

Management Alert

Gearing Up For the New Disclosure Requirements: SEC Issues Final Executive Compensation and Related Party Disclosure Guidance

On August 11, 2006, the SEC released the final rules relating to disclosure of executive and director compensation, related party transactions, director independence and other corporate governance matters, current reporting regarding compensation arrangements and beneficial ownership of officers and directors. Although the final rules have been adopted largely in the proposed form, the SEC did make several significant changes, such as the disclosure relating to option grant practices and revisions to the proposed requirement to disclose the compensation of up to three non-executive employees who earn in excess of any of the named executive officers. However, the overarching principle of the final rules continues to be that a company must disclose all elements of compensation.

Summary of the Final Rules

A summary of the principal new disclosure requirements adopted by the SEC which will affect the 2007 proxy season include the following:

- Disclosure of any program, plan or practice to time the grant of options in connection with the release of material non-public information;
- Modification of the group comprising “named executive officers”;
- A new Compensation Discussion and Analysis section (analogous to the MD&A but will be a part of the disclosure which will be subject to certification by the company's principal executive officer and principal financial officer);
- A revised focus of the Compensation Committee Report;
- A revised and expanded Summary Compensation Table, including a new “total compensation” column;
- Additional supplemental compensation tables (resulting in as many as nine tables) and related narrative discussions;
- Tabular disclosure of director compensation;
- Changes regarding related party transactions including disclosure requirements regarding policies and procedures for approval;
- Consolidation and other modifications of director independence and other corporate governance related disclosures;
- Modification of the disclosure requirements in Form 8-K regarding employment compensation arrangements;
- Disclosure of shares pledged as collateral and directors’ qualifying shares; and
- Extension of plain English disclosure requirement.

Compliance Dates

The final rules establish the following compliance dates for filings:

- Forms 10-K and 10-KSB, for fiscal years ending on or after December 15, 2006;
- Forms 8-K, for triggering events that occur 60 days or more after publication of the final rules in the Federal Register;
- For Securities Act and Exchange Act registration statements (including both pre-effective and post-effective amendments) that are filed on or after December 15, 2006 and that are required to include compensation and related party transaction disclosure for fiscal years ending on or after December 15, 2006; and
- For proxy and information statements that are filed on or after December 15, 2006 for fiscal years ending on or after that date. Therefore, the new rules will generally apply to proxy statements issued in 2007 which provide disclosure with respect to 2006 compensation amounts.

Officers Covered

Prior to the new disclosure rules, the “named executive officers” for purposes of an Item 402 disclosure included the chief executive officer and the four most highly compensated executive officers other than the chief executive officer. The final rules confirm and clarify that the “named executive officers” will now include the principal financial officer, in addition to the principal executive officer, and the three most highly compensated executive officers other than the principal executive officer and principal financial officer. As was anticipated, the principal financial officer is included because of his/her role in certifying the issuer’s periodic reports and primary responsibility for the fair presentation of the issuer’s financial statements and other financial information. As is the case for the principal executive officer, disclosures are required for the principal financial officer even if he/she is not serving in that capacity at the end of the last completed fiscal

year. Additionally, the final rules retain the current requirement to capture up to two additional executive officers where disclosure would have been required for them except that they were not serving in that capacity at the end of the last completed fiscal year.

Finally, the determination of this group will continue to be made as of the end of the issuer’s last fiscal year, but if disclosure would have applied to an individual if he or she had remained employed through the end of the year, then disclosure would apply to that individual as well. The \$100,000 disclosure threshold continues to apply for purposes of determining whether an individual is one of the most highly compensated executive officers, and the final rules clarify that this determination is made based on total compensation as reported on the new Summary Compensation Tables (rather than solely base salary and bonus) but excluding from this amount any increase in pension value and nonqualified deferred compensation above-market or preferential earnings. The prior exclusion from the compensation determination related to non-recurring and not likely to recur items was eliminated due to the SEC’s opinion that it was susceptible to manipulation.

