

# Client Alert

A report  
for clients  
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of the firm     **January 2007**

## SEC Amends Executive Compensation Disclosure To Align With FAS 123R

On December 22, 2006, the Securities and Exchange Commission adopted an amendment to its executive and director compensation disclosure rules to more closely conform the reporting of stock and option awards to Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 Share-Based Payment (FAS 123R). The amendment was made in the form of interim final rules that will be effective upon publication in the Federal Register.

On July 26, 2006, the SEC adopted enhanced executive compensation disclosure requirements for proxy statements, registration statements and annual reports filed by public companies. The amendment to these rules will align the reporting of equity awards in the Summary Compensation Table and the Director Compensation Table to the amounts that are disclosed in the financial statements under FAS 123R.

### **FAS 123R**

FAS 123R requires recognition of the costs of equity awards over the period in which an employee or other service provider is required to provide service in exchange for the award. Using this same approach in the executive compensation disclosure will give investors a better idea of the compensation earned by an executive or director during a particular reporting period, consistent with the principles underlying the financial statement disclosure.

### **The Amendments**

Under the amendments:

- The dollar values required to be reported in the Stock Awards and Option Awards columns of the Summary Compensation Table and the Director Compensation Table are revised to disclose the compensation cost of those awards, before reflecting forfeitures, over the requisite service period, as described in FAS 123R. Amounts of salary or bonus foregone at the election of a named executive with respect to which the executive received non-cash compensation must be included in the salary or bonus column of the Summary Compensation Table and in the executive's total compensation. The executive's receipt of that non-cash compensation must be disclosed in a footnote to the Table with a reference to the related narrative disclosure about any material terms of any plan under which such compensation was received.
- The Grants of Plan-Based Awards Table is revised to require disclosure of the grant date fair value of each individual equity award, computed in accordance with FAS 123R, and the Director Compensation Table required under Item 402 of Regulation S-K is revised to require footnote disclosure of the same information. The Grants of Plan-Based Awards Table does not apply to small business issuers.
- The Grants of Plan-Based Awards Table is revised to require disclosure of any option or stock appreciation right that was repriced or otherwise materially modified during the last completed fiscal year, including the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R, and the Director Compensation Table required under Item 402 of Regulation S-K is revised to

require footnote disclosure of the same incremental fair value information. Repricing according to preexisting formulas is not required to be disclosed in the Grants of Plan-Based Awards Table.

## Compliance Dates

Compliance with the Item 402 amendments is required for proxy statements, information statements and registration statements filed on or after December 15, 2006, that are required to include Item 402 disclosure for fiscal years ending on or after December 15, 2006, and for Forms 10-K and 10-KSB for fiscal years ending on or after December 15, 2006. These compliance dates are the same as the compliance dates for the amendments to Item 402 of Regulations S-K and S-B that were adopted on July 26, 2006.

The SEC is soliciting comment on the amendments for a period of 30 days following Federal Register publication, and will consider those comments and make changes to the amendments if necessary. The comment period does not affect the compliance dates specified in the preceding paragraph.

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