Tuesday, October 20
9:00 am–10:30 am

1005 Securities 101 for In-house Counsel

April Hamlin
Partner
Lindquist & Vennum PLLP

Gayle M. Hyman
Vice President and Deputy General Counsel
Las Vegas Sands Corp.

Eric Loewe
Senior Vice President, General Counsel and Secretary
InsWeb Corporation

Faculty Biographies

April Hamlin

April Hamlin is a partner at Lindquist & Vennum, PLLP in its Minneapolis office. She practices corporate and securities law, representing both publicly and privately held companies. Her practice emphasizes securities regulation and corporate finance for publicly held companies, including SEC reporting requirements, stock exchange listing standards, executive compensation and disclosure matters, corporate governance, and public and private offerings. For privately held companies, Ms. Hamlin provides general legal representation, typically in the areas of formation, shareholder agreements, and private placements. She represents clients in various industries such as life sciences and medical device, information systems, consumer products, telecommunications, renewable energy, hospitality, and manufacturing.

Since 2005, Ms. Hamlin has served as an adjunct professor at William Mitchell College of Law for the first-year core course "Writing & Representation: Advice and Persuasion."

Ms. Hamlin received a BA, summa cum laude, from the University of Minnesota and a JD, magna cum laude, from William Mitchell College of Law.

Gayle M. Hyman

Gayle M. Hyman is the vice president and deputy general counsel of Las Vegas Sands Corp.

Prior to joining Las Vegas Sands Corp., she was the deputy general counsel, finance and securities at Allegheny Energy, Inc. She also was a corporate associate at Paul, Weiss, Rifkind, Wharton & Garrison LLP in its New York and Hong Kong offices and, prior to that, a corporate associate at Sullivan & Cromwell LLP in its New York office.

Ms. Hyman received an AB from Stanford University, an MBA from the University of Chicago Graduate School of Business and a JD from New York Law School.

Eric Loewe

Eric Loewe is senior vice president, general counsel and secretary for InsWeb Corporation, a publicly traded company that operates an online marketplace that matches consumers with insurance providers. Mr. Loewe is responsible for all legal, corporate compliance, and human resource matters for InsWeb.

Before joining InsWeb, Mr. Loewe was senior counsel for the National Association of Independent Insurers, providing legal and government affairs advice to the association's 570 member insurance companies.

He is vice president of ACC's Sacramento chapter.

Mr. Loewe holds a BA from Loyola University Chicago and a JD from IIT Chicago-Kent College of Law.

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Periodic Reports: Forms 10-K and 10-Q

Comprehensive, continuous system of disclosure

Recurring theme of SEC, Congress and investors: More transparency

Translation: More disclosure, and more timely disclosure

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Annual Report on Form 10-K

Not a "form"

Not the same as the "glossy" annual report

Filing deadlines:

- **Large accelerated filers—**45 days after end of fiscal year
- **Accelerated filers—**60 days after end of fiscal year
- **All others—**90 days after end of fiscal year

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Quarterly report on Form 10-Q

Three per year

Less but similar info as the 10-K

Tiered deadlines, same as Form 10-K

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Overview of EDGAR

Mandatory electronic filing

Nearly instantaneous public dissemination

Specific filing formats
- Regulation S-T (17CFR 232._____) and EDGAR Filing Manual (available on SEC website)

XBRL is the "future"

Management's Discussion and Analysis (MD&A)

Core of the 10-K or 10-Q
- Financial statements tell the history; MD&A explains "why"
- Issuers are encouraged to provide forward looking statements

Always in 10-K and each 10-Q

MD&A (cont.)

Goals of MD&A per SEC (Sec. Act Release No. 6176 (Jan. 15, 1980)):
- "Articulate management's objectives and financial policies"
- "Describe where the company is headed and how it hopes to get there"
- "Establish and maintain credibility"

MD&A (cont.)

Enable investors to see company through eyes of management

- Narrative explanation of material trends and uncertainties
- Context for review of financials
- Principles-based disclosure

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MD&A (cont.)

In recent past, SEC was critical of the limited amount of information being provided

Too much "discussion" boilerplate; not enough "analysis"

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MD&A (cont.)

Topics required by Regulation S-K:

- **Liquidity—**what is the trend, what sources would be used
- **Capital resources—**what's the company on the hook for, what are the trends
- **Results of operations—**trends of expenses and income, what's the effect of inflation
- **Off-balance-sheet transactions—**describe and explain how they help the business

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MD&A (cont.)

Other topics of interest to the SEC

- Critical accounting estimates—analysis of the variability or uncertainty of accounting estimates
- Newly adopted accounting policies—why the accounting changed and the impact

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MD&A (cont.)

Drafting principles:

- Include an executive summary ("the big picture")
- Discuss key performance metrics used by management
- Discuss material trends of company, industry and economy
- Provide analysis, not just facts
- Consider using tables to facilitate comparison

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MD&A (cont.)

Safe harbor for "forward-looking statements"

No liability if:

- "identified as a forward-looking statement," and
- "is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement"

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Risk Factors

Simple concept: explain why past performance may not be indicative of future

Why is investing in this company risky?

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Risk Factors (cont.)

Examples:

- Limited operating history
- Macro-economic trends
- Outcome of significant litigation
- New legislation/regulation

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Risk Factors (cont.)

Drafting principles:

- Short, concise statements
- Captions
- Complete explanation
- Not required to repeat risk factor in 10-Q, unless it has changed

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Certifications

Section 302

CEO and CFO:

- Have reviewed
- No untrue or misleading statements
- Financials are fairly presented
- Accept responsibility for maintaining disclosure controls

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Certifications (cont.)

Section 906

Also CEO and CFO

- 10-K or 10-Q comply with requirements
- Are fairly presented (in all material respects)

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Certifications (cont.)

Management's Report on Internal Control

CEO and CFO statements

- System of internal control provides reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements
- CEO and CFO were involved in evaluating the effectiveness of the internal controls

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Proxy Statement

- SEC requires that shareholders of a company whose securities are registered under Section 12 of the Securities Exchange Act of 1934 receive a proxy statement prior to a shareholder meeting
- Required contents described in Schedule 14A
- Filed electronically on EDGAR

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Timing

Filing deadline:

- 120 days after end of fiscal year (if 10-K, Part III compensation information is included)
- This applies regardless of delivery method
- Beware preliminary proxy requirements

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Delivery Deadlines

Notice and Access: 40 days before annual meeting:
- File proxy materials
- Post proxy materials on company website
- Send notice of Internet availability to shareholders

Full set delivery:
- On or before mailing date:
  - File proxy materials
  - Post proxy materials on company website
- Mail proxy materials—allow enough time to reach shareholders before the meeting

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Contents of Proxy Statement

Information about the company, including

- Its directors and executive officers
- Its corporate governance
- Officer and director compensation information

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Contents of Proxy Statement (cont.)

Matters to be voted on by shareholders, including:

- Election of directors
- Election, approval or ratification of auditors
- Management and shareholder resolutions

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Directors and Officers

Identify directors and executive officers and provide:

- Biographical information
- Related party transactions
- Compensation

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Corporate Governance

Describe the company's corporate governance, including:

- Director independence
- Board meetings
- Board committees
  - Audit
  - Compensation
  - Nominating and governance
- Code of ethics

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Compensation Disclosure

Disclose compensation for "named executive officers":

- Principal executive officer
- Principal financial officer
- Three most highly compensated executive officers (other than PEO or PF0)

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Compensation Disclosure (cont.)

Disclose all elements of compensation, including:

- Base salary
- Bonuses
- Long-term incentives
- Retirement benefits
- Payments upon termination or change-in-control
- Perquisites

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Compensation Disclosure (cont.)

Compensation discussion and analysis ("CD&A"):

- Permits a company to tell its story about its executive pay policies and executive pay levels
- Covers all aspects and components of compensation provided to named executive officers
- Provides principles-based disclosure

CD&A

Analysis:

- Focus on how and why specific executive compensation decisions and policies are developed

Presentation:

- Use plain English
- Organize tables and graphs to help the reader understand the disclosure
- Do not include boilerplate disclosure

Proposed Proxy Disclosure Changes

- In July 2009, SEC proposed enhanced compensation and corporate governance disclosure
- According to SEC, purpose of proposals is to "better inform and empower investors to improve corporate governance and help restore investor confidence"
- SEC anticipates that final rules will be available for the 2010 proxy season

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Proposed Disclosure Changes (cont.)

Proposed changes include:

- CD&A to address the company's overall compensation policy as it relates to risk and management of that risk
- Disclosure about the role of a company's board of directors in its risk management process
- Disclosure about a company's leadership structure
- Disclosure regarding compensation consultant fees and services

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Current Report on Form 8-K

- Triggering events
- Crafting the disclosure
- Filing deadlines and exceptions
- Suggestions for ensuring timely, accurate filings

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Triggering Events

- 28 specific "items" requiring disclosure
- 8 general categories of disclosure
  - Registrants' business and operations
  - Financial information
  - Securities and trading markets
  - Matters related to accountants and financial statements
  - Corporate governance and management
  - Regulation FD
  - Other events
  - Financial statements and exhibits

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Spotlight on Common Triggering Events

- Material definitive agreements
- Earnings releases
- Acceleration or increase of direct financial obligation
- Changes in directors
- Executive officer compensation
- Regulation FD

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Crafting the Disclosure

- Item identifies information to be disclosed
- Always requires disclosure of date of triggering event
- Incorporation by reference
- Websites and press releases as functional substitutes
- Filing exhibits
- "Furnished" versus "filed"

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Filing Deadlines and Exceptions

- Four business days
- Triggering events on non-business days
- Exceptions:
  - Earnings calls
  - Appointment of certain officers
  - Regulation FD disclosure
  - Financial statements
  - Other events

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Consequences of Delinquent Form 8-K

- No extensions available (unlike Forms 10-K and 10-Q)
- Disclosure controls and procedures
- Form S-3 eligibility and other registration statement impacts
- Rule 144 availability
- Insider trading concerns
- Violation of Exchange Act, requirements for listing, and possibly covenants

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Ensuring Timely Filings

- Advance planning and the avoidable "oops": earnings releases and calls, board and committee meetings, presentations to investors
- Use of a disclosure committee
- Developing robust reporting chains and processes

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Exchange Act Section 16

- Statements of ownership, changes in ownership
- Who has duty to report
  - Directors
  - Officers
  - +10% owners
  - Transactions before and after insider status
- Determining beneficial ownership
- Determining reportable securities

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Specifics of Section 16 Forms

- Form 3, Form 4 and Form 5
- Mechanics of filing
  - Electronic filing
  - Reporting codes
  - Short deadlines (2 business days)
  - Table I and Table II

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Section 16 Special Situations

- Managing the reporting process
- Insider trading policy and "open windows"
- Rule 10b5-1 trading plans
- Reporting late filings
- Disclosure controls and procedures

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Section 16 Liability

- Prohibition on short swing profits
  - Knowledge, intent, good faith
  - Matching opposite way transactions
  - Six month period
  - Determination of profit
  - Remedy to the company
- Exempt transactions: committee of solely "non-employee" directors

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Sample 2010 Annual Report/Proxy Timetable

Date	Task	Status	Notes
January 1, 2009	Identify top 10 highly compensated individuals and all members of the Board of Directors. Confirm that mechanism is in place to track compensation, perquisites, etc. for disclosure in 2010 proxy		
January 18, 2010	Distribute D&O questionnaires		
January 18, 2010 - April 30, 2010	Discussions with Compensation Committee re compensation philosophy for executive officers		
February 1, 2010	(1) Confirm arrangements with Broadridge for notice/access distribution. (2) Notify art department to design AR cover		
February 25, 2010	Board meeting to, among other things: (1) set record date for annual meeting; and (2) consider any management proposals for proxy		
February 26, 2010	Notify NYSE, transfer agent, Broadridge and DTC of record and annual meeting dates.		NYSE Rule 401.02 requires notification of meeting date and record date. The NYSE must be notified at least 10 days before the record date.
March _, 2010	Deadline specified in 2009 proxy for submission of stockholder proposals		
March 10, 2010	Deadline for return of D&O questionnaires		
March 11, 2010 - April 30, 2010	Meet with directors and executive officers to confirm information in D&O questionnaires		
March 16, 2010 (Tuesday)	Commence brokers' search		At least 20 business days before record date (Rule 14a-13(a)(3)). (NYSE broker search requirement is 10 days)
April 13, 2010 (Tuesday)	Record date		No more than 60 days before meeting (April 11, 2010) (By-laws Section ___ and state law)
February 1 - April 30, 2010	Prepare proxy materials		
Wednesday, April 7, 2010 (preliminary proxy filing) **OR** Monday, April 26, 2010 (no preliminary proxy filing)	Board, Audit, Compensation and Nominating and Governance committee meetings to review/approve proxy and committee reports		

Monday, April 12, 2010	File preliminary proxy (if necessary)		The preliminary proxy is subject to a 10 calendar day SEC review period. If reviewed, allow additional time to reply to SEC comments. Rule 14a-6.
No later than Friday, April 30, 2010	File definitive proxy.		Filing deadline is April 30, 2010 (120 days after 12/31/09). Filing must be after March __, 2010 (last date in 2009 proxy for submission of stockholder proposals).
No later than Friday, April 30, 2010	Post proxy on website and mail notice and access cards if e-proxy. Consider earlier filing to meet printer/mailing schedule, save mailing costs, etc., especially if e-proxy is not used. Mail AR/proxy/notice of meeting or post via e-proxy		Filing and website posting must be completed by April 30, 2010 (40 days before annual meeting) if e-proxy is used.

Promptly after filing definitive proxy	Mail AR/proxy/notice of meeting if e-proxy is not used. Print fulfillment documents if e-proxy		Note that NYSE listing agreement no longer requires that the AR be mailed no later than 120 days after 12/31/09.
June 10, 2010 (Thursday)	Annual Meeting		Location – _____
June 11, 2010	File 8-K (if necessary)		File 8-K if anything reportable occurs at meeting.
July 9, 2010 (Friday)	Deadline for NYSE annual written affirmation and CEO certification		Due within 30 calendar days of the annual meeting (Instructions to Section 303A Annual Written Affirmation)

Legal/Stock Exchange Holidays:
February 15, 2010 – Presidents' Day
March 29 - April 6, 2010 – Passover
April 2, 2010 – Good Friday
April 4, 2010 – Easter
May 31, 2010 – Memorial Day
July 4, 2010 – Independence Day (Friday)

REGULATION S-K, Item 402 (Current as of July 31, 2009)

§ 229.402 (Item 402) Executive compensation.

top

(a) *General* —(1) *Treatment of foreign private issuers.* A foreign private issuer will be deemed to comply with this Item if it provides the information required by Items 6.B and 6.E.2 of Form 20–F (17 CFR 249.220f), with more detailed information provided if otherwise made publicly available or required to be disclosed by the issuer's home jurisdiction or a market in which its securities are listed or traded.

(2) *All compensation covered.* This Item requires clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (a)(3) of this Item, and directors covered by paragraph (k) of this Item, by any person for all services rendered in all capacities to the registrant and its subsidiaries, unless otherwise specifically excluded from disclosure in this Item. All such compensation shall be reported pursuant to this Item, even if also called for by another requirement, including transactions between the registrant and a third party where a purpose of the transaction is to furnish compensation to any such named executive officer or director. No amount reported as compensation for one fiscal year need be reported in the same manner as compensation for a subsequent fiscal year; amounts reported as compensation for one fiscal year may be required to be reported in a different manner pursuant to this Item.

(3) *Persons covered.* Disclosure shall be provided pursuant to this Item for each of the following (the “named executive officers”):

(i) All individuals serving as the registrant's principal executive officer or acting in a similar capacity during the last completed fiscal year (“PEO”), regardless of compensation level;

(ii) All individuals serving as the registrant's principal financial officer or acting in a similar capacity during the last completed fiscal year (“PFO”), regardless of compensation level;

(iii) The registrant's three most highly compensated executive officers other than the PEO and PFO who were serving as executive officers at the end of the last completed fiscal year; and

(iv) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (a)(3)(iii) of this Item but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year.

Instructions to Item 402(a)(3). 1. *Determination of most highly compensated executive officers.* The determination as to which executive officers are most highly compensated shall be made by reference to total compensation for the last completed fiscal year (as required to be disclosed pursuant to paragraph (c)(2)(x) of this Item) reduced by the amount required to be disclosed pursuant to paragraph (c)(2)(viii) of this Item, *provided, however,* that no disclosure need be provided for any executive officer, other than the PEO and PFO, whose total compensation, as so reduced, does not exceed $100,000.

2. *Inclusion of executive officer of subsidiary.* It may be appropriate for a registrant to include as named executive officers one or more executive officers or other employees of subsidiaries in the disclosure required by this Item. See Rule 3b–7 under the Exchange Act (17 CFR 240.3b–7).

3. *Exclusion of executive officer due to overseas compensation.* It may be appropriate in limited circumstances for a registrant not to include in the disclosure required by this Item an individual, other than its PEO or PFO, who is one of the registrant's most highly compensated executive officers due to the payment of amounts of cash compensation relating to overseas assignments attributed predominantly to such assignments.

(4) *Information for full fiscal year.* If the PEO or PFO served in that capacity during any part of a fiscal year with respect to which information is required, information should be provided as to all of his or her compensation for the full fiscal year. If a named executive officer (other than the PEO or PFO) served as an executive officer of the registrant (whether or not in the same position) during any part of the fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(5) *Omission of table or column.* A table or column may be omitted if there has been no compensation awarded to, earned by, or paid to any of the named executive officers or directors required to be reported in that table or column in any fiscal year covered by that table.

(6) *Definitions.* For purposes of this Item:

(i) The term *stock* means instruments such as common stock, restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or any similar instruments that do not have option-like features, and the term *option* means instruments such as stock options, stock appreciation rights and similar instruments with option-like features. The term *stock appreciation rights* (" *SARs* ") refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the registrant or a named executive officer. The term *equity* is used to refer generally to stock and/or options.

(ii) The term *plan* includes, but is not limited to, the following: Any plan, contract, authorization or arrangement, whether or not set forth in any formal document, pursuant to which cash, securities, similar instruments, or any other property may be received. A plan may be applicable to one person. Registrants may omit information regarding group life, health, hospitalization, or medical reimbursement plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees.

(iii) The term *incentive plan* means any plan providing compensation intended to serve as incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the registrant or an affiliate, the registrant's stock price, or any other performance measure. An *equity incentive plan* is an incentive plan or portion of an incentive plan under which awards are granted that fall within the scope of Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment,* as modified or supplemented ("FAS 123R"). A *non-equity incentive plan* is an incentive plan or portion of an incentive plan that is not an equity incentive plan. The term *incentive plan award* means an award provided under an incentive plan.

(iv) The terms *date of grant* or *grant date* refer to the grant date determined for financial statement reporting purposes pursuant to FAS 123R.

(v) *Closing market price* is defined as the price at which the registrant's security was last sold in the principal United States market for such security as of the date for which the closing market price is determined.

(b) *Compensation discussion and analysis.* (1) Discuss the compensation awarded to, earned by, or paid to the named executive officers. The discussion shall explain all material elements of the registrant's compensation of the named executive officers. The discussion shall describe the following:

(i) The objectives of the registrant's compensation programs;

(ii) What the compensation program is designed to reward;

(iii) Each element of compensation;

(iv) Why the registrant chooses to pay each element;

(v) How the registrant determines the amount (and, where applicable, the formula) for each element to pay; and

(vi) How each compensation element and the registrant's decisions regarding that element fit into the registrant's overall compensation objectives and affect decisions regarding other elements.

(2) While the material information to be disclosed under Compensation Discussion and Analysis will vary depending upon the facts and circumstances, examples of such information may include, in a given case, among other things, the following:

(i) The policies for allocating between long-term and currently paid out compensation;

(ii) The policies for allocating between cash and non-cash compensation, and among different forms of non-cash compensation;

(iii) For long-term compensation, the basis for allocating compensation to each different form of award (such as relationship of the award to the achievement of the registrant's long-term goals, management's exposure to downside equity performance risk, correlation between cost to registrant and expected benefits to the registrant);

(iv) How the determination is made as to when awards are granted, including awards of equity-based compensation such as options;

(v) What specific items of corporate performance are taken into account in setting compensation policies and making compensation decisions;

(vi) How specific forms of compensation are structured and implemented to reflect these items of the registrant's performance, including whether discretion can be or has been exercised (either to award compensation absent attainment of the relevant performance goal(s) or to reduce or increase the size of any award or payout), identifying any particular exercise of discretion, and stating whether it applied to one or more specified named executive officers or to all compensation subject to the relevant performance goal(s);

(vii) How specific forms of compensation are structured and implemented to reflect the named executive officer's individual performance and/or individual contribution to these items of the registrant's performance, describing the elements of individual performance and/or contribution that are taken into account;

(viii) Registrant policies and decisions regarding the adjustment or recovery of awards or payments if the relevant registrant performance measures upon which they are based are restated or otherwise adjusted in a manner that would reduce the size of an award or payment;

(ix) The factors considered in decisions to increase or decrease compensation materially;

(x) How compensation or amounts realizable from prior compensation are considered in setting other elements of compensation (e.g., how gains from prior option or stock awards are considered in setting retirement benefits);

(xi) With respect to any contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) at, following, or in connection with any termination or change-in-control, the basis for selecting particular events as triggering payment (e.g., the rationale for providing a single trigger for payment in the event of a change-in-control);

(xii) The impact of the accounting and tax treatments of the particular form of compensation;

(xiii) The registrant's equity or other security ownership requirements or guidelines (specifying applicable amounts and forms of ownership), and any registrant policies regarding hedging the economic risk of such ownership;

(xiv) Whether the registrant engaged in any benchmarking of total compensation, or any material element of compensation, identifying the benchmark and, if applicable, its components (including component companies); and

(xv) The role of executive officers in determining executive compensation.

Instructions to Item 402(b). 1. The purpose of the Compensation Discussion and Analysis is to provide to investors material information that is necessary to an understanding of the registrant's compensation policies and decisions regarding the named executive officers.

2. The Compensation Discussion and Analysis should be of the information contained in the tables and otherwise disclosed pursuant to this Item. The Compensation Discussion and Analysis should also cover actions regarding executive compensation that were taken after the registrant's last fiscal year's end. Actions that should be addressed might include, as examples only, the adoption or implementation of new or modified programs and policies or specific decisions that were made or steps that were taken that could affect a fair understanding of the named executive officer's compensation for the last fiscal year. Moreover, in some situations it may be necessary to discuss prior years in order to give context to the disclosure provided.

3. The Compensation Discussion and Analysis should focus on the material principles underlying the registrant's executive compensation policies and decisions and the most important factors relevant to analysis of those policies and decisions. The Compensation Discussion and Analysis shall reflect the individual circumstances of the registrant and shall avoid boilerplate language and repetition of the more detailed information set forth in the tables and narrative disclosures that follow.

4. Registrants are not required to disclose target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm for the registrant. The standard to use when determining whether disclosure would cause competitive harm for the registrant is the same standard that would apply when a registrant requests confidential treatment of confidential trade secrets or confidential commercial or financial information pursuant to Securities Act Rule 406 (17 CFR 230.406) and Exchange Act Rule 24b–2 (17 CFR 240.24b–2), each of which incorporates the criteria for non-disclosure when relying upon Exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and Rule 80(b)(4) (17 CFR 200.80(b)(4)) thereunder. A registrant is not required to seek confidential treatment under the procedures in Securities Act Rule 406 and Exchange Act Rule 24b-2 if it determines that the disclosure would cause competitive harm in reliance on this instruction; however, in that case, the registrant must discuss how difficult it will be for the executive or how likely it will be for the registrant to achieve the undisclosed target levels or other factors.

5. Disclosure of target levels that are non-GAAP financial measures will not be subject to Regulation G (17 CFR 244.100—102) and Item 10(e) (§229.10(e)); however, disclosure must be provided as to how the number is calculated from the registrant's audited financial statements.

(c) *Summary compensation table* —(1) *General.* Provide the information specified in paragraph (c)(2) of this Item, concerning the compensation of the named executive officers for each of the registrant's last three completed fiscal years, in a Summary Compensation Table in the tabular format specified below.

Summary Compensation Table

Name and principal position	Year	Salary ($)	Bonus ($)	Stock awards ($)	Option awards ($)	Non-equity incentive plan compensation ($)	Change in pension value and nonqualified deferred	All other compensation ($)	Total ($)

							compensation earnings ($)		
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
PFO									
A									
B									
C									

(2) The Table shall include:

(i) The name and principal position of the named executive officer (column (a));

(ii) The fiscal year covered (column (b));

(iii) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (c));

(iv) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d));

Instructions to Item 402(c)(2)(iii) and (iv). 1. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, a footnote shall be included disclosing that the amount of salary or bonus is not calculable through the latest practicable date and providing the date that the amount of salary or bonus is expected to be determined, and such amount must then be disclosed in a filing under Item 5.02(f) of Form 8–K (17 CFR 249.308).

2. Registrants shall include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer under which stock,

equity-based or other forms of non-cash compensation instead have been received by the named executive officer. However, the receipt of any such form of non-cash compensation instead of salary or bonus must be disclosed in a footnote added to the salary or bonus column and, where applicable, referring to the Grants of Plan-Based Awards Table (required by paragraph (d) of this Item) where the stock, option or non-equity incentive plan award elected by the named executive officer is reported.

(v) For awards of stock, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (e));

(vi) For awards of options, with or without tandem SARs, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (f));

Instruction to Item 402(c)(2)(v) and (vi) . For awards reported in columns (e) and (f), disregard the estimate of forfeitures related to service-based vesting conditions. Include a footnote describing all forfeitures during the year, and disclosing all assumptions made in the valuation. Disclose assumptions made in the valuation by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

(vii) The dollar value of all earnings for services performed during the fiscal year pursuant to awards under non-equity incentive plans as defined in paragraph (a)(6)(iii) of this Item, and all earnings on any outstanding awards (column (g));

Instructions to Item 402(c)(2)(vii). 1. If the relevant performance measure is satisfied during the fiscal year (including for a single year in a plan with a multi-year performance measure), the earnings are reportable for that fiscal year, even if not payable until a later date, and are not reportable again in the fiscal year when amounts are paid to the named executive officer.

2. All earnings on non-equity incentive plan compensation must be identified and quantified in a footnote to column (g), whether the earnings were paid during the fiscal year, payable during the period but deferred at the election of the named executive officer, or payable by their terms at a later date.

(viii) The sum of the amounts specified in paragraphs (c)(2)(viii)(A) and (B) of this Item (column (h)) as follows:

(A) The aggregate change in the actuarial present value of the named executive officer's accumulated benefit under all defined benefit and actuarial pension plans (including supplemental plans) from the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the prior completed fiscal year to the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the covered fiscal year; and

(B) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans;

Instructions to Item 402(c)(2)(viii). 1. The disclosure required pursuant to paragraph (c)(2)(viii)(A) of this Item applies to each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans and supplemental executive retirement plans, but excluding tax-qualified defined contribution plans and nonqualified defined contribution plans. For purposes of this disclosure, the registrant should use the same amounts required to be disclosed pursuant to paragraph (h)(2)(iv) of this Item for the covered fiscal year and the amounts that were or would have been

required to be reported for the executive officer pursuant to paragraph (h)(2)(iv) of this Item for the prior completed fiscal year.

2. Regarding paragraph (c)(2)(viii)(B) of this Item, interest on deferred compensation is above-market only if the rate of interest exceeds 120% of the applicable federal long-term rate, with compounding (as prescribed under section 1274(d) of the Internal Revenue Code, (26 U.S.C. 1274(d))) at the rate that corresponds most closely to the rate under the registrant's plan at the time the interest rate or formula is set. In the event of a discretionary reset of the interest rate, the requisite calculation must be made on the basis of the interest rate at the time of such reset, rather than when originally established. Only the above-market portion of the interest must be included. If the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate. Dividends (and dividend equivalents) on deferred compensation denominated in the registrant's stock ("deferred stock") are preferential only if earned at a rate higher than dividends on the registrant's common stock. Only the preferential portion of the dividends or equivalents must be included. Footnote or narrative disclosure may be provided explaining the registrant's criteria for determining any portion considered to be above-market.

3. The registrant shall identify and quantify by footnote the separate amounts attributable to each of paragraphs (c)(2)(viii)(A) and (B) of this Item. Where such amount pursuant to paragraph (c)(2)(viii)(A) is negative, it should be disclosed by footnote but should not be reflected in the sum reported in column (h).