Compensation Discussion and Analysis

Under the final rules, a company must provide a new Compensation Discussion and Analysis (CD&A) section that provides material information about the compensation objectives and policies for named executive officers without resorting to boilerplate disclosure. The CD&A, according to the SEC, would be analogous to a company’s MD&A and would discuss the separate elements of executive compensation as well as executive compensation as a whole. The CD&A will be a part of the disclosure which will be subject to certification by the company’s principal executive officer and principal financial officer. Although the CD&A discloses a company’s compensation policies and decisions, the CD&A would not address the deliberations of the compensation

committee and is not a report of the compensation committee. The SEC contemplates that the CD&A would provide a general overview of the material factors underlying the compensation policies and decisions reflected in the compensation tables by addressing the following issues:

- What are the objectives of the company's compensation programs?
- What is the compensation program designed to reward?
- What is each element of compensation?
- Why does the company choose to pay each element of compensation?
- How does the company determine the amount (or formula) for each element?
- How does each element and the company's decisions regarding that element fit into the company's overall compensation objectives and affect decisions regarding other elements?

Although the SEC recognizes that the CD&A will vary from company to company, the SEC provided a non-exhaustive list of examples that might be appropriate for a company to address. In general, the SEC-identified examples include information regarding a company's policies that deal with the form and type of compensation, the basis for determining the type and granting of various awards, specific items of both corporate and individual performance measures, the impact of prior compensation, taxes, security ownership guidelines and benchmarking, and the role of executive officers in the compensation process. Some of the examples address specific issues such as:

- The impact of accounting and tax treatments of a particular form of compensation;
- The company's stock ownership requirements, and any policies regarding hedging the risk of such ownership;
- Whether the company engaged in benchmarking of total compensation or any material element of compensation, the benchmark used and its components; and
- The role of executive officers in the compensation process.

Other examples deal with broader issues regarding compensation such as:

- policies regarding the allocation (i) between long-term and current compensation, (ii) between cash and non-cash compensation and (iii) among different forms of non-cash compensation;
- for long-term compensation, the basis for allocating compensation to each different form of award;
- how the determination is made as to when awards are granted, including awards of equity-based compensation such as options;
- what specific items of corporate performance are taken into account in setting compensation policies and making compensation decisions;
- how specific elements of compensation are structured and implemented to reflect the company's performance and the named executive officer's performance;
- the factors considered in decisions to increase or decrease compensation materially; and
- how prior compensation is considered in setting other elements of compensation (e.g., how gains from prior option or stock awards are considered in setting retirement benefits).

The final rules added two additional examples with respect to the adjustment or recovery of awards if the relevant performance measures upon which they were based are restated or adjusted in a manner that would reduce the size of an award and the basis for selecting particular events as triggering payment in connection with post-termination agreements. In addition, to the extent material differences in compensation policies and decisions for individual named executive officers exist, those differences should be identified. As under current rules, confidential information and performance targets would continue to be excluded if disclosure would have an adverse competitive effect on the company. The CD&A also would require a discussion of post-termination as well as current employment compensation arrangements.

The CD&A will also require enhanced narrative disclosure about option grants to executives. Companies will be required to discuss material information such as the reasons a company selects particular grant dates for awards or the methods a company uses to select the terms of awards, such as the exercise prices of stock options. With regard to the *timing of stock options* in particular, companies will be required to discuss (i) whether the company has any program, plan or practice to time option grants to its executives in coordination with the release of material non-public information, (ii) how a program, plan or practice to time option grants to executives fits in the context of the company's program, plan or practice, if any, with regard to option grants to employees more generally, (iii) the role of the compensation committee in approving and administering such a program, plan or practice, (iv) how the board or compensation committee took such information into account when determining whether and in what amount to make those grants, and (v) whether the compensation committee delegated any aspect of the actual administration of a program, plan or practice to any other persons. Additional discussion will also be required to *explain the role of executive officers* in the company's program, plan or practice of option timing, whether the company set the grant date of its stock option grants to new executives in coordination with the release of material non-public information and whether the company plans to time, or has it timed, its release of material nonpublic information for the purpose of affecting the value of executive compensation. Disclosure will also be required where a company has not previously disclosed a program, plan or practice of timing option grants to executives, but has adopted such a program, plan or practice or has made one or more decisions since the beginning of the past fiscal year to time option grants. Similar disclosure standards will apply if a company has a program, plan or practice of awarding options and setting the exercise price based on the stock's price on a date other than the actual grant date or if the company determines the exercise price of option grants by using formulas based on average prices (or lowest prices) of the

company's stock in a period preceding, surrounding or following the grant date.

Compensation Committee Report and Performance Graph

In response to certain comments received, the SEC adopted a revised version of the Compensation Committee Report that is substantially similar to the current Audit Committee Report. The new Compensation Committee Report requires the compensation committee members whose names will appear below the report to state whether:

- the compensation committee has reviewed and discussed the CD&A with management; and
- based on the review and discussions, the compensation committee recommended to the board of directors that the CD&A be included in the company's annual report on Form 10-K and, as applicable, the company's proxy or information statement.

