PROSKAUER ROSE LLP®

Client Alert

A report for clients and friends of the firm

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Proposed Revisions to Executive Compensation and Related Party Disclosure Rules

The Securities and Exchange Commission has proposed revising the disclosure rules to encourage public companies to present a more complete picture of compensation and related issues.

On January 27, 2006, the SEC released proposals to amend the disclosure requirements for executive and director compensation, related party transactions, director independence, other corporate governance matters and security ownership of officers and directors.[1]

The proposing release includes currently applicable SEC interpretive guidance regarding disclosure of perquisites and other personal benefits. We summarized this interpretive guidance for you in our Client Alert dated February 1, 2006, available on our website at www.proskauer.com.

This proxy season, companies must follow the interpretive guidance on perquisites and other personal benefits described in our Client Alert. The rest of the proposals are not yet effective, and they are not expected to be effective until next proxy season. Nevertheless, companies should be aware that the proposals represent best practices for this proxy season.

The proposals would:

- create a new narrative overview of compensation policies called the Compensation Discussion and Analysis section;
- modify existing compensation tables, including the addition of a new Total Compensation column showing the aggregate dollar value of all forms of cash and non-cash compensation;
- create a new Director Compensation Table;
- change Form 8-K requirements;
- change related party disclosure rules;
- consolidate director independence and corporate governance disclosure rules; and
- require that disclosure be written in "plain English."

The comment period on the proposals will close on April 10, 2006. The SEC staff has indicated that it hopes to adopt final rules in time for next year's proxy season. If the proposals do become effective in time for next proxy season, companies would not be required to restate their disclosure of compensation or related party transactions for fiscal years already reported under the current rules. Companies would only be required to provide disclosure under the new rules for the most recent fiscal year. The new rules are expected to be phased in over a three-year period (two years in the case of small business issuers). While we expect that the proposals will be adopted substantially as proposed, we cannot predict their final form at this time.

[1] Available at: http://www.sec.gov/rules/proposed.shtml.

Executive and Director Compensation Disclosure

Compensation Discussion and Analysis Section

The proposals would create a new narrative overview of compensation policies called the Compensation Discussion and Analysis section. The form of the Compensation Discussion and Analysis would be narrative. It would discuss and analyze the material factors underlying the company's policies and decisions about the compensation of its named executive officers reflected in the compensation tables.[2] The Compensation Discussion and Analysis would replace the current Compensation Committee Report and the Performance Graph.

The proposing release says that the Compensation Discussion and Analysis would be similar to Management's Discussion and Analysis of Financial Condition and Results of Operations. Boilerplate language would have to be avoided. The proposing release lists six questions that a company would answer in its Compensation Discussion and Analysis:

1. What are the objectives of the company's compensation programs?

2. What is the compensation program designed to reward and not reward?

3. What is each element of compensation?

4. Why does the company choose to pay each element?

5. How does the company determine the amount (and the formula) for each element?

6. How does each element, and the company's decisions about that element, fit into the company's overall compensation objectives, and how do they affect decisions regarding other elements of compensation?

Forward-looking information. Forward-looking information in the Compensation Discussion and Analysis would fall within the safe harbors of Section 27A of the '33 Act and Section 21E of the '34 Act.

Excluded information. Companies would not be required to disclose target levels for specific quantitative or qualitative performance factors (unless they were disclosed previously), or any factors involving confidential commercial or business information whose disclosure would adversely affect the company.[3]

Liability. The Compensation Discussion and Analysis would constitute company disclosure filed with the SEC. That means it would be subject to Regulations 14A or 14C and the liabilities of Section 18 of the '34 Act. If the Compensation Discussion and Analysis was incorporated by reference into a periodic report, then it would be covered by the certifications of the principal executive officers and principal financial officers under the Sarbanes-Oxley Act of 2002.

Revised Summary Compensation Table

The revised Summary Compensation Table and related disclosure would show compensation of each named executive officer for each of the three most recently completed fiscal years, whether or not the compensation was actually paid out during that period. We have attached a copy of the proposed Summary Compensation Table as **Exhibit A.**

Total compensation column. A company would show total compensation for each named executive officer in a new total column. A company would calculate total compensation for each named executive officer by adding up the total dollar value of each amount of compensation showing in the other columns located to the right of the total column.