(ix) All other compensation for the covered fiscal year that the registrant could not properly report in any other column of the Summary Compensation Table (column (i)). Each compensation item that is not properly reportable in columns (c)–(h), regardless of the amount of the compensation item, must be included in column (i). Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the registrant or its subsidiaries purchased from the registrant or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the registrant, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(*1*) Any termination, including without limitation through retirement, resignation, severance or constructive termination (including a change in responsibilities) of such executive officer's employment with the registrant and its subsidiaries; or

(*2*) A change in control of the registrant;

(E) Registrant contributions or other allocations to vested and unvested defined contribution plans;

(F) The dollar value of any insurance premiums paid by, or on behalf of, the registrant during the covered fiscal year with respect to life insurance for the benefit of a named executive officer; and

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (*l*) of the Grants of Plan-Based Awards Table required by paragraph (d)(2)(viii) of this Item; and

Instructions to Item 402(c)(2)(ix). 1. Non-equity incentive plan awards and earnings and earnings on stock and options, except as specified in paragraph (c)(2)(ix)(G) of this Item, are required to be reported elsewhere as provided in this Item and are not reportable as All Other Compensation in column (i).

2. Benefits paid pursuant to defined benefit and actuarial plans are not reportable as All Other Compensation in column (i) unless accelerated pursuant to a change in control; information concerning these plans is reportable pursuant to paragraphs (c)(2)(viii)(A) and (h) of this Item.

3. Any item reported for a named executive officer pursuant to paragraph (c)(2)(ix) of this Item that is not a perquisite or personal benefit and whose value exceeds $10,000 must be identified and quantified in a footnote to column (i). This requirement applies only to compensation for the last fiscal year. All items of compensation are required to be included in the Summary Compensation Table without regard to whether such items are required to be identified other than as specifically noted in this Item.

4. Perquisites and personal benefits may be excluded as long as the total value of all perquisites and personal benefits for a named executive officer is less than $10,000. If the total value of all perquisites and personal benefits is $10,000 or more for any named executive officer, then each perquisite or personal benefit, regardless of its amount, must be identified by type. If perquisites and personal benefits are required to be reported for a named executive officer pursuant to this rule, then each perquisite or personal benefit that exceeds the greater of $25,000 or 10% of the total amount of perquisites and personal benefits for that officer must be quantified and disclosed in a footnote. The requirements for identification and quantification apply only to compensation for the last fiscal year. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the registrant. With respect to the perquisite or other personal benefit for which footnote quantification is required, the registrant shall describe in the footnote its methodology for computing the aggregate incremental cost. Reimbursements of taxes owed with respect to perquisites or other personal benefits must be included in column (i) and are subject to separate quantification and identification as tax reimbursements (paragraph (c)(2)(ix)(B) of this Item) even if the associated perquisites or other personal benefits are not required to be included because the total amount of all perquisites or personal benefits for an individual named executive officer is less than $10,000 or are required to be identified but are not required to be separately quantified.

5. For purposes of paragraph (c)(2)(ix)(D) of this Item, an accrued amount is an amount for which payment has become due.

(x) The dollar value of total compensation for the covered fiscal year (column (j)). With respect to each named executive officer, disclose the sum of all amounts reported in columns (c) through (i).

Instructions to Item 402(c). 1. Information with respect to fiscal years prior to the last completed fiscal year will not be required if the registrant was not a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) at any time during that year, except that the registrant will be required to provide information for any such year if that information previously was required to be provided in response to a Commission filing requirement.

2. All compensation values reported in the Summary Compensation Table must be reported in dollars and rounded to the nearest dollar. Reported compensation values must be reported numerically, providing a single numerical value for each grid in the table. Where compensation was paid to or received by a named executive officer in a different currency, a footnote must be provided to identify that currency and describe the rate and methodology used to convert the payment amounts to dollars.

3. If a named executive officer is also a director who receives compensation for his or her services as a director, reflect that compensation in the Summary Compensation Table and provide a footnote identifying and itemizing such compensation and amounts. Use the categories in the Director Compensation Table required pursuant to paragraph (k) of this Item.

4. Any amounts deferred, whether pursuant to a plan established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), or otherwise, shall be included in the appropriate column for the fiscal year in which earned.

(d) *Grants of plan-based awards table.* (1) Provide the information specified in paragraph (d)(2) of this Item, concerning each grant of an award made to a named executive officer in the last completed fiscal year under any plan, including awards that subsequently have been transferred, in the following tabular format:

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										

(2) The Table shall include:

(i) The name of the named executive officer (column (a));

(ii) The grant date for equity-based awards reported in the table (column (b)). If such grant date is different than the date on which the compensation committee (or a committee of the board of directors performing a similar function or the full board of directors) takes action or is deemed to take action to grant such awards, a separate, adjoining column shall be added between columns (b) and (c) showing such date;

(iii) The dollar value of the estimated future payout upon satisfaction of the conditions in question under non-equity incentive plan awards granted in the fiscal year, or the applicable range of estimated payouts denominated in dollars (threshold, target and maximum amount) (columns (c) through (e)).

(iv) The number of shares of stock, or the number of shares underlying options to be paid out or vested upon satisfaction of the conditions in question under equity incentive plan awards granted in the fiscal year, or the

applicable range of estimated payouts denominated in the number of shares of stock, or the number of shares underlying options under the award (threshold, target and maximum amount) (columns (f) through (h)).

(v) The number of shares of stock granted in the fiscal year that are not required to be disclosed in columns (f) through (h) (column (i));

(vi) The number of securities underlying options granted in the fiscal year that are not required to be disclosed in columns (f) through (h) (column (j));

(vii) The per-share exercise or base price of the options granted in the fiscal year (column (k)). If such exercise or base price is less than the closing market price of the underlying security on the date of the grant, a separate, adjoining column showing the closing market price on the date of the grant shall be added after column (k) and

(viii) The grant date fair value of each equity award computed in accordance with FAS 123R (column (*l*)). If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise or base price of options, SARs or similar option-like instruments previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means (“repriced”), or otherwise has materially modified such awards, the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R, with respect to that repriced or modified award, shall be reported.

Instructions to Item 402(d). 1. Disclosure on a separate line shall be provided in the Table for each grant of an award made to a named executive officer during the fiscal year. If grants of awards were made to a named executive officer during the fiscal year under more than one plan, identify the particular plan under which each such grant was made.

2. For grants of incentive plan awards, provide the information called for by columns (c), (d) and (e), or (f), (g) and (h), as applicable. For columns (c) and (f), *threshold* refers to the minimum amount payable for a certain level of performance under the plan. For columns (d) and (g), *target* refers to the amount payable if the specified performance target(s) are reached. For columns (e) and (h), *maximum* refers to the maximum payout possible under the plan. If the award provides only for a single estimated payout, that amount must be reported as the *target* in columns (d) and (g). In columns (d) and (g), registrants must provide a representative amount based on the previous fiscal year's performance if the target amount is not determinable.

3. In determining if the exercise or base price of an option is less than the closing market price of the underlying security on the date of the grant, the registrant may use either the closing market price as specified in paragraph (a)(6)(v) of this Item, or if no market exists, any other formula prescribed for the security. Whenever the exercise or base price reported in column (k) is not the closing market price, describe the methodology for determining the exercise or base price either by a footnote or accompanying textual narrative.

4. A tandem grant of two instruments, only one of which is granted under an incentive plan, such as an option granted in tandem with a performance share, need be reported only in column (i) or (j), as applicable. For example, an option granted in tandem with a performance share would be reported only as an option grant in column (j), with the tandem feature noted either by a footnote or accompanying textual narrative.

5. Disclose the dollar amount of consideration, if any, paid by the executive officer for the award in a footnote to the appropriate column.

6. If non-equity incentive plan awards are denominated in units or other rights, a separate, adjoining column between columns (b) and (c) shall be added quantifying the units or other rights awarded.

7. Options, SARs and similar option-like instruments granted in connection with a repricing transaction or other material modification shall be reported in this Table. However, the disclosure required by this Table does not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

(e) *Narrative disclosure to summary compensation table and grants of plan-based awards table.* (1) Provide a narrative description of any material factors necessary to an understanding of the information disclosed in the tables required by paragraphs (c) and (d) of this Item. Examples of such factors may include, in given cases, among other things:

(i) The material terms of each named executive officer's employment agreement or arrangement, whether written or unwritten;

(ii) If at any time during the last fiscal year, any outstanding option or other equity-based award was repriced or otherwise materially modified (such as by extension of exercise periods, the change of vesting or forfeiture conditions, the change or elimination of applicable performance criteria, or the change of the bases upon which returns are determined), a description of each such repricing or other material modification;

(iii) The material terms of any award reported in response to paragraph (d) of this Item, including a general description of the formula or criteria to be applied in determining the amounts payable, and the vesting schedule. For example, state where applicable that dividends will be paid on stock, and if so, the applicable dividend rate and whether that rate is preferential. Describe any performance-based conditions, and any other material conditions, that are applicable to the award. For purposes of the Table required by paragraph (d) of this Item and the narrative disclosure required by paragraph (e) of this Item, performance-based conditions include both performance conditions and market conditions, as those terms are defined in FAS 123R; and

(iv) An explanation of the amount of salary and bonus in proportion to total compensation.

Instructions to Item 402(e)(1). 1. The disclosure required by paragraph (e)(1)(ii) of this Item would not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

2. Instructions 4 and 5 to Item 402(b) apply regarding disclosure pursuant to paragraph (e)(1) of this Item of target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm for the registrant.

(2) [Reserved]

(f) *Outstanding equity awards at fiscal year-end table.* (1) Provide the information specified in paragraph (f)(2) of this Item, concerning unexercised options; stock that has not vested; and equity incentive plan awards for each named executive officer outstanding as of the end of the registrant's last completed fiscal year in the following tabular format:

Outstanding Equity Awards at Fiscal Year-End

	Option awards					Stock awards			
Name	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									

(2) The Table shall include:

(i) The name of the named executive officer (column (a));

(ii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are exercisable and that are not reported in column (d) (column (b));

(iii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are unexercisable and that are not reported in column (d) (column (c));

(iv) On an award-by-award basis, the total number of shares underlying unexercised options awarded under any equity incentive plan that have not been earned (column (d));

(v) For each instrument reported in columns (b), (c) and (d), as applicable, the exercise or base price (column (e));

(vi) For each instrument reported in columns (b), (c) and (d), as applicable, the expiration date (column (f));

(vii) The total number of shares of stock that have not vested and that are not reported in column (i) (column (g));

(viii) The aggregate market value of shares of stock that have not vested and that are not reported in column (j) (column (h));

(ix) The total number of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned, and, if applicable the number of shares underlying any such unit or right (column (i)); and

(x) The aggregate market or payout value of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned (column (j)).

Instructions to Item 402(f)(2). 1. Identify by footnote any award that has been transferred other than for value, disclosing the nature of the transfer.

2. The vesting dates of options, shares of stock and equity incentive plan awards held at fiscal-year end must be disclosed by footnote to the applicable column where the outstanding award is reported.

3. Compute the market value of stock reported in column (h) and equity incentive plan awards of stock reported in column (j) by multiplying the closing market price of the registrant's stock at the end of the last completed fiscal year by the number of shares or units of stock or the amount of equity incentive plan awards, respectively. The number of shares or units reported in columns (d) or (i), and the payout value reported in column (j), shall be based on achieving threshold performance goals, except that if the previous fiscal year's performance has exceeded the threshold, the disclosure shall be based on the next higher performance measure (target or maximum) that exceeds the previous fiscal year's performance. If the award provides only for a single estimated payout, that amount should be reported. If the target amount is not determinable, registrants must provide a representative amount based on the previous fiscal year's performance.

4. Multiple awards may be aggregated where the expiration date and the exercise and/or base price of the instruments is identical. A single award consisting of a combination of options, SARs and/or similar option-like instruments shall be reported as separate awards with respect to each tranche with a different exercise and/or base price or expiration date.

5. Options or stock awarded under an equity incentive plan are reported in columns (d) or (i) and (j), respectively, until the relevant performance condition has been satisfied. Once the relevant performance condition has been satisfied, even if the option or stock award is subject to forfeiture conditions, options are reported in column (b) or (c), as appropriate, until they are exercised or expire, or stock is reported in columns (g) and (h) until it vests.

(g) *Option exercises and stock vested table.* (1) Provide the information specified in paragraph (g)(2) of this Item, concerning each exercise of stock options, SARs and similar instruments, and each vesting of stock, including restricted stock, restricted stock units and similar instruments, during the last completed fiscal year for each of the named executive officers on an aggregated basis in the following tabular format:

Option Exercises and Stock Vested

Name	Option awards		Stock awards	
	Number of shares acquired on exercise (#)	Value realized on exercise ($)	Number of shares acquired on vesting (#)	Value realized on vesting ($)
(a)	(b)	(c)	(d)	(e)
PEO				
PFO				
A				
B				
C				

(2) The Table shall include:

(i) The name of the executive officer (column (a));

(ii) The number of securities for which the options were exercised (column (b));

(iii) The aggregate dollar value realized upon exercise of options, or upon the transfer of an award for value (column (c));

(iv) The number of shares of stock that have vested (column (d)); and

(v) The aggregate dollar value realized upon vesting of stock, or upon the transfer of an award for value (column (e)).

Instruction to Item 402(g)(2). Report in column (c) the aggregate dollar amount realized by the named executive officer upon exercise of the options or upon the transfer of such instruments for value. Compute the dollar amount realized upon exercise by determining the difference between the market price of the underlying securities at exercise and the exercise or base price of the options. Do not include the value of any related payment or other consideration provided (or to be provided) by the registrant to or on behalf of a named executive officer, whether in payment of the exercise price or related taxes. (Any such payment or other consideration provided by the registrant is required to be disclosed in accordance with paragraph (c)(2)(ix) of this Item.) Report in column (e) the aggregate dollar amount realized by the named executive officer upon the

vesting of stock or the transfer of such instruments for value. Compute the aggregate dollar amount realized upon vesting by multiplying the number of shares of stock or units by the market value of the underlying shares on the vesting date. For any amount realized upon exercise or vesting for which receipt has been deferred, provide a footnote quantifying the amount and disclosing the terms of the deferral.

(h) *Pension benefits.* (1) Provide the information specified in paragraph (h)(2) of this Item with respect to each plan that provides for payments or other benefits at, following, or in connection with retirement, in the following tabular format:

Pension Benefits

Name	Plan name	Number of years credited service (#)	Present value of accumulated benefit ($)	Payments during last fiscal year ($)
(a)	(b)	(c)	(d)	(e)
PEO				
PFO				
A				
B				
C				

(2) The Table shall include:

(i) The name of the executive officer (column (a));

(ii) The name of the plan (column (b));

(iii) The number of years of service credited to the named executive officer under the plan, computed as of the same pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the last completed fiscal year (column (c));

(iv) The actuarial present value of the named executive officer's accumulated benefit under the plan, computed as of the same pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the last completed fiscal year (column (d)); and

(v) The dollar amount of any payments and benefits paid to the named executive officer during the registrant's last completed fiscal year (column (e)).

Instructions to Item 402(h)(2). 1. The disclosure required pursuant to this Table applies to each plan that provides for specified retirement payments and benefits, or payments and benefits that will be provided primarily following retirement, including but not limited to tax-qualified defined benefit plans and supplemental executive retirement plans, but excluding tax-qualified defined contribution plans and nonqualified defined contribution plans. Provide a separate row for each such plan in which the named executive officer participates.

2. For purposes of the amount(s) reported in column (d), the registrant must use the same assumptions used for financial reporting purposes under generally accepted accounting principles, except that retirement age shall be assumed to be the normal retirement age as defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age. The registrant must disclose in the accompanying textual narrative the valuation method and all material assumptions applied in quantifying the present value of the current accrued benefit. A benefit specified in the plan document or the executive's contract itself is not an assumption. Registrants may satisfy all or part of this disclosure by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

3. For purposes of allocating the current accrued benefit between tax qualified defined benefit plans and related supplemental plans, apply the limitations applicable to tax qualified defined benefit plans established by the Internal Revenue Code and the regulations thereunder that applied as of the pension plan measurement date.

4. If a named executive officer's number of years of credited service with respect to any plan is different from the named executive officer's number of actual years of service with the registrant, provide footnote disclosure quantifying the difference and any resulting benefit augmentation.

(3) Provide a succinct narrative description of any material factors necessary to an understanding of each plan covered by the tabular disclosure required by this paragraph. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) The material terms and conditions of payments and benefits available under the plan, including the plan's normal retirement payment and benefit formula and eligibility standards, and the effect of the form of benefit elected on the amount of annual benefits. For this purpose, normal retirement means retirement at the normal retirement age as defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age;

(ii) If any named executive officer is currently eligible for early retirement under any plan, identify that named executive officer and the plan, and describe the plan's early retirement payment and benefit formula and eligibility standards. For this purpose, early retirement means retirement at the early retirement age as defined in the plan, or otherwise available to the executive under the plan;

(iii) The specific elements of compensation (e.g., salary, bonus, etc.) included in applying the payment and benefit formula, identifying each such element;

(iv) With respect to named executive officers' participation in multiple plans, the different purposes for each plan; and

(v) Registrant policies with regard to such matters as granting extra years of credited service.

(i) *Nonqualified defined contribution and other nonqualified deferred compensation plans.* (1) Provide the information specified in paragraph (i)(2) of this Item with respect to each defined contribution or other plan that provides for the deferral of compensation on a basis that is not tax-qualified in the following tabular format:

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)
PEO					
PFO					
A					
B					
C					

(2) The Table shall include:

(i) The name of the executive officer (column (a));

(ii) The dollar amount of aggregate executive contributions during the registrant's last fiscal year (column (b));

(iii) The dollar amount of aggregate registrant contributions during the registrant's last fiscal year (column (c));

(iv) The dollar amount of aggregate interest or other earnings accrued during the registrant's last fiscal year (column (d));

(v) The aggregate dollar amount of all withdrawals by and distributions to the executive during the registrant's last fiscal year (column (e)); and

(vi) The dollar amount of total balance of the executive's account as of the end of the registrant's last fiscal year (column (f)).

Instruction to Item 402(i)(2). Provide a footnote quantifying the extent to which amounts reported in the contributions and earnings columns are reported as compensation in the last completed fiscal year in the registrant's Summary Compensation Table and amounts reported in the aggregate balance at last fiscal year end (column (f)) previously were reported as compensation to the named executive officer in the registrant's Summary Compensation Table for previous years.

(3) Provide a succinct narrative description of any material factors necessary to an understanding of each plan covered by tabular disclosure required by this paragraph. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) The type(s) of compensation permitted to be deferred, and any limitations (by percentage of compensation or otherwise) on the extent to which deferral is permitted;

(ii) The measures for calculating interest or other plan earnings (including whether such measure(s) are selected by the executive or the registrant and the frequency and manner in which selections may be changed), quantifying interest rates and other earnings measures applicable during the registrant's last fiscal year; and

(iii) Material terms with respect to payouts, withdrawals and other distributions.

(j) *Potential payments upon termination or change-in-control.* Regarding each contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) to a named executive officer at, following, or in connection with any termination, including without limitation resignation, severance, retirement or a constructive termination of a named executive officer, or a change in control of the registrant or a change in the named executive officer's responsibilities, with respect to each named executive officer:

(1) Describe and explain the specific circumstances that would trigger payment(s) or the provision of other benefits, including perquisites and health care benefits;

(2) Describe and quantify the estimated payments and benefits that would be provided in each covered circumstance, whether they would or could be lump sum, or annual, disclosing the duration, and by whom they would be provided;

(3) Describe and explain how the appropriate payment and benefit levels are determined under the various circumstances that trigger payments or provision of benefits;

(4) Describe and explain any material conditions or obligations applicable to the receipt of payments or benefits, including but not limited to non-compete, non-solicitation, non-disparagement or confidentiality agreements, including the duration of such agreements and provisions regarding waiver of breach of such agreements; and

(5) Describe any other material factors regarding each such contract, agreement, plan or arrangement.

Instructions to Item 402(j). 1. The registrant must provide quantitative disclosure under these requirements, applying the assumptions that the triggering event took place on the last business day of the registrant's last completed fiscal year, and the price per share of the registrant's securities is the closing market price as of that date. In the event that uncertainties exist as to the provision of payments and benefits or the amounts involved, the registrant is required to make a reasonable estimate (or a reasonable estimated range of amounts) applicable to the payment or benefit and disclose material assumptions underlying such estimates or estimated ranges in its disclosure. In such event, the disclosure would require forward-looking information as appropriate.

2. Perquisites and other personal benefits or property may be excluded only if the aggregate amount of such compensation will be less than $10,000. Individual perquisites and personal benefits shall be identified and quantified as required by Instruction 4 to paragraph (c)(2)(ix) of this Item. For purposes of quantifying health care benefits, the registrant must use the assumptions used for financial reporting purposes under generally accepted accounting principles.

3. To the extent that the form and amount of any payment or benefit that would be provided in connection with any triggering event is fully disclosed pursuant to paragraph (h) or (i) of this Item,

reference may be made to that disclosure. However, to the extent that the form or amount of any such payment or benefit would be enhanced or its vesting or other provisions accelerated in connection with any triggering event, such enhancement or acceleration must be disclosed pursuant to this paragraph.

4. Where a triggering event has actually occurred for a named executive officer and that individual was not serving as a named executive officer of the registrant at the end of the last completed fiscal year, the disclosure required by this paragraph for that named executive officer shall apply only to that triggering event.

5. The registrant need not provide information with respect to contracts, agreements, plans or arrangements to the extent they do not discriminate in scope, terms or operation, in favor of executive officers of the registrant and that are available generally to all salaried employees.

(k) *Compensation of directors.* (1) Provide the information specified in paragraph (k)(2) of this Item, concerning the compensation of the directors for the registrant's last completed fiscal year, in the following tabular format:

Director Compensation

Name	Fees earned or paid in cash ($)	Stock awards ($)	Option awards ($)	Non-equity incentive plan compensation ($)	Change in pension value and nonqualified deferred compensation earnings	All other compensation ($)	Total ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A							
B							
C							
D							
E							

(2) The Table shall include:

(i) The name of each director unless such director is also a named executive officer under paragraph (a) of this Item and his or her compensation for service as a director is fully reflected in the Summary Compensation Table pursuant to paragraph (c) of this Item and otherwise as required pursuant to paragraphs (d) through (j) of this Item (column (a));

(ii) The aggregate dollar amount of all fees earned or paid in cash for services as a director, including annual retainer fees, committee and/or chairmanship fees, and meeting fees (column (b));

(iii) For awards of stock, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (c));

(iv) For awards of stock options, with or without tandem SARs, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (d));

Instruction to Item 402(k)(2)(iii) and (iv). For each director, disclose by footnote to the appropriate column: the grant date fair value of each equity award computed in accordance with FAS 123R; for each option, SAR or similar option like instrument for which the registrant has adjusted or amended the exercise or base price during the last completed fiscal year, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), or otherwise has materially modified such awards, the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R; and the aggregate number of stock awards and the aggregate number of option awards outstanding at fiscal year end. However, the disclosure required by this Instruction does not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

(v) The dollar value of all earnings for services performed during the fiscal year pursuant to non-equity incentive plans as defined in paragraph (a)(6)(iii) of this Item, and all earnings on any outstanding awards (column (e));

(vi) The sum of the amounts specified in paragraphs (k)(2)(vi)(A) and (B) of this Item (column (f)) as follows:

(A) The aggregate change in the actuarial present value of the director's accumulated benefit under all defined benefit and actuarial pension plans (including supplemental plans) from the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the prior completed fiscal year to the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the covered fiscal year; and

(B) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans;

(vii) All other compensation for the covered fiscal year that the registrant could not properly report in any other column of the Director Compensation Table (column (g)). Each compensation item that is not properly reportable in columns (b)–(f), regardless of the amount of the compensation item, must be included in column (g). Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the registrant or its subsidiaries purchased from the registrant or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the registrant, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any director pursuant to a plan or arrangement in connection with:

(*1*) The resignation, retirement or any other termination of such director; or

(*2*) A change in control of the registrant;

(E) Registrant contributions or other allocations to vested and unvested defined contribution plans;

(F) Consulting fees earned from, or paid or payable by the registrant and/or its subsidiaries (including joint ventures);

(G) The annual costs of payments and promises of payments pursuant to director legacy programs and similar charitable award programs;

(H) The dollar value of any insurance premiums paid by, or on behalf of, the registrant during the covered fiscal year with respect to life insurance for the benefit of a director; and

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value for the stock or option award; and

Instructions to Item 402(k)(2)(vii). 1. Programs in which registrants agree to make donations to one or more charitable institutions in a director's name, payable by the registrant currently or upon a designated event, such as the retirement or death of the director, are charitable awards programs or director legacy programs for purposes of the disclosure required by paragraph (k)(2)(vii)(G) of this Item. Provide footnote disclosure of the total dollar amount payable under the program and other material terms of each such program for which tabular disclosure is provided.

2. Any item reported for a director pursuant to paragraph (k)(2)(vii) of this Item that is not a perquisite or personal benefit and whose value exceeds $10,000 must be identified and quantified in a footnote to column (g). All items of compensation are required to be included in the Director Compensation Table without regard to whether such items are required to be identified other than as specifically noted in this Item.

3. Perquisites and personal benefits may be excluded as long as the total value of all perquisites and personal benefits for a director is less than $10,000. If the total value of all perquisites and personal benefits is $10,000 or more for any director, then each perquisite or personal benefit, regardless of its amount, must be identified by type. If perquisites and personal benefits are required to be reported for a director pursuant to this rule, then each perquisite or personal benefit that exceeds the greater of $25,000 or 10% of the total amount of perquisites and personal benefits for that director must be quantified and disclosed in a footnote. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the registrant. With respect to the perquisite or other personal benefit for which footnote quantification is required, the registrant shall describe in the footnote its methodology for computing the aggregate incremental cost. Reimbursements of taxes owed with respect to perquisites or other personal benefits must be included in column (g) and are subject to separate quantification and identification as tax reimbursements (paragraph (k)(2)(vii)(B) of this Item) even if the associated perquisites or other personal benefits are not required to be included because the total amount of all perquisites or personal benefits for an individual director is less than $10,000 or are required to be identified but are not required to be separately quantified.

(viii) The dollar value of total compensation for the covered fiscal year (column (h)). With respect to each director, disclose the sum of all amounts reported in columns (b) through (g).

Instruction to Item 402(k)(2). Two or more directors may be grouped in a single row in the Table if all elements of their compensation are identical. The names of the directors for whom disclosure is presented on a group basis should be clear from the Table.

(3) *Narrative to director compensation table.* Provide a narrative description of any material factors necessary to an understanding of the director compensation disclosed in this Table. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) A description of standard compensation arrangements (such as fees for retainer, committee service, service as chairman of the board or a committee, and meeting attendance); and

(ii) Whether any director has a different compensation arrangement, identifying that director and describing the terms of that arrangement.

Instruction to Item 402(k). In addition to the Instruction to paragraphs 402(k)(2)(iii) and (iv) and the Instructions to paragraph (k)(2)(vii) of this Item, the following apply equally to paragraph (k) of this Item: Instructions 2 and 4 to paragraph (c) of this Item; Instructions to paragraphs (c)(2)(iii) and (iv) of this Item; the Instruction to paragraphs (c)(2)(v) and (vi) of this Item; Instructions to paragraph (c)(2)(vii) of this Item; Instructions to paragraph (c)(2)(viii) of this Item; and Instructions 1 and 5 to paragraph (c)(2)(ix) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (k) of this Item that correspond to analogous disclosures provided for in paragraph (c) of this Item to which they refer.

(l) *Smaller reporting companies.* A registrant that qualifies as a “smaller reporting company,” as defined by Item 10(f) (§229.10(f)(1)), may provide the scaled disclosure in paragraphs (m) through (r) instead of paragraphs (a) through (k) of this Item.

(m) *Smaller reporting companies — General —*(1) *All compensation covered.* This Item requires clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (m)(2) of this Item, and directors covered by paragraph (r) of this Item, by any person for all services rendered in all capacities to the smaller reporting company and its subsidiaries, unless otherwise specifically excluded from disclosure in this Item. All such compensation shall be reported pursuant to this Item, even if also called for by another requirement, including transactions between the smaller reporting company and a third party where a purpose of the transaction is to furnish compensation to any such named executive officer or director. No amount reported as compensation for one fiscal year need be reported in the same manner as compensation for a subsequent fiscal year; amounts reported as compensation for one fiscal year may be required to be reported in a different manner pursuant to this Item.

(2) *Persons covered.* Disclosure shall be provided pursuant to this Item for each of the following (the “named executive officers”):

(i) All individuals serving as the smaller reporting company's principal executive officer or acting in a similar capacity during the last completed fiscal year (“PEO”), regardless of compensation level;

(ii) The smaller reporting company's two most highly compensated executive officers other than the PEO who were serving as executive officers at the end of the last completed fiscal year; and

(iii) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (m)(2)(ii) of this Item but for the fact that the individual was not serving as an executive officer of the smaller reporting company at the end of the last completed fiscal year.

Instructions to Item 402(m)(2) .

1. *Determination of most highly compensated executive officers.* The determination as to which executive officers are most highly compensated shall be made by reference to total compensation for the last completed fiscal year (as required to be disclosed pursuant to paragraph (n)(2)(x) of this Item) reduced by the amount required to be disclosed pursuant to paragraph (n)(2)(viii) of this

Item, *provided, however* , that no disclosure need be provided for any executive officer, other than the PEO, whose total compensation, as so reduced, does not exceed $100,000.

