

SEC Amends Rules on Proxy Disclosure, Corporate Governance and Executive Compensation

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On December 16, 2009, the **U.S. Securities and Exchange Commission** (the "SEC") adopted amendments to the SEC's rules that will enhance information provided in connection with **proxy solicitations** and in other reports filed with the SEC. These amendments relate to director and director nominee qualifications, the structure of board governance, fees paid to conflicts of interest, including compensation consultants and the relationship between a company's overall compensation policy and its risk profile. The amended rules will become effective on February 28, 2010, so these rules will apply to most public companies during the 2010 proxy season. According to SEC Chairman Mary L. Schapiro, "Good corporate governance is a system in which those who manage a company - that is, officers and directors - are effectively held accountable for their decisions and performance. But accountability is impossible without transparency. By adopting these rules, we will improve the disclosure around risk, compensation, and corporate governance, thereby increasing accountability and directly benefiting investors."

The following is a summary of the new and amended rules:

Amended Disclosures in Proxy Statements

Director and Nominee Qualifications

The SEC amended Item 401 of Regulation S-K to require expanded disclosure about the qualifications of each director and any nominee for director. Under these amendments, a company must disclose, for each director or nominee for director, the experience, skills or attributes, and qualifications that make the director qualified to serve as a director for that particular company. In addition, the amended rules will require directors to disclose any directorships held at public companies in the last five years, rather than current directorships only (as required under current rules). These amendments also expand the disclosure period for material legal proceedings involving directors or nominees for director from five years to ten years and expand the list of legal proceedings covered by the rules. The amendments will also require a company to discuss the role diversity plays in its selection process for directors. This new disclosure requirement will require companies with diversity policies to discuss how the policy is implemented and how the board assesses the effectiveness of the policy.

To comply with these rules, companies should institute a process for analysis and review of the demographics and skill set needed for an individual to serve on the board of such companies and how each incumbent board member meets those needs.

Board Governance

The SEC amended Item 407 of Regulation S-K and Schedule 14A to require disclosure regarding why a company believes its leadership structure is the best for the company under the particular circumstances. In particular, a company will now be required to disclose whether and why it has chosen to combine or separate the positions of chief executive officer and chairman of the board. If the roles are combined, the company must disclose whether it has a lead independent director and what role this director plays in the leadership of the company. In addition, a company will now be required to discuss its board's role in risk oversight and how this role affects the leadership structure of the company.

Annual Meeting Voting Results

The amended rules will require disclosure of shareholder voting results in Form 8-K, instead of the Form 10-K and Form 10-Q for the period in which the shareholder meeting occurred, which often would be filed months after the relevant meeting. This new Form 8-K requirement will require a company to disclose the results of a shareholder vote within four business days after the shareholder meeting at which the vote was held.

Disclosures Regarding Compensation Consultants

The SEC has made additional amendments to Item 407 of Regulation S-K about fees paid to compensation consultants and potential conflicts of interest. Disclosure will now be required about fees paid to compensation consultants or their affiliates, whether they have any role in determining compensation, and if they perform any additional services for the company if the fees for these additional services exceed

\$120,000 during the company's fiscal year. If this threshold is not met, no disclosure about compensation consultants' fees or conflicts of interest will be required.

Additionally, the amendments contain two exemptions to this disclosure requirement. First, disclosure will not be required if the compensation consultant's role is broad-based, such as consultation about 401(k) or health plans. In addition, if the compensation consultant only provides services that are not specifically tailored to the company, such as a general survey, the company is not required to disclose fees and conflicts of interest. Second, fees and related disclosure will not be required if the consultant works with management and the board has its own compensation consultant. To highlight any potential conflicts of interest in a manner similar to the current fees of the company's independent auditors, a company will be required to disclose in its proxy statement the additional services provided, the aggregate fees paid for all additional services, aggregate fees paid for work relating to executive compensation, and whether the additional services were recommended by management and approved by the board.

Enhanced Compensation Disclosure

The SEC adopted two amendments to the executive compensation disclosure required by Item 402 of Regulation S-K. First, companies will be required to analyze their overall compensation practices and policies as they relate to employees generally, and must discuss these practices and policies if risks arising from these compensation policies are reasonably likely to have a material adverse effect on the company. For example, discussion may be required if a company's compensation policies and practices provide bonuses based upon the accomplishments of a task when the income and risk to the company from the task extend over a significantly longer period of time. In addition, the amendments will require a company to disclose how its compensation policies create incentives that can affect the company's risk.

Second, the Summary Compensation Table has been revised now to require, for stock and option awards, the disclosure of the value of options when they are awarded to executives (the aggregate grant date fair value), instead of the current requirement to report the annual accounting charge. For companies providing disclosure for fiscal years ending after December 20, 2009, each of the preceding fiscal years in the table will be required to be recomputed using the revised standard. The proposal to eliminate the corresponding column in the Grants of Plan-Based Awards Table was not adopted in the final rule amendments.

Companies should ensure that the company's compensation committee undertakes the requisite discussions in order to make the appropriate compensation disclosures under the new rules.

The full text of amended rules is available on the SEC website at: www.sec.gov/rules/final/2009/33-9089.pdf.

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