Salary and bonus as of the most recent practicable date. If the amounts for the salary or bonus columns could not be calculated as of the most recent practicable date, a company would disclose this in a footnote and provide an estimate of the date when it would be determined. Later, the company would be required to file a Form 8-K upon a payment, decision or other event resulting from the amount of salary or bonus becoming available.

Deferred compensation. As is the case today, the salary or bonus (or other appropriate column) could show compensation that was earned, but for which payment

[2] The proposing release gives several examples of material factors a company might address in the Compensation Discussion and Analysis including: (i) whether it used benchmarking to set all or part of compensation; (ii) what other companies it used to benchmark; (iii) its policies for allocating between long-term and currently paid compensation, and between cash and non-cash compensation; (iv) its basis for allocating among different forms of long-term compensation; (v) how it decides when to grant equity awards; (vi) what items of corporate performance it considers when it makes compensation decisions; (vii) its equity or other security ownership requirements; and (viii) what impact tax and accounting treatments have on different forms of compensation.

[3] The standard for deciding whether there is adverse affect would be the same standard applied in confidential treatment requests for trade secrets. See Staff Legal Bulletin 1A on the SEC's website at www.sec.gov.

would be deferred. Under the proposals, however, if receipt of any amount of compensation was deferred for any reason (not just at the officer's election, as the rules currently require), the compensation would be disclosed in the appropriate column and the deferred amount would be disclosed in a footnote to the column.

Stock awards. A new stock awards column (replacing the current restricted stock award(s) column) would show stock-related awards like restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalents or similar instruments without option-like features. Stock awards would be valued at grant date fair value under FAS 123R[4] for financial reporting purposes. All earnings on stock awards (rather than just above-market earnings under the current rules), accrued or paid, would be shown in the column and described by type and amount in a footnote.

Options. The options awards column would show awards of options, stock appreciation right grants and similar instruments with option-like features. Instead of showing the number of securities underlying the awards (as the current rules require), a company would show the grant date fair value of the award under FAS 123R for financial reporting purposes. Transferred awards would be shown in the options column. Also, awards that were repriced in the last fiscal year would be shown at the repriced value in the options column. All earnings on awards, accrued or paid, would be shown in the column and described by type and amount in a footnote.

Assumptions made in valuing stock and option awards. A company would describe the assumptions it made in valuing its stock awards or option awards and could reference its notes to financial statements or MD&A. Companies delivering proxies on the internet could provide hyperlinks from the proxy to the sections referenced in the Form 10-K. The sections of the financial notes or MD&A referenced by the company would be deemed part of its executive compensation disclosure under Item 402 of Regulation S-K.

Non-Stock Incentive Plan Compensation. The non-stock incentive plan compensation column would show the dollar value of all awards earned under non-stock-related incentive plans during the fiscal year. This would cover awards where the performance measure was not based on the company stock price, or the award would not be settled by issuing stock. Awards would be considered earned in the year when the performance criteria was satisfied, whether or not payment was actually made to the named executive officer in that year. All earnings on awards, accrued or paid, would be shown in the column and described by type and amount in a footnote.

All Other Compensation. The all other compensation column would be the last column in the Summary Compensation Table. This column would cover all compensation that was not required to be included in any other column. The current other annual compensation would be eliminated. Each item of compensation shown in this column that exceeded $10,000 would be described by type and amount in a footnote. The proposing release lists several items that a company would disclose in this column:

- perquisites and other personal benefits, unless they aggregate to less than $10,000 (summarized in our Client Alert dated February 1, 2006);
- all earnings on compensation deferred on a non-tax qualified basis (instead of only above-market earnings shown under the current rules), including earnings on non-qualified defined contribution plans;
- "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;
- the aggregate increase in actuarial value to an named executive officer of all defined benefit and actuarial pension plans (including supplemental plans) accrued during the fiscal year;
- amounts paid or accrued pursuant to a plan or arrangement for any employment termination (including retirement, resignation or severance) or a change in control;
- company contributions to vested and unvested defined contribution plans;
- the dollar value of any life insurance premiums paid by the company during the fiscal year for the benefit of an named executive officer; and
- the compensation cost computed under FAS 123R for financial reporting purposes of company stock purchased (including through deferral of salary or bonus) at a discount from the market price on the date of purchase.