2. *Inclusion of executive officer of a subsidiary.* It may be appropriate for a smaller reporting company to include as named executive officers one or more executive officers or other employees of subsidiaries in the disclosure required by this Item. See Rule 3b–7 under the Exchange Act (17 CFR 240.3b–7).

3. *Exclusion of executive officer due to overseas compensation.* It may be appropriate in limited circumstances for a smaller reporting company not to include in the disclosure required by this Item an individual, other than its PEO, who is one of the smaller reporting company's most highly compensated executive officers due to the payment of amounts of cash compensation relating to overseas assignments attributed predominantly to such assignments.

(3) *Information for full fiscal year.* If the PEO served in that capacity during any part of a fiscal year with respect to which information is required, information should be provided as to all of his or her compensation for the full fiscal year. If a named executive officer (other than the PEO) served as an executive officer of the smaller reporting company (whether or not in the same position) during any part of the fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(4) *Omission of table or column.* A table or column may be omitted if there has been no compensation awarded to, earned by, or paid to any of the named executive officers or directors required to be reported in that table or column in any fiscal year covered by that table.

(5) *Definitions.* For purposes of this Item:

(i) The term *stock* means instruments such as common stock, restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or any similar instruments that do not have option-like features, and the term *option* means instruments such as stock options, stock appreciation rights and similar instruments with option-like features. The term *stock appreciation rights* (" *SARs* ") refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the smaller reporting company or a named executive officer. The term *equity* is used to refer generally to stock and/or options.

(ii) The term *plan* includes, but is not limited to, the following: Any plan, contract, authorization or arrangement, whether or not set forth in any formal document, pursuant to which cash, securities, similar instruments, or any other property may be received. A plan may be applicable to one person. Smaller reporting companies may omit information regarding group life, health, hospitalization, or medical reimbursement plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the smaller reporting company and that are available generally to all salaried employees.

(iii) The term *incentive plan* means any plan providing compensation intended to serve as incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the smaller reporting company or an affiliate, the smaller reporting company's stock price, or any other performance measure. An equity incentive plan is an incentive plan or portion of an incentive plan under which awards are granted that fall within the scope of Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment* , as modified or supplemented ("FAS 123R"). A *non-equity incentive plan* is an incentive plan or portion of an incentive plan that is not an equity incentive plan. The term *incentive plan award* means an award provided under an incentive plan.

(iv) The terms *date of grant* or *grant date* refer to the grant date determined for financial statement reporting purposes pursuant to FAS 123R.

(v) *Closing market price* is defined as the price at which the smaller reporting company's security was last sold in the principal United States market for such security as of the date for which the closing market price is determined.

(n) *Smaller reporting companies—Summary compensation table* —(1) *General* . Provide the information specified in paragraph (n)(2) of this Item, concerning the compensation of the named executive officers for each of the smaller reporting company's last two completed fiscal years, in a Summary Compensation Table in the tabular format specified below.

Summary Compensation Table

Name and principal position	Year	Salary ($)	Bonus ($)	Stock awards ($)	Option awards ($)	Nonequity incentive plan compensation ($)	Nonqualified deferred compensation earnings ($)	All other compensation ($)	Total ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
A									
B									

(2) The Table shall include:

(i) The name and principal position of the named executive officer (column (a));

(ii) The fiscal year covered (column (b));

(iii) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (c));

(iv) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d));

Instructions to Item 402(n)(2)(iii) and (iv).

1. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, a footnote shall be included disclosing that the amount of salary or bonus is not calculable through the latest practicable date and providing the date that the amount of salary or bonus is expected to be determined, and such amount must then be disclosed in a filing under Item 5.02(f) of Form 8–K (17 CFR 249.308).

2. Smaller reporting companies shall include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer under which stock, equity-based or other forms of non-cash compensation instead have been received by the named executive officer. However, the receipt of any such form of non-cash compensation instead of salary or bonus must be disclosed in a footnote added to the salary or bonus column and, where applicable, referring to the narrative disclosure to the Summary Compensation Table (required by paragraph (o) of this Item) where the material terms of the

stock, option or non-equity incentive plan award elected by the named executive officer are reported.

(v) For awards of stock, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (e));

(vi) For awards of options, with or without tandem SARs, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (f));

Instruction to Item 402(n)(2)(v) and (vi). For awards reported in columns (e) and (f), disregard the estimate of forfeitures related to service-based vesting conditions. Include a footnote describing all forfeitures during the year, and disclosing all assumptions made in the valuation. Disclose assumptions made in the valuation by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

(vii) The dollar value of all earnings for services performed during the fiscal year pursuant to awards under non-equity incentive plans as defined in paragraph (m)(5)(iii) of this Item, and all earnings on any outstanding awards (column (g));

Instructions to Item 402(n)(2)(vii).

1. If the relevant performance measure is satisfied during the fiscal year (including for a single year in a plan with a multi-year performance measure), the earnings are reportable for that fiscal year, even if not payable until a later date, and are not reportable again in the fiscal year when amounts are paid to the named executive officer.

2. All earnings on non-equity incentive plan compensation must be identified and quantified in a footnote to column (g), whether the earnings were paid during the fiscal year, payable during the period but deferred at the election of the named executive officer, or payable by their terms at a later date.

(viii) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans (column (h));

Instruction to Item 402(n)(2)(viii). Interest on deferred compensation is above-market only if the rate of interest exceeds 120% of the applicable federal long-term rate, with compounding (as prescribed under section 1274(d) of the Internal Revenue Code, (26 U.S.C. 1274(d))) at the rate that corresponds most closely to the rate under the smaller reporting company's plan at the time the interest rate or formula is set. In the event of a discretionary reset of the interest rate, the requisite calculation must be made on the basis of the interest rate at the time of such reset, rather than when originally established. Only the above-market portion of the interest must be included. If the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate. Dividends (and dividend equivalents) on deferred compensation denominated in the smaller reporting company's stock (“deferred stock”) are preferential only if earned at a rate higher than dividends on the smaller reporting company's common stock. Only the preferential portion of the dividends or equivalents must be included. Footnote or narrative disclosure may be provided explaining the smaller reporting company's criteria for determining any portion considered to be above-market.

(ix) All other compensation for the covered fiscal year that the smaller reporting company could not properly report in any other column of the Summary Compensation Table (column (i)). Each compensation item that

is not properly reportable in columns (c) through (h), regardless of the amount of the compensation item, must be included in column (i). Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All “gross-ups” or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the smaller reporting company or its subsidiaries purchased from the smaller reporting company or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the smaller reporting company, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(*1*) Any termination, including without limitation through retirement, resignation, severance or constructive termination (including a change in responsibilities) of such executive officer's employment with the smaller reporting company and its subsidiaries; or

(*2*) A change in control of the smaller reporting company;

(E) Smaller reporting company contributions or other allocations to vested and unvested defined contribution plans;

(F) The dollar value of any insurance premiums paid by, or on behalf of, the smaller reporting company during the covered fiscal year with respect to life insurance for the benefit of a named executive officer; and

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value for the stock or option award; and

Instructions to Item 402(n)(2)(ix).

1. Non-equity incentive plan awards and earnings and earnings on stock or options, except as specified in paragraph (n)(2)(ix)(G) of this Item, are required to be reported elsewhere as provided in this Item and are not reportable as All Other Compensation in column (i).

2. Benefits paid pursuant to defined benefit and actuarial plans are not reportable as All Other Compensation in column (i) unless accelerated pursuant to a change in control; information concerning these plans is reportable pursuant to paragraph (q)(1) of this Item.

3. Reimbursements of taxes owed with respect to perquisites or other personal benefits must be included in the columns as tax reimbursements (paragraph (n)(2)(ix)(B) of this Item) even if the associated perquisites or other personal benefits are not required to be included because the aggregate amount of such compensation is less than $10,000.

4. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the smaller reporting company.

5. For purposes of paragraph (n)(2)(ix)(D) of this Item, an accrued amount is an amount for which payment has become due.

(x) The dollar value of total compensation for the covered fiscal year (column (j)). With respect to each named executive officer, disclose the sum of all amounts reported in columns (c) through (i).

Instructions to Item 402(n).

1. Information with respect to the fiscal year prior to the last completed fiscal year will not be required if the smaller reporting company was not a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) at any time during that year, except that the smaller reporting company will be required to provide information for any such year if that information previously was required to be provided in response to a Commission filing requirement.

2. All compensation values reported in the Summary Compensation Table must be reported in dollars and rounded to the nearest dollar. Reported compensation values must be reported numerically, providing a single numerical value for each grid in the table. Where compensation was paid to or received by a named executive officer in a different currency, a footnote must be provided to identify that currency and describe the rate and methodology used to convert the payment amounts to dollars.

3. If a named executive officer is also a director who receives compensation for his or her services as a director, reflect that compensation in the Summary Compensation Table and provide a footnote identifying and itemizing such compensation and amounts. Use the categories in the Director Compensation Table required pursuant to paragraph (r) of this Item.

4. Any amounts deferred, whether pursuant to a plan established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), or otherwise, shall be included in the appropriate column for the fiscal year in which earned.

(o) *Smaller reporting companies—Narrative disclosure to summary compensation table.* Provide a narrative description of any material factors necessary to an understanding of the information disclosed in the Table required by paragraph (n) of this Item. Examples of such factors may include, in given cases, among other things:

(1) The material terms of each named executive officer's employment agreement or arrangement, whether written or unwritten;

(2) If at any time during the last fiscal year, any outstanding option or other equity-based award was repriced or otherwise materially modified (such as by extension of exercise periods, the change of vesting or forfeiture conditions, the change or elimination of applicable performance criteria, or the change of the bases upon which returns are determined), a description of each such repricing or other material modification;

(3) The waiver or modification of any specified performance target, goal or condition to payout with respect to any amount included in non-stock incentive plan compensation or payouts reported in column (g) to the Summary Compensation Table required by paragraph (n) of this Item, stating whether the waiver or modification applied to one or more specified named executive officers or to all compensation subject to the target, goal or condition;

(4) The material terms of each grant, including but not limited to the date of exercisability, any conditions to exercisability, any tandem feature, any reload feature, any tax-reimbursement feature, and any provision that could cause the exercise price to be lowered;

(5) The material terms of any non-equity incentive plan award made to a named executive officer during the last completed fiscal year, including a general description of the formula or criteria to be applied in determining the amounts payable and vesting schedule;

(6) The method of calculating earnings on nonqualified deferred compensation plans including nonqualified defined contribution plans; and

(7) An identification to the extent material of any item included under All Other Compensation (column (i)) in the Summary Compensation Table. Identification of an item shall not be considered material if it does not exceed the greater of $25,000 or 10% of all items included in the specified category in question set forth in paragraph (n)(2)(ix) of this Item. All items of compensation are required to be included in the Summary Compensation Table without regard to whether such items are required to be identified.

Instruction to Item 402(o). The disclosure required by paragraph (o)(2) of this Item would not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

(p) *Smaller reporting companies—Outstanding equity awards at fiscal year-end table.* (1) Provide the information specified in paragraph (p)(2) of this Item, concerning unexercised options; stock that has not vested; and equity incentive plan awards for each named executive officer outstanding as of the end of the smaller reporting company's last completed fiscal year in the following tabular format:

Outstanding Equity Awards at Fiscal Year-End

	Option awards					Stock awards			
Name	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 ($)	Option expiration date	Number of shares or units of stock that have not vested (#)	Market value of shares of units of stock that have not vested ($)	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									
A									
B									

(2) The Table shall include:

(i) The name of the named executive officer (column (a));

(ii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are exercisable and that are not reported in column (d) (column (b));

(iii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are unexercisable and that are not reported in column (d) (column (c));

(iv) On an award-by-award basis, the total number of shares underlying unexercised options awarded under any equity incentive plan that have not been earned (column (d));

(v) For each instrument reported in columns (b), (c) and (d), as applicable, the exercise or base price (column (e));

(vi) For each instrument reported in columns (b), (c) and (d), as applicable, the expiration date (column (f));

(vii) The total number of shares of stock that have not vested and that are not reported in column (i) (column (g));

(viii) The aggregate market value of shares of stock that have not vested and that are not reported in column (j) (column (h));

(ix) The total number of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned, and, if applicable the number of shares underlying any such unit or right (column (i)); and

(x) The aggregate market or payout value of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned (column (j)).

Instructions to Item 402(p)(2).

1. Identify by footnote any award that has been transferred other than for value, disclosing the nature of the transfer.

2. The vesting dates of options, shares of stock and equity incentive plan awards held at fiscal-year end must be disclosed by footnote to the applicable column where the outstanding award is reported.

3. Compute the market value of stock reported in column (h) and equity incentive plan awards of stock reported in column (j) by multiplying the closing market price of the smaller reporting company's stock at the end of the last completed fiscal year by the number of shares or units of stock or the amount of equity incentive plan awards, respectively. The number of shares or units reported in column (d) or (i), and the payout value reported in column (j), shall be based on achieving threshold performance goals, except that if the previous fiscal year's performance has exceeded the threshold, the disclosure shall be based on the next higher performance measure (target or maximum) that exceeds the previous fiscal year's performance. If the award provides only for a single estimated payout, that amount should be reported. If the target amount is not determinable, smaller reporting companies must provide a representative amount based on the previous fiscal year's performance.

4. Multiple awards may be aggregated where the expiration date and the exercise and/or base price of the instruments is identical. A single award consisting of a combination of options, SARs and/or similar option-like instruments shall be reported as separate awards with respect to each tranche with a different exercise and/or base price or expiration date.

5. Options or stock awarded under an equity incentive plan are reported in columns (d) or (i) and (j), respectively, until the relevant performance condition has been satisfied. Once the relevant performance condition has been satisfied, even if the option or stock award is subject to forfeiture conditions, options are reported in column (b) or (c), as appropriate, until they are exercised or expire, or stock is reported in columns (g) and (h) until it vests.

(q) *Smaller reporting companies—Additional narrative disclosure.* Provide a narrative description of the following to the extent material:

(1) The material terms of each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans, supplemental executive retirement plans, tax-qualified defined contribution plans and nonqualified defined contribution plans.

(2) The material terms of each contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) to a named executive officer at, following, or in connection with the resignation, retirement or other termination of a named executive officer, or a change in control of the smaller reporting company or a change in the named executive officer's responsibilities following a change in control, with respect to each named executive officer.

(r) *Smaller reporting companies—Compensation of directors.* (1) Provide the information specified in paragraph (r)(2) of this Item, concerning the compensation of the directors for the smaller reporting company's last completed fiscal year, in the following tabular format:

Director Compensation

Name	Fees earned or paid in cash ($)	Stock awards ($)	Option awards ($)	Non-equity incentive plan compensation ($)	Nonqualified deferred compensation earnings ($)	All other compensation ($)	Total ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A							
B							
C							
D							
E							

(2) The Table shall include:

(i) The name of each director unless such director is also a named executive officer under paragraph (m) of this Item and his or her compensation for service as a director is fully reflected in the Summary Compensation Table pursuant to paragraph (n) of this Item and otherwise as required pursuant to paragraphs (o) through (q) of this Item (column (a));

(ii) The aggregate dollar amount of all fees earned or paid in cash for services as a director, including annual retainer fees, committee and/or chairmanship fees, and meeting fees (column (b));

(iii) For awards of stock, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (c));

(iv) For awards of stock options, with or without tandem SARs, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (d));

Instruction to Item 402(r)(2)(iii) and (iv). For each director, disclose by footnote to the appropriate column, the aggregate number of stock awards and the aggregate number of option awards outstanding at fiscal year end.

(v) The dollar value of all earnings for services performed during the fiscal year pursuant to non-equity incentive plans as defined in paragraph (m)(5)(iii) of this Item, and all earnings on any outstanding awards (column (e));

(vi) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans (column (f));

(vii) All other compensation for the covered fiscal year that the smaller reporting company could not properly report in any other column of the Director Compensation Table (column (g)). Each compensation item that is not properly reportable in columns (b) through (f), regardless of the amount of the compensation item, must be included in column (g) and must be identified and quantified in a footnote if it is deemed material in accordance with paragraph (o)(7) of this Item. Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All “gross-ups” or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the smaller reporting company or its subsidiaries purchased from the smaller reporting company or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the smaller reporting company, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any director pursuant to a plan or arrangement in connection with:

(*1*) The resignation, retirement or any other termination of such director; or

(*2*) A change in control of the smaller reporting company;

(E) Smaller reporting company contributions or other allocations to vested and unvested defined contribution plans;

(F) Consulting fees earned from, or paid or payable by the smaller reporting company and/or its subsidiaries (including joint ventures);

(G) The annual costs of payments and promises of payments pursuant to director legacy programs and similar charitable award programs;

(H) The dollar value of any insurance premiums paid by, or on behalf of, the smaller reporting company during the covered fiscal year with respect to life insurance for the benefit of a director; and

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value for the stock or option award; and

Instruction to Item 402(r)(2)(vii). Programs in which smaller reporting companies agree to make donations to one or more charitable institutions in a director's name, payable by the smaller reporting company currently or upon a designated event, such as the retirement or death of the director, are charitable awards programs or director legacy programs for purposes of the disclosure required by paragraph (r)(2)(vii)(G) of this Item. Provide footnote disclosure of the total dollar amount payable under the program and other material terms of each such program for which tabular disclosure is provided.

(viii) The dollar value of total compensation for the covered fiscal year (column (h)). With respect to each director, disclose the sum of all amounts reported in columns (b) through (g).

Instruction to Item 402(r)(2). Two or more directors may be grouped in a single row in the Table if all elements of their compensation are identical. The names of the directors for whom disclosure is presented on a group basis should be clear from the Table.

(3) *Narrative to director compensation table.* Provide a narrative description of any material factors necessary to an understanding of the director compensation disclosed in this Table. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) A description of standard compensation arrangements (such as fees for retainer, committee service, service as chairman of the board or a committee, and meeting attendance); and

(ii) Whether any director has a different compensation arrangement, identifying that director and describing the terms of that arrangement.

Instruction to Item 402(r). In addition to the Instruction to paragraph (r)(2)(vii) of this Item, the following apply equally to paragraph (r) of this Item: Instructions 2 and 4 to paragraph (n) of this Item; the Instructions to paragraphs (n)(2)(iii) and (iv) of this Item; the Instruction to paragraphs (n)(2)(v) and (vi) of this Item; the Instructions to paragraph (n)(2)(vii) of this Item; the Instruction to paragraph (n)(2)(viii) of this Item; the Instructions to paragraph (n)(2)(ix) of this Item; and paragraph (o)(7) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (r) of this Item that correspond to analogous disclosures provided for in paragraph (n) of this Item to which they refer.

Instruction to Item 402. Specify the applicable fiscal year in the title to each table required under this Item which calls for disclosure as of or for a completed fiscal year.

[71 FR 53241, Sept. 8, 2006; 71 FR 56225, Sept. 26, 2006, as amended at 71 FR 78350, Dec. 29, 2006; 73 FR 958, Jan. 4, 2008

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 229, 239, 240, 249, 270 and 274

[RELEASE NOS. 33-9052; 34-60280; IC-28817; File No. S7-13-09]

RIN 3235-AK28

PROXY DISCLOSURE AND SOLICITATION ENHANCEMENTS

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to our rules to enhance the compensation and corporate governance disclosures registrants are required to make about: their overall compensation policies and their impact on risk taking; stock and option awards of executives and directors; director and nominee qualifications and legal proceedings; company leadership structure; the board's role in the risk management process; and potential conflicts of interest of compensation consultants that advise companies. The proposed amendments to our disclosure rules would be applicable to proxy and information statements, annual reports and registration statements under the Securities Exchange Act of 1934, and registration statements under the Securities Act of 1933 as well as the Investment Company Act of 1940. We are also proposing amendments to transfer from Forms 10-Q and 10-K to Form 8-K the requirement to disclose shareholder voting results. In addition, we are proposing amendments to our proxy rules to clarify the manner in which they operate and address issues that have arisen in the proxy solicitation process.

DATES: Comments should be received on or before September 15, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/proposed.shtml);
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-13-09 on the subject line; or
- Use the Federal Rulemaking ePortal (http://www.regulations.gov). Follow the instructions for submitting comments.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-13-09**.** This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/proposed.shtml). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: N. Sean Harrison, Special Counsel, at (202) 551-3430 or Anne Krauskopf, Senior Special Counsel, at (202) 551-3500, in the Division of Corporation Finance; or with respect to questions regarding the proposed proxy solicitation amendments, Mark W. Green, Senior Special Counsel, or Nicholas P. Panos, Senior Special

Counsel at (202) 551-3440, in the Division of Corporation Finance; or with respect to questions regarding investment companies, Marc Oorloff Sharma, Senior Counsel, Division of Investment Management, at (202) 551-6784, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Items 401,[1] 402,[2] and 407[3] of Regulation S-K;[4] Rules 14a-2,[5] 14a-4,[6] and 14a-12;[7] Schedule 14A[8] and Forms 8-K,[9] 10-Q,[10] and 10-K[11] under the Securities Exchange Act of 1934 ("Exchange Act");[12] and Forms N-1A,[13] N-2,[14] and N-3,[15] registration forms used by management investment companies to register under the Investment Company Act of 1940 ("Investment Company Act")[16] and to offer their securities under the Securities Act of 1933 ("Securities Act").[17]

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[1] 17 CFR 229.401.

[2] 17 CFR 229.402.

[3] 17 CFR 229.407.

[4] 17 CFR 229.10 et al.

[5] 17 CFR 240.14a-2.

[6] 17 CFR 240.14a-4.

[7] 17 CFR 240.14a-12.

[8] 17 CFR 240.14a-101.

[9] 17 CFR 249.308.

[10] 17 CFR 249.308a.

[11] 17 CFR 249.310.

[12] 15 U.S.C. 78a et seq.

[13] 17 CFR 239.15A and 274.11A.

[14] 17 CFR 239.14 and 274.11a-1.

[15] 17 CFR 239.17a and 274.11b.

[16] 15 U.S.C. 80a-1 et seq.

I. BACKGROUND AND SUMMARY

We are proposing a number of revisions to our rules that would improve the disclosure shareholders of public companies receive regarding compensation and corporate governance, and facilitate communications relating to voting decisions. During the past few years, shareholders have increasingly focused on corporate accountability, and have expressed the desire for additional information that would enhance their ability to make informed voting and investment decisions. Several rulemaking initiatives in recent years have focused on these themes. In addition to proposals that are largely focused on disclosure enhancements, we also are proposing some revisions to the rules governing the proxy solicitation process that would clarify the manner in which soliciting parties communicate with shareholders.

First, we are proposing revisions to our rules governing disclosure of executive and director compensation, director biographical information and qualifications, compensation consultants, and other matters. Over the past several years, we have engaged in a number of rulemaking initiatives designed to improve the presentation of information about executive officer and director compensation and relationships with the company, and thereby assist investors' ability to make more informed voting and investment decisions.[18] The turmoil in the markets during the past 18 months has reinforced the importance of enhancing transparency, especially with regard to activities that materially contribute to a company's risk profile. We

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[17] 15 U.S.C. 77a et seq.

[18] See Release No. 33-8340 (Nov. 24, 2003) [68 FR 69204] (adopting rule amendments to improve the disclosure regarding the nominating committee process of public companies and the ways by which security holders may communicate with boards at the companies in which they invest); Release No. 33-8732A (Aug. 29, 2006) [71 FR 53518] (adopting rule amendments that significantly revised the disclosure of executive officer and director compensation, related party transactions, director independence and the security ownership of officers and directors).

have decided to re-examine our disclosure rules to provide investors with important and relevant information upon which to base their proxy voting and investment decisions.

The amendments proposed today would add new disclosure requirements on several topics that are designed to enhance the information included in proxy and information statements,[19] including information about the relationship of a company's overall compensation policies to risk, director and nominee qualifications, company leadership structure, and the potential conflicts of interests of compensation consultants. We believe that some of our current disclosure requirements on these topics could be improved to elicit more informative disclosure for investors. In addition, the proposals would improve Summary Compensation Table reporting of stock and option awards. We are proposing to change the manner in which stock and option awards are reported both in the Summary Compensation Table[20] and Director Compensation Table.[21] We believe the current method for presenting this information may have inadvertently resulted in investor confusion. The proposed amendments would require disclosure in these tables of the aggregate grant date fair value of awards computed in accordance with Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards No. 123 (revised 2004) Share-Based Payment (FAS 123R), instead of the dollar amount recognized for financial statement reporting purposes. We also propose to accelerate the timing of the reporting of information regarding voting results, so that investors have access to this important information on a more timely basis.

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[19] The proposed amendments to Regulation S-K would also be applicable to registration statements under the Securities Act, and in some cases also Form 10-K under the Exchange Act.

[20] Item 402(c) and 402(n) of Regulation S-K [17 CFR 229.402(c) and 229.402(n)].

[21] Item 402(k) and 402(r) of Regulation S-K [17 CFR 229.402(k) and 229.402(r)].

Finally, we are proposing amendments to Exchange Act Rules 14a-2, 14a-4 and 14a-12 to clarify certain issues relating to the solicitation of proxies and the granting of proxy authority.[22] In 1992, we adopted significant amendments to the proxy rules intended to remove unnecessary impediments to the solicitation of proxy authority and to allow management and other persons seeking proxy authority more efficiently and effectively to communicate with shareholders.[23] Since that time, we have become aware of a few interpretive issues regarding the rules governing proxy solicitations, particularly solicitations by shareholders and other non-management parties. We believe the proposed revisions will provide certainty in how the rules operate and facilitate the proxy solicitation process.

If the amendments proposed in this release are adopted, we anticipate that they would be effective for the 2010 proxy season.

II. DISCUSSION OF THE PROPOSED AMENDMENTS

A. Enhanced Compensation Disclosure

1. Compensation Discussion and Analysis Disclosure

In 2006, we amended our executive compensation disclosure rules to require a new principles-based, narrative discussion that provides an overview of a company's compensation program for its principal executive officer, principal financial officer and the three most highly compensated executive officers, other than the principal executive officer and principal financial officer, and that provides an analysis of the material elements of the company's compensation

[22] The Commission has taken action in recent years in regard to proxy materials. For example, in 2007 we provided for the use of electronic proxy solicitations, and recently we proposed to revise our rules to facilitate inclusion of shareholder nominations in company proxy materials. See Release No. 34-56135 (July 26, 2007) [72 FR 42222] (shareholder choice regarding proxy materials); Release No. 33-9046 (June 10, 2009) [74 FR 29024] (proposed amendments to facilitate rights of shareholders to nominate directors).

[23] Release No. 34-31326 (Oct. 16, 1992) [52 FR 48276] ("1992 adopting release").

for these named executive officers.[24] This Compensation Discussion and Analysis ("CD&A") requirement is designed to elicit disclosure about the material elements of the company's compensation for the named executive officers, and is intended to put into perspective for investors the tabular compensation data required by our rules.[25]

In addition to the compensation policies for the named executive officers, a company's broader compensation policies and arrangements for other employees may also be important. It has been suggested that, at some companies, compensation policies have become disconnected from long-term company performance because the interests of management and some employees, in the form of incentive compensation arrangements, and the long-term well-being of the company are not sufficiently aligned.[26] Critics have argued that, in some cases, the structure and the particular application of incentive compensation policies can create inadvertent incentives for management and employees to make decisions that significantly, and

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[24] See Release No. 33-8732A (Aug. 29, 2006) [71 FR 53518]; Release No. 33-8765 (Dec. 22, 2006) [71 FR 78338].

[25] Shortly after implementation of the CD&A requirements, in the spring of 2007, the Commission staff undertook a review of the proxy statements of 350 public companies in an effort to both evaluate compliance with the revised rules and provide guidance on how companies could enhance their disclosures in this area. The staff prepared a report of its observations of the CD&A disclosures of these companies. In the report, the staff described the principal comments they had issued to the companies that were subject to the review. Overall, the staff noted at the time that companies appeared to have generally made a good faith effort to comply with the new rules, and investors had benefited from the new disclosures. At the same time, the staff's comments highlighted areas where it believed companies may need to provide additional or clearer disclosure in future filings. Furthermore, the staff emphasized in its report that companies should provide security holders and investors with a more robust discussion of the basis and the context for granting different types and amounts of executive compensation, and that companies should continue thinking about how the CD&A can be better organized and presented for both the lay reader and the professional, in order to make the disclosure as useful and meaningful to security holders and investors as possible. U.S. Securities and Exchange Commission, Division of Corporation Finance, Staff Observations in the Review of Executive Compensation Disclosure, (2007) at http://www.sec.gov/divisions/corpfin/guidance/execcompdisclosure.htm.