In addition, the Performance Graph has been retained but has been removed from the executive compensation disclosure rules. Instead, the Performance Graph will be required under Item 201 of Regulation S-K, which addresses the market price and dividends of the company's common equity and certain equity compensation plan information. Both the Compensation Committee Report and the Performance Graph will be "furnished" rather than "filed."

Summary Compensation Table

The Summary Compensation Table continues to serve as the principal disclosure vehicle for executive compensation (with total compensation expressed in tabular form). The new table discloses the total compensation of each covered named executive officer for the last three fiscal years, whether or not such compensation was actually paid out. The table has nine separate columns quantifying each element of the named executive officer's compensation.

[See Exhibit A](#)

- **Salary and Bonus** (columns (c) and (d)) specifically must include amounts earned but deferred (for any reason and without regard to whether the named executive officer affirmatively elected to defer the compensation). Note that if the amounts for “salary” or “bonus” cannot be calculated as of the “most recent practicable date,” the issuer must disclose this fact in a footnote to the table and provide an estimate of the date when the amounts will be determinable.

Subsequently, the issuer will be required to file an Item 5.02 on Form 8-K when payment, decision or other event results in the amount of salary or bonus becoming determinable.

- **Stock Awards** (column (e)). The Stock Awards column must disclose equity-based awards that derive their value from the issuer’s equity securities or permit settlement by issuance of issuer stock (e.g., restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or other similar equity vehicles that do not have option-like features). The Stock Awards are disclosed based upon their full FAS 123R value (which incorporates the fair market value of such shares on the date of grant and not the compensation cost spread over the period of service). Any Stock Awards issued under an equity incentive plan must also prospectively be included in this column (i.e., performance-based Stock Awards previously could be reported as “incentive plan awards” but such election is no longer available). Any earnings on Stock Awards (such as dividends) that are not incorporated into the reported FAS 123R value must be separately disclosed when paid.

- **Option Awards** (column (f)). The Option Awards column must disclose equity-based awards with option-like features that fall within the scope of FAS 123R (e.g., stock options and stock appreciation rights). Instead of the number of Option Awards, the Option Awards (which would include reloads) are disclosed based upon their full FAS 123R value (which incorporates the fair market value of such shares on the date of grant and not the compensation cost spread over the period of service). This is required regardless if the Option Award is settled in cash or issuer stock. Additionally, if an

Option Award is repriced or otherwise modified in the last fiscal year, that Option Award’s FAS 123R incremental fair market value, computed as of the repricing or modification date, is also required to be included in the Option Awards column. Any earnings on Option Awards (such as dividends) that are not incorporated into the reported FAS 123R value must be separately disclosed when paid.

- **Non-equity Incentive Plan Compensation** (column (g)) must disclose the dollar value of all amounts earned during the fiscal year under arrangements where the performance measure is not based on the stock price of the issuer and the award may not be settled in the issuer’s stock. This column will include all other incentive plan awards not included in the Stock Award or Option Award columns (i.e., awards not within the scope of FAS 123R). Note that amounts are disclosed only when the named executive officer has satisfied the relevant performance criteria and the compensation is earned, whether or not payment is actually made to the named executive officer in that year. Unearned incentive awards would be disclosed under the Grants of Plan-Based Awards Table described below.

- **Change in Pension Value and Nonqualified Deferred Compensation Earnings** (column (h)) was originally included in the All Other Compensation column but is first introduced as a separate column in the final disclosure rules. This column will reflect the aggregate increase in actuarial value to the named executive officer of all defined benefit and actuarial plans (such as supplemental plans) accrued during the year and above-market or preferential earnings on nonqualified deferred compensation during such year. Note that the methodology for calculating the increase in the value of pension benefits must match that used for purposes of the Pension Benefits Table discussed below (i.e., based on generally accepted accounting principles for financial reporting). Additionally, footnote identification and quantification of the full amount of each element is required. Negative “accruals” for a given year should be footnoted but not included in the total in this column.