All Other Compensation Supplemental Table. Several different forms of compensation would be shown in the "all other compensation" column. Because of this, the SEC has requested comment whether, in addition to the Summary Compensation Table, the rules should require a separate table just for all other compensation. We have attached a copy of the All Other Compensation table as **Exhibit B**. This

[4] Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), Share-Based Payment.

table is not yet required and is only a suggestion open to comment.

As best practice this proxy season, a company may wish to consider using the suggested table to present some or all of the proposed "all other compensation" disclosure. As long as a company fully complies with the current disclosure rules, including providing each of the current compensation tables, the SEC staff has said that it will not object if a company provides additional supplemental compensation disclosure.

Director compensation. For an named executive officer who was also a director, his or her compensation for director services would be reported in the appropriate column(s) of the Summary Compensation Table, rather than in the separate Director Compensation Table discussed below. Each type and amount of director compensation would be provided in footnotes.

Supplemental Annual Compensation Tables

Two annual tables would supplement the revised Summary Compensation Table.

Grants of Performance-Based Awards Table. We have attached a copy of the proposed table as **Exhibit C**. Performance-based awards reported in the Summary Compensation Table would also be reported in the "Grants of Performance-Based Awards Table." This table would include incentive plan awards, option awards and restricted stock awards granted in the last fiscal year. The table would show separately each grant made during the last fiscal year, including its terms and estimated future payouts. An award would be considered performance-based if it was subject to a performance or market condition under FAS 123R.

Grants of All Other Equity Awards Table. We have attached a copy of the proposed table as **Exhibit D**. Nonperformance-based awards reported in the Summary Compensation Table would also be reported in the Grants of all Other Equity Awards Table. This table would show each equity based compensation award granted in the last fiscal year, including stock, options or similar awards, where payout or future value was tied to the company's stock price rather than to other performance criteria. This table would also show repricings. A company would describe the material terms of each grant or award in footnotes. Companies would no longer show the potentially realizable value of awards based on a 5% or 10% stock appreciation.

Narrative Disclosure to Tables

Material factors. A company would provide narrative disclosure describing any material factors necessary to an understanding of the information disclosed in the compensation tables. Material factors may include:

- material terms of named executive officer employment agreements;
- repricings (the proposals would eliminate the ten-year option repricing table) or other material modifications of outstanding stock-based awards during the last fiscal year, including extensions of exercise periods, changes in vesting, forfeiture terms or performance criteria;
- terms such as formulas used to determine amounts payable, vesting schedules, performance-based conditions, dividends and applicable rates (excluding any factor or condition that involves confidential commercial or business information); and
- material assumptions in determining increases in actuarial value of defined benefit or actuarial plans or in determining earnings on deferred compensation plans.

Compensation of non-executive officers. In addition, a company would provide narrative disclosure regarding up to three employees who were not executive officers[5] during the last completed fiscal year and whose total compensation for the last completed fiscal year was greater than that of any named executive officer. A company would disclose the amount of each of these employee's total compensation for the most recent fiscal year and describe his or her job position. A company would not be required to name these employees.

Exercises and Holdings of Previously Awarded Equity

The proposals provide for two tables showing equity compensation to named executive officers that has been previously awarded and that remains outstanding as of fiscal year end.

Outstanding Equity Awards at Fiscal Year-End Table. A copy of the proposed table is attached as **Exhibit E**. This table would cover outstanding equity awards, including those made under stock option plans, stock appreciation rights plans, restricted stock plans and incentive plans. "In-the-money" amounts of unexercised options and stock appreciation

[5] An "executive officer" is a president, vice president in charge of a principal business unit, division or function, or any other officer or person who performs a policy making function for the company.

rights would be shown when the fiscal year-end market price of the underlying securities exceeded the exercise or base price. Other valuations in the table would be based on market price at the end of the fiscal year. In addition, terms like exercisability, vesting dates and expiration dates would be disclosed in footnotes.

Options Exercises and Stock Vested Table. A copy of the proposed table is attached as **Exhibit F**. This table would show the number of shares acquired by a named executive officer upon the exercise of options or vesting of stock awards during the last fiscal year and the value of those shares as of the exercise or vesting date. The last column of this table would reflect the grant date fair value previously reported in the revised Summary Compensation Table.