[26] See, for example, Financial Stability Forum, FSF Principles of Sound Compensation Practices 1 (Apr. 2, 2009) (noting that "[h]igh short-term profits led to generous bonus payments to employees without adequate regard to the longer-term risks they imposed on their firms"), at http://www.financialstabilityboard.org/publications/r_0904b.pdf. The report also noted that "below the level of the executive suite, most employees view the performance of the firm as a whole as being almost independent of their own actions. Actions by other employees or business units are seen as determining the firm's fate. Similarly, stock performance might be driven by various exogenous factors. Thus, employees heavily discount the value of the stock and act to bring the cash component of bonus up." Id. at 11.

inappropriately, increase the company's risk, without adequate recognition of the risks to the company.[27] Companies, and in turn investors, may be negatively impacted where the design or operation of their compensation programs creates incentives that influence behavior inconsistent with the overall interests of the company. Indeed, one of the many contributing factors cited as a basis for the current market turmoil is that at a number of large financial institutions the short-term incentives created by their compensation policies were misaligned with the long-term well-being of the companies.[28] By contrast, well-designed compensation policies may enhance a company's business interests by encouraging innovation and appropriate levels of risk taking.[29]

We are proposing to amend our CD&A requirements to broaden their scope to include a new section that will provide information about how the company's overall compensation policies for employees create incentives that can affect the company's risk and management of that risk. We believe investors would benefit from an expanded discussion and analysis about how the company rewards and incentivizes its employees to the extent it creates risk to the

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[27] See, for example, Calvin H. Johnson, The Disloyalty of Stock and Stock Option Compensation, 11 CONN. INS. L.J. 133 (2004-2005); Michael C. Jensen, et al., Remuneration: Where we've been, how we got here, what are the problems, and how to fix them (2004) (unpublished manuscript on file), available at www.ssrn.com/abstract=561305. The relationship between compensation incentives and risk also has been recognized in the legislation authorizing the Troubled Asset Relief Program ("TARP"). Specifically, Section 111(b) of the Emergency Economic Stabilization Act of 2008, as amended by Section 7001 of the American Recovery and Reinvestment Act of 2009, requires the Secretary of the Treasury to require each TARP recipient to meet appropriate standards for executive compensation and corporate governance that shall include "limits on compensation that exclude incentives for senior executive officers of the TARP recipient to take unnecessary and excessive risks that threaten the value of such recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding." See Pub. L. 111-5, §7001, 123 Stat. 115, 517 (2009).

[28] See, for example, Financial Stability Forum, FSF Report on Enhancing Market and Institutional Resilience 8 (Apr. 2008)(noting that "[c]ompensation schemes in financial institutions encouraged disproportionate risk-taking with insufficient regard to longer-term risks"), at http://www.financialstabilityboard.org/publications/r_0804.pdf; L. Story, On Wall Street, Bonuses, Not Profits, Were Real, N.Y. TIMES, Dec. 18, 2008.

[29] See, for example, U.S. Chamber of Commerce, Letter to the Treasury Secretary, (Feb. 9, 2009) (suggesting that "corporate governance policies must promote long-term shareholder value and profitability but should not constrain reasonable risk-taking and innovation"), at http://www.uschamber.com/NR/rdonlyres/ej2mxgcl4qbguyozahqba4xzsiht7wyqxcdcjhsyfbvl4jwcurjanaslkfm4up6xgxuf5c57ogpkxt44shucmryo3ja/ExecutiveCompensationSecretaryGeithnerFeb62009.pdf.

company. The proposed amendments would require a company to discuss and analyze its broader compensation policies and overall actual compensation practices for employees generally, including non-executive officers, if risks arising from those compensation policies or practices may have a material effect on the company.[30] In preparing this disclosure, we anticipate that companies will need to consider the level of risk that employees might be encouraged to take to meet their incentive compensation elements.[31] We believe that disclosure of a company's overall compensation policies in certain circumstances can help investors identify whether the company has established a system of incentives that can lead to excessive or inappropriate risk taking by employees.

Under the proposed amendments, the situations that would require disclosure will vary depending on the particular company and its compensation programs. We believe situations that potentially could trigger discussion and analysis include, among others, compensation policies and practices:

- At a business unit of the company that carries a significant portion of the company's risk profile;
- At a business unit with compensation structured significantly differently than other units within the company;
- At business units that are significantly more profitable than others within the company;
- At business units where the compensation expense is a significant percentage of the unit's revenues; or

[30] See proposed Item 402(b)(2) of Regulation S-K. If a company had a policy against providing compensation that encouraged imprudent risk-taking, but actually provided compensation that encouraged such behavior and the effect may be material on the company, disclosure under the new provision would be required.

[31] To the extent that such risk considerations are a material aspect of the company's compensation policies or decisions for named executive officers, the company is required to discuss them as part of its CD&A under the current rules.

- That vary significantly from the overall risk and reward structure of the company, such as when bonuses are awarded upon accomplishment of a task, while the income and risk to the company from the task extend over a significantly longer period of time.

This is a non-exclusive list of situations where compensation programs may have the potential to raise material risks to the company. These are only examples; disclosure under the proposed rule amendment would only be required if the materiality threshold is triggered.

We believe that discussion and analysis of a company's broader compensation policies may be appropriate in these situations because the policies may create risk to the company that is not otherwise apparent from a discussion solely focused on executive compensation policies. For example, if a particular business unit that carries a significant portion of the company's overall risk is significantly more profitable than others within the company, compensation policies relevant to employees of that unit could be just as essential to the company's overall financial condition and performance as those of its senior executives. Similarly, in situations where particular business units compensate their employees significantly differently from other units or carry an overall risk and reward structure that varies significantly from the rest of the company, provided the effects of the compensation policies may be material to the company, those differences should be disclosed and explained so that investors can more readily assess their significance and appropriateness.

Consistent with the principles-based approach of the CD&A, the proposed amendments provide several examples of the types of issues that would be appropriate for a company to discuss and analyze. We wish to emphasize, however, that the application of a particular example must be tailored to the facts and circumstances of the company and that the examples are non-exclusive. We believe that using illustrative examples will help to identify the types of

disclosure that may be appropriate. A company must assess the importance to investors of the information that is identified by the example in light of the particular situation of the company. Examples of the issues that companies may need to address regarding the compensation policies or practices that may give rise to risks that may have a material effect on the company would include the following:

- The general design philosophy of the company's compensation policies for employees whose behavior would be most affected by the incentives established by the policies, as such policies relate to or affect risk taking by those employees on behalf of the company, and the manner of its implementation;
- The company's risk assessment or incentive considerations, if any, in structuring its compensation policies or in awarding and paying compensation;
- How the company's compensation policies relate to the realization of risks resulting from the actions of employees in both the short term and the long term, such as through policies requiring claw backs or imposing holding periods;
- The company's policies regarding adjustments to its compensation policies to address changes in its risk profile;
- Material adjustments the company has made to its compensation policies or practices as a result of changes in its risk profile; and
- The extent to which the company monitors its compensation policies to determine whether its risk management objectives are being met with respect to incentivizing its employees.

The level of detail required will necessarily depend on the particular facts at a company and within various business units of a company.

Request for Comment

- Would expanding the scope of the CD&A to require disclosure concerning a company's overall compensation program as it relates to risk management and or risk-taking incentives provide meaningful disclosures to investors? Should the scope of the amendments be limited in application to specific groups of employees, such as executive officers? Should it be limited to companies of a particular size, like large accelerated filers? Should it be limited to particular industries like financial services, including companies that have segments in such industries? Is the cost of tracking and disclosing the nature of the risk different at different types of companies or company segments and if so, should that be reflected in our rules?
- In light of the complexity of the issue and compensation programs generally, we recognize that it may be difficult to identify and describe which compensation structures may expose a company to material risks. We believe the listed examples are situations where compensation policies may induce risk taking behavior, and therefore, potentially have a material impact on the company. Are the listed examples appropriate issues for companies to consider discussing and analyzing? Are there any other specific items we should list as possibly material information? Are there any items that are listed that should not be? If so, why?
- Should other elements of compensation that may encourage excessive risk taking be highlighted in the CD&A?
- We have included a list of examples of the types of issues that would be appropriate for a company to discuss and analyze. Is that list appropriate? Rather than treat the list as examples, should we require discussion of each item?

- Are there other disclosure requirements that would provide more meaningful information about the effect of the registrant's compensation policies on its risk profile or risk management?
- Are there certain risks that are more clearly aligned with compensation practices the disclosure of which would be important to investors?
- If a company determines that disclosure under the proposed amendments is not required, should we require the company to affirmatively state in its CD&A that it has determined that the risks arising from its broader compensation policies are not reasonably expected to have a material effect on the company?
- Should smaller reporting companies, who are currently not required to provide CD&A disclosure, be required to provide disclosure about their overall compensation policies as they relate to risk management?

2. Revisions to the Summary Compensation Table

The Item 402 amendments proposed today also would revise Summary Compensation Table and Director Compensation Table disclosure of stock awards and option awards to require disclosure of the aggregate grant date fair value of awards computed in accordance with FAS 123R.[32] The proposed revised disclosure would replace currently mandated disclosure of the dollar amount recognized for financial statement reporting purposes for the fiscal year in accordance with FAS 123R.[33]

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[32] Pursuant to FAS 168, the FASB Accounting Standards Codification has superseded all references to previous FASB standards for interim or annual periods ending on or after September 15, 2009. For purposes of facilitating comments, our proposals retain the well-known FAS 123R nomenclature. However, if we adopt the Summary Compensation Table and Director Compensation Table proposals, we expect in the final rules to update references accordingly.

[33] In proposing these changes to the Summary Compensation Table and Director Compensation Table, we do not suggest that recognizing share-based compensation costs over the periods during which employees perform the related services is an inappropriate measure for financial statement reporting. Instead, we simply acknowledge that

A significant objective of the broad executive compensation disclosure amendments we adopted in 2006 was to provide investors a single total figure that includes all compensation and is comparable across fiscal years and companies.[34] To accomplish this, we needed to include a dollar amount for option awards, which previously had been reported in the Summary Compensation Table as the number of securities underlying stock options granted.[35] When we initially adopted the 2006 amendments, we required Summary Compensation Table and Director Compensation Table disclosure of the aggregate grant date fair value of stock awards and option awards computed in accordance with FAS 123R, the same as we propose today.[36] Before those amendments became effective, however, we reconsidered the issue based on concerns that the actual amounts ultimately paid out could differ from the amounts initially reported in the tables. In December 2006, we adopted the current disclosure requirements for the stock award and option award columns as Interim Final Rules and solicited comment.[37] In the same rulemaking, we amended the Grants of Plan-Based Awards Table to require disclosure of the FAS 123R grant date fair value of the individual equity awards granted to named executive officers in the last completed fiscal year.[38]

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the aggregate grant date fair value measure is more useful to the users of executive compensation disclosure and would facilitate CD&A disclosure.

[34] See Release No. 33-8732A in note 24 above at 53170. We recognized that the timing for disclosing different elements of compensation in the Summary Compensation Table disclosure varies depending on the form of the compensation.

[35] See Release No. 33-6962 (Oct. 16, 1992) [57 FR 48126].

[36] See Release No. 33-8732A in note 24 above at 53172. This approach was consistent with the timing of option and stock awards disclosure that had applied in the Summary Compensation Table since 1992.

[37] See Release No. 33-8765 in note 24 above.

[38] Item 402(d)(2)(viii) of Regulation S-K.

Since the adoption of these current disclosure requirements, we have received comments from a variety of sources that the information that investors would find most useful and informative in the Summary Compensation Table and Director Compensation Table is the full grant date fair value of equity awards made during the covered fiscal year.[39] This is because investors may consider compensation decisions made during the fiscal year – which usually are reflected in the full grant date fair value measure, but not the financial statement recognition measure – to be material to voting and investment decisions.[40] Disclosure of full grant date fair value permits investors to better evaluate the amount of equity compensation awarded. Investors have noted that disclosure in the Summary Compensation Table of how much equity compensation the company decides to award during a fiscal year is more informative to voting and investment decisions than the dollar amount recognized for financial statement reporting purposes.[41] Investors have commented that because full grant date fair value is indicative of which executives the company intends to compensate most highly, it is a more useful measure to

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[39] See, for example, letters regarding File No. S7-03-06 from Ken Belcher (Dec. 28, 2006); Andrew H. Dral (Dec. 30, 2006); Council of Institutional Investors (Jan. 25, 2007); American Federation of Labor and Congress of Industrial Organizations (Jan. 29, 2007); Teachers Insurance and Annuity Association of America (Jan. 16, 2007); CALSTRS (Jan. 16, 2007); Leggett & Platt, Inc. (Apr. 23, 2007); and CFA Institute for Financial Market Integrity (Dec. 20, 2007). These comment letters are available at http://www.sec.gov/rules/proposed/s70306.shtml. In its May 5, 2009, meeting with the staff of the Division of Corporation Finance, the Joint Committee on Employee Benefits of the American Bar Association also recommended that we revise Summary Compensation Table disclosure of stock awards and option awards to report aggregate grant date fair value.

[40] See letter regarding File No. S7-03-06 from Council of Institutional Investors (Jan. 25, 2007) (stating that "the Summary Compensation Table should disclose the decisions of the compensation committee in the applicable year…[This] methodology is consistent with the objective of providing investors with the tools needed to evaluate the annual decisions of the compensation committee[.]"). See also letter regarding File No. S7-03-06 from Leggett & Platt, Inc. (Apr. 23, 2007) (stating that "[t]his is clearly the information most investors want").

[41] See letter regarding File No. S7-03-06 from Teachers Insurance and Annuity Association of America (Jan. 16, 2007) ("Our view is that executive compensation disclosure and financial reporting are separate and distinct. We believe that reporting the aggregate fair value of awards in the Summary Compensation Table is important to give an accurate representation of the compensation committee's actions and intentions in any given reporting period"). See also letter from American Federation of Labor and Congress of Industrial Organizations in note 39 above ("By spreading out the disclosure of the value of equity awards over a number of years, the total impact of executive compensation decisions will be concealed from shareholders and the public").

include in the Summary Compensation Table as a component of total compensation.[42] Because total compensation is also the basis for determining which executives, in addition to the principal executive officer and principal financial officer, are the named executive officers whose compensation is reported,[43] the full grant date fair value measure will better align the identification of named executive officers with company compensation decisions. Summary Compensation Table disclosure of the full grant date fair value measure also can facilitate companies' ability to provide a CD&A that clearly and concisely explains and analyzes material compensation policies and decisions.[44]

Some companies have recognized the importance of full grant date fair value information to investors and have provided an "alternative" Summary Compensation Table – substituting full grant date fair value numbers in the Stock Awards and Option Awards columns – in addition to the Summary Compensation Table disclosure prescribed by the current rules.[45] Because companies generally consider the full grant date fair value of these awards in making compensation decisions, they may include such an "alternative" table in the CD&A to illuminate their decision making process. Some users of executive compensation disclosure also

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[42] See letter from American Federation of Labor and Congress of Industrial Organizations in note 39 above ("The methodology used to calculate total compensation in the Summary Compensation Table is extremely important to shaping behavior by compensation committees and investors. Shareholders will evaluate the disclosed total compensation figure when voting in director elections and when asked to ratify equity award plans. Directors will shape their executive compensation decisions to reflect these shareholder views. For this reason, the total compensation figure should represent the current decisions made regarding executive compensation in the most recent fiscal year.").

[43] Pursuant to Instruction 1 to Items 402(a)(3) and Instruction 1 to Item 402(m)(2), this determination is made by reference to total compensation for the last completed fiscal year.

[44] Summary Compensation Table disclosure of the dollar amount recognized for financial statement reporting purposes can frustrate this objective because it can result in lengthy, complex CD&A explanations of the FAS 123R recognition model. See The Corporate Counsel, Mar.-Apr. 2009, at 3-4.

[45] Some compensation experts have also suggested adding an alternative Summary Compensation Table if the mandated Summary Compensation Table "distorts" the compensation of an executive. See Frederick D. Lipman & Steven E. Hall, Executive Compensation Best Practices 50-52 (2008).

independently substitute grant date fair value information from the Grants of Plan-Based Awards Table for the financial statement recognition-based numbers disclosed in the Summary Compensation Table.[46]

Further, correlating Stock Awards and Option Awards disclosure to financial statement recognition can result in the disclosure of a negative number in the relevant column.[47] Such a negative number currently flows through to the Total Compensation column, reducing the amount of total compensation reported. Because decreases in stock price affect the financial reporting of the value of stock options, using the financial statement recognition measure to disclose stock and option awards can result in disclosure of negative total compensation to principal executive officers or principal financial officers, confusing investors.[48]

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[46] See Moody's Investors Service, A User's Guide to the SEC's New Rules for Reporting Executive Pay (Apr. 2007), available at www.law.yale.edu/documents/pdf/CBL/AUsersGuidetotheSECPayDisclosures102762.pdf, and (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=987914) ("Moody's uses the full Statement 123(R) grant date fair value of stock awarded and options granted, as disclosed in the grants of plan-based awards table, instead of the figures disclosed in the SCT stock awards and options awards columns.").

[47] Correlating Stock Awards and Option Awards reporting to financial statement recognition often can involve negative adjustments to the numbers reported. In particular:

- Awards classified as "liability awards" under FAS 123R (such as an award that is cash settled) are initially measured at grant date fair value, but for purposes of financial statement recognition are re-measured at each financial statement reporting date through the date the awards are settled.
- Under FAS 123R, compensation cost for awards containing a performance-based vesting condition is disclosed only if it is probable that the performance condition will be achieved. If achievement of the performance condition subsequently is no longer considered probable, the amount of compensation cost previously disclosed in the Summary Compensation Table is reversed in the period when it is determined that achievement of the condition is no longer probable.

In addition, pursuant to the Instruction to Item 402(c)(2)(v) and (vi) and the Instruction to Item 402(n)(2)(v) and (vi), the compensation cost reported for stock and option awards in the Summary Compensation Table does not include the estimate of forfeitures related to service-based vesting conditions used for FAS 123R financial statement recognition because this estimate is not considered meaningful in reporting the compensation of individual named executive officers. Instead, compensation cost for awards with service-based vesting is disclosed assuming that a named executive officer will perform the service required for the award to vest. If the named executive officer fails to do so and forfeits the award, the amount of compensation cost previously disclosed in the Summary Compensation Table is deducted in the period when the award is forfeited.

[48] See G. Morgenson, Weird and Weirder Numbers on Pay Reports, N.Y. TIMES, Mar. 11, 2007.

Because total compensation also determines identification of some named executive officers, where a company experiences significant volatility in its stock price, such as the significant decreases during 2008, the current rules may also cause the list of named executive officers to change more frequently from year to year due to factors unrelated to the company's compensation decisions.[49] This can potentially exclude from executive compensation disclosure executives that the company considers the most highly compensated based on its compensation decisions, including its decisions with respect to equity awards.[50] One reason for the adoption of the financial statement recognition model was the potential to distort identification of named executive officers when a single large grant, to be earned for services to be performed over multiple years, affects the list of named executive officers in the Summary Compensation Table, even though the executive may earn a consistent level of compensation over the award's term.[51] Our experience with the current rules, however, leads us to believe that it is more meaningful to shareholders if company compensation decisions – including the decision to grant such a large award – rather than factors unrelated to those decisions, cause the named executive officers to change.

A further significant reason for adopting the current rules was concern that disclosing the full grant date fair value would overstate compensation earned related to service rendered for the

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[49] See letter regarding File No. S7-03-06 from the HR Policy Association (Jan. 29, 2007) ("The Amended Rules also will increase the annual variability of the composition of the NEOs based on accounting rules rather than compensation programs. . . . Consistency with financial accounting does not justify re-introducing such variability into the table, especially with respect to a core element of compensation such as equity compensation that cannot be excluded in determining total compensation.").

[50] See letter regarding File No. S7-03-06 from Ernst & Young (Jan. 29, 2007) (generally supporting the current rules yet stating that "[w]e recommend that the SEC adopt an approach that also excludes the effects of any negative amounts, regardless of their source in the determination of the NEOs. We believe that such an approach would result in more consistency from year to year in the identity of the NEOs included in the SCT. Further, the NEOs determined in this fashion would more likely be those executives that the compensation committee regards as the most highly compensated.").

[51] See Release No. 33-8765 in note 24 above at 78340 (citing letter from Fenwick & West LLP).

year, and that actual amounts earned later could be substantially different.[52] However, companies have recognized that the current rules also have the potential to over-report compensation for a given year.[53] To the extent that both methods possess this potential, we believe that reporting based on the full grant date fair value method is more informative because it better reflects compensation decisions. If a company does not believe that full grant date fair value reflects a named executive officer's compensation, it can provide appropriate explanatory narrative disclosure.

While we continue to recognize that no one approach to disclosure of stock and option awards addresses all the issues regarding disclosure of equity compensation, our experience and the comment letters received since adoption of the current requirements lead us to believe that the goals of clear, concise and meaningful executive compensation disclosure would be better served by amending the Summary Compensation Table and Director Compensation Table to report stock awards and option awards based on aggregate grant date fair value. Among other things, because presentation of aggregate grant date fair value would include the incremental fair value of options repriced during the fiscal year, the effect of option repricings on total compensation would be clearer. Further, because smaller reporting companies do not provide a Grants of Plan-Based Awards Table, the current rules do not require them to provide any disclosure of the grant date fair value of awards made in the fiscal year (although they are

[52] See Release No. 33-8765 in note 24 above. See also Release No. 33-8765, in note 24 above at 78340 (citing letters of U.S. Chamber of Commerce (Apr. 7, 2006); Ernst & Young LLP (Apr. 10, 2006)).

[53] See Frederick D. Lipman & Steven E. Hall in note 45 above (stating that "[w]hen shareholders look at the 'Total' column for a 2007 or a subsequent year proxy statement, the executive's compensation would include the allocable share of the 2005 option grant under FAS 123R. This figure could substantially inflate the 'Total' column for 2007 or subsequent years, leading unsophisticated shareholders or financial writers to the conclusion that this amount was received in 2007, when in fact the option grants were received in 2005. If 2007 were a particularly bad year financially for the company or for shareholders' stock values, there could be a hue and cry that this was another example of excessive CEO compensation").

currently required to provide the Summary Compensation Table). The proposals thus would make this information available to smaller reporting company investors.

The amendments we propose also would:

- Rescind the requirement to report the full grant date fair value of each individual equity award in the Grants of Plan-Based Awards Table[54] and corresponding footnote disclosure[55] to the Director Compensation Table because these disclosures may be considered duplicative of the aggregate grant date fair value disclosure to be provided in the Summary Compensation Table under the proposals; and
- Amend Instruction 2 to the salary and bonus columns of the Summary Compensation Table to provide that registrants will not be required to report in those columns the amount of salary or bonus forgone at a named executive officer's election, and that non-cash awards received instead are reportable in the column applicable to the form of award elected. With this amendment, the Summary Compensation Table disclosure would reflect the form of compensation ultimately received by the named executive officer.[56]

Request for comment:

- Is the proposed Summary Compensation Table reporting of equity awards a better approach for providing investors clear, meaningful, and comparable executive compensation disclosure consistent with the objectives of providing concise analysis

[54] See Item 402(d)(2)(viii) of Regulation S-K and Instruction 7 to Item 402(d).

[55] Current Instruction to Item 402(k)(2)(iii) and (iv) of Regulation S-K.

[56] This proposed amendment would apply to General Instruction 2 to Item 402(c)(2)(iii) and (iv) and General Instruction 2 to Item 402(n)(2)(iii) and (iv). The current versions of these Instructions, which require such forgone salary or bonus to be reported in the Salary or Bonus column, as applicable, were adopted in Release No. 33-8765 to reflect that the original terms of the award, which would have compensated the named executive officer in cash, are not within the scope of FAS 123R.

in CD&A and a clear understanding of total compensation for the year? Would the proposals facilitate better informed investment and voting decisions?

- The proposal contemplates that the Summary Compensation Table would report the aggregate grant date fair value of stock awards and option awards granted during the relevant fiscal year, just as the Grants of Plan-Based Awards Table reports each grant of an award made to a named executive officer in the last completed fiscal year. Should the Summary Compensation Table instead report the aggregate grant date fair value of equity awards granted for services in the relevant fiscal year, even if the awards were granted after fiscal year end? Explain why or why not. For example, could such an approach be applied in a manner inconsistent with the purposes of our compensation disclosure rules, for example by distorting the determination of named executive officers? If we change our approach with respect to the Summary Compensation Table, should the Grants of Plan-Based Awards Table be amended correspondingly to conform to the scope of awards reported in that table?
- If the Summary Compensation Table is amended as proposed, should the Grants of Plan-Based Awards Table disclosure of the full grant date fair value of each individual award be retained, rather than rescinded as proposed? Should the Grants of Plan Based Awards Table continue to disclose the incremental fair value with respect to individual awards that were repriced or otherwise materially modified during the last completed fiscal year? If so, why? If disclosure of grant date fair value of individual awards is retained, should it also be made applicable to smaller reporting companies?

- As described above, one reason for adopting the financial statement recognition model was the potential for distortion in identifying named executive officers when a single large grant, to be earned by services to be performed over multiple years, affects the list of named executive officers in the Summary Compensation Table, even though the executive earns a consistent level of compensation over the award's term. Are multi-year grants a common practice, so that they would introduce significant year-to-year variability in the list of named executive officers if the proposed amendments are adopted relative to the variability under the current rules? If so, how should our rules address this variability?
- Under the proposal, all stock and option awards would be reported in the Summary Compensation Table at full grant date fair value, including awards with performance conditions. Would the proposal discourage companies from tying stock awards to performance conditions, since the full grant date fair value would be reported without regard to the likelihood of achieving the performance objective? If the proposal is adopted, is any disclosure other than that already currently required (e.g., in the Compensation Discussion and Analysis, the Grants of Plan-Based Awards Table, and the Outstanding Equity Awards at Fiscal Year-End Table) needed to clarify that the amount of compensation ultimately realized under a performance-based equity award may be different?
- As proposed, Instruction 2 to the salary and bonus columns would be revised to provide that any amount of salary or bonus forgone at the election of a named executive officer pursuant to a program under which a different, non-cash form of compensation may be received need not be included in the salary or bonus column,

but instead would need to be reported in the appropriate other column of the Summary Compensation Table. Should this approach cover elections to receive salary or bonus in the form of equity compensation only if the opportunity to elect equity settlement is within the terms of the original compensatory arrangement, so that the original arrangement is within the scope of FAS 123R? Why or why not?

- The Commission also has received a rulemaking petition requesting that we revise Summary Compensation Table disclosure of stock and option awards a different way.[57] Instead of reporting the aggregate grant date fair value of awards granted during the year, as we propose, the petition's suggested approach would report the annual change in value of awards, which could be a negative number if market values decline. For restricted stock, restricted stock units and performance shares, the reported amount would be the change in stock price from year-end to year-end. For stock options, it would be the change in the in-the-money value over the same period. Would the approach suggested by the rulemaking petition be easy to understand or difficult to understand? Would the information provided under the suggested approach be useful to investors? In particular, would investors be able to evaluate the decision making of directors with respect to executive compensation if the value of equity compensation on the date of the compensation decision is not disclosed, but instead investors are provided information regarding changes in value of the compensation, which changes occur after the compensation decision is made? Would it enhance or diminish the ability of companies to explain in CD&A the relationship between pay and company performance? Would it be more or less informative to

[57] See May 26, 2009, rulemaking petition submitted by Ira T. Kay and Steven Seelig, Watson Wyatt Worldwide, File No. 4-585, at http://www.sec.gov/rules/petitions/2009/petn4-585.pdf.

voting and investment decisions than the aggregate grant date fair value approach we propose? Would it be a better measure for computing total compensation, including for purposes of identifying named executive officers? Are there any other ways of reporting stock and option awards that would better reflect their compensatory value? If so, please explain. For example, are there any potential amendments to the Grants of Plan-Based Awards Table or the Outstanding Equity Awards at Fiscal Year-End Table that we should consider to better illustrate the relationship between pay and company performance?

- The Summary Compensation Table requires disclosure for each of the registrant's last three completed fiscal years,[58] and with respect to smaller reporting companies, for each of the registrant's last two completed fiscal years.[59] Regarding transition, our goal is to facilitate year-to-year comparisons in a cost-effective way. To this end, we are considering whether to require companies providing Item 402 disclosure for a fiscal year ending on or after December 15, 2009 to present recomputed disclosure for each preceding fiscal year required to be included in the Summary Compensation Table, so that the Stock Awards and Option Awards columns would present the applicable full grant date fair values,[60] and Total Compensation would be recomputed correspondingly. If a person who would be a named executive officer for the most recent fiscal year (2009) also was disclosed as a named executive officer for 2007, but not for 2008, we expect to require the named executive officer's compensation for

[58] See Item 402(c)(1) of Regulation S-K.

[59] See Item 402(n)(1) of Regulation S-K.

