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The SEC has adopted revised compensation and corporate governance disclosure requirements with respect to reporting companies' proxy and information statements, which are similar to the proposed requirements we discussed in our second July and our August/September Bulletins. The new requirements are effective February 28, 2010 and as a result will be applicable for the upcoming Form 10-K/proxy reporting season. The new rules require the following modified and additional disclosures:

Narrative disclosure regarding compensation policies' relationship to risk management. Under the new rules reporting companies, other than smaller reporting companies (generally, companies with a market value of common equity held by non-affiliates of less than $75 million), will be required to discuss their overall compensation policies and practices for employees (not just executive officers) as they relate to risk management if such policies and practices are reasonably likely to have a material adverse effect on the company. Unlike the proposed rules, this disclosure will be a separate stand-alone section in the compensation discussion and will not be included as part of the Compensation Discussion and Analysis, which focuses on executive officers.

Reporting of equity awards in the summary compensation table. Under the new rules, as proposed, stock and option awards will be reported in the summary compensation table based on their full grant date fair value in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 718, Compensation - Stock Compensation ("FASB ASC Topic 718"), formerly Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), Share-Based Payment ("FAS 123R"). Currently such awards are reported based on the amount expensed in the company's financial statements with respect to such awards. Special rules address the reporting of performance-based awards. Under the new rules awards granted in the relevant fiscal year should be reported, even if granted with respect to performance during a prior year.

Enhanced disclosure regarding director qualifications and background. The new rules require each reporting company to disclose the particular experience, qualifications, attributes or skills that led the board of directors to conclude that each current director or director nominee should serve as a director of the company as of the time of the filing. In addition, disclosure is now required for each director and nominee of membership on the board of directors of any public company or registered investment company in the past five years, instead of only current directorships. Finally, the time period for disclosure of involvement in certain legal proceedings has been expanded from five to ten years, and certain additional types of legal proceedings must now be disclosed.

The new rules also require reporting companies to disclose whether, and if so how, the company's nominating committee considers diversity in identifying director nominees, if it has a policy with respect to diversity, and if so, how the policy is implemented and assessed for effectiveness. In this regard, "diversity" can include attributes such as background, skill sets, etc., and is not limited to just racial, ethnic and gender diversity.

Board leadership structure, risk oversight role. The new rules require reporting companies to describe their board's leadership structure, including whether the Chair/CEO roles are separated, why, the reasons this leadership structure is appropriate, and whether the board has a lead independent director. Reporting companies must also discuss the board's role in risk oversight, including whether and which committee executes such function and how the board receives information from the management personnel responsible for day-to-day risk management.

Disclosure regarding compensation consultants. Under specified circumstances certain disclosure is required when the board or compensation committee retains a compensation consultant that also provides non-executive compensation consulting services to the company.

Voting results reported in four business days. Under the new rules reporting companies are required to report the results of a stockholder vote within four business days of such vote under new Item 5.07 of Form 8-K. Companies may report preliminary voting results if final results are not available within the four-business day period, and amend such Form 8-K to report final results within four business days after the final results are known.

What to do now. Companies should review the new rules and ensure they understand the disclosure required. Director and Officer Questionnaires should be revised to obtain the information from directors necessary to address the expanded disclosure. Finally, companies should schedule board and relevant committee meetings to address the new requirements. For example, the nominating committee must determine the reasons the directors and nominees are selected to sit on the board and whether its assessment process needs to be revised in this regard, as well as whether and how it has considered diversity in the past and whether to adopt a formal policy in that regard, and the board must determine why its leadership structure is appropriate.

About Me. I am a former SEC attorney who also has prior "big firm" experience. I assist public as well as private companies with compliance with federal and state securities laws, including assisting public companies with their reporting obligations under the Securities Exchange Act of 1934, and general corporate matters, at competitive billing rates. Please contact me if you would like more information about my practice or to discuss how I can be of assistance to you.

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