Post-Employment Compensation

Retirement Plan Potential Annual Payments and Benefits Table. The proposals would eliminate the current pension plan table. Instead, the proposals provide for a new table disclosing estimated annual retirement payments under defined benefit plans for each named executive officer. A copy of the proposed table is attached as **Exhibit G**. The table would show estimated benefits at normal retirement age and at early retirement age (if available). Normal retirement age and early retirement age would be defined as defined in the relevant plan. The forms of benefits currently elected would be disclosed in footnotes. In addition, the proposals would require a narrative description of the material factors necessary to an understanding of each plan shown in the table. Some examples include:

- material terms and conditions of benefits available under the plan, including the benefit formula, eligibility standards and early retirement arrangements;
- lump sum distributions available by election, the distribution amount available as of fiscal year end and the valuation method;
- each element of compensation included in the benefit formula;
- reasons for participation in multiple plans; and
- company policy for granting extra years of credited service.

Nonqualified Defined Contribution and Other Deferred Compensation Plans Table. A copy of the proposed table is attached as **Exhibit H**. This table would disclose contributions, full value earnings and balances under nonqualified defined contribution and other deferred compensation plans for the last fiscal year. This would depart from current requirements to disclose only the above-market earnings on nonqualified deferred compensation when earned. The proposals would require footnote explanation tying the contributions and earnings amount in the table to deferred compensation reported in the Summary Compensation Table for previous years. In addition, the proposals would require narrative description of the material factors necessary to an understanding of each plan shown in the table. Examples include:

- types of compensation permitted to be deferred and any limitations on permitted deferrals;
- measures of calculating interest or other plan earnings, terms for selection of measures and interest rates for the last fiscal year; and
- material terms of payouts, withdrawals and other distributions.

Other Potential Post-Employment Payments. The proposals provide for narrative disclosure of payments related to the resignation, severance, retirement or other termination of an named executive officer, a change in a named executive officer's responsibilities or a change in control in the company. Specifically, a company would describe:

- specific circumstances that would trigger payment under the termination or change-in-control arrangements or the provision of other benefits (including perquisites);
- estimated payments and benefits that would be provided in each termination scenario, whether they would be lump-sum or annual, their duration and the party responsible to make the payments;
- specific factors used to determine appropriate payment and benefit levels under various triggering scenarios;
- material conditions or obligations of receipt of payments or benefits, including non-compete, non-solicitation, non-disparagement or confidentiality covenants;
- duration of noncompetes (and terms of waiver of breach);
- tax gross-up payments; and
- any other material features necessary for an understanding of the provisions.

The proposals would eliminate the current $100,000 threshold for disclosure of compensatory plans or arrangements providing payments upon termination or change-in-control. In the event that uncertainties existed regarding payments or benefits, a company would provide reasonable estimates and disclose its material assumptions underlying the estimates. These estimates would fall within the safe harbor for forward-looking information.

Officers Covered

Named executive officers. The proposals would specifically add the CFO (renamed the Principal Financial Officer) as an named executive officer. As proposed, the named executive officers would be:

- the CEO (renamed the Principal Executive Officer);
- the Principal Financial Officer;
- the three most highly compensated executive officers other than the Principal Executive Officer and the Principal Financial Officer; and
- up to two additional individuals for whom disclosure would have been required but for the fact that they were no longer serving as executive officers at the end of the last completed fiscal year.

Like the Principal Executive Officer, if the Principal Financial Officer served in that capacity for any part of the fiscal year, information would be required as to all of his or her compensation for the full fiscal year.

Most highly compensated executive officers. The most highly compensated executive officers would be determined on the basis of total compensation for the last fiscal year. The proposals would eliminate the current carve-out for cash compensation not recurring and unlikely to continue, but would retain the current carve-out for cash compensation for overseas assignments.

Minimum reporting threshold. The proposals would change the current basis of the $100,000 minimum reporting threshold from total annual salary and bonus for the last fiscal year, to total compensation for the last fiscal year. The minimum reporting threshold would not be applicable to the Principal Executive Officer or the Principal Financial Officer.

Relocation Plans

The proposals would change the current rules to require executive compensation disclosure under Item 402 of nondiscriminatory relocation plans that are generally available to salaried employees.