[60] This amount would be computed based on the individual award grant date fair values reported in that year's Grants of Plan Based Award Table.

each of those three fiscal years to be reported pursuant to the proposed amendments.[61] However, we would not require companies to include different named executive officers for any preceding fiscal year based on recomputing total compensation for those years pursuant to the proposed amendments or to amend prior years' Item 402 disclosure in previously filed Forms 10-K or other filings. Would recomputation of prior years included in the 2009 Summary Compensation Table to substitute aggregate grant date fair value numbers for the financial statement recognition numbers previously reported for those years cause companies practical difficulties? Is there a better approach that would preserve the objective of year-to-year comparability on a cost-effective basis as a transitional matter?

B. Enhanced Director and Nominee Disclosure

We are proposing amendments to Item 401 of Regulation S-K to expand the disclosure requirements regarding the qualifications of directors and nominees, past directorships held by directors and nominees, and the time frame for disclosure of legal proceedings involving directors, nominees and executive officers. Specifically, we are proposing to require disclosure detailing for each director and nominee for director the particular experience, qualifications, attributes or skills that qualify that person to serve as a director of the company as of the time that a filing containing this disclosure is made with the Commission, and as a member of any committee that the person serves on or is chosen to serve on (if known), in light of the company's business and structure.[62]

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[61] However, a smaller reporting company, which is required to provide disclosure only for the two most recent fiscal years, could provide Summary Compensation Table disclosure only for 2009 if the person was a named executive officer for 2009 but not for 2008.

[62] We last adopted substantive revisions to the disclosure concerning the background of directors, executive officers and control persons in 1984, when we amended Item 401 of Regulation S-K to require disclosure of legal

Item 401 currently requires only brief biographical information about directors and nominees for the past five years, and Item 407 requires general disclosure about director qualification requirements at a company. The proposed amendments to Item 401 would expand the information required about individual directors and supplement the current director qualification disclosures in Item 407 of Regulation S-K. These revisions are aimed at helping investors determine whether a particular director and the entire board composition is an appropriate choice for a given company as of the time that a filing containing this disclosure is made with the Commission.[63]

Companies today face ever-increasing challenges from the business and social environments in which they operate. As recent market events have demonstrated, the capacity to assess risk and respond to complex financial and operational challenges can be important attributes for directors of public companies. Moreover, developments such as the enactment of the Sarbanes-Oxley Act of 2002[64] and corporate-governance related listing standards of the major stock exchanges[65] also have brought about significant changes in the structure and composition of corporate boards, such as requiring directors to have particular knowledge in areas such as finance and accounting. We believe that the director qualification disclosure requirements in Item 407 have resulted in more general information being provided about the qualifications of

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proceedings involving federal commodities laws and applied the disclosure requirements to promoters and control persons of newly public companies. See Release No. 33-6545 (Aug. 9, 1984) [49 FR 32762].

[63] See, for example, Richard Leblanc & James Gillies, Inside the boardroom: How boards really work and the coming revolution in corporate governance, (2005) (noting that an effective board "must have a set of directors who collectively have all the competencies required by the board to fulfill its duties.").

[64] Pub. L. 107-204, 116 Stat. 745 (2002).

[65] In 2003, we approved revisions to the listing standards of the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers ("NASD") that, among other things, imposed new independent director requirements and enhanced independence standards. See Self-Regulatory Organizations; NYSE and NASD; Order Approving Proposed Rule Changes Relating to Corporate Governance, Release No. 34-48445 (Nov. 12, 2003) [68 FR 64154].

the board as a whole, but not more specific discussions of the background and skills of individual directors.

The proposed amendments are designed to provide investors with more meaningful disclosure to help them in their voting decisions by better enabling them to determine whether and why a director or nominee is a good fit for a particular company, and to allow companies flexibility in disclosing material information on the background and specific qualifications of each director and nominee, including information that goes beyond the five-year biographical requirement of Item 401. We are proposing that, for each director or nominee, disclosure be included that discusses the specific experience, qualifications or skills that qualify that person to serve as a director and committee member. The types of information that may be disclosed include, for example, information about a director's or nominee's risk assessment skills and any specific past experience that would be useful to the company, as well as information about a director's or nominee's particular area of expertise and why the director's or nominee's service as a director would benefit the company at the time at which the relevant filing with the Commission is made. This expanded disclosure would apply to incumbent directors, to nominees for director who are selected by a company's nominating committee, and to any nominees put forward by other proponents. Regardless of who has nominated the director, we believe a discussion of why the particular person is qualified to serve on the company's board would be useful to investors.

In addition to the expanded narrative disclosure regarding director and nominee qualifications, we are proposing two additional changes to our director and nominee biographical disclosure requirements. First, we are proposing to require disclosure of any directorships held by each director and nominee at any time during the past five years at public companies, and

second, we are proposing to lengthen the time during which disclosure of legal proceedings is required from five to 10 years. With respect to other directorships held by directors or nominees, Item 401 requires disclosure of any current director positions held by each director and nominee in any company with a class of securities registered pursuant to Section 12 of the Exchange Act,[66] or subject to the requirements of Section 15(d) of that Act,[67] or any company registered as an investment company under the Investment Company Act. We believe that expanding this disclosure to include membership on corporate boards of those companies for the past five years (even if the director or nominee no longer serves on that board) would allow investors to better evaluate the relevance of a director's or nominee's past board memberships, or professional or financial relationships that might pose potential conflicts of interest (such as membership on boards of major suppliers, customers, or competitors).

Item 401 requires disclosure of specified legal proceedings over the past five years involving directors, executive officers, and persons nominated to become directors that are material to an evaluation of the ability or integrity of any director, director nominee or executive officer.[68] In 1994, we proposed rules that would have increased the reporting period for legal

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[66] 15 U.S.C. 78l.

[67] 15 U.S.C. 78o(d).

[68] Under Item 401(f), the registrant must disclose any of the following events that occurred during the past five years and that are material to an evaluation of the director, director nominee or executive officer:

(1) A petition under Federal bankruptcy laws or any state insolvency law A petition under the Federal bankruptcy laws or any state insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which he was a general partner at or within two years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding or is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses);

proceedings from five to ten years.[69] Because the legal proceedings listed in Item 401 reflect upon an individual's competence and character to serve as a public company official, we believe it is appropriate to extend the required reporting period from five to ten years in order to give investors more extensive information regarding an individual's competence and character.[70]

The disclosures that would be required under the proposed amendments to Item 401 would appear in proxy and information statements on Schedules 14A and 14C, annual reports on Form 10-K and the registration statement on Form 10 under the Exchange Act, as well as in registration statements under the Securities Act.

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(3) Such person was the subject of any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining him from, or otherwise limiting, the following activities: (i) Acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the Commodity Futures Trading Commission, or an associated person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity; (ii) Engaging in any type of business practice; or (iii) Engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of Federal or State securities laws or Federal commodities laws;

(4) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any Federal or State authority barring, suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in paragraph (f)(3)(i) of this section, or to be associated with persons engaged in any such activity;

(5) Such person was found by a court of competent jurisdiction in a civil action or by the Commission to have violated any Federal or State securities law, and the judgment in such civil action or finding by the Commission has not been subsequently reversed, suspended, or vacated; or

(6) Such person was found by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any Federal commodities law, and the judgment in such civil action or finding by the Commodity Futures Trading Commission has not been subsequently reversed, suspended or vacated.

The instruction to Item 401(f) indicates that if any event specified in Item 401(f) has occurred and information in a filing is omitted on the grounds that it is not material, the registrant may furnish to the Commission, at the time of filing, as supplemental information and not as part of the registration statement, report, or proxy or information statement, materials to which the omission relates, a description of the event and a statement of the reasons for the omission of the information.

[69] Release No. 33-7106 (Nov. 1, 1994) [59 FR 55385].

[70] Consistent with the current disclosure requirement regarding legal proceedings, the proceedings required to be disclosed under the proposal would not need to be disclosed if they are not material to an evaluation of the director or director nominee. See 17 CFR 229.401(f).

Currently, Item 407(c)(2)(v) of Regulation S-K requires disclosure of any specific minimum qualifications that a nominating committee believes must be met by a nominee for a position on the board.[71] We are interested in understanding whether investors and other market participants believe that diversity in the boardroom is a significant issue. As indicated below, we are requesting comment on whether additional disclosure in this area should be required.

We also are proposing to apply the expanded disclosure requirements regarding director and nominee qualifications, past directorships held by directors and nominees, and the time frame for disclosure of legal proceedings involving directors, nominees, and executive officers to management investment companies that are registered under the Investment Company Act ("funds"). We believe investors in funds would, for the same reasons as investors in operating companies, find this information useful. The proposal would amend the disclosures in Schedules 14A and 14C to apply these expanded requirements to fund proxy and information statements where action is to be taken with respect to the election of directors.[72] We are also proposing to amend Forms N-1A, N-2, and N-3 to require that funds include the expanded disclosures regarding director qualifications and past directorships in their statements of additional information.[73]

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[71] Management investment companies that are registered under the Investment Company Act are subject to the disclosure requirements of Item 407(c)(2)(v) of Regulation S-K pursuant to Item 22(b)(15)(ii)(A) of Schedule 14A. See 17 CFR 240.14a-101, Item 22(b)(15)(ii)(A). Management investment companies typically issue shares representing an interest in a changing pool of securities, and include open-end and closed-end companies. An open-end company is a management company that is offering for sale or has outstanding any redeemable securities of which it is the issuer. A closed-end company is any management company other than an open-end company. See Section 5 of the Investment Company Act [15 U.S.C. 80a-5].

[72] See proposed Item 22(b)(3)(i) of Schedule 14A (qualifications); proposed Item 22(b)(4)(ii) of Schedule 14A (directorships); proposed Item 22(b)(11) of Schedule 14A (legal proceedings).

[73] See proposed Items 17(b)(3)(ii) & 17(b)(10) of Form N-1A; proposed Items 18.6(b) & 18.17 of Form N-2; proposed Items 20(e)(ii) & 20(o) of Form N-3. Form N-1A is used by open-end management investment companies. Form N-2 is used by closed-end management investment companies. Form N-3 is used by separate accounts, organized as management investment companies, which offer variable annuity contracts.

Request for Comment

- Would the proposed amendments provide investors with important information regarding directors and nominees for director? Are there any additional changes that we should make to further improve the disclosures about director and nominee qualifications?
- If Item 401 is amended as proposed, should the disclosure currently required by Item 407(c)(2)(v) of Regulation S-K regarding disclosure of any minimum qualifications that a nominating committee believes must be met by someone nominated by the committee for a position on the board, be retained? Does the disclosure elicited by Item 407(c)(2)(v) provide useful information that would supplement the information provided pursuant to the proposed amendment to Item 401?
- Should we amend Item 407(c)(2)(v) to require disclosure of any additional factors that a nominating committee considers when selecting someone for a position on the board, such as diversity? Should we amend our rules to require additional or different disclosure related to board diversity?
- Would director qualification disclosure for all of a company's board committees be useful to investors, or should the disclosures be focused on membership of certain key committees, such as the audit, compensation and nominating/governance committees?
- Should we require the proposed director qualification disclosure less frequently than annually? Even though the overall composition of a board may change, is it sufficient to require this disclosure only when a director is first nominated or periodically, such as every three years? Should the disclosure be required only when

the director is standing for election, or should it be required each year, as proposed, in order to facilitate shareholders' assessments of the quality of the board as a whole?

- Would it be helpful to investors if we required companies to list and describe all committees of the board similar to the current disclosure requirements for audit, compensation and nominating/governance committees? Would it also be helpful if we required disclosure of whether the board (or a committee) periodically conducts an evaluation of the performance of the board as a whole, the committees of the board and/or each individual director?
- Should we require disclosure of other directorships for more than the past five years? If so, for how long?
- Could requiring more director and nominee qualification disclosure in any way hinder a company's ability to find potential candidates for the board? If so, explain how.
- Should the current five-year disclosure period for legal proceedings be maintained? Should it be longer than proposed, for example for fifteen or twenty years? Should there be no time limit? Would it be more appropriate to require disclosure of legal proceedings for longer periods with respect to certain types of legal proceedings—for example, criminal fraud convictions, civil or administrative actions based on fraud involving securities, commodities, financial institutions, insurance companies or other businesses? If so, for what period or periods and why?
- Are there additional legal proceeding disclosures that reflect on a director's, executive officer's, or nominee's character and fitness to serve as a public company official that should be required to be disclosed? For example, should we expand the current requirements to require disclosure of:

  - Any civil or administrative proceedings resulting from involvement in mail fraud, or wire fraud;
  - Any judicial or administrative findings, orders or sanctions based on violations of federal or state securities, commodities, banking or insurance laws and regulations or any settlement to such actions;
  - Any disciplinary sanctions imposed by a stock, commodities or derivatives exchange or other self-regulatory organization; or
  - Situations where the director, nominee, or executive officer was a general partner of any partnership or served as a director or executive officer of any corporation subject to any federal or state agency receivership?
- Should we continue, as proposed, to permit companies to exclude disclosure of director, director nominee or executive officer legal proceedings, when the registrant concludes that the information would not be material to an evaluation of the ability or integrity of the director, director nominee or executive officer, or should this disclosure be required in all cases?
- Should we make any special accommodations in the proposed amendments to Item 401 for smaller reporting companies? If so, what accommodations should be made and why?
- Should the proposed amendments regarding director and nominee qualifications, past directorships held by directors and nominees, and the time frame for disclosure of legal proceedings apply to registered management investment companies? If so, where should each of the disclosures be required (e.g., proxy statements, statements of additional information, and/or shareholder reports)? Does the disclosure

requirement need to be modified in any way to make it more appropriate for registered management investment companies?

C. New Disclosure about Company Leadership Structure and the Board's Role in the Risk Management Process

We are proposing a new disclosure requirement to Item 407 of Regulation S-K and a corresponding amendment to Item 7 of Schedule 14A that would require disclosure of the company's leadership structure and why the company believes it is the best structure for it at the time of the filing. This proposed disclosure would appear in proxy and information statements. Under the proposed amendments, companies also would be required to disclose whether and why they have chosen to combine or separate the principal executive officer and board chair positions. In some companies, the role of principal executive officer and board chairman are combined, and a lead independent director is designated to chair meetings of the independent directors. Those companies would also be required to disclose whether and why the company has a lead independent director, as well as the specific role the lead independent director plays in the leadership of the company. In proposing this requirement, we note that different leadership structures may be suitable for different companies depending on factors such as the size of a company, the nature of a company's business, or internal control considerations, among other things. Regardless of the type of leadership structure selected by a company, the disclosure would provide investors with insights about why the company has chosen that particular leadership structure.

In making voting and investment decisions, investors should be provided with meaningful information about the corporate governance practices of companies.[74] One important

[74] See, for example, National Association of Corporate Directors, Key Agreed Principles to Strengthen Corporate Governance for U.S. Publicly Traded Companies, (Mar. 2009) ("Every board should explain, in proxy materials and

aspect of a company's corporate governance practices is its board's leadership structure. Our proposed amendments to Item 407 are not intended to influence a company's decision regarding its board leadership structure. Disclosure of board leadership structure and why the company believes this is the best structure will increase the transparency for investors into how boards function.

We also are proposing to require additional disclosure in proxy and information statements about the board's role in the company's risk management process. Companies face a variety of risks, including credit risk, liquidity risk, and operational risk. Similar to disclosure about the leadership structure of a board, disclosure about the board's involvement in the risk management process should provide important information to investors about how a company perceives the role of its board and the relationship between the board and senior management in managing the material risks facing the company. Given the role that risk and the adequacy of risk oversight have played in the recent market crisis, we believe it is important for investors to understand the board's, or board committee's role in this area. For example, how does the board implement and manage its risk management function, through the board as a whole or through a committee, such as the audit committee?[75] Such disclosure might address questions such as whether the persons who oversee risk management report directly to the board as whole, to a committee, such as the audit committee, or to one of the other standing committees of the board; and whether and how the board, or board committee, monitors risk. We believe that this

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other communications with shareholders, why the governance structures and practices it has developed are best suited to the company.")

[75] Section 303A of the NYSE's Listed Company Manual provides that the audit committee of companies listed on the exchange must "discuss guidelines and policies to govern the process by which risk assessment and management is undertaken."

disclosure will provide key insights into how a company's board perceives and manages a company's risks.

We also are proposing that registered management investment companies provide the new Item 407 disclosure about leadership structure and the board's role in the risk management process in proxy and information statements.[76] Similar to the transparency provided to investors in corporate issuers, we believe that providing this disclosure to investors in investment companies should enable them to consider their management structure preference, if any, when deciding where to invest.[77] We have, however, tailored the proposal to the management structure of funds. Accordingly, we propose to require that a fund disclose whether the board chair is an "interested person" of the fund, as defined in Section 2(a)(19) of the Investment Company Act.[78] If the board chair is an interested person, a fund would be required to disclose whether it has a lead independent director and what specific role the lead independent director plays in the leadership of the fund. We are also proposing to require similar disclosure in statements of additional information filed as part of registration statements on Forms N-1A, N-2, and N-3.[79]

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[76] See proposed Item 22(b)(11) of Schedule 14A.

[77] In the context of this rulemaking, we believe it is appropriate to propose to require disclosure about fund management that is similar to the disclosure requirement for corporate issuers. In another context and for other purposes, the Commission previously considered a number of issues, including disclosure, regarding fund governance that we are not addressing here. See Investment Company Governance, File No. S7-03-04.

[78] 15 U.S.C. 80a-2(a)(19).

[79] See proposed Item 17(b)(1) of Form N-1A; proposed Item 18.5(a) of Form N-2; proposed Item 20(d)(i) of Form N-3. We are proposing to require this disclosure in the statement of additional information because not all funds hold annual meetings for the election of directors.

A large number of funds are organized as entities in jurisdictions which do not require funds to hold an annual shareholder meeting to elect directors. See, for example, Md. Code Ann., Corps. & Ass'ns Code § 2-501(b) (2009) (law exempts funds from annual meeting requirement in any year that the fund is not required to act upon the election of directors under the Investment Company Act); Del. Code Ann. tit. 12, § 3806 (2009) (statutory trust law structure has the effect of generally not requiring shareholder meetings). See also Sheldon A. Jones et al., The Massachusetts Business Trust and Registered Investment Companies, 13 DEL. J. CORP. L. 421 (1988) (noting that the organizational and operational requirements of Massachusetts business trusts are not specified by statute, and a fund's essential structure is contained in the trust agreement, which generally includes a provision eliminating the

Request for Comment

- Are the proposed amendments to Item 407 appropriate? Are there additional disclosure requirements that should also be included in these proposed requirements?
- Are there certain considerations that would affect the company's leadership structure that should be highlighted in the proposed amendment? If so, explain.
- Are there any additional disclosures about a company's leadership that would be helpful to investors?
- Should we require disclosure of the specific duties performed by the board's chair or independent lead director?
- Should we require disclosure of other board structure matters, such as how a company determines the number of independent directors to have on its board, and/or how a company determines the size of the board?
- Are there competitive or proprietary concerns about the level of detail about the company's risk management structure and function that the proposed rule should account for? If so, please identify these concerns and explain how they should be accounted for.
- Should we make any special accommodations in these proposed amendments for smaller reporting companies? If so, what accommodations should be made and why?
- The proposals address risk management oversight by the board of directors as a part of the corporate governance disclosures required in proxy and information statements. We are considering whether we should revise our existing disclosure requirements,

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need for annual shareholder meetings to elect directors). Closed-end funds registered on national securities exchanges, however, are required to hold an annual meeting to elect directors under the rules of the exchanges. See, for example, AMEX Company Guide §704; New York Stock Exchange Listed Company Manual §302.00.

such as in Items 303[80] and 305[81] of Regulation S-K, to require additional disclosure regarding a registrant's risk management practices in other registrant filings, such as annual and quarterly reports? Should we consider proposing additional requirements? If so, what additional or different disclosure requirements should we consider proposing?

- Should we, as proposed, require a registered management investment company to provide disclosure about its leadership structure and the board's role in the risk management process? Are there alternative disclosures relating to a fund's leadership structure and board involvement in the risk management process that would be more helpful to investors? If we require each of the disclosures, where should such disclosures appear (e.g., proxy statements, statements of additional information, and/or shareholder reports)?
- As proposed, funds would be required to include the proposed disclosure in registration statements filed on Forms N-1A, N-2, and N-3. Should we differentiate between open-end and closed-end funds? For example, should we omit this requirement from Form N-2 because closed-end funds generally hold annual shareholder meetings pursuant to exchange requirements and their shareholders will receive this disclosure in annual proxy or information statements?

D. New Disclosure Regarding Compensation Consultants

In 2003, we amended Regulation S-K to require new disclosures regarding compensation committees similar to the disclosures required regarding audit and nominating committees of the

[80] 17 CFR 229.303.

[81] 17 CFR 229.305.

board of directors.[82] In addition, in 2006, we amended Item 407 to require registrants to describe, among other things, any role played by compensation consultants in determining or recommending the amount or form of executive and director compensation, identifying such consultants, stating whether they are engaged directly by the compensation committee or any other person, 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.[83]

Many companies engage compensation consultants to make recommendations on appropriate executive compensation levels, to design and implement incentive plans, and to provide information on industry and peer group pay practices.[84] These services can benefit companies, such as by providing management and the board current information about compensation trends or any regulatory requirements related to executive compensation.

The services offered by compensation consultants, however, are often not limited to recommending executive compensation plans or policies. Many compensation consultants, or their affiliates, provide a broad range of additional services, such as benefits administration, human resources consulting and actuarial services.[85] The fees generated by these additional services may be more significant than the fees earned by the consultants for their executive compensation services.[86] The provision of such additional services by compensation consultants

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[82] See Release No. 33-8340 (Nov. 24, 2003) [68 FR 69204].

[83] 17 CFR 229.407(e)(3)(iii).

[84] See, for example, J. Creswell, Pressing for Independent Advice from Consultants, N.Y. TIMES, Apr. 8 2007.

[85] See, for example, Rulemaking Petition No. 4-558 (May 12, 2008), at http://www.sec.gov/rules/petitions.shtml.

[86] In December 2007, the U.S. House of Representatives Committee on Oversight and Government Reform issued a report on the role played by compensation consultants at large, publicly-traded companies. The report found that the fees earned by compensation consultants for providing other services often far exceed those earned for advising on

or their affiliates may create the appearance, or risk, of a conflict of interest that may call into question the objectivity of the consultants' executive pay recommendations. Increasingly, some investors are becoming concerned that the executive compensation services provided by compensation consultants may be influenced by the provision of these additional services.[87]

Presently, companies are not required to disclose the fees paid to compensation consultants and their affiliates for executive compensation consulting or other services, or to describe services that are not related to executive or director compensation. We are proposing amendments to Item 407 of Regulation S-K to require disclosure about the fees paid to compensation consultants and their affiliates when they play any role in determining or recommending the amount or form of executive and director compensation, if they also provide other services to the company. In addition, the proposed amendments would require a description of any additional services provided to the company by the compensation consultants and any affiliates of the consultants. These disclosures are intended to enable investors to assess any incentives a compensation consultant may have in recommending executive compensation and better assess the compensation decisions made by the board.

Under the proposed amendments to Item 407, if a compensation consultant or its affiliates played a role in determining or recommending the amount or form of executive or

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executive compensation, and that on average companies paid compensation consultants over $2.3 million for other services and less than $220,000 for executive compensation advice. See Staff of House Comm. on Oversight and Government Reform, 110th Cong., Report on Executive Pay: Conflicts of Interest Among Compensation Consultants (Comm. Print 2007).

[87] See Rulemaking Petition No. 4-558 in note 85 above. See also letters regarding File No. S7-03-06 from CalPERS, CalSTRS, New York State Common Retirement System, Florida State Board of Administration, New York City Pension Funds, PGGM, ABP, Hermes, Universities Superannuation Scheme, UniSuper, London Pensions Fund Authority, F&C Asset Management, Co-operative Insurance Society, Illinois State Board of Investment, Ontario Teachers Pension Plan, Public Sector and Commonwealth Super, and Railpen Investments (Apr. 10, 2006); CFA Institute for Financial Market Integrity (Apr. 13, 2006); and Denise Nappier, Connecticut State Treasurer (Apr. 10, 2006) at http://www.sec.gov/rules/proposed/s70306.shtml.

director compensation, and also provided additional services, then the company would be required to disclose the following:[88]

- The nature and extent of all additional services provided to the company or its affiliates during the last fiscal year by the compensation consultant and any affiliates of the consultant;
- The aggregate fees paid for all additional services, and the aggregate fees paid for work related to determining or recommending the amount or form of executive and director compensation;
- Whether the decision to engage the compensation consultant or its affiliates for non-executive compensation services was made, recommended, subject to screening or reviewed by management; and
- Whether the board of directors or the compensation committee has approved all of these services in addition to executive compensation services.

These new requirements would apply to all services provided by a compensation consultant and its affiliates if the compensation consultant plays any role in determining or recommending the amount or form of executive or director compensation. The proposed amendments would not apply to those situations in which the compensation consultant's only role in recommending the amount or form of executive or director compensation is in connection with consulting on broad-based plans that do not discriminate in favor of executive officers or directors of the company, such as 401(k) plans or health insurance plans. For example, if a company retains a compensation consultant to assist it in developing a 401(k) plan in which all salaried employees, including executives, will be eligible to participate on the same terms, and

[88] See proposed Item 407(e)(3)(iii) of Regulation S-K.

the compensation consultant provides other services to the company that are not related to determining or recommending the level of executive or director compensation, the new disclosure requirements would not apply to the services provided by that compensation consultant.[89] When a compensation consultant's only services that touch on the form or amount of executive or director compensation are limited to broad-based, non-discriminatory plans, even though executives or directors may be eligible to participate in them, we do not believe that these services give rise to the type of potential conflict of interest intended to be addressed by our proposed revisions.[90]

Request for Comment

- Will this disclosure help investors better assess the role of compensation consultants and potential conflicts of interest, and thereby better assess the compensation decisions made by the board?
- Would the disclosure of additional consulting services and any related fees adversely affect the ability of a company to receive executive compensation consulting or non-executive compensation related services? If so, how might we achieve our goal while minimizing that impact?
- Are there competitive or proprietary concerns that the proposed disclosure requirements should account for? If so, how should the amendments account for them if the compensation consultant provides additional services?

[89] On the other hand, if a consultant provides other services involving executive or director compensation, and also provides services regarding broad-based, non-discriminatory plans, the new disclosure requirements would be applicable to all services provided by the consultant or its affiliates.

[90] We also propose to amend Item 407 along the same lines to clarify that the existing disclosure requirements are not triggered for a compensation consultant whose only services with regard to executive or director compensation are limited to these types of broad-based, non-discriminatory plans.

- Are there additional disclosures regarding the potential conflicts of interest of compensation consultants that should be required? For example, would requiring disclosure of any ownership interest that an individual consultant may have in the compensation consultant or any affiliates of the compensation consultant that are providing the additional services to the company help provide information about potential conflicts? If so, why?
- The proposed disclosure requirement calls for disclosure of services during the prior year. Should we also require disclosure of any currently contemplated services in order to capture a situation where the compensation consultant provides services related to executive pay in one year and in the next year receives fees for other services? If so, should we require that fees for the currently contemplated services be estimated? Is there a better way to require that information, for instance through the date of the filing? Should we require disclosure for the prior three years?
- Is the proposed exclusion for consulting services that are limited to broad-based, non-discriminatory plans appropriate? Should we consider any other exclusions for services that do not give rise to potential conflicts of interest? If so, describe them.
- Should we establish a disclosure threshold based on the amount of the fees for the non-executive compensation related services, such as above a certain dollar amount or a percentage of income or revenues? If so, how should the threshold be computed?
- Would disclosure of the individual fees paid for non-executive compensation related services provided by the compensation consultants be more useful to investors than disclosure of the aggregate fees paid for non-compensation related service provided as proposed?

- Would disclosure about the fees paid to compensation consultants and their affiliates help highlight potential conflicts of interest on the part of these compensation consultants and their affiliates? Is fee disclosure necessary to achieve this goal, or would it be sufficient to require disclosure of the nature and extent of additional services provided by the compensation consultant and its affiliates? Should disclosure only be required for fees paid in connection with executive compensation related services?
- Should we make any special accommodations in the proposed amendments to Item 407(h) for smaller reporting companies? If so, what accommodations should be made and why?
- Are there other categories of consultants or advisors whose activities on behalf of companies should be disclosed to shareholders? If so, what kind of disclosure would be appropriate?

E. Reporting of Voting Results on Form 8-K

We are proposing to transfer the requirement to disclose vote results from Forms 10-Q and 10-K to Form 8-K. Currently, Item 4 in Part II of Form 10-Q and Item 4 in Form 10-K require the disclosure of vote results of any matter that was submitted to a vote of shareholders during the fiscal quarter covered by either the Form 10-Q or Form 10-K with respect to the fourth fiscal quarter. Under the proposals, we would add a new Item 5.07 to Form 8-K to require a company to disclose on the Form 8-K the results of a shareholder vote, and to have that information filed within four business days after the end of the meeting at which the vote was held. If the proposal is adopted, we would delete the requirement from Forms 10-Q and 10-K.