• **All other compensation** (column (i)) would include all other amounts not otherwise captured in columns (c) through (h). The SEC intends this column to be a “catch all” number. Each item of compensation included in this column that exceeds \$10,000 must be separately identified and quantified in a footnote. All Other Compensation amounts include, but are not limited to:

- **Perquisites.** Any perquisites and other personal benefits are included if the aggregate amount equals at least \$10,000. If the value of any perquisite or personal benefit is more than the greater of \$25,000 or 10% of total perquisites and other personal benefits, then the value of the individual perquisite or other personal benefit must be separately disclosed and identified. The final rules retain the former rule that these amounts should be valued at their aggregate incremental cost to the issuer and its subsidiaries. When determining whether an item is a perquisite, the issuer needs to evaluate whether the item is “integrally and directly related” to job performance. If it is “integrally and directly related” to job performance, then it is a perquisite unless it is generally available on a non-discriminatory basis to all employees.
- **Tax Gross-Ups.** Amounts provided during the fiscal year for the payment of the named executive officer’s personal taxes;
- **Severance.** Amounts paid or accrued pursuant to a plan or arrangement in connection with any termination (or constructive termination) of employment or change in control;
- **Tax-Qualified Retirement Benefits Not Through a Pension Plan.** Annual company contributions or other allocations to vested and unvested defined contribution plans;
- **Life Insurance.** The dollar value of any insurance premiums paid by the issuer with respect to life

insurance for the benefit of a named executive officer; and

- **Discounted Securities.** The compensation cost, if any, related to a security of the issuer purchased from the issuer or a subsidiary (through deferral of salary or bonus) at a discount from the market price of such security on the date of purchase, unless that discount is available generally to all security holders or to all salaried employees of the issuer (all computed in accordance with FAS 123R).
- **Total compensation** (column (j)) aggregates the amounts set forth in each of the other columns. The SEC intends this column to provide investors with a single, accurate, aggregate amount of compensation that is comparable across years and companies.

Grants of Plan-Based Awards Table

Supplementing and providing further detail to the Summary Annual Compensation Table explained above is the Grants of Plan-Based Awards Table. The Grants of Plan-Based Awards Table is a combination of the Grants of Performance-Based Awards Table and the Grants of All Other Equity Awards Table which were both included in the proposed rules. The table has five columns quantifying each type of award granted to the named executive officer.

See Exhibit B

Disclosure in this table is intended to complement the Summary Compensation Table disclosure of grant date fair market value of Stock Awards and Option Awards by further disclosing the number of shares of stock or units comprising or underlying the particular award. In particular, this supplemental table reflects the estimated future payouts for both equity incentive plans and non-equity incentive plans, with separate disclosures for each grant. The narrative section will identify the material terms of an award reported in this table (including, but not limited to, the vesting date, performance period or other period until payout). However, the

final rules do not allow the aggregation of options with the same exercise price. Instead, the SEC believes that a grant-by-grant disclosure is the most appropriate approach.

Additionally, if the per-share exercise price of options, stock appreciation rights and similar option-like instruments is less than the market price of the underlying securities on the grant date, a separate column must be added showing market price on the date of grant. The market price on the date of grant for this purpose is identified as the last sales price on the principal US market for the security on the specified date. If the exercise price is not the grant date closing market price per share, the issuer is required to provide a description of the methodology for determining the exercise price either by footnote to the table or in the accompanying narrative section.

Finally, if the date on which the compensation committee (or the board of directors or other committee of the board of directors) takes action or is deemed to take action to grant equity-based awards is different from the date of grant, a column must also be added to disclose the date of action. The rules further clarify that the “date of grant” or the “grant date” is the grant date as determined for financial statement reporting purposes under FAS 123R. If a non-equity incentive plan award is denominated in units or other rights, then a separate adjoining column would also be required to disclose the units or other rights awarded.

Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards Table

The narrative disclosure portion is intended to place into context the tabular disclosures of the Summary Compensation Table and the Grants of Plan-Based Awards Table. According to the final rules, the issuer is required to provide a narrative description of any additional material factors necessary to understand the information disclosed in the above two tables (e.g., explaining material aspects of a plan that are not evident from the quantitative tabular disclosure and not otherwise addressed in the Compensation Discussion and Analysis).

Whether something is a “material factor” depends on all the facts and circumstances. Examples of what might constitute a “material factor” include, but are not limited to, the following:

- employment agreement terms;
- repricing or other material modifications to equity awards;
- extensions of option exercise periods;
- changes in vesting or forfeiture conditions;
- changes or elimination to performance criteria;
- changes to the bases upon which returns are calculated;
- a general description of the formula for performance-based awards;
- vesting schedules;
- whether dividends are paid on equity awards and the applicable rate;
- any material waiver or modification of any performance target, goal or condition to payment under any incentive plan;
- material assumptions underlying the value assigned to the increase in the executive’s accrued benefit under the issuer’s defined benefit plans; and
- provisions for determining earnings on deferred compensation.