Director Compensation

The proposals would create a new Director Compensation Table. A copy of the proposed table is attached as **Exhibit I**. The proposed Director Compensation Table would be similar to the proposed Summary Compensation Table, except that it would only cover the most recently completed fiscal year. Instructions provided in the Summary Compensation Table would apply to similar matters in the Director Compensation Table.

Like the Summary Compensation Table, the proposals would require that all compensation must be included in the Director Compensation Table. An All Other Compensation column would show:

- perquisites and other personal benefits if they aggregate to $10,000 or greater;
- earnings on compensation deferred on a non tax-qualified basis;
- tax reimbursements;
- annual company contributions or other allocations to vested and unvested defined contribution plans;
- the compensation cost computed pursuant to FAS 123R for company stock purchased (including through deferral of fees) at a discount from the market price of such security at the date of purchase;
- aggregate annual increases in actuarial value of defined benefit and actuarial pension plans;
- annual company contributions to vested and unvested defined contribution and other deferred compensation plans;
- consulting fees;
- legacy or charitable awards, disclosed at the annual cost of the company's commitment, with footnote disclosure of total dollar amount and other material terms of the program; and
- the dollar value of any life insurance premiums paid for the director's benefit.

The proposals would require footnotes to the Directors Compensation Table, describing each director's outstanding equity awards at fiscal year end, in the same manner that these awards would be disclosed for named executive officers in the Outstanding Equity Awards at Fiscal Year-End Table.

A company could group directors having identical amounts and elements of compensation in a single row. A company could also omit from the Director Compensation Table any compensation to an named executive officer that was disclosed in the revised Summary Compensation Table as long as it was identified in a footnote as compensation for director services.

In addition to the table, the proposals would require narrative description of the material factors necessary to an understanding of the table, including, for example, a breakdown of the types of director fees.

Small Business Issuers[6]

Small business issuers would not be required to provide a Compensation Discussion and Analysis. Small business issuers would only provide the following tables (and accompanying narrative disclosure):

- the revised Summary Compensation Table, with information for only the last two fiscal years;
- the Outstanding Equity Awards at Fiscal Year-End Table; and
- the Director Compensation Table.

Small business issuers would only provide information for a total of three named executive officers, including the Principal Executive Officer and the two most highly compensated executive officers other than the Principal Executive Officer.

Proposed Revisions to Form 8-K

The proposals, if adopted, would reorganize certain aspects of executive and director compensation disclosure under Form 8-K.

Revised Item 1.01. The proposing release indicates that compensation disclosure filings under current Item 1.01 of Form 8-K have not all been "unquestionably or presumptively material" since the adoption of amendments to Form 8-K in August 2004, In response, the proposals would eliminate employment compensation arrangements from Item 1.01.

Revised Item 5.02(b). Current Item 5.02(b) requires disclosure of the retirement, resignation, termination, refusal to stand for re-election or removal of directors and specified officers (the Principal Executive Officer, Principal Financial Officer, president, principal accounting officer, principal operating officer and any person performing similar functions). The proposals would expand Item 5.02(b) to also require this disclosure for named executive officers for the last fiscal year (whether or not they are specified officers).

Revised Item 5.02(c) and Item 5.02(d). The proposals would also expand current Items 5.02(c) (triggered by an appointment of a new specified officer) and 5.02(d)(triggered by election of a new director except by shareholder vote) to require a brief description of any material plan, contract or arrangement (or material amendment) to which a covered officer or director is a party or participant that is entered into in connection with an Item 5.02 triggering event, or any grant or award (or modification) to any such covered person in connection with an Item 5.02 triggering event.

New Item 5.02(e). The proposals would also create new Item 5.02(e), which would require that where the company enters into, adopts or commences a material compensatory plan, contract or arrangement (or material amendment), in which the Principal Executive Officer, Principal Financial Officer or any named executive officer for the most recent fiscal year is a party or participant, or a material grant or award (or material modification) is made, then the company would provide a brief description of the plan, contract or arrangement and the amounts payable to the officer. A company would provide Item 5.02(e) disclosure for an named executive officer regardless of whether the new plan, contract or arrangement (or amendment) is related to an Item 5.02 triggering event.