We believe that more timely disclosure of the voting result of an annual or special meeting would benefit investors and the markets. While quarterly and annual reports generally

reflect historical information, we are concerned that the delay between the end of an annual or special meeting and when the voting result of the meeting is disclosed in a Form 10-Q or 10-K may make the information less useful to investors and the markets. Depending on the date of the shareholder meeting, it could take a few months before the vote is disclosed in a Form 10-Q or 10-K. Because matters submitted for a shareholder vote at an annual or special meeting often involve issues that directly impact shareholder interests -- for example, the composition of the board, executive compensation policies, or changes in shareholder rights -- we believe more timely disclosure of those voting results is appropriate. In short, we believe that if a matter is important enough to submit to a vote at a meeting of shareholders, it likely is important enough to warrant current reporting of the results on Form 8-K.

We understand that technological advances in shareholder communications and the growing use of third-party proxy services have increased the ability of companies to tabulate vote results and disseminate this information on a more expedited basis than is currently required. However, we recognize that in situations such as contested elections, companies may not have definitive vote results within four business days after the meeting. We have included an instruction to the proposed item that states that if the matter voted upon at the meeting relates to a contested election of directors and the voting results are not definitively determined at the end of the meeting, companies should disclose on Form 8-K the preliminary voting results within four business days after the preliminary voting results are determined, and file an amended report on Form 8-K within four business days after the final voting results are certified. We think it is important for investors to have at least preliminary voting results because the certification process may take a longer amount of time.

Request for Comment

- To what extent would requiring the reporting of voting results on Form 8-K provide more timely information to investors and the markets?
- Are there any possible adverse consequences to requiring the disclosure of preliminary voting results in a contested election when the outcome is not final? For example, could the preliminary disclosure affect the final outcome?
- Should the filing period under Form 8-K for the reporting of voting results be longer than four business days? Should we require the reporting of preliminary voting results? Are there unique difficulties or significant costs in finalizing voting results at smaller reporting companies that would warrant a longer filing period for those companies? What factors should we consider in deciding whether to make the filing period longer? Are there situations other than contested elections that might warrant a longer filing period?
- Are there alternative methods to disseminate this information to investors sooner or within a similar time frame that would be more effective or appropriate?
- We are moving and accelerating the disclosure requirement but not proposing any other revisions to the disclosures that are currently required by Item 4 of Form 10-Q and Form 10-K. Are there any changes to the requirements as to what should be disclosed that we should consider? For instance, since disclosure must be provided for all matters voted, on including a separate tabulation for the election of each director, should we eliminate the portion of Instruction 4 that provides when paragraph (b) need not be answered?

- Would the proposal impose any significant costs or difficulties on companies? If so, what type and amount of costs? Are these short-term or one-time costs to adjust a company's reporting procedures, or long-term, ongoing costs?
- Would the proposal create any special burdens for smaller reporting companies? If so, would scaled disclosure be appropriate for these companies and how should it be accomplished? Alternatively, should these requirements be phased in for smaller reporting companies?
- Would the accuracy of disclosure of voting results be affected as a result of a Form 8-K filing requirement?
- Section 13a-11(c) under the Exchange Act provides that "[n]o failure to file a report on Form 8-K that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e) or 6.03 of Form 8-K shall be deemed to be a violation of" Section 10(b) of the Exchange Act or Rule 10b-5 thereunder. Should we amend Section 13a-11(c) to include proposed Item 5.07 in this list of Items with respect to which the failure to file a report on Form 8-K will not be deemed to be a violation of Section 10(b) or Rule 10b-5? Similarly, should we amend General Instruction I.A.3(b) of Form S-3 to add proposed Item 5.07 to the corresponding list of Items on Form 8-K with respect to which a company's failure timely to file the Form 8-K will not result in the loss of S-3 eligibility? Why or why not?

F. Proxy Solicitation Process

We are proposing revisions to our rules governing the proxy solicitation process to provide clarity and address issues that have arisen. We believe these proposals, if adopted,

would provide greater certainty to soliciting parties, help shareholders receive timely and complete information and facilitate shareholder voting.

Specifically, the amendments would provide that:

- an unmarked copy of management's proxy card that is requested to be returned directly to management is not a "form of revocation" under Exchange Act Rule 14a-2(b)(1)[91] so that a person who furnishes such a duplicate proxy card is not disqualified from relying on the exemption provided by that rule;
- a person need not be a security holder of the class of securities being solicited and a benefit need not be related to or derived from any security holdings in the class being solicited for Exchange Act Rule 14a-2(b)(1)(ix)[92] to disqualify the person from relying on the Exchange Act Rule 14a-2(b)(1) exemption;
- a person soliciting in support of nominees who, if elected, would constitute a minority of the board may seek authority to vote for another soliciting person's nominees in addition to or instead of the issuer's nominees to round out its short slate consistent with Exchange Act Rule 14a-4(d)(4)'s limitations on proxy authority;[93]
- the "reasonable specified conditions" under which the shares represented by a proxy will not be voted under Exchange Act Rule 14a-4(e) must be objectively determinable;[94] and

[91] 17 CFR 240.14a-2(b)(1).

[92] 17 CFR 240.14a-2(b)(1)(ix).

[93] 17 CFR 240.14a-4(d)(4).

[94] 17 CFR 240.14a-4(e).

- the participant information required by Exchange Act Rule 14a-12(a)(1)(i)[95] must be filed under cover of Schedule 14A in a proxy statement or other soliciting materials no later than the time the first soliciting communication is made.

1. Exchange Act Rule 14a-2(b)(1) Introductory Text

Exchange Act Rule 14a-2(b)(1) exempts from the generally applicable disclosure, filing and most other requirements of the proxy rules solicitations by shareholders or other non-management parties who are not seeking proxy authority and do not have a substantial interest in the subject matter of the solicitation. When the Commission adopted this rule in 1992, we stated that the purpose of the rule was to remove obstacles to the free and unrestrained expression of views by disinterested shareholders who do not seek authority for themselves.[96] Accordingly, the exemption is unavailable to, among others, a person who "furnish[es] or otherwise request[s], or act[s] on behalf of a person who furnishes or requests, a form of revocation."[97]

Over time, questions have arisen related to the scope of the term "form of revocation," in particular, whether a person otherwise qualified to rely on the exemption would be providing a "form of revocation" and, therefore, be ineligible to rely on the exemption if the person provided a solicited shareholder with an unmarked copy of management's proxy card and asked that the card be returned directly to management. Consistent with the purpose underlying the exemption, we believe that a person providing a solicited shareholder with an unmarked copy of management's proxy card requested to be returned directly to management would not be seeking authority for itself.[98] As a result, this action would not be providing a "form of revocation"

[95] 17 CFR 240.14a-12(a)(1)(i).

[96] 1992 adopting release in note 23 above.

[97] Exchange Act Rule 14a-2(b)(1).

[98] Indeed, the soliciting person has not foreclosed any voting option available to the shareholder.

within the meaning of the rule even if a solicited shareholder's use of that proxy card resulted in a revocation of the shareholder's prior vote. We acknowledge that the U.S. Court of Appeals for the Second Circuit has concluded that in the case of a proxy vote to authorize a proposed merger under Delaware law, a duplicate of management's proxy card, when included in a mailing opposing a proposed merger, was a form of revocation under the rule.[99]

We propose to clarify the rule to align with our view by amending it to provide expressly that a "form of revocation" does not include an unmarked copy of management's proxy card that the soliciting shareholder requests be returned directly to management.[100] This amendment would aid efforts by persons not seeking proxy authority to facilitate voting by shareholders sharing their views on matters submitted for shareholder approval—such as in a "just vote no" campaign—without having to incur the costs and efforts of conducting a fully-regulated proxy solicitation and provide shareholders a convenient opportunity to indicate their votes after hearing those views without having to request another proxy card from management.[101]

Request for Comment

- Is the proposed amendment appropriate, or should a form of proxy provided in this setting be treated as a form of revocation, thereby disqualifying the soliciting person from relying upon the exemption?

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[99] See Mony Group, Inc. v. Highfields Capital Mgmt. L.P., 368 F.3d 138 (May 13, 2004). The Second Circuit reversed the district court's decision that, consistent with the staff's views, the unmarked copy of management's proxy card was not a "form of revocation" within the meaning of Exchange Act Rule 14a-2(b)(1). See Mony Group, Inc. v. Highfields Capital Mgmt. L.P., 2004 U.S. Dist. LEXIS 1840 (S.D.N.Y., Feb. 11, 2004).

[100] This clarification is consistent with advice the staff informally has provided in response to related inquiries since the rule was adopted.

[101] Providing shareholders with a marked copy of a proxy card would be inconsistent with the availability of the Rule 14a-2(b)(1) exemption because it would be an attempt to indirectly solicit proxy authority. Providing shareholders with a marked copy of a proxy card in a non-exempt solicitation would be impermissible because it would violate the requirement of Rule 14a-4(b) [17 CFR 240.14a-4(b)] to provide shareholders the opportunity to specify a choice.

- Should a soliciting person that provides an unmarked copy of management's proxy card be required to file a Notice of Exempt Solicitation[102] even if the person does not meet the thresholds for filing such notice under Exchange Act Rule 14a-6(g)?[103] Should such a soliciting person be required to file and provide to solicited persons any other information about itself, such as any relationships with the registrant or its affiliates, the amount of shares it holds, whether such person intends to hold its shares through the date of the meeting at which the vote will take place, or other information?
- Should the determination as to whether an unmarked management proxy card is a "form of revocation" depend on whether a non-management soliciting person requests that shareholders return the proxy card directly to management, as proposed, or should this treatment be available even if the card is returned to the soliciting person?
- Would the proposed amendment have an effect on shareholder communications in general or the practices of shareholders and companies with regard to unmarked proxy cards in particular?
- Would the proposed amendment raise concerns under applicable state law?

2. Exchange Act Rule 14a-2(b)(1)(ix)

Exchange Act Rule 14a-2(b)(1)(ix) provides that the Rule 14a-2(b)(1) exemption is not available to "[a]ny person who, because of a substantial interest in the subject matter of the solicitation, is likely to receive a benefit from a successful solicitation that would not be shared

[102] 17 CFR 240.14a-103.

[103] 17 CFR 240.14a-6(g).

pro rata by all other holders of the same class of securities, other than a benefit arising from the person's employment with the registrant." A question has arisen as to whether this limitation applies only when both the person is a security holder of the class being solicited and the benefit relates to or is derived from such holdings, or is generally applicable to any person with a substantial interest as described in the rule. We believe the nature of the "substantial interest" contemplated by the rule is broader, and propose to amend the rule to clarify this point.[104]

If a soliciting person has a substantial interest in the matter, we believe shareholders should have the benefit of the disclosure required by our rules when deciding how to vote. We do not believe it is appropriate to limit this disclosure obligation to cases when the soliciting party is a shareholder.[105] Otherwise, a solicited holder may not have sufficient information to make an informed voting decision if the holder is not aware of the soliciting person's substantial interest in the matter. Consistent with our intent to limit the exemption to disinterested persons and to provide clarity and certainty to those wishing to rely on the exemption, we propose to amend the rule to clarify that a person need not be a security holder of the class of securities being solicited and a benefit need not be related to or derived from any security holdings in the class being solicited for a person to be disqualified from relying on the exemption.

[104] In adopting this provision, the Commission noted in the 1992 adopting release that the substantial interest "standard is similar to that used in Item 5 of Schedule 14A, which requires specified persons conducting solicitations to describe briefly any substantial interest in the matter to be acted upon, other than an interest as a shareholder." Specifically, Item 5 required at the time of the 1992 adopting release and requires now a description of "any substantial interest, direct or indirect, by security holdings or otherwise, . . . in any matter to be acted upon, other than elections to office."

[105] For example, a soliciting party could have a significant financial interest in the subject matter of a solicitation without owning any shares of the company whose shareholders are solicited if the solicitation relates to a merger with a company that the soliciting party wishes to acquire.

Request for Comment

- Does the proposed amendment clearly specify when the Rule 14a-2(b)(1) exemption would be unavailable? Is additional detail necessary to understand when the exemption would be unavailable? If so, please provide examples of details that would be helpful.
- Would the proposed amendment inappropriately narrow or broaden the scope of the Rule 14a-2(b)(1) exemption and, if so, how?

3. Exchange Act Rule 14a-4(d)(4)

Exchange Act Rule 14a-4(d)(1) requires that, in order to solicit authority to vote for the election of a person to office, the person must be a bona fide nominee who consents to being named in the soliciting person's proxy statement and to serving if elected. Exchange Act Rule 14a-4(d)(4) is an exception to the bona fide nominee requirement. This exception permits a person soliciting support for nominees who, if elected, would constitute a minority of the board of directors (commonly referred to as a "short slate"), to round out its short slate of nominees up to the total number of director positions then subject to election by seeking authority to vote for nominees named in the registrant's proxy statement.[106] We adopted the exception in 1992 to permit a form of proxy that allows persons soliciting in support of a short slate to exercise their state law right to nominate and run independently their own nominees and vote for both company and shareholder nominees.[107] The current form of the rule expressly permits rounding out a short slate by seeking authority to vote for nominees named in the registrant's proxy statement, but does not address nominees named in other soliciting persons' proxy statements.

[106] See Exchange Act Rule 14a-4(d)(4).

[107] 1992 adopting release in note 23 above at 48288.

Recently, however, questions have arisen regarding non-management groups that each sought to solicit support of a short slate and wished to round out its short slate with nominees named in the other group's and the registrant's proxy statement.[108] We propose to revise the rule so the short slate rounding exception to the bona fide nominee requirement is available whether a non-management soliciting person attempts to round out its short slate by seeking authority to vote for nominees named in the registrant's or any other persons' proxy statements.

Our intention in adopting the short slate exception was to eliminate unnecessary impediments to short slate elections and ameliorate "the difficulty experienced by shareholders in gaining a voice in determining the composition of the board of directors," especially those seeking minority representation.[109] We recognized the need to address an unintended consequence of the "bona fide nominee" rule that effectively forced security holders to choose between voting for the management slate in order to exercise their full voting rights or voting for a less than full complement of directors.[110] Under the current rule, however, only the registrant's nominees may be used to fill out the non-management slate and, as a result, are effectively advantaged, as security holders may vote for them on two or more proxy cards where non-management nominees can only be voted for on one. To modify the rule as we propose is, therefore, consistent with our intention in adopting the rule.

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[108] See Eastbourne Capital, L.L.C., SEC No-Action Letter (Mar. 30, 2009) and Icahn Associates Corp., SEC No-Action Letter (Mar. 30, 2009) at http://www.sec.gov/divisions/corpfin/cf-noaction.shtml. The Division issued a letter to each of two non-management groups stating that, based on the facts and representations presented, and conditioned on the two groups' acting and continuing to act independently of each other, the Division would not recommend enforcement action under Exchange Act Rule 14a-4(d)(4) and Section 14(a) of the Exchange Act [15 U.S.C. 78m(a)] if the group solicited votes for its own short slate and sought the authority to round out its short slate by voting for nominees of the other group as well as management's nominees. While the Division would continue to consider issuing such letters in the absence of the adoption of the proposed amendment, only the parties to whom the letters were addressed can rely upon them.

[109] 1992 adopting release in note 23 above at 48288.

[110] 1992 adopting release in note 23 above at 48287-48288.

The proposed exception would be available only when non-management parties are not acting together. Persons acting together may incur reporting obligations under Sections 13(d)[111] and 13(g)[112] of the Exchange Act. In this regard, a non-management person who actively recommends or whose proxy solicitor actively recommends nominees in addition to those for whom the non-management person expressly solicits support would be considered to be soliciting in support of both sets of nominees for purposes of determining whether the non-management person were soliciting in support of nominees who, if elected, would constitute more than a minority of the board.[113] Similarly, a non-management person would be considered to be soliciting in support of not only the nominees for whom it expressly solicits support but also the nominees for whom any other non-management person solicits support if the non-management persons are not acting independently of one another. Accordingly, a non-management soliciting person that seeks to round out its short slate with any nominee named in another non-management person's proxy statement would be required by the proposed rule to represent in its proxy statement that it has not agreed and will not agree to act, directly or indirectly, as a group or otherwise engage in any activities that would be deemed to cause the formation of a group as determined under Section 13(d)(3)[114] and in Regulation 13D-G[115] with the other non-management person.

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[111] 15 U.S.C. 78m(d).

[112] 15 U.S.C. 78m(g).

[113] A non-management person and its proxy solicitor would not be actively recommending nominees in addition to those for whom the person expressly solicits support if the person and proxy solicitor only state the person's intention to vote for another person's nominees or expected nominees other than those specifically named on the person's proxy card.

[114] 15 U.S.C. 78m(d)(3).

[115] 17 CFR 240.13d-1 et seq.

When a non-management person actively recommends or solicits proxies in support of another person's nominees in addition to those for whom the person expressly solicits support and identifies by name in its proxy statement, that person may be a participant within the meaning of Instruction 3(a)(vi) to Item 4 of Schedule 14A in the other person's solicitation. Being a participant in the other person's solicitation potentially may result in the person soliciting in support of a total number of persons that would not constitute a minority of the board of directors if elected. Therefore, a non-management soliciting person that seeks to round out its short slate with any nominee named in another non-management person's proxy statement would also be required by the proposed rule to represent in its proxy statement that it is not a participant in the other non-management person's solicitation.

Request for Comment

- Are there different policy or practical concerns we should take into consideration when a short slate is rounded out with other persons' nominees rather than with the registrant's nominees alone? Would the proposed amendment increase the risk that a person would attempt to appear to be eligible for the short slate rounding exception even though the person, as a practical matter, was alone, or in combination with one or more other non-management persons, soliciting in support of more than a short slate? Are there appropriate safeguards in the rule to address this concern?
- As proposed, amended Exchange Act Rule 14a-4(d)(4) would only permit a soliciting person to round out a short slate with both a registrant's and other persons' nominees so long as the soliciting person does not form a group with the other persons as determined under Section 13(d)(3) and in Regulation 13D-G and is not a participant in the other persons' solicitations. Are these restrictions appropriate? Should Rule

14a-4(d)(4) impose other conditions or limitations on the availability of the proposed amendment to the short slate exception? For example, should a soliciting person be permitted to seek authority to vote for the nominees of other non-management persons only if the other non-management persons are seeking minority representation on the board? Should the Commission limit use of the rule to situations where a soliciting person will need to use its proxy authority to vote for one or more of the registrant's nominees? For example, should it be limited to require a soliciting person to use its proxy authority to vote for at least a specified number of the registrant's nominees or at least the number of management nominees that would constitute a majority?

- It is possible that permitting a soliciting person to round out its short slate with other persons' nominees instead of or in addition to a registrant's nominees under amended Rule 14a-4(d)(4), as proposed, could lead to a change in a majority of a board. What are the concerns, if any, about the possible effects of a change in a majority of a board, including the triggering of takeover defensive measures, such as poison pills, and other change in control provisions, such as those found in loan agreements, leases and employment agreements? What are the issues, if any, associated with a change in a majority of a board where a company is subject to the standards of a national securities exchange or a national securities association, including exchange rules regarding director independence and board and committee composition standards?
- Would the proposed amendment encourage shareholders to run more short slates? In particular, is it likely that such shareholders will run more short slates, possibly targeting particular companies, knowing that other shareholders may also run short

slates, with the intent that, where another shareholder targets the same company, each shareholder can then round out its own short slate with one or more nominees from the other shareholder's slate, and thus increase the likelihood of displacing management nominees and potentially increasing each shareholder's negotiating power with management? Does the proposed rule adequately prevent shareholders from relying upon the provision when they are acting in concert with other shareholders? While the current rule distinguishes between a person soliciting support for its nominees named in its proxy statement and seeking proxy authority to vote for a registrant's nominees, does a meaningful difference exist between these actions if a soliciting person is permitted, as proposed, to round out its slate with a non-management person's nominees?

- The amended rule, as proposed, would require a person to include in its proxy statement representations regarding the restrictions on forming a group and acting as a participant. Are these representations necessary, or should the amended rule merely include the restrictions as conditions to reliance on the rule?
- Rule 14a-4(d)(4) currently, and as proposed to be amended, would permit a non-management person to round out its short slate with one or more shareholder nominees named in the registrant's proxy statement regardless of whether the non-management person nominated such shareholder nominees and regardless of how the shareholder nominees came to be named in the registrant's proxy statement.[116] Should we amend Rule 14a-4(d)(4) to make it unavailable to some or all shareholder

[116] We currently have pending rule proposals related to shareholder nominees that, if adopted, could result in a registrant being required to include shareholder nominees in its proxy statement under specified circumstances. See Release No. 33-9046 in note 22 above.

nominees named in the registrant's proxy statement and, if so, why and how? For example, should the rule be unavailable where such a shareholder nominee was nominated by the non-management person, a person with whom the non-management person has formed or intends to form a group under Section 13(d)(3) and Regulation 13D-G or a person in whose solicitation the non-management person is a participant?

- Should we amend Rule 14a-4(d)(4) so the exception it provides to the Rule 14a-4(d)(1) bona fide nominee requirement extends to non-management persons who do not have their own nominees for whom to solicit support but seek authority to vote for nominees named in the registrant's or other persons' proxy statements?

4. Exchange Act Rule 14a-4(e)

Exchange Act Rule 14a-4(e) requires that a proxy statement or form of proxy provide that the shares represented by the proxy be voted "subject to reasonable specified conditions." When the Commission adopted the rule, it stated that it previously had taken the position that the solicitation of proxies constitutes an implied representation by the persons making the solicitation that the shares represented by the proxy will be voted and that the rule was amended in order to make this representation more explicit.[117]

As the Commission stated in 1992, "[p]rior to a shareholder granting the legal power to someone else – whether management or an outsider – to vote his or her stock, the shareholder needs to know what matters will be voted on, and how the recipient of the proxy intends to vote the shareholder's shares."[118] Similarly, a shareholder needs to know whether the recipient of a proxy will only vote the shareholder's shares subject to some condition. We believe that in order

[117] Release No. 34-4185 (Nov. 5, 1948) [13 FR 6680].

[118] 1992 adopting release in note 23 above at 48277.

for there to be "reasonable specified conditions," the conditions must be objectively determinable to enable the shareholder to make an informed decision in regard to granting proxy authority and confirm that any later withholding of shares from voting is consistent with the authority granted.[119] In addition, if the conditions were not objectively determinable, the recipient of the proxy could seek to exercise a degree of discretion that would be inconsistent with Rule 14a-4(c)'s limits on when a proxy can confer discretionary authority.[120] Accordingly, we propose to amend Rule 14a-4(e) to clarify that the reasonable specified conditions must be objectively determinable.

Request for Comment

- Will specifying that reasonable specified conditions must be objectively determinable have any harmful effect on proxy solicitation practices?
- Does the phrase "objectively determinable" achieve the objective of clarifying the conditions shareholders should know about before giving their proxies or deciding to revoke their proxies?

[119] In a related context, we have stressed that conditions must be objective for shareholders to be able to understand what they are being asked to do. In 2000, we published our views on the disclosure and dissemination of "mini-tender" offers that result in the bidder holding five percent or less of the outstanding securities of a company. There, we stated that "[i]t is important for security holders to be able to evaluate the genuineness of the [tender] offer" and "[w]e believe therefore that a tender offer can be subject to conditions only where the conditions are based on objective criteria, and the conditions are not within the bidder's control." See Release No. 34-43069 (July 24, 2000) [65 FR 46581].

[120] 17 CFR 240.14a-4(c). The conditions would not be objectively determinable, for example, if voting the shares was subject to the proxy holder concluding in its sole discretion that it would not be advisable to vote the shares. The conditions would be objectively determinable, for example, if voting the shares was subject to a third party's filing with the Commission, within seven days before the scheduled date for the meeting for which proxies were solicited, a Schedule TO [17 CFR 240.14d-100] for a tender offer for over half of the issuer's shares.

5. Exchange Act Rule 14a-12(a)(1)(i)

Exchange Act Rule 14a-12 permits a solicitation to be made before furnishing security holders with a proxy statement meeting the requirements of Exchange Act Rule 14a-3(a)[121] if, among other requirements, each written communication that is part of the solicitation contains specified participant information. Rule 14a-12(a)(1)(i) requires such information to include the identity of the participants in the solicitation and a description of their direct or indirect interests or a legend advising security holders where they can obtain that information.

Questions have arisen regarding when and how the participant information to which the legend refers must be filed. The Commission amended Exchange Act Rule 14a-12 in 1999 to, among other things, provide that participant information could be provided directly in written materials as historically required or, as a new alternative, indirectly through the legend described above.[122] In affording the option to provide participant information indirectly through a legend, we intended to offer a convenience but did not intend to permit the participant information to be provided later than it would be if provided directly in the written materials. If the legend is to give meaningful information to shareholders, the information referenced in the legend must be available when the soliciting person uses the soliciting material with the legend. Accordingly, we propose to amend the rule to clarify that the required participant information must be filed under cover of Schedule 14A as part of a proxy statement or other soliciting materials no later than the time the first soliciting communication is made. It is not sufficient to provide the information in a document filed later.

Request for Comment

[121] 17 CFR 240.14a-3(a).

[122] See Release No. 33-7760 (Oct. 22, 1999) [64 FR 61408].

- Does the proposed amendment adequately clarify the need to have the participant information to which a legend refers on file no later than when the written material containing the legend is first sent or given to security holders?
- Does the proposed amendment adequately clarify how the participant information must be filed?
- Does the requirement to have the participant information on file no later than when the written material containing the legend is first sent or given to security holders create practical difficulties for parties soliciting proxies? If so, to what extent does the requirement impede the ability to solicit and how much of a delay in providing the participant information would be needed to avoid impeding that ability? If the requirement was revised to permit any such delay, what would be the effect of the delay on the ability of solicited shareholders to make a voting decision?

G. Transition

We anticipate that if the proposed amendments are adopted, compliance with the amendments would begin in the 2010 proxy season following their publication in the Federal Register.

Request for Comment

- Would this compliance schedule be workable?
- Are any special transition provisions necessary for any aspects of the proposed amendments? If so, please explain what would be needed and why.
- Would any of the proposed amendments to Regulation S-K present any particular difficulty or expense in preparing?

H. Other Requests for Comment

The Commission is exploring other ways in which we could improve proxy disclosures. We invite interested persons to submit comments on the advisability of pursuing any or all of the following possible reforms, as well as to provide other approaches that we might consider to achieve our goals. We expect to benefit from the comments we receive before deciding whether to propose changes.

- Are there any disclosures required in the proxy statement that we should consider proposing to eliminate in light of the proposed amendments?
- Are there other initiatives we should consider in order to improve the disclosure in proxy statements, particularly with regard to disclosure regarding executive compensation? For instance should we propose requiring disclosure of the compensation paid to each executive officer, not just the named executive officers? Should we consider proposing to eliminate the instruction that provides that performance targets can be excluded based on the potential adverse competitive effect on the company of their disclosure? Alternatively, should we consider proposing to revise the CD&A to require disclosure of performance targets on an after-the-fact basis, after the performance related to the award is measured, such as three or more fiscal years later, whether or not the disclosure may result in competitive harm?
- Under current Item 407(e)(5) of Regulation S-K, the Compensation Committee Report must state whether the committee: (1) has reviewed and discussed the CD&A with management; and (2) recommended to the board of directors that the CD&A be included in the company's annual report and the proxy or information

statement. Although the CD&A is considered "filed", the Compensation Committee Report is "furnished."[123] Because it is furnished, the Compensation Committee Report does not have the same liability as the CD&A and other information that is "filed." For example, it is not incorporated by reference or otherwise considered a part of the company's Form 10-K, registration statements and other filings, and is not covered by the principal executive officer and principal financial officer certifications required under Exchange Act Rules 13a-14[124] and 15d-14.[125] Should we consider proposing to amend this rule to make the CD&A be a part of the Compensation Committee Report? Why or why not? If we make the CD&A part of the Compensation Committee Report, should the Compensation Committee Report be "filed"? If we were to make the CD&A part of the Compensation Committee Report, are there any requirements to the CD&A that we should change?

- Should we consider requiring disclosure regarding whether a member of the compensation committee has expertise in compensation matters and whether the committee has the resources to hire its own independent legal counsel?
- Some investors may want more information regarding whether compensation arrangements are reasonably designed to create incentives among executives to increase long-term enterprise value. Should we consider supplementing any of the tabular and narrative disclosure requirements to require additional disclosure

[123] For a discussion of the differences between the Compensation Committee Report and the CD&A, see Section II.3. "Filed" status of Compensation Discussion and Analysis and the "Furnished" Compensation Committee Report' in Release 33-8732A.

[124] 17 CFR 240.13a-14.

[125] 17 CFR 240.15d-14.

about whether or not a company has "hold to retirement" and/or claw back provisions and if not, why not?