However, consistent with prior rules, issuers will not be required to disclose any factor, criteria or performance-related or other condition to payout or vesting of a particular award that involves confidential trade secrets or confidential commercial or financial information (where disclosure would result in competitive harm to the issuer).

At this time, the SEC chose not to adopt the proposal to require narrative disclosures of compensation information for up to three additional employees who were not executive officers during the year and whose total compensation was greater than that of any of the named executive officers. Alternatively, the SEC has opted to continue considering this issue and has requested that comments be submitted regarding a modified proposal involving narrative disclosures only with respect to three additional employees whose total

compensation was greater than that of any of the named executive officers and who are responsible for significant policy decisions at the issuer or a significant subsidiary or principal business unit, division or function of the issuer. A separate Management Alert will be issued when the revised proposal is released.

Exercises and Holding of Previously Awarded Equity

This section is designed to capture equity compensation awards that have previously been awarded but are currently outstanding (unexercised or unvested equity awards). Additionally, this section is intended to capture amounts realized by a named executive officer on his/her equity awards when he/she exercises an Option Award or vests in a Stock Award. The first table (Outstanding Equity Awards at Fiscal Year-End Table) will reflect outstanding awards and the second table (Option Exercise and Stock Vesting Table) will reflect exercised and/or vested awards.

Outstanding Equity Awards at Fiscal Year-End Table

The Outstanding Equity Awards at Fiscal Year-End Table identifies all outstanding equity awards that have been granted but which remain unvested or unexercised at the end of the last fiscal year (where the ultimate outcome has not yet been realized). The table would identify the number of shares underlying the unvested or unexercised awards, the award exercise price and expiration date, the number of unvested shares, the market value of the unvested shares, the number of unvested shares or units in the issuer's incentive plans and the market or payout value of the unvested shares in the incentive plan.

See Exhibit C

The purpose of this table is to disclose individual exercise prices and expiration dates to provide a full understanding of the potential compensation opportunity. In particular, with respect to out-of-the-money awards, this allows investors to see the amount that the stock price must rise and the amount

of time remaining for that to occur. A separate disclosure is required for each award.

Option Exercises and Stock Vesting

The Option Exercises and Stock Vesting Table identifies all the amounts received by the named executive officer upon the exercise of any Option Award or vesting of any Stock Award during the most recent fiscal year. This table would identify the number of shares acquired upon exercise or vesting and the value realized.

See Exhibit D

The purpose of this table is to provide an investor with a more complete picture of the amounts that a named executive officer ultimately realizes on his/her equity compensation awards. Additionally, if an executive has deferred receipt of an option or other equity award, a footnote is required which must qualify the amount deferred and the terms of the deferral.

Post-Employment Compensation

In the final rules, the SEC significantly expanded the requirements applicable to retirement benefit disclosures. Under the prior rules, the separate pension table provided a very limited amount of information concerning a named executive officer's potential benefit amounts under the issuer's defined benefit plan. As noted previously, the new rules provide that the annual actuarial increase in the named executive officer's retirement benefit under a defined benefit plan must now be reported in the Summary Compensation Table. Additionally, the two tables discussed below (the Pension Benefits Table and the Nonqualified Deferred Compensation Table) are intended to provide even greater detail and insight into the named executive officer's retirement benefits in order to provide a clearer picture of potential future compensation.

Pension Benefits Table

The Pension Benefits Table has been designed to disclose the present value of the current accrued benefit computed as of the end of the issuer's last completed fiscal year. The idea is that such a disclosure will achieve comparability by reporting the economic value of the benefit that the named executive officer has accumulated through the relevant plan. Whether or not the plan allows for a lump-sum payment, presentation of the present value of the accrued plan benefit provides investors with an understanding of the cost of promised benefits in present value terms. Companies are required to use the same assumption, such as interest rate assumptions, that they use to derive the amounts disclosed in conformity with generally accepted accounting principles (i.e., FAS 87).

See Exhibit E

A separate line would be required for each plan in which the named executive officer participates. The table would be followed by a separate narrative providing significant detail regarding the underlying defined benefit plan, including the retirement benefit formula, eligibility criteria, early retirement benefit provisions, each element of the plan's definition of compensation, the purpose of each plan if a named executive officer participates in more than one plan and any policy the issuer follows in granting additional years of credited service. Additionally, the narrative must specifically disclose whether any named executive officer is eligible for early retirement.

