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August 30, 2007

**SEC Staff Comment Letters on
Proxy Disclosure of Executive Compensation**

The SEC has been working on a targeted review project to determine how well compensation disclosures have complied with the new executive compensation proxy disclosure rules and to provide guidance for improving compliance in future years. The first phase of the project is a review of proxy statement compensation disclosures for several hundred companies selected by the SEC, with an emphasis on large companies. The review is being conducted by the SEC's Division of Corporation Finance and has resulted in the issuance of comment letters to select companies on August 21. The comment letters do not require the companies to amend their proxy statements, but rather reflect the comments in next year's proxy statements and, if applicable, provide additional information to the SEC staff about certain disclosures. The select companies are given until September 21 to respond. It is our understanding that additional letters will be issued in the next month and that up to an estimated 300 letters may be issued in total.

The project's second phase will be a report of the review results, taking into account responses by companies to the comment letters. The report is expected to be issued in the late fall. There may also be a third phase of amendments to the SEC's proxy disclosure rules. Any amendments are not expected to be proposed until the summer of 2008.

This letter summarizes the key themes found in the SEC comment letters to 23 large companies across a broad range of industries, provides an overview of key compliance issues, and, possibly, a preview of the SEC's anticipated report. This letter may also provide guidance to companies that have not yet filed their fiscal 2007 proxies.

Compensation Discussion and Analysis

- All companies were asked to provide more specifics as to how individual performance impacts compensation decisions and payouts.
 - 5 companies (22%) were specifically asked to discuss the role of Compensation Committee discretion.
- 22 companies (96%) were asked to provide detailed disclosure and analysis of the quantitative and qualitative aspects of performance goals in incentive plans and how they were determined.
 - 4 companies (17%) were asked to disclose the performance goals and targets for the *current* fiscal year (i.e., fiscal 2007 goals as well as fiscal 2006 goals).

- 3 companies (13%) were asked to add or expand disclosure on funding and/or payout schedules for incentive plans.
- If the company believes disclosure would result in competitive harm, then it was asked to provide more specific information justifying confidential treatment, plus a statement about the level of difficulty in achieving the undisclosed target goals.
- 17 companies (74%) were asked to discuss how the determination was made for the benefit levels under various circumstances that trigger payments or benefits under termination and change-in-control arrangements.
 - The discussion is to address how the arrangements fit in the company’s overall compensation objectives and affect decisions regarding other compensation elements, as well as the rationale for decisions made in connection with the arrangements.
 - 2 companies (9%) were specifically asked to discuss the rationale for selecting the various change-in-control events that trigger payments.
- 15 companies (65%) were asked to explain the rationale for the elements of compensation and the mix of elements, including how the determination with respect to one element of compensation may (or may not) have influenced decisions with respect to other compensation elements.
- 15 companies (65%) were asked to provide additional disclosure on the role and services provided by compensation consultants, including the Compensation Committee’s consultant, management’s consultant, and any former consultants engaged during the year.
 - Requests were made for a discussion of the material elements of each consultant’s instructions and, in some instances, how they are utilized in determining compensation policies or establishing specific compensation types and amounts.
 - For companies asked to provide additional disclosure related to management’s consultant, the disclosure is to state which officers or group has authority to choose and retain the consultant, the nature and scope of its assignments, and how its duties differ from those of the Compensation Committee’s consultant.
- 13 companies (57%) were asked to explain any major disparity of pay levels or opportunities among the named executive officers (particularly the CEO).
- 9 companies (39%) were asked to identify the companies in any peer group used for benchmarking purposes.
 - This may include the names of companies that participate in third-party surveys used by the company for benchmarking purposes.

- 8 companies (35%) were asked to clarify compensation jargon (e.g., “incentive multiplier”) or define key terms (e.g., “for cause,” “good reason,” and “change-in-control”).
- 6 companies (26%) were asked to provide a discussion of actual compensation earned versus target opportunities based on benchmark data.
 - The discussion is to address how each element of compensation relates to peer group data, where the compensation element was targeted against the peer group, how actual compensation compared to the peer group, and to explain actual compensation of any named executive officer that is materially different than the targeted level.
- 5 companies (22%) were asked to add or provide more detail regarding the timing of equity grants.
- 5 companies (22%) were asked to provide an analysis of the information in the tally sheets and how its evaluation resulted in specific compensation awards or modification of how the company’s compensation program is implemented.
- 5 companies (22%) were asked to provide disclosure on the role of management (particularly the CEO) in the compensation setting process.
- 3 companies (13%) were asked to provide the rationale behind the terms in executive employment agreements.

Executive Compensation Tables

- 6 companies (26%) were asked to provide additional footnote disclosure under the Nonqualified Deferred Compensation table.
 - In particular, footnote disclosure is required to quantify the extent to which the amounts in the year-end aggregate balance at fiscal-year end column have been reported in the Summary Compensation Table in prior years.
- 3 companies (13%) were asked to include a “total” line in the severance tables which sums all pieces of the severance benefit.

Other Disclosure

- 11 companies (48%) were asked to add footnote disclosure of all assumptions used in valuing equity awards to directors by referring to the discussion in financial statements, footnotes to financial statements, or the Management Discussion and Analysis.
- 5 companies (22%) were asked to expand narrative or table disclosure related to director compensation.

In conclusion, the major issues emerging from this admittedly small sample of comment letters are three-fold: (1) provide specific financial performance goals under annual and long-term incentive plans or fully explain why it would be harmful to do so; (2) explain the specific factors that went into decisions about individual pay elements, including levels and mix; and (3) explain the individual performance factors that affect pay decisions for individual named executive officers.

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