A company would not be required to disclose grants or awards (or modifications) under Item 5.02(e) that were materially consistent with the terms of previously disclosed plans, contracts or arrangements, if the grants or awards (or modifications) were disclosed the next time the company was required to provide new disclosure under Item 402 of Regulation S-K.

As noted earlier, under Item 5.02(e), the proposals would require a company to disclose salary and bonus for the most

[6] Under Item 10(a)(1) of Regulation S-B, small business issuers are U.S. or Canadian issuers that have less than $25 million in revenues and a public float of less than $25 million.

recent fiscal year that was not available at the most recent practicable date in connection with its disclosure under Item 402 of Regulation S-K.

Item 5.02(e) disclosure would fall within the safe harbor from liability under Section 10(b) and Rule 10b-5 of the '34 Act for failure to timely file Form 8-K reports and related Form S-3 ineligibility.

The proposing release cautions that revised Item 5.02 would only call for a brief description of the specific information required, rather than an updating of the company's Item 402 disclosure.

Beneficial Ownership Disclosure

The proposals would require footnote disclosure to the Security Ownership of Certain Beneficial Owners and Management Table disclosing the number of shares pledged as security by named executive officers, directors, nominees and directors and executive officers as a group. The proposals would not require this disclosure of significant shareholders (except to the extent disclosure was already required of pledges that may result in a change of control under Item 403(c) of Regulation S-K). Finally, the proposals would require disclosure of beneficial ownership of directors' qualifying shares, which is not currently required.

Certain Relationships and Related Transactions Disclosure

The proposals would revise Item 404 of Regulation S-K, which governs disclosure of related party transactions.

Transactions with Related Persons

Under revised Item 404(a), a company would disclose:

- any transaction since the beginning of the company's last fiscal year or any currently proposed transaction;
- in which the company was or was to be a participant;
- in which the amount involved exceeded $120,000 (increased from the current threshold of $60,000); and
- in which any related person had, or would have, a direct or indirect material interest.

Materiality standard. The proposals would eliminate several of the current instructions to Item 404(a) about what types of transactions are material. But the standard for deciding whether a transaction is material under revised Item 404(a) would not change. The standard would still be "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." Factors such as the relationship of related persons to the transaction, and the amount involved would remain relevant.

No bright lines. The proposing release cautions that the current $60,000 threshold and the proposed $120,000 threshold are not bright-line tests. Even if a transaction exceeds one of these thresholds, a company must analyze the transaction's materiality to decide whether a related person has a direct or indirect interest.

New Definitions

Revised Item 404(a) would define "transaction," "related person" and "amount involved."

Transaction would include a series of similar transactions, and it would specifically include indebtedness and guarantees of indebtedness.

Related person would now include stepchildren, stepparents and persons sharing a household (except tenants and employees). A related person would mean any person who had any of the following relationships at any time during the last fiscal year:

- director or executive officer (or director nominee for disclosure in a proxy for the election of directors);
- any immediate family member of a director, executive officer or nominee, meaning any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and any person (other than a tenant or employee) sharing the household of a director, officer or nominee; and
- any significant shareholder or any of its immediate family members (unless the person was not a significant shareholder, or its immediate family member, at the time of the transaction).

Amount involved would mean the dollar value of the transaction, including:

- for leases or other transactions with periodic payments, the aggregate amount of all periodic payments due during the last fiscal year; and
- for indebtedness, the largest aggregate principal amount of all indebtedness outstanding during the last fiscal

year, and all interest payable on it during the last fiscal year.

Indebtedness

Item 404(c) would be eliminated, and current requirements to disclose indebtedness would be folded into revised Item 404(a). Companies also would disclose material direct and indirect interests in indebtedness with significant shareholders as well as other related persons. Current Item 404(c) does not require disclosure of indebtedness with significant shareholders.

Disclosure Requirements

What is required. A company would disclose:

- the related person's relationship to the company;
- the related person's interest in the transaction with the company (including his or her ownership in any entity that is a party to the transaction);
- the dollar value of the amount involved in the transaction and of the related person's interest in the transaction; and
- any other information about the transaction or the related person that is material to investors.

What is not required. Named executive officer and director compensation would not be required under Item 404 if the compensation was reported under Item 402. Executive officer compensation would not be required under Item 404 if (i) the compensation would have been reportable under Item 402 if the officer was a named executive officer, (ii) the officer was not an immediate family member of another related person and (iii) the compensation committee approved the compensation.