Nonqualified Deferred Compensation Table

In addition to the defined benefit plan disclosures under the Pension Benefits Table, a separate Nonqualified Deferred Compensation Table is now required that reflects a named executive officer's post-employment compensation from a nonqualified defined contribution plan and other deferred compensation arrangements in which the named executive officer participates (other than a tax-qualified defined contribution plan). The table discloses the executive's deferrals, employer contributions, aggregate earnings on all deferred amounts, aggregate withdrawals and distributions, all

with respect to the last fiscal year. The final column would disclose the named executive officer's aggregate balance under the particular plan.

See Exhibit F

A footnote to the table is required that reconciles the contributions and earnings amounts in this table to deferred compensation disclosed in the Summary Compensation Table for prior years. A narrative description of the material factors necessary to understand the disclosures in the table is required and includes, but is not limited to, the following: the types of compensation a named executive officer may defer under the arrangement, any limits on a named executive officer's ability to defer compensation, interest and earnings (including how they are measured), and the arrangement's distribution provisions.

Other Potential Post-Employment Payments

As expected, the final rules require a narrative explanation of any arrangement that provides for payments upon the named executive officer's termination or a change in control of the issuer. These provisions will be disclosed in a narrative only (no table) which would describe the specific circumstances that trigger payment, estimates of the amount payable upon the trigger, the form and duration of the payment, by whom the payments would be made, any factors used to determine the pay and benefit levels, any post-termination perquisites, accelerated vesting and payment of equity awards and any condition or obligation that may apply to the payments (such as a restrictive covenant) as well as its duration. An issuer is required to estimate payments to the extent such amounts cannot be fully quantified and to identify the material assumptions the issuer used in estimating the value. Additionally, the SEC added an instruction that requires issuers to calculate the post-employment payments disclosed by assuming that the triggering event took place on the last business day of the issuer's last completed fiscal year and that the price per share of the issuer's securities is the closing market price as of that date

Interplay of Item 402 and 404 of Regulation S-K

Item 402 was amended by the SEC so that it now requires disclosure of all transactions between the issuer and a third party where the primary purpose of the transaction is to furnish compensation to a named executive officer. Additionally, Item 402 will no longer exclude from its disclosure requirements information about compensatory transactions that had been disclosed under the related person transaction disclosure requirements of Item 404. The final rules acknowledge that this requirement may, in some circumstances, require an issuer to disclose the same transaction in two places.

Compensation of Directors

Revision to the director compensation disclosures have arisen primarily because director compensation packages evolved from simple cash compensation and attendance fees to more complex packages which incorporate equity-compensation grants, incentive plan awards as well as other forms of compensation. The Director Compensation Table is comparable to the Summary Compensation Table with the exception that it only covers the most recent fiscal year (not three). According to the SEC rules, the same instructions provided for the Summary Compensation Table govern analogous matters in the Director Compensation Table.

See Exhibit G

Director fees earned and paid in cash are reported separately from fees paid in stock. With respect to the “All Other Compensation” column, although similar to the “catch all” column in the Summary Compensation Table, items specific to directors which are included in this table include consulting fees, awards under any director legacy or charitable awards program, and the value of any insurance premiums paid on behalf of the director.

Additionally, any outstanding equity awards (i.e., the aggregate number of Stock Awards and the aggregate number of Option Awards) are required to be disclosed in a footnote to the table. Unlike the named executive officers, directors may be listed in a single row of the table if all of their elements and amounts of compensation are identical. Finally, like all the tables discussed above, the Director Compensation Table would be followed by a separate narrative providing significant detail regarding the material factors necessary to understanding the disclosures in the table.

Related Party Transactions

The final rules provide a broad principle for disclosures of related party transactions. Specifically, a company is required to disclose any transaction since the beginning of the company’s last fiscal year or any currently proposed transaction in which the company is a “participant” (as opposed to the prior requirement that a company is a party to the transaction) in which any related person has a direct or indirect material interest and the amount involved exceeds \$120,000 (up from the prior \$60,000 threshold). The materiality of any interest would continue to be determined on the basis of the significance of the information to investors in light of all the circumstances and the significance of the interest to the person having the interest. In that regard, the relationship of the related persons to the transaction and the amount involved in the transaction would be among the factors to be considered in determining the materiality of the information to investors. According to the SEC, the related party transaction rule calls for, and would continue to call for, a materiality analysis of transactions above the threshold in order to determine if the related person has a direct or indirect material interest. The SEC reaffirmed that the \$120,000 threshold is not be a bright line materiality standard but is merely a factor to be considered in the materiality analysis.