- Are investors interested in disclosure of whether the amounts of executive compensation reflect any considerations of internal pay equity? For example, would investors find such disclosure relevant in considering the motivation and effectiveness of broad based compensation plans? Should we consider proposing additional requirements to address this? For instance, should we consider proposing required disclosure regarding internal pay ratios of a company, such as disclosure of the ratio of the total compensation of the named executive officers, or total compensation of each individual named executive officer, to the total compensation of the average non-executive employee of the company?
- In order to give investors a better understanding of the breadth and depth of a company's focus on compensation, should we require disclosure regarding the total number of compensation plans a company has and the total number of variables in all of its compensation plans? Are there other ways to convey the complexity and significance of all of a company's plans?
- Should we consider proposing to supplement the required disclosure of tax gross-up arrangements that the company has for the named executive officers to include a requirement to disclose and quantify the savings to each executive?

General Request for Comment

We request and encourage any interested person to submit comments on any aspect of our proposals, other matters that might have an impact on the amendments, and any suggestions for additional changes. With respect to any comments, we note that they are of greatest

assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments and by alternatives to our proposals where appropriate.

III. PAPERWORK REDUCTION ACT

A. Background

Certain provisions of the proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA).[126] We are submitting the proposed amendments to the Office of Management and Budget (OMB) for review in accordance with the PRA.[127] The titles for the collection of information are:

(1) "Regulation 14A and Schedule 14A" (OMB Control No. 3235-0059);

(2) "Regulation 14C and Schedule 14C" (OMB Control No. 3235-0057);

(3) "Form 10-K" (OMB Control No. 3235-0063);

(4) "Form 10-Q" (OMB Control No. 3235-0070);

(5) "Form 10" (OMB Control No. 3235-0064);

(6) "Form S-1" (OMB Control No. 3235-0065);

(7) "Form S-4" (OMB Control No. 3235-0324);

(8) "Form S-11" (OMB Control No. 3235-0067);

(9) "Form 8-K" (OMB Control No. 3235-0060);

(10) "Rule 20a-1 under the Investment Company Act of 1940, Solicitations of Proxies, Consents, and Authorizations" (OMB Control No. 3235-0158);

(11) "Form N-1A" (OMB Control No. 3235-0307);

(12) "Form N-2" (OMB Control No. 3235-0026);

[126] 44 U.S.C. 3501 et seq.

[127] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

(13) "Form N-3" (OMB Control No. 3235-0316); and

(14) "Regulation S-K" (OMB Control No. 3235-0071).

The regulations, schedules and forms were adopted under the Securities Act and the Exchange Act, except for Forms N-1A, N-2, and N-3, which we adopted pursuant to the Securities Act and the Investment Company Act, and Rule 20a-1, which we adopted pursuant to the Investment Company Act. The regulations, forms and schedules set forth the disclosure requirements for periodic reports; registration statements; and proxy and information statements filed by companies to help investors make informed investment and voting decisions. The hours and costs associated with preparing, filing and sending the form or schedule constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Compliance with the proposed amendments would be mandatory. Responses to the information collections would not be kept confidential and there would be no mandatory retention period for the information disclosed.

As discussed in more detail above, the proposed amendments to Items 401, 402(b) and 407 of Regulation S-K would increase existing disclosure burdens for proxy and information statements, annual reports on Form 10-K, and registration statements on Forms 10, S-1, S-4, and S-11 by requiring:

- New disclosure and analysis of how a company's overall compensation policies for employees create incentives that can affect the company's risk and management of that risk if it may have a material effect on the company;
- New disclosure of the qualifications of directors and nominees for director, and the reason why a company or other proponent believes each director or nominee is

qualified to serve as a director of the company at the time at which the relevant filing with the Commission is made, and as a member of any committee that the person serves on or is chosen to serve on, in light of the company's business and structure;

- Additional disclosure of any directorships held by each director and nominee at any time during the past five years at public companies;
- Lengthening the time during which disclosure of legal proceedings involving a company's directors, nominees for director and executive officers is required from five to 10 years;
- New disclosure about a company's board leadership structure and the board's role in the risk management process;
- New disclosure about the fees paid to compensation consultants and their affiliates when they play any role in determining or recommending the amount or form of executive and director compensation, if they also provide other services to the company. In addition, new disclosure of any additional services provided to the company by the compensation consultants and any affiliates of the consultants; and
- Transferring the requirement for companies to disclose the results of shareholder votes on Forms 10-Q or 10-K to Form 8-K.

The proposed amendments to Forms N-1A, N-2, and N-3 would increase existing disclosure burdens for such forms by requiring:

- New disclosure of the qualifications of directors and nominees for director, and the reason why a company or other proponent believes each director or nominee is qualified to serve as a director of the company at the time at which the relevant filing

with the Commission is made, and as a member of any committee that the person serves on or is chosen to serve on, in light of the company's business and structure;

- Additional disclosure of any directorships held by each director and nominee at any time during the past five years at public companies; and
- New disclosure about a company's board leadership structure and the board's role in the risk management process.

At the same time, the proposals would not increase existing disclosure burdens for proxy and information statements, annual reports on Form 10-K, and registration statements on Forms 10, S-1, S-4 and S-11 by:

- Revising Summary Compensation Table and Director Compensation Table disclosure of stock awards and option awards to require disclosure of the aggregate grant date fair value of such awards, computed in accordance with FAS 123R, rather than the dollar amount recognized for financial statement purposes for the fiscal year in accordance with FAS 123R; and
- Eliminating the requirement to report the full grant date fair value of each individual equity award in the Grants of Plan-Based Awards Table and corresponding footnote disclosure to the Director Compensation Table.

The proposed amendments to the Summary Compensation Table, Grants of Plan-Based Awards Table and Director Compensation Table are intended to provide investors with clearer and more meaningful executive compensation disclosure, to facilitate informative and concise Compensation Discussion and Analysis disclosure of company policies and decisions regarding named executive officers' compensation, and to provide investors with a clearer view of the annual compensation earned by executives and directors consistent with the timing of current

actions regarding plan awards, including the effect on total compensation of decisions to reprice option awards.

Together, the proposed amendments to the Summary Compensation Table, Grants of Plan-Based Awards Table and Director Compensation Table will simplify executive compensation disclosure because companies no longer will need to report two separate measures of equity compensation in their compensation disclosure. For purposes of Item 402 disclosure, companies no longer will need to explain or analyze a second, separate measure of equity compensation that is based on financial statement recognition rather than compensation decisions. In addition, we believe it is likely that these proposals will make companies' identification of named executive officers more consistent from year-to-year, providing investors more meaningful disclosure and reducing executive compensation tracking burdens in determining which executive officers are the most highly compensated.

The proposed amendments to the rules governing the proxy solicitation process would not increase any existing disclosure burden. We believe these proposals, if adopted, would provide certainty to soliciting parties and facilitate communications with shareholders. The proposed amendments to Exchange Act Rules 14a-2(b)(1), 14a-2(b)(1)(ix), 14a-4(e) and 14a-12(a)(1)(i) merely would clarify existing requirements. As a result, these amendments would not affect any existing disclosure burden. The proposed amendment to Rule 14a-4(d) would make the short slate rounding exception to the bona fide nominee requirement available whether a non-management soliciting person attempts to round out its short slate by seeking authority to vote for nominees named in the registrant's proxy statement, as currently permitted, or seeks to round out its short slate with nominees named in one or more other persons' proxy statements. Consequently, the proposed amendment to Rule 14a-4(d) simply would provide more flexibility

to non-management persons that seek to round out their short slates and, as a result, would not increase any existing disclosure burden.[128]

B. Burden and Cost Estimates Related to the Proposed Amendments

We anticipate that the proposed disclosure amendments would increase the burdens and costs for companies that would be subject to the proposed amendments. We estimated the average number of hours a company would spend completing the forms and the average hourly rate for outside professionals. In deriving our estimates, we recognize that the burdens will likely vary among individual companies based on a number of factors, including the size and complexity of their organizations, and the nature of their operations. We believe that some companies will experience costs in excess of this average in the first year of compliance with proposals and some companies may experience less than the average costs.

We estimate no annual incremental increase in the paperwork burden for companies to comply with the proposed amendments to the Summary Compensation Table, Director Compensation Table, and Grants of Plan-Based Awards Table. We base this estimate on the fact that the amended approach would require disclosure of information that is collected to comply with financial reporting requirements, and will not impose additional burdens compared to the burdens associated with applying the currently required disclosure. We also base this estimate on the likelihood that, by eliminating factors unrelated to company compensation decisions, the proposed amendments will make companies' identification of named executive officers more consistent from year-to-year, thereby potentially reducing the burden of tracking the

[128] The proposed amendment to Exchange Act Rule 14a-4(d)(4) would require that a non-management soliciting person that attempts to round out its short slate by seeking authority to vote for nominees named in another non-management person's proxy statement provide specified representations to the effect that it is not acting together with any such other non-management person. The required representations would not, however, affect any existing disclosure burden in more than a negligible way.

compensation of all executive officers in order to determine which executive officers are the most highly compensated.

For purposes of the PRA, we estimate the annual incremental paperwork burden for all companies (other than registered management investment companies) to prepare the disclosure that would be required under our proposals to be approximately 247,773 hours of company personnel time and a cost of approximately $47,413,161 for the services of outside professionals. These estimates include the time and the cost of preparing and reviewing disclosure, filing documents and retaining records.

We derived the above estimates by estimating the total amount of time it would take a company to prepare and review the proposed disclosure requirements. This estimate represents the average burden for all companies, both large and small. Our estimates have been adjusted to reflect the fact that some of the proposed amendments would be required in some but not all of the above listed documents, and would not apply to all companies.

With respect to reporting companies (other than registered management investment companies), all of the proposed revisions to Regulation S-K would be required in proxy and information statements; however, only the proposed revisions to Items 401 and 402 of Regulation S-K would be required in Forms 10, 10-K, S-1, S-4 and S-11. Furthermore, the proposed amendments to CD&A would not be applicable to smaller reporting companies because under current CD&A reporting requirements these companies are not required to provide CD&A in their Commission filings. Based on the number of proxy filings we received in the 2008 fiscal year, we estimate that approximately 3,922 domestic companies are smaller reporting companies that have a public float of less than $75 million. With respect to registered

management investment companies, the proposed revisions would be reflected in certain Regulation S-K items, Schedule 14A, and Forms N-1A, N-2 and N-3.

Our annual burden estimates are also based on other assumptions. First, we assumed that the burden hours of the proposed amendments would be comparable to the burden hours related to similar disclosure requirements under current reporting requirements, such as the disclosure of audit fees and non-audit services,[129] CD&A and executive compensation reporting,[130] and the disclosure of the activities of nominating committees.[131] Second, we assumed that substantially all of the burdens associated with the proposed amendments to Items 401 and 402 of Regulation S-K would be associated with Schedules 14A and 14C as these would be the primary disclosure documents that CD&A would be prepared and presented.[132] For each reporting company (other than registered management investment companies), we estimated that the proposed amendments would impose on average the following incremental burden hours:

- Sixteen hours for the proposed amendments to CD&A;
- Four hours for the proposed enhanced director and nominee disclosure;
- Six hours for the proposed disclosures about company leadership structure and the board's role in risk management;
- Four hours for the proposed disclosures regarding compensation consultants; and

[129] Release No. 33-8183 (Jan. 28, 2003) [68 FR 6006] (which we estimated to be two hours).

[130] Release No. 33-8732A in note 24 above (which we estimated to be 95 hours). For purposes of the proposed amendments to CD&A, we adjusted this number downward in recognition that the 95 hours included, among other things, the estimated burdens of the preparation and review of additional tabular and related narrative disclosures required by Item 402 of Regulation S-K.

[131] Release No. 33-8340 (Nov. 24, 2003) [68 FR 69204] (which we estimated to be three hours).

[132] The burden estimates for Form 10-K assume that the proposed amendments to Items 401 and 402 of Regulation S-K would be satisfied by either including the information directly in an annual report or incorporating the information by reference from the proxy statement or information statement on Schedule 14A or Schedule 14C. Our PRA estimates include an estimate 1 hour burden in the Form 10-K and schedules to account for the incorporation of the information that would be required under proposed amendments to Items 401 and 402 of Regulation S-K.

- One hour for the proposed reporting of voting results on Form 8-K.

With respect to registered management investment companies, we estimated that the proposed amendments would impose on average the following incremental burden hours:

- Four hours for the proposed enhanced director and nominee disclosure in proxy statements and three hours for such proposed disclosure in registration statements;[133] and
- Six hours for the proposed disclosures about company leadership structure and the board's role in risk management.

1. Proxy and Information Statements

For purposes of the PRA, in the case of reporting companies (other than registered management investment companies) we estimated the annual incremental paperwork burden for proxy and information statements under the proposed amendments would be approximately 14 hours per form for companies that are smaller reporting companies, and 30 hours per form for companies that are either accelerated or large accelerated filers. In the case of registered management investment companies, we estimate the annual incremental paperwork burden for proxy and information statements under the proposed amendments would be approximately ten hours per form. These estimates include the time and the cost of preparing disclosure that has been appropriately reviewed by management, in-house counsel, outside counsel, and members of the board of directors.

[133] We estimated that the disclosure burden for registration statements on Forms N-1A, N-2, and N-3 is less than for proxy statements because the proposed disclosure relating to involvement in legal proceedings for the past 10 years applies only to proxy statements and not to registration statements.

2. Exchange Act Periodic Reports

For purposes of the PRA, we estimate the annual incremental paperwork burden for Form 10-K under the proposed amendments would be approximately 1 hour per form. This estimate includes the time and the cost of preparing disclosure that has been appropriately reviewed by management, in-house counsel, outside counsel, and members of the board of directors.

3. Securities Act Registration Statements and Exchange Act Registration Statements

For purposes of the PRA, in the case of reporting companies (other than registered management investment companies) we estimate the annual incremental paperwork burden for Securities Act registration statements under the proposed amendments would be approximately 20 hours per form.[134] For registered management investment companies, we estimate that the annual incremental paperwork burden under the proposed amendments to Forms N-1A, N-2, and N-3 would be approximately 9 hours per form. These estimates include the time and the cost of preparing disclosure that has been appropriately reviewed by management, in-house counsel, outside counsel, and members of the board of directors.

The tables below illustrate the total annual compliance burden of the collection of information in hours and in cost under the proposed amendments for annual reports; quarterly reports; current reports; proxy and information statements; Form 10; Forms S-1, S-4, S-11, N-1A, N-2, and N-3; and Regulation S-K.[135] The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take a company to prepare and review the proposed disclosure requirements. For the Exchange Act reports on Form 10-K, 10-Q, and Form 8-K, and the proxy and information statements we

[134] We calculated the 20 hours by adding 16 hours for the proposed amendments to CD&A to 4 hours for the proposed enhanced director and nominee disclosure.

[135] Figures in both tables have been rounded to the nearest whole number.

estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $400 per hour. For the registration statements on Forms S-1, S-4, S-11, N-1A, N-2, and N-3, and the Exchange Act registration statement on Form 10, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $400 per hour. There is no change to the estimated burden of the collections of information under Regulation S-K because the burdens that this regulation imposes are reflected in our revised estimates for the forms. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

Table 1. Incremental Paperwork Burden under the proposed amendments for annual reports; quarterly reports; proxy and information statements:

	Number of Responses[136] (A)	Incremental Burden Hours/Form (B)	Total Incremental Burden Hours (C)=(A)*(B)	75% Company (D)=(C)*0.75	25% Professional (E)=(C)*0.25	Professional Costs (F)=(E)*$400
10-K	13,545	1	13,545	10,159	3,386	$1,354,500
10-Q[137]	32,462	(1)	(7,300)	(5,475)	(1,825)	$(730,000)
8-K[138]	115,795	1	115,795	86,846	28,949	$11,579,500
Form 10[139]	238	20	4,760	1,190	3,570	$1,428,000

[136] The number of responses reflected in the table equals the actual number of forms and schedules filed with the Commission during the 2008 fiscal year, except for Form 8-K. The number of responses for Form 8-K reflects the number of Form 8-Ks filed during the 2008 fiscal year plus an additional 7,371 filings.

[137] We calculated the reduction in the burden hours for Form 10-Q based on the number of proxy statements filed with the Commission during the 2008 fiscal year. We assumed that there would be, at a minimum, an equal number of Form 10-Qs filed to report the voting results from a meeting of shareholders. The reduction reflects the proposed deletion of the disclosure of voting results from the form.

[138] We have included an additional 7,300 responses to Form 8-K to reflect the additional Form 8-Ks that would be filed to report final voting results. We have also included an additional 71 Form 8-Ks to reflect the number of Form 8-Ks that would be filed to report preliminary voting results which we based on the actual number of proxy statements involving contested elections that were filed with the Commission during the 2008 fiscal year.

[139] The burden allocation for Form 10 uses a 25% internal to 75% outside professional allocation.

Sch. 14A[140]	7,300					
Accel. Filers	3,378	30	101,340	76,005	25,335	$10,134,000
SRC Filers	3,922	14	54,908	41,181	13,727	$5,490,800
Sch. 14C	680					
Accel. Filers	315	30	9,440	7,080	2,360	$1,415,984
SRC Filers	365	14	5,115	3,836	1,279	$511,472
Rule 20a-1	1,225	10	12,250	9,188	3,062	$1,225,000
Reg. S-K	N/A	N/A	N/A	N/A	N/A	N/A
Total			317,153	235,485		$32,667,261

Table 2. Incremental Paperwork Burden under the proposed amendments for registration statements:

	Number of Responses[141] (A)	Incremental Burden Hours/Form (B)	Total Incremental Burden Hours (C)=(A)*(B)	25% Company (D)=(C)*0.25	75% Professional (E)=(C)*0.75	Professional Costs (F)=(E)*$400
Form S-1	768	20	15,360	3,840	11,520	$4,608,000
Form S-4	619	20	12,380	3,095	9,285	$3,714,000
Form S-11	100	20	2,000	500	1,500	$600,000
Form N-1A	1,935	9	17,415	4,354	13,061	$5,224,500
Form N-2	205	9	1,845	461	1,384	$553,500
Form N-3	17	9	153	38	115	$45,900
Reg. S-K	N/A	N/A	N/A	N/A	N/A	N/A
Total			49,153	12,288		$14,745,900

C. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;

[140] The estimates for Schedule 14A and Schedule 14C are separated to reflect our estimate of the burden hours and costs related to the proposed amendments to CD&A which would be applicable to companies that are either accelerated or large accelerated filers, but not applicable to companies that are smaller reporting companies. We estimate that 3,378 Schedule 14A responses were filed by accelerated or large accelerated filers, and 315 Schedule 14C responses were filed by accelerated or large accelerated filers.

[141] The number of responses reflected in the table equals the actual number of forms filed with the Commission during the 2008 fiscal year, except for Forms N-1A and N-3. The number of responses for Forms N-1A and N-3 reflect the number of open-ended management investment companies registered with the Commission.

- Evaluate the accuracy of our estimates of the burden of the proposed collections of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the proposed amendments will have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090, with reference to File No. S7-13-09. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7-13-09 and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street NE, Washington DC 20549-0213. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IV. COST-BENEFIT ANALYSIS

A. Introduction

We are proposing amendments to enhance the disclosures with respect to a company's overall compensation policy and its impact on risk taking, director and nominee qualifications and legal proceedings, company leadership structure and the board's role in the risk management process, and the interests of compensation consultants. In addition, we are proposing amendments to transfer the requirement to disclose voting results from Forms 10-Q and 10-K to Form 8-K.

We also are proposing amendments to the disclosure requirements for executive and director compensation to require stock awards and option awards reporting based on a measure that will represent the aggregate grant date fair value of the compensation decision in the grant year, rather than the current rule, which allocates the grant date fair value over time commensurate with financial statement recognition of compensation costs.

Finally, we also are proposing amendments to Exchange Act Rules 14a-2, 14a-4, and 14a-12 to provide clarity and address issues that have arisen in regard to the proxy solicitation process. These amendments, discussed in detail above,[142] and their potential consequences that could result in benefits and costs are as follows.

1. Exchange Act Rule 14a-2(b)(1)

We propose to clarify the introductory text of Exchange Act Rule 14a-2(b)(1) by revising it to provide specifically that a "form of revocation" does not include an unmarked copy of management's proxy card that the soliciting shareholder requests be returned directly to management. As a result, a person otherwise qualified to rely on the exemption the rule provides

[142] See Part II.F above.

still could rely on it if the person provided a solicited shareholder with an unmarked copy of management's proxy card and requested that the card be returned directly to management.[143] Consequently, the proposed amendment would provide certainty regarding the availability of the exemption in relation to this procedure. There may be persons who have different views or are uncertain about the application of the exemption to the procedure and would not, in the absence of the clarification, undertake it. As a result, the clarification may cause more persons to avail themselves of the procedure.[144]

2. Exchange Act Rule 14a-2(b)(1)(ix)

We propose to clarify Exchange Act Rule 14a-2(b)(1)(ix) by revising it to provide specifically that a person need not be a security holder of the class of securities being solicited and a benefit need not be related to or derived from any security holdings in the class being solicited for a person to have a substantial interest in a matter that would disqualify the person from relying on the exemption Exchange Act Rule 14a-2(b)(1) otherwise would provide in regard to that matter. As a result, the proposed amendment would provide certainty regarding the fact that a person need not be a security holder of the class of securities being solicited and a benefit need not be related to or derived from any security holdings in the class being solicited for the person to have a substantial interest. There may be persons who have different views or are uncertain about this fact and would not, in the absence of the clarification, recognize that the

[143] Rule 14a-2(b)(1) exempts from the generally applicable disclosure filing and most other requirements of the proxy rules solicitations by non-management persons who are not seeking proxy authority and do not have a substantial interest in the subject matter of the solicitation. The exemption is unavailable to, among others, a person who "furnish[es] or otherwise request[s], or act[s] on behalf of a person who furnishes or requests, a form of revocation."

[144] If more non-management persons use the procedure and provide solicited shareholders with more opportunities to vote as they suggest, then it is possible that these non-management persons will succeed more often in defeating management proposals. As a practical matter, however, it seems unlikely that many solicited shareholders would vote differently merely because they have more opportunities to vote as a non-management soliciting person suggests.

exemption is not available and act accordingly. Consequently, the clarification may cause more persons to refrain from soliciting in the absence of an exemption or to solicit in compliance with all of the generally applicable proxy solicitation requirements.

3. Exchange Act Rule 14a-4(d)(4)

We propose to revise Exchange Act Rule 14a-4(d)(4) to provide that the short slate rounding exception to the bona fide nominee requirement would be available whether a non-management soliciting person attempts to round out its short slate by seeking authority to vote for nominees named in the registrant's proxy statement, as currently permitted, or seeks to round out its short slate with nominees named in any other persons' proxy statement.[145] As a result, the proposed amendment would end the situation under the current rule in which only the registrant's nominees may be used to fill out the non-management slate and, as a result, are effectively advantaged as security holders may vote for them on two or more proxy cards where non-management nominees can only be voted for on one. Consequently, the proposed amendment would provide additional flexibility to non-management persons with regard to the nominees with whom they seek to round out their short slates without their seeking a no-action letter from the staff.[146] The codified additional flexibility may cause more non-management

[145] Rule 14a-4(d)(1) requires that, in order to solicit authority to vote for the election of a person to office, the person must be a bona fide nominee, consenting to being named in the soliciting person's proxy statement and serving if elected. Rule 14a-4(d)(4) is an exception to the bona fide nominee requirement. This exception permits a person soliciting support of nominees who, if elected, would constitute a minority of the board of directors (commonly referred to as a "short slate"), to round out its short slate of nominees up to the total number of director positions then subject to election by seeking authority to vote for nominees named in the registrant's proxy statement

[146] As discussed above, the Division of Corporation Finance has issued two no-action letters in regard to short slate rounding with persons named in a non-management person's proxy statement under circumstances generally the same as those contemplated by the proposed amendment. While the Division would continue to consider issuing such letters in the absence of the adoption of the proposed amendment, only the parties to whom the letters were addressed can rely upon them. See Eastbourne Capital, L.L.C. in note 108 above; Icahn Associates Corp. in note 108 above.

soliciting persons to seek to round out their short slates with other non-management persons' nominees.[147]

4. Exchange Act Rule 14a-4(e)

We propose to clarify Exchange Act Rule 14a-4(e) by revising it to provide specifically that the "reasonable specified conditions" under which the shares represented by a proxy will not be voted must be objectively determinable.[148] As a result, the proposed amendment would provide certainty regarding the fact that the "reasonable specified conditions" under which the shares represented by a proxy will not be voted must be objectively determinable. There may be persons who have different views or are uncertain about this fact and would not, in the absence of the clarification, recognize that the conditions must be objectively determinable and act accordingly. Consequently, the clarification may cause some persons to revise the conditions they otherwise would state to make them objectively determinable or refrain from soliciting because they do not wish to state objectively determinable conditions.

5. Exchange Act Rule 14a-12(a)(1)(i)

We propose to clarify Exchange Act Rule 14a-12(a)(1)(i) by revising it to provide specifically that when a soliciting communication is made before providing shareholders with a full proxy statement and that communication includes required participant information through a legend advising security holders where they can obtain the information, the information to which

[147] It is possible that more non-management soliciting persons will seek to round out their short slates with other non-management persons' nominees and, as a result, more non-management nominees and fewer management nominees will be elected. As a practical matter, however, it is unclear how often non-management persons would seek to round out their short slates in this manner and, if they did, whether they would attract enough votes to increase the number of successful non-management nominees and decrease the number of successful management nominees. In this regard, we note that there appear to have been few instances in the past in which more than one non-management person sought to round out a short slate with respect to a single election of directors.

[148] Exchange Act Rule 14a-4(e) requires that a proxy statement or form of proxy provide that the shares represented by the proxy be voted "subject to reasonable specified conditions."

the legend refers must be filed under cover of Schedule 14A, as part of a proxy statement or other soliciting materials, no later than the time the first soliciting communication is made.[149] As a result, the proposed amendment would provide certainty regarding when the participant information to which the legend refers must be filed. There may be persons who have different views or are uncertain about this fact and would not, in the absence of the clarification, recognize that the participant information must be filed by the time the first soliciting communication is made. Consequently, the clarification may cause some persons to file the participant information earlier than they otherwise would or delay the start of a solicitation due to taking additional time to prepare and file the participant information.

B. Benefits

1. Disclosure Amendments

The proposed disclosure amendments are intended to enhance transparency of a company's compensation policies and its impact on risk taking; director and nominee qualifications; company leadership structure and the role of the board in the risk management process; potential conflicts of interest of compensation consultants; and voting results at annual and special meetings.

a. Benefits Related to Expanded Compensation Discussion and Analysis Disclosure

Expanding the Compensation Discussion and Analysis to include a discussion of the company's overall compensation program and how it relates to the company's approach to risk management may benefit investors in several ways. Incentive schemes and other compensation

[149] Exchange Act Rule 14a-12 permits a solicitation to be made before furnishing security holders with a proxy statement meeting the requirements of Rule 14a-3(a) if, among other requirements, each written communication that is part of the solicitation contains specified participant information. Rule 14a-12(a)(1)(i) requires such information to include the identity of the participants in the solicitation and a description of their direct or indirect interests or a legend advising security holders where they can obtain that information.

for employees may affect risk-taking behavior in the company's operations. To the extent that risks arising from a company's overall compensation policies for employees generally may have a material effect on the company, investors will benefit through an enhanced ability to monitor it. They would also potentially benefit from the ability to use this additional information in allocating capital across companies, toward companies where employee incentives appear better aligned with operational success and investors' appetite for risk. The new disclosure may also encourage the board and senior management to examine and improve incentive structures for management and employees of the company. These benefits should also lead to increased value to investors.

b. Benefits Related to Revisions to Summary Compensation Table Disclosure

As a result of the proposed Summary Compensation Table revision, companies would no longer need to prepare and report the allocation of equity awards' grant date fair value over time commensurate with financial statement recognition of compensation costs for executive and director compensation tabular reporting or as a footnote to the Director Compensation Table. Further, in preparing stock awards and option awards disclosure in the Summary Compensation Table and Director Compensation Table, companies no longer would need to incur additional costs to exclude the estimate for forfeitures related to service-based vesting used for financial statement reporting purposes. The elimination of costs of preparing and reporting this information is a benefit of the proposed amendments. The effects of the proposed amendments in making this information more readily available to investors may be useful to their voting and investment decisions.

Reporting stock awards and option awards in the Summary Compensation Table based on aggregate grant date fair value is designed to make it easier for investors to assess compensation

decisions and evaluate the decisions of the compensation committee. For example, under the amendments the Summary Compensation Table values will correspond to awards granted for the fiscal year, potentially allowing companies to better explain in Compensation Discussion and Analysis how decisions with respect to these awards relate to other compensation decisions in the context of total compensation for the year. Further, the effect on total compensation of decisions to reprice options will be more evident because aggregate grant date fair value will be a component of total compensation reported in the Summary Compensation Table. However, because the proposals would eliminate the requirement to report the grant date fair value of individual awards in the Grants of Plan-Based Awards Table, there would not be disclosure of incremental fair value with respect to individual awards that were repriced or otherwise materially modified during the year, potentially limiting this benefit.