In addition, a company would not disclose certain ordinary business debt or indebtedness with institutional lenders that was made in the ordinary course of business. Finally, directors and less than ten percent equity owners or limited partners of participants in a transaction with the company would not be deemed to have an indirect material interest in a transaction.

Procedures for Approval of Related Party Transactions

A company would describe its policies and procedures for review and approval of related party transactions that would be reportable under Item 404(a), including their material features.

Some examples are:

- the board members responsible for applying the policies and procedures;
- the standards to be applied;
- types of covered transactions; and
- whether the policies and procedures are written.

In addition, a company would identify any situations where its policies and procedures did not require review or approval of a transaction that was reportable under Item 404(a), or where its policies and procedures were not followed for such a transaction.

Promoters

Proposed Item 404(c) would require companies to describe transactions with promoters if a company had a promoter at any time during the past five fiscal years, regardless of when the company was organized. Currently, this disclosure is only required for companies organized within the past five years.

Corporate Governance

The proposals would create new Item 407, which would consolidate and update current disclosure requirements for director independence and related corporate governance matters.

Independent directors and non-independent committee members. A company would disclose those directors and nominees that it identifies as independent, and those board committee members that it does not identify as independent. If the company was a listed issuer on a national securities exchange, the company would apply definitions for director and committee member independence that complied with the company's listing standards. If the company was not a listed issuer, the company would apply definitions for director independence of a national securities exchange chosen by the company. Companies would apply the same definition from the same national securities exchange uniformly to all directors and committee members.

A company that adopted and applied its own definitions of independence for directors and committee members would be required to disclose whether the definitions are posted on the company's website. If the definitions were not posted on the company's website, the company would be required to attach a copy of the definitions to its proxy at least once every three years.

Relationships considered in determining independence. For each director or nominee identified as independent, a company would be required to describe any transaction, relationship or arrangement not disclosed under proposed Item 404(a) that was considered by the board in determining the director's or nominee's independence.

Proposed Item 407 disclosure would be required for any person who served as a director during any part of the last fiscal year, even if his or her term ended.

Audit committee charter. Under the proposals, a company would no longer be required to deliver its audit committee charter to its shareholders if the charter was posted on the company's website.

New compensation committee disclosure. The proposals would expand board committee disclosure requirements. A company would disclose the following information about its compensation committee:

- the scope of its authority (or of persons performing equivalent functions);
- the extent to which it could delegate authority;
- whether its authority was set forth in a charter or other document, and if so, the company's website address where a current copy was available (if the charter was not available on the company's website, the company would attach the charter to its proxy once every three years);
- any role of executive officers in determining the amount or form of executive and director compensation; and
- the identity of any compensation consultants as well as detailed information regarding their role in determining or recommending the amount or form of executive and director compensation.

The proposals would consolidate additional information with respect to compensation committee interlocks and insider participation in compensation decisions that is currently required under Item 402(j) of Regulation S-K.

Plain English

Companies would present their disclosure of executive and director compensation, related party transactions, beneficial ownership and corporate governance included in '34 Act reports according to the SEC plain English standards adopted in 1998. If the disclosure was incorporated by reference into a '34 Act report from a company's proxy, the disclosure in the proxy would have to be written in plain English.

The proposing release lists some plain English do's, including:

- present information in clear, concise sections, paragraphs and sentences;
- use short sentences, everyday words and the active voice;
- use descriptive headings and subheadings; and
- use charts or bullet lists for complex material.

The proposing release lists some plain English don'ts, including:

- vague boilerplate explanations;
- multiple negatives;
- legal, technical or business jargon;
- repeating disclosure in different sections without enhancing the quality of the information;
- complex information copied directly from legal documents; and
- over reliance on glossaries or defined terms.