The final rules also eliminate the current distinction between indebtedness and other related party transactions, and a company would be required to disclose indebtedness

transactions with regard to all related persons other than significant shareholders or their immediate family members (shareholders known by the company to beneficially own more than five percent of any class of the company's voting securities). The final rules require the disclosure of all material indirect interests in indebtedness transactions of related persons (other than significant shareholders and their immediate family members).

The final rules also provide certain exceptions to the disclosure requirements for related party transactions that the SEC believes are consistent with its principles-based approach. Most importantly, disclosure of compensation to a named executive officer would not be required under the related party transaction rules if (i) the compensation is reported pursuant to Item 402 of Regulation S-K, or (ii) the named executive officer is not an immediate family member of a related person and such compensation would have been reported under Item 402 as compensation earned for services to the company if the executive officer was a named executive officer, and such compensation had been approved, or recommended to the board of directors for approval, as such by the compensation committee (or group of independent directors performing a similar function) of the company.

If the transaction falls within the scope of the final rules, a company would be required to describe the transaction, including the person's relationship to the company, the person's interest in the transaction with the company, including the related person's position or relationship with an entity that is a party to or has an interest in the transaction and the dollar value of the amount involved in the transaction and of the related person's interest in the transaction.

The final rules also require a description of the company's policies and procedures with respect to the review, approval or ratification of related party transactions that would be reportable. While the material features of such policies and procedures would vary depending on the particular circumstances, examples of such features may include,

among other things:

- the types of transactions that are covered by such policies and procedures, and the standards to be applied pursuant to such policies and procedures;
- the persons or groups of persons on the board of directors who are responsible for applying such policies and procedures; and
- whether such policies and procedures are in writing and, if not, how such policies and procedures are evidenced.

The final rules further require the identification of any reportable related party transactions where the company's policies and procedures did not require review, approval or ratification or where such policies and procedures were not followed.

Director Independence and Corporate Governance

The final rules consolidate the disclosure requirements regarding director independence and related corporate governance disclosure requirements under a single disclosure item (new Item 407 of Regulation S-K) and update the disclosure requirements regarding director independence to reflect current requirements and current listing standards. The final rules require (i) disclosure of whether each director and director nominee is independent, (ii) a description of any relationships not otherwise disclosed that were considered when determining whether each director and director nominee is independent, and (iii) disclosure of any audit, nominating and compensation committee members who are not independent. Under the final rules, a company is required to use the definition for independence of directors (and for committee members) that is in compliance with the applicable listing standards. If a company uses its own definition, then the company must disclose its definitions on its website or as an appendix to its proxy statement.

In addition to the disclosures currently required regarding audit and nominating committees, the final rules require

similar disclosure regarding compensation committees relating to the makeup and composition of the committee. A company is also required to describe its processes and procedures for the consideration and determination of executive and director compensation, including:

- the scope of authority of the compensation committee;
- the extent to which the compensation committee may delegate any authority to other persons, specifying what authority may be delegated and to whom;
- whether the compensation committee's authority is set forth in a charter, and if so, providing the company's website address or attaching the charter to the proxy statement at least once every three years;
- any role of executive officers in determining or recommending the amount or form of executive and director compensation; and
- any role of compensation consultants in determining or recommending the amount or form of executive and director compensation, identifying such consultants, stating whether such consultants are engaged directly by the compensation committee, describing the nature and scope of their assignment and the material elements of the instructions or directions given to the consultants with respect to the performance of their duties under the engagement.

Changes to Form 8-K

The staff of the SEC has acknowledged that much of the information that has been filed under Item 1.01 of Form 8-K falls below the "unquestionably or presumptively material" standard associated with the expanded Form 8-K disclosure items. To alleviate these issues, the final rules would consolidate all Form 8-K disclosure regarding employment arrangements under a single item.

Under the final rules, employment compensation arrangements are eliminated from the scope of Item 1.01 and will be covered under a modified and broader Item 5.02 of Form 8-K. This change also will apply to disclosure of terminations of material definitive agreements under Item 1.02

of Form 8-K, which references the definition of "material definitive agreement" in Item 1.01 of Form 8-K.

