., non-compete agreement).

DIRECTOR COMPENSATION

A new director compensation table, similar to the summary compensation table for Named Executive Officers, would be required to be included in the proxy. The table would only show information about each director's compensation for the prior year (not the prior three years as required for Named Executive Officers). The salary and bonus columns would be replaced by a column showing all director fees earned or paid in cash. The remainder of the table would be similar, with separate columns for stock awards, option awards, non-stock incentive plan compensation, all other compensation (which would include the cost of awards under director legacy or charitable award programs) and total compensation (which would be the first column).

MISCELLANEOUS

Other items included in the proposed rules are:

- A requirement that all disclosure be provided in “plain English”
- The full fair value of any option/SAR repricings or material modifications would be reported in the option award column of the summary compensation table and explained in the narrative; the ten-year option/SAR repricing table would be eliminated
- Disclosure of the number of shares of company stock pledged by Named Executive Officers, directors and director nominees
- Disclosure relating to whether each director and nominee for director is independent
- Disclosure about the compensation committee, including the scope of its authority, the role of executive officers and compensation consultants in determining or recommending the amount or form of executive and director compensation, and the identity, nature and scope of assignments of compensation consultants
- Revisions to disclosure required of related party transactions including an increase in the disclosure threshold from \$60,000 to \$120,000
- Revisions to the Form 8-K requirements to limit disclosure relating to employment arrangements with executive officers other than Named Executive Officers to the company’s president, principal accounting officer and principal operating officer, and consolidation of the disclosure under a single item

NEXT STEPS

There will be a 60-day period for the submission of comments on the proposed rules to the SEC. Numerous specific requests for comment have been set forth by the SEC for each item in the proposed rules (almost 100 for executive and director compensation alone). Following the end of the comment period, it is likely that there will be a public hearing of the SEC to discuss the comments. Issuance of the final rules is not expected until the summer of 2006 at the earliest. The final rules would be effective for proxy statements filed 90 days or more after the final rules are published in the Federal Register.

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 proposed rules to proxy disclosure of compensation of executives and directors should be discussed with appropriate counsel. General questions applicable to the proposed rules on proxy disclosure of compensation may be directed to Richard Alpern in our New York offices at 212-299-3599 or by email at ralpern@fwcook.com or to Edward Graskamp in our Chicago office at 312-894-0031 or by email at edgraskamp@fwcook.com. This letter and other published materials are available on our website, www.fwcook.com.