EXHIBIT A

SUMMARY COMPENSATION TABLE

Name and Principal Position (a)	Year (b)	Total ($) (c)	Salary ($) (d)	Bonus ($) (e)	Stock Awards ($) (f)	Option Awards ($) (g)	Non-Stock Incentive Plan Compen-sation ($) (h)	All Other Compen-sation ($) (i)
PEO	_____ _____ _____							
PFO	_____ _____ _____							
A	_____ _____ _____							
B	_____ _____ _____							
C	_____ _____ _____							

EXHIBIT B

Name (a)	Perquisites and Other Personal Benefits (b)	Earnings on Deferred Compensation (c)	Tax Reimburse-ments (d)	Discounted Securities Purchases (e)	Payments/ Accruals on Termina-tion Plans (f)	Registrant Contribu-tions to Defined Contribu-tion plans (g)	Increase in Pension Actuarial Value (h)	Insurance Premiums (i)	Other (j)
PEO									
PFO									
A									
B									
C									

EXHIBIT C

GRANTS OF PERFORMANCE-BASED AWARDS

Name	Performance Based Stock and Stock-based Incentive Plans: number of shares, units or other rights (#)	Performance-Based Options: number of securities underlying Options (#)	Non-Stock Incentive Plan Awards: number of units or other rights (#)	Dollar amount of consideration paid for award, if any ($)	Grant Date for Stock or Option Awards	Performance or other period until vesting or payout and Option Expiration Date	Estimated future payouts		
							Threshold ($) or (#)	Target ($) or (#)	Maximum ($) or (#)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
PFO									
A									
B									
C									

EXHIBIT D

GRANTS OF ALL OTHER EQUITY AWARDS

Name (a)	Number of Securities Underlying Options Granted (#) (b)	Exercise or Base Price ($/Sh) (c)	Expiration Date (d)	Number of Shares of Stock or Units Granted (#) (e)	Vesting Date (f)	Grant Date (g)
PEO						
PFO						
A						
B						
C						

EXHIBIT E

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

Name (a)	Number of securities underlying unexercised Options (#) Exercisable/ Unexercisable (b)	In-the-money amount of unexercised Options ($) Exercisable/ Unexercisable (c)	Number of shares or units of Stock held that have not vested (#) (d)	Market value of shares or units of Stock held that have not vested ($) (e)	Incentive Plans: Number of nonvested shares, units or other rights held (#) (f)	Incentive Plans: Market or payout value of nonvested shares, units or other rights held ($) (g)
PEO						
PFO						
A						
B						
C						

EXHIBIT F

OPTION EXERCISES AND STOCK VESTED

Name of Executive Officer (a)	Number of Shares Acquired on Exercise Or Vesting (#) (b)	Value Realized Upon Exercise Or Vesting ($) (c)	Grant Date Fair Value Previously Reported in Summary Compensation Table ($) (d)
PEO – Options			
Stock			
PFO – Options			
Stock			
A – Options			
Stock			
B – Options			
Stock			
C – Options			
Stock			

EXHIBIT G

RETIREMENT PLAN POTENTIAL ANNUAL PAYMENTS AND BENEFITS

Name (a)	Plan name (b)	Number of years credited service (#) (c)	Normal retirement age (#) (d)	Estimated normal retirement annual benefit ($) (e)	Early retirement age (#) (f)	Estimated early retirement annual benefit ($) (g)
PEO						
PFO						
A						
B						
C						

EXHIBIT H

NONQUALIFIED DEFINED CONTRIBUTION
AND OTHER DEFERRED COMPENSATION PLANS

Name (a)	Executive contributions in last FY ($) (b)	Registrant contributions in last FY ($) (c)	Aggregate earnings in last FY ($) (d)	Aggregate withdrawals/ distributions ($) (e)	Aggregate balance at last FYE ($) (f)
PEO					
PFO					
A					
B					
C					

EXHIBIT I

DIRECTOR COMPENSATION

Name (a)	Total ($) (b)	Fees earned or paid in cash ($) (c)	Stock Awards ($) (d)	Option Awards ($) (e)	Non-Stock Incentive Plan Compensation ($) (f)	All Other Compensation ($) (g)
A						
B						
C						
D						
E						

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For more information contact:

Julie M. Allen
212.969.3155 – jallen@proskauer.com

Ira G. Bogner
212.969.3947 – ibogner@proskauer.com

Robyn Manos
202.416.6816 – rmanos@proskauer.com

Andrea S. Rattner
212.969.3812 – arattner@proskauer.com

Richard H. Rowe
202.416.6820 – rrowe@proskauer.com

Michael S. Sirkin
212.969.3840 – msirkin@proskauer.com

Allan R. Williams
212.969.3220 – awilliams@proskauer.com

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