The final rules expand the information regarding retirement, resignation or termination to include all persons falling within the definition of named executive officers for the company's previous fiscal year, in addition to those specified officers enumerated under current Item 5.02. In addition, the final rules expand the disclosure items covered under Item 5.02 beyond employment agreements to require a brief description of any material plan, contract or arrangement to which a covered officer or director is a party or in which he or she participates that is entered into or materially amended in connection with any of the triggering events specified in Item 5.02, or any grant or award to any such covered person, or modification thereto, under any such plan, contract or arrangement in connection with any such event.

With respect to the principal executive officer, the principal financial officer or persons falling within the definition of named executive officer for the company's previous fiscal year, the final rules expand the disclosure items to include a brief description of any material new compensatory plan, contract or arrangement, or new grant or award thereunder (whether or not written), and any material amendment to any compensatory plan, contract or arrangement (or any modification to a grant or award thereunder), whether or not such occurrence is in connection with a triggering event specified in Item 5.02. Grants or awards or modifications thereto will not be required to be disclosed if they are consistent with the terms of previously disclosed plans or arrangements and they are disclosed the next time the company is required to provide new disclosure under Item 402 of Regulation S-K. Finally, the final rules require disclosure of salary and bonus for the most recent fiscal year that was not available at the latest practicable date in connection with disclosure under Item 402 of Regulation S-K.

Beneficial Ownership

The beneficial ownership table requirements have been amended to require the footnote disclosure of shares pledged as collateral by named executive officers, directors and director nominees, as well as directors' qualifying shares.

If you have any questions or require further guidance with respect to the new executive compensation disclosure requirements or any of the SEC's reporting requirements, please contact your Seyfarth Shaw attorney or any attorney on our website at www.seyfarth.com.

Plain English

The final rules extend the plain English requirements currently applicable to portions of registration statements filed under the Securities Act to periodic reports and current reports filed under the Exchange Act and information in proxy or information statements incorporated by reference into those reports.

Exhibit A

SUMMARY COMPENSATION TABLE

Name and Principal Position (a)	Year (b)	Salary (\$) (c)	Bonus \$ (d)	Stock Awards (\$) (e)	Option Awards (\$) (f)	Non-Equity Incentive Plan Compensation (\$) (g)	Change in Pension Value and Non-qualified Deferred Compensation Earnings (\$) (h)	All Other Compensation (\$) (i)	Total (\$) (j)
PEO ¹	_____ _____ _____								
PFO ¹	_____ _____ _____								
A	_____ _____ _____								
B	_____ _____ _____								
C	_____ _____ _____								

¹ "PEO" refers to principal executive officer and "PFO" refers to principal financial officer.

Exhibit B

GRANTS OF PLAN-BASED AWARDS

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares of Stock or Units (#)	All Other Option Awards: Number of Securities Underlying Options(#)	Exercise or Base Price of Option Awards (\$/Sh)
		Threshold (\$)	Target (\$)	Maximum (\$)	Threshold (\$)	Target (\$)	Maximum (\$)			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)
PEO										
PFO										
A										
B										
C										

Exhibit C

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

Name	Option Awards					Stock Awards			
	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#)	Option Exercise Price (\$)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
PFO									
A									
B									
C									

Exhibit D

OPTION EXERCISES AND STOCK VESTED

Name (a)	Option Awards		Stock Awards	
	Number of Shares Acquired on Exercise (#) (b)	Value Realized on Exercise (\$) (c)	Number of Shares Acquired on Vesting (#) (d)	Value Realized on Vesting (\$) (e)
PEO				
PFO				
A				
B				
C				

Exhibit E

PENSION BENEFITS

Name (a)	Plan Name (b)	Number of Years Credited Service (#) (c)	Present Value of Accumulated Benefit (\$) (d)	Payments During Last Fiscal Year (\$) (e)
PEO				
PFO				
A				
B				
C				

Exhibit F

NONQUALIFIED DEFERRED COMPENSATION

Name	Executive Contributions in Last FY (\$)	Registrant Contributions in Last FY (\$)	Aggregate Earnings in Last FY (\$)	Aggregate Withdrawals/ Distributions (\$)	Aggregate Balance At Last FYE (\$)
(a)	(b)	(c)	(d)	(e)	(f)

Exhibit G

DIRECTOR COMPENSATION TABLE

Name	Fees earned or paid in cash (\$)	Stock Awards (\$)	Option Awards (\$)	Non-Equity Incentive Plan Compensation (\$)	All Other Compensation (\$)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (\$)	Total (\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A							
B							
C							
D							
E							

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