Under the proposed amendments, the identification of named executive officers based on total compensation for the last completed fiscal year will reflect the aggregate grant date fair value of equity awards granted in that year. As a result, the named executive officers other than the principal executive officer and principal financial officer may change. Investors may benefit from receiving compensation disclosure with respect to executives who would not have been named executive officers under the current rules. To the extent that this proposed change better aligns the identification of named executive officers with compensation decisions for the year, it may make it easier for companies to track executive compensation for reporting purposes.

Smaller reporting companies are not required to provide a Grants of Plan-Based Awards Table or a Compensation Discussion and Analysis, but are required to provide a Summary Compensation Table. Investors in these companies may benefit from reporting stock awards and

option awards based on full grant date fair value in the grant year, as opposed to the current reporting approach based on financial statement recognition of the awards.

c. Benefits Related to Enhanced Director and Nominee Disclosure

The proposed amendments to Item 401 of Regulation S-K would potentially benefit investors by increasing the amount and quality of information that they receive concerning the background and skills of directors and nominees for director, enabling investors to make better-informed voting and investment decisions. This increased information also may improve investor confidence because investors could determine more easily whether a particular director and the entire board composition is an appropriate choice for a given company at the time.

Disclosure of management's or other proponents' rationale for their nominees' membership on the board and on specific committees may benefit investors by enabling them to better assess the rationale in favor of a particular nominee. Investors would be able to adjust their holdings, allocating more capital to companies in which they believe board members are most likely to be able to effectively fulfill their duties to shareholders. In particular, in cases that do not meet investors' expectations, investors may respond by attempting to exert more influence on management or the board than would occur otherwise, thereby enhancing shareholder value.

Expanded disclosure of membership on previous corporate boards may also benefit investors by making it easier for them to evaluate whether nominees' past board memberships present potential conflicts of interest (such as membership on boards of major suppliers, customers, or competitors). Investors may also be able to more easily evaluate the performance, in both operations and governance, of the other companies on whose boards the nominees serve or have served. The public may also benefit from better understanding any potential positive or negative effects on corporate performance resulting from directors serving on other boards.

Expanded disclosure of legal proceedings involving directors, nominees and executive officers, from the current five year requirement to ten years, would benefit investors by providing more information by which they could determine the suitability of a director or nominee.

d. Benefits Related to New Disclosure about Company Leadership Structure and the Board's Role in the Risk Management Process

Investors may benefit from new disclosure about company leadership structure. In particular, they may benefit from understanding management's explanation regarding whether or not the principal executive officer serves as chairman of the board and, in the case of registered investment management company, whether the chairman is an "interested person" of the fund. In deciding whether to separate principal executive officer and chairman positions, companies may consider several factors, including the effectiveness of communication with the board and the degree to which the board can exercise independent judgment about management performance, and shareholders may, in different cases, be best served by different decisions.

Disclosures of the board's role in the risk management process may also benefit investors. Expanded disclosure of the board's role in risk management may enable investors to better evaluate whether the board is exercising appropriate oversight of risk management. Investors would be able to adjust their holdings, allocating more capital to companies in which they believe the board is adequately focused on risks. Improved capital allocation will also benefit the financial markets by increasing market efficiency.

e. Benefits Related to New Disclosure Regarding Compensation Consultants

New disclosure regarding compensation consultants may benefit investors by illuminating potential conflicts of interest. Providing better, more complete information in cases where non-executive compensation services occur allows investors to determine for themselves

whether there are concerns related to the compensation consultants' financial interests and objectivity. Compensation consultants may earn fees from other services to the company, including benefits administration, human resources consulting, and actuarial services. With an incentive to retain these additional revenue streams, they may face incentives to cater, to some degree, to management preferences in recommending executive compensation packages. To the degree that these relationships are more transparent under the proposed amendments, investors benefit through their ability to better monitor the process of setting executive pay. This benefit may be limited to the degree that compensation consultants have potential conflicts of interest related to other material relationships with the company or other conflicts not specifically enumerated in the proposed amendments.

f. Benefits Related to Reporting of Voting Results on Form 8-K

The proposed amendments to Form 8-K would facilitate security holder access to faster disclosure of the vote results of a company's annual or special meeting. To find this information, investors no longer would need to wait for this information to be disclosed in a Form 10-Q or 10-K, which could be filed months after the end of the meeting.

2. Proxy Solicitation Process Amendments

We believe the proposed proxy solicitation process amendments may result in benefits as follows.

a. Exchange Act Rule 14a-2(b)(1) Introductory Text

The proposed amendment to the introductory text of Exchange Act Rule 14a-2(b)(1) may cause more persons to furnish an unmarked copy of management's proxy card requested to be returned directly to management.[150] Consequently, the proposed amendment may result in the

[150] See Part IV.A.1 above.

benefit of aiding efforts by persons not seeking proxy authority to facilitate voting by shareholders sharing their views on matters submitted for shareholder approval—such as in a "just vote no" campaign—without having to incur the costs and efforts of conducting a fully-regulated proxy solicitation and provide shareholders a convenient opportunity to indicate their votes after hearing those views.

b. Exchange Act Rule 14a-2(b)(1)(ix)

The proposed amendment to Exchange Act Rule 14a-2(b)(1)(ix) may cause more persons to refrain from soliciting in the absence of an exemption or solicit in compliance with all of the generally applicable proxy solicitation requirements.[151] To the extent such persons refrain from soliciting without an exemption, shareholders may benefit by not being called upon to make a voting decision in regard to a matter while possibly being unaware of the soliciting person's substantial interest in the matter. To the extent such persons solicit in compliance with all of the generally applicable proxy solicitation requirements, shareholders may benefit by having information regarding the soliciting person's substantial interest in the matter that they otherwise might not have.

c. Exchange Act Rule 14a-4(d)(4)

The proposed amendment to Exchange Act Rule 14a-4(d)(4) may cause more non-management soliciting persons to seek to round out their short slates with other non-management persons' nominees.[152] The amendment's effective codification of a no-action position the staff has taken in the past may benefit non-management soliciting persons who wish to round out their short slates with other non-management persons' nominees by enabling them

[151] See Part IV.A.2 above.

[152] See Part IV.A.3 above.

to avoid the cost of seeking a no-action letter. To the extent more non-management soliciting persons seek to round out their slates with other non-management persons' nominees, shareholders may benefit from having more choices in deciding for whom they will vote.

d. Exchange Act Rule 14a-4(e)

The proposed amendment to Exchange Act Rule 14a-4(e) may cause some persons to revise the conditions they otherwise would state to make them objectively determinable or refrain from soliciting because they do not wish to state objectively determinable conditions.[153] To the extent such persons revise the conditions they state to make them objectively determinable, solicited shareholders may benefit by being better able to make an informed decision in regard to granting proxy authority and confirm that any later withholding of shares from voting is consistent with the authority granted. To the extent such persons refrain from soliciting, shareholders may benefit from not being called upon to make a decision in regard to granting proxy authority or confirming that any later withholding of shares from voting is consistent with the authority granted where such decisions would be more difficult due to a lack of objectively determinable conditions.

e. Exchange Act Rule 14a-12(a)(1)(i)

The proposed amendment to Exchange Act Rule 14a-12(a)(1)(i) may cause some persons to file legend-referenced participant information earlier than they otherwise would or delay the start of a solicitation due to taking additional time to prepare and file the participant information.[154] To the extent such persons file the participant information sooner or delay the start of a solicitation until ready to file the participant information, shareholders may benefit

[153] See Part IV.A.4 above.

[154] See Part II.A.5 above.

from having the participant information with which they can begin to evaluate the solicitation from the time they first are solicited.

C. Costs

1. Disclosure Amendments

The proposed rules would impose new disclosure requirements on companies. Some of the proposed disclosures are designed to build upon existing requirements to elicit a more detailed discussion of overall compensation policy and its impact on risk taking, director and nominee qualifications and legal proceedings and the interests of compensation consultants. To the degree that the proposed amendments require collecting information currently available, costs related to information collection will be limited.

a. Costs Related to Expanded Compensation Discussion and Analysis Disclosure

Expanded Compensation Discussion and Analysis disclosure will increase costs to companies as the proposed amendments would impose additional information gathering and drafting requirements. We believe that there may be information gathering costs, even though the information required may be readily available because this information may need to be reported up from business units and analyzed. Using our PRA burden estimates, we estimate the aggregate annual cost of the proposed amendments to CD&A to be approximately $29,950,652.[155] In addition, there may be costs in assessing whether risk arising from compensation policies and practices may have a material effect on the company, and if they may, there will be cost in drafting the additional disclosure. This could include the cost of hiring

[155] This estimate is based on the estimated total burden hours of 86,683 (the annual responses for the schedules and forms that would include the proposed CD&A amendments multiplied by 16 hours), an assumed split of the burden hours between internal staff and external professionals with respect to proxy and information statements, an assumed 25%/75% split of the burden hours between internal staff and external professionals with respect to registration statements, and an hourly rate of $200 for internal staff time and $400 for external professionals.

additional advisors to assist in the analysis as well as potential liability if risk is not identified as having a material effect on the company.

b. Costs Related to Revisions to Summary Compensation Table Disclosure

Investors may face some costs related to revisions in executive compensation reporting. The proposed amendments would rescind the requirement to report the full grant date fair value of each individual equity award in the Grants of Plan-Based Awards Table and corresponding footnote disclosure in the Director Compensation Table. Although the Outstanding Equity Awards at Fiscal Year-End Table would continue to provide useful disclosure of the contractual terms of outstanding equity awards, the contribution of an individual grant to the aggregate grant date fair value of awards would not be disclosed under the proposed amendments. Investors will therefore be less able to determine the manner in which an individual grant affects the aggregate grant date fair value of equity awards granted in the year.

Grant date fair value guidelines under FAS 123R call for management to exercise judgment. For example, the valuation of stock options requires assumptions about stock volatility and choice among several valuation methods. For financial statement recognition purposes, this grant date fair value measure of compensation cost is expensed over the expected term of the option. Compensation cost for awards containing a performance-based vesting condition is recognized only if it is probable that the performance condition will be achieved. If achievement of the performance condition later is no longer considered probable, the amount of compensation cost previously recognized is reversed in the period when it is determined that achievement of the condition is no longer probable. In addition, awards that are classified as "liability awards" under FAS 123R (such as an award that is cash settled) are re-measured at each financial statement reporting date through the date the awards are settled. Some investors

may believe that Summary Compensation Table and Director Compensation Table disclosure of stock awards and option awards measured based on financial statement recognition principles provides a clearer understanding of compensation earned in the reporting period because it takes into account potential adjustments regarding such factors as term of the option and changes in market value over time. To the extent that an investor would prefer to also see disclosure of this measure for purposes of voting or investment decisions, the proposed amendments may entail a cost.

In particular, the required re-measurement of liability awards under the current rules may help to reveal situations in which companies grant awards that subsequently change in value. For example, if a company grants an option-based liability award under the proposed amendments, the impact of subsequent events on the stock price, and therefore on the award value, would not be reflected in the Summary Compensation Table in the current or subsequent year. In contrast, under the current rule, reported compensation in the next year could be higher or lower as the result of re-measurement. To the extent that investors prefer to see changes in value of liability award compensation decisions reflected in the Summary Compensation Table, presentation of grant date fair value in the table may represent a cost. This cost, however, is limited to the degree that changes in value of liability based awards are reflected elsewhere in the proxy statement or can be inferred from previously disclosed award terms. Additionally, awards classified as "equity awards" under FAS 123R are not re-measured, and therefore any changes in the value of such awards are not currently reflected in the Summary Compensation Table and will also not be reflected under the proposed amendments.

Under the proposed amendments to the Summary Compensation Table and as noted in the Benefits section, the identification of named executive officers based on total compensation

for the last completed fiscal year will reflect the aggregate grant date fair value of equity awards granted in that year, so that some executives subject to executive compensation disclosure may be different.

Smaller reporting companies, which are not required to provide the Grants of Plan-Based Awards Table, may incur some costs on a transitional basis in switching from the currently required measure of stock awards and option awards to full grant date fair value reporting. We expect that any such additional costs will be limited by the fact that full grant date fair value information required under the proposals is also collected to comply with financial reporting purposes. Because companies other than smaller reporting companies currently are required to report the grant date fair value of individual equity awards, we expect that they will incur only negligible costs in switching to the proposed Summary Compensation Table and Director Compensation Table disclosure requirements.

c. Costs Related to Enhanced Director and Nominee Disclosure

Companies may face some information gathering and reporting costs related to enhanced director and nominee disclosure. Using our PRA burden estimates, we estimate the aggregate annual cost to operating companies to be approximately $11,775,000.[156] With respect to our PRA burden estimates for registered management investment companies, we estimate the aggregate annual cost to be approximately $3,489,800.[157] Companies may also experience

[156] This estimate is based on the estimated total burden hours of 38,820 (the annual responses for the schedules and forms that would include the proposed enhanced director and nominee disclosure multiplied by 4 hours), an assumed 75%/25% split of the burden hours between internal staff and external professionals with respect to proxy and information statements, an assumed 25%/75% split of the burden hours between internal staff and external professionals with respect to registration statements, and an hourly rate of $200 for internal staff time and $400 for external professionals.

[157] This estimate is based on the estimated total burden hours of 11,371, an assumed 75%/25% split of the burden hours between internal staff and external professionals with respect to proxy statements, an assumed 25%/75% split of the burden hours between internal staff and external professionals with respect to registration statements, and an hourly rate of $200 for internal staff time and $400 for external professionals.

increased costs as it may be more difficult to find candidates willing to serve on boards if they do not want this information disclosed in a Commission filing. To the extent that information is available and verifiable, however, we expect that certain costs will be limited.

d. Costs Related to New Disclosure about Company Leadership Structure and the Board's Role in the Risk Management Process

Companies may face some costs related to new disclosure about company leadership structure. Disclosure of the board's role in the risk management process may have some similar costs. The information gathering costs are likely to be less significant than the costs to prepare the disclosure. Using our PRA burden estimates, we estimate the aggregate annual cost to operating companies to be approximately $11,970,000.[158] With respect to our PRA burden estimates for registered management investment companies, we estimate the aggregate annual cost to be approximately $6,367,200.[159] Although the amendments are not intended to drive behavior, there may be possible costs if a company re-evaluates its leadership structure or the board's role in the risk management process.

e. Costs Related to New Disclosure Regarding Compensation Consultants

Companies may face some costs related to new disclosure about other services provided by compensation consultants and aggregate fees. Using our PRA burden estimates, we estimate the aggregate annual cost to be approximately $7,980,000.[160] The costs to a company in

[158] This estimate is based on the estimated total burden hours of 47,880 (the annual responses for Schedules 14A and 14C multiplied by 6 hours), an assumed 75%/25% split of the burden hours, and an hourly rate of $200 for internal staff time and $400 for external professionals.

[159] This estimate is based on the estimated total burden hours of 20,292, an assumed 75%/25% split of the burden hours between internal staff and external professionals with respect to proxy statements, an assumed 25%/75% split of the burden hours between internal staff and external professionals with respect to registration statements, and an hourly rate of $200 for internal staff time and $400 for external professionals.

[160] This estimate is based on the estimated total burden hours of 31,920 (the annual responses for Schedules 14A and 14C multiplied by 4 hours), an assumed 75%/25% split of the burden hours, and an hourly rate of $200 for internal staff time and $400 for external professionals.

contracting with compensation consultants could be increased under these amendments, and compensation consultants also may alter their mix of services. For instance, costs may increase if companies decide to contract with multiple different compensation consultants for services that had previously been provided by only one compensation consultant. Possible increased costs might include the costs associated with the time each new compensation consultant will need to learn about the company and decline in any economies of scale the compensation consultant may have factored into fees charged to the company. To the extent that fees for compensation consultants decline, rather than increase as a result of any improvement in competition under the proposed amendments, this represents a potential cost to compensation consultants, if any increase in the volume of business does not offset fee reductions.

f. Costs Related to Reporting of Voting Results on Form 8-K

Shareholders who are used to receiving this information in Form 10-Q filing may incur costs of adapting their research practices to find this information in 8-K filings, which may involve searching through a number of filings. This adjustment may be costly, in particular, to those investors who process this information using automated systems. A separate filing to report the information and potentially report both preliminary and final voting results may also increase direct costs to companies for filing fees, filing creation, and report dissemination because it may require two Form 8-K filings. However, the cost for preparing a quarterly report on Form 10-Q would be less because this disclosure would not appear in that Form. Companies engaged in a contested election may face some additional information gathering and reporting costs related to reporting shareholder voting results on Form 8-K, as these companies would need to file a Form 8-K to report preliminary voting results in addition to reporting final vote

results. Using our PRA burden estimates, we estimate the aggregate annual cost to be approximately $1,842,750.[161]

2. Proxy Solicitation Process Amendments

We believe the proposed proxy solicitation process amendments may result in costs as follows.

a. Exchange Act Rule 14a-2(b)(1) Introductory Text

The proposed amendment to the introductory text of Exchange Act Rule 14a-2(b)(1) may cause more persons to furnish an unmarked copy of management's proxy card requested to be returned directly to management.[162] If more persons avail themselves of that procedure, companies may increase soliciting activity in an effort to counterbalance its use and, as a result, incur additional costs.

b. Exchange Act Rule 14a-2(b)(1)(ix)

The proposed amendment to Exchange Act Rule 14a-2(b)(1)(ix) may cause more persons to refrain from soliciting in the absence of an exemption or solicit in compliance with all of the generally applicable proxy solicitation requirements.[163] To the extent such persons refrain from soliciting, shareholders may be denied the opportunity to consider such persons' views in making a voting decision. To the extent such persons solicit in compliance with all of the generally

[161] This estimate is based on the estimated 7,371 additional Form 8-K filings, an assumed 75%/25% split of one burden hour between internal staff and external professionals, and an hourly rate of $200 for internal staff time and $400 for external professionals.

[162] See Part IV.A.1 above.

[163] See Part IV.A.2 above.

applicable proxy solicitation requirements, they may incur greater costs than they otherwise would have.[164]

c. Exchange Act Rule 14a-4(d)(4)

The proposed amendment to Exchange Act Rule 14a-4(d)(4) may cause more non-management soliciting persons to seek to round out their short slates with other non-management persons' nominees.[165] Consequently, companies may increase soliciting activity in an effort to counterbalance such rounding out and, as a result, incur additional costs.

d. Exchange Act Rule 14a-4(e)

The proposed amendment to Exchange Act Rule 14a-4(e) may cause some persons to revise the conditions they otherwise would state to make them objectively determinable or refrain from soliciting because they do not wish to state objectively determinable conditions.[166] To the extent such persons revise the conditions to make them objectively determinable or refrain from soliciting, shareholders may lose the opportunity to grant proxy authority to a person that might exercise some degree of discretion in a manner that could be beneficial to the shareholders. The inability to grant proxy authority to a person that might exercise some degree of discretion may cause some shareholders to decide to attend a meeting and, as a result, incur costs accordingly.

e. Exchange Act Rule 14a-12(a)(1)(i)

The proposed amendment to Exchange Act Rule 14a-12(a)(1)(i) may cause some persons to file legend-referenced participant information earlier than they otherwise would or delay the

[164] We recently cited certain evidence that indicated the average cost to a soliciting shareholder engaged in a proxy contest is $368,000. See Release No. 33-9046 in 22 above at 29073.

[165] See Part IV.A.3 above.

[166] See Part IV.A.4 above.

start of a solicitation due to taking additional time to prepare and file the participant information.[167] To the extent such persons file the participant information sooner, they may incur additional costs to accelerate the preparation and filing of the information. To the extent such persons delay the start of a solicitation until when ready to file the participant information, they may lose time during which the shareholders can consider the solicitation and, thereby, reduce the likelihood of a successful solicitation.

D. Request for Comment

We request data to quantify the costs and the value of the benefits described above. We seek estimates of these costs and benefits, as well as any costs and benefits not already defined, that may result from the adoption of these proposed amendments. We also request qualitative feedback on the nature of the benefits and costs described above and any benefits and costs we may have overlooked.

V. CONSIDERATION OF IMPACT ON THE ECONOMY, BURDEN ON COMPETITION AND PROMOTION OF EFFICIENCY, COMPETITION AND CAPITAL FORMATION

Section 23(a)(2) of the Exchange Act also requires us,[168] when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Section 2(b) of the Securities Act,[169] Section 3(f) of the Exchange Act,[170] and Section 2(c) of the Investment Company Act require us,[171] when engaging in rulemaking where we are

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[167] See Part IV.A.5 above.

[168] 15 U.S.C. 78w(a)(2).

[169] 15 U.S.C. 77b(b).

[170] 15 U.S.C. 78c(f).

required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The proposed amendments to Regulation S-K are intended to provide additional important information to investors about corporate boards and management structure; and the clarity of executive compensation available to investors and the financial markets. These proposals would enhance investors' understanding of how corporate resources are used, and enable shareholders to better evaluate the actions of the board of directors and executive officers in fulfilling their responsibilities.

The proposed disclosure amendments would enhance our reporting requirements. These proposed amendments are designed to enhance transparency of a company's compensation policies and its impact on risk taking; director and nominee qualifications; board leadership structure; the potential conflicts of compensation consultants; and to provide investors with clearer and more meaningful executive compensation disclosure. The proposed amendments would also accelerate the reporting of the results of shareholder votes at a company's annual or special meeting. The proposed amendments should improve the ability of investors to make informed voting and investment decisions, and, therefore lead to increased efficiency and competitiveness of the U.S. capital markets.

The proposed disclosure amendments should also increase efficiency and competitiveness of the U.S. capital markets by providing investors with additional information on risk incentives and companies' risk management practices. This information could be used by investors in allocating capital across companies, toward companies where the risk incentives appear better aligned with an investor's appetite for risk. The new disclosure may also

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[171] 15 U.S.C. 80a-2(c).

encourage competition amongst companies to demonstrate superior risk management practices and improved incentive structures for management and employees of the company.

The proposed disclosure amendments also may affect competition among compensation consultants. Additional disclosure of consulting fees may provide an informational advantage to firms and increase competition as firms can use this information to bid for additional services and potentially negotiate lower rates.

The proposed amendments to our rules governing the proxy solicitation process are intended to provide clarity and address issues that have arisen. We believe these proposals would provide certainty to soliciting parties and facilitate communications with shareholders. Additional clarity and facilitated communications would promote efficiency.

We request comment on whether the proposed amendments would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

VI. SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)[172] we solicit data to determine whether the proposed rule amendments constitute a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

[172] 5 U.S.C. 603.

Commenters should provide empirical data on (a) the annual effect on the economy; (b) any increase in costs or prices for consumers or individual industries; and (c) any effect on competition, investment or innovation. We request your comments on the reasonableness of this estimate.

VII. INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS

This Initial Regulatory Flexibility Analysis (IRFA) has been prepared in accordance with the Regulatory Flexibility Act.[173] It relates to proposed revisions to the rules under the Securities Act, Exchange Act and Investment Company Act regarding executive compensation and corporate governance disclosures and the proxy solicitation process.

A. Reasons for, and Objectives of, the Proposed Action

These proposals are designed to enhance the executive compensation and corporate governance disclosures provided by companies, and clarify and address issues that have arisen in the proxy solicitation process. Specifically, in regard to disclosure, the proposals are intended to enhance the transparency of a company's compensation policies and its impact on risk taking; director and nominee qualifications; board leadership structure; the potential conflicts of compensation consultants; and to provide investors with clearer and more meaningful executive compensation disclosure. We are also proposing amendments to our proxy rules that would clarify the manner in which they operate and to eliminate potential obstacles to shareholder communication.

[173] 5 U.S.C. 601.

B. Legal Basis

We are proposing the amendments pursuant to Sections 3(b), 6, 7, 10 and 19(a) of the Securities Act; Sections 12, 13, 14(a), 15(d), and 23(a) of the Exchange Act, and Sections 8, 20(a), 24(a), 30, and 38 of the Investment Company Act.

C. Small Entities Subject to the Proposed Action

The proposed amendments would affect some companies that are small entities. The Regulatory Flexibility Act defines "small entity" to mean "small business," "small organization," or "small governmental jurisdiction."[174] The Commission's rules define "small business" and "small organization" for purposes of the Regulatory Flexibility Act for each of the types of entities regulated by the Commission. Securities Act Rule 157[175] and Exchange Act Rule 0-10(a)[176] defines a company, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 1,229 companies, other than registered investment companies, that may be considered small entities. The proposed amendments would affect small entities that have a class of securities that are registered under Section 12 of the Exchange Act or that are required to file reports under Section 15(d) of the Exchange Act. In addition, the proposals also would affect small entities that file, or have filed, a registration statement that has not yet become effective under the Securities Act and that has not been withdrawn. An investment company is considered to be a "small business" if it, together with other investment companies in the same group of related investment companies, has net assets of

[174] 5 U.S.C. 601(6).

[175] 17 CFR 230.157.

[176] 17 CFR 240.0-10(a).

$50 million or less as of the end of its most recent fiscal year.[177] We believe that the proposals would affect small entities that are investment companies. We estimate that there are approximately 212 investment companies that may be considered small entities.

D. Reporting, Recordkeeping, and other Compliance Requirements

The proposed disclosure amendments are designed to enhance the transparency of boards of directors, provide investors with a better understanding of the functions and activities of boards, and to provide investors with clearer and more meaningful compensation disclosure. These amendments would require small entities that are operating companies to provide:[178]

- Disclosure of the aggregate grant date fair value of equity awards computed in accordance with FAS 123R;
- Additional disclosure about compensation consultants employed by companies, including disclosure about the full scope of services provided by the consultants or its affiliates and the related fees for such services; and
- Disclosure of the results of shareholder votes on Form 8-K within four business days after the end of the meeting.

In addition, these amendments would require small entities that are operating companies or registered management investment companies to provide:

- Disclosure of the qualifications of directors and nominees for director, and a brief discussion of the specific experience, qualifications, attributes or skills that qualify that person to serve as a director for the company at that time, and as a member of

[177] 17 CFR 270.0-10(a).

[178] The proposed requirements to discuss and analyze a company's overall compensation programs as the may have a material impact on risk management practices would not apply to smaller reporting companies.

any committee that the person serves on or is chosen to serve on, in light of the company's business and structure;

- Added disclosure regarding certain legal proceedings involving a company's directors, nominees for director and executive officers; and
- Disclosure about a company's board leadership structure and the board's role in the risk management process.

The proposed proxy rule amendments would provide certainty to soliciting parties and facilitate communications with shareholders and, as a result, would not impose any reporting or recordkeeping requirements on small entities. These proposed amendments would affect both large and small entities equally. The proposed proxy rule amendments set forth clear, uniform standards to aid companies and other soliciting parties in the process of soliciting proxies under our rules.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We believe the proposed amendments would not duplicate, overlap, or conflict with other federal rules.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed disclosure amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;

- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

Currently, small entities are subject to some different compliance or reporting requirements under Regulation S-K and the proposed amendments would not affect these requirements. Under Regulation S-K, small entities are required to provide abbreviated compensation disclosure with respect to the principal executive officer and two most highly compensated executive officers for the last two completed fiscal years. Specifically, small entities may provide the executive compensation disclosure specified in Items 402(l) through (r) of Regulation S-K, rather than the corresponding disclosure specified in Items 402(a) through (k) of Regulation S-K. Items 402(l) through (r) also do not require small entities to provide CD&A or the Grants of Plan-Based Awards Table. Therefore small entities would not be required to disclose their overall compensation practices. Other than the proposed amendments to the Grants of Plan-Based Awards Table, the remaining proposed disclosure requirements would apply to small entities to the same extent as larger issuers.

As noted above, the proposed amendments to CD&A would not apply to small entities. We are not proposing to expand the existing alternative reporting requirements under Item 402 of Regulation S-K, or establish additional different compliance requirements or an exemption from coverage of the proposed amendments for small entities. The proposed amendments would provide investors with greater transparency regarding director and nominee qualifications; board leadership structure and their role in the risk management process; potential conflicts of compensation consultants; and voting results at annual and special meetings. We do not believe these disclosures will create a significant new burden; we do, however, believe uniform, comparable disclosures across all companies will help shareholders and the markets.

The proposed amendments would clarify, consolidate and simplify the reporting requirements for all public companies including small entities. The proposed amendments would require clear and straightforward disclosure of director and nominee qualifications, board leadership structure and the potential conflicts of interest of compensation consultants. We have used design rather than performance standards in connection with the proposed amendments for two reasons. First, based on our past experience, we believe the proposed revisions would be more useful to investors if there were specific disclosure requirements. The proposed disclosures are intended to result in more comprehensive and clear disclosure. Second, the specific disclosure requirements in the proposed amendments would promote consistent disclosure among all companies. We seek comment on whether we should exempt small entities from any of the proposed disclosures or scale the proposed amendments to reflect the characteristics of small entities and the needs of their investors.

G. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- How the proposed amendments can achieve their objective while lowering the burden on smaller entities;
- The number of small entity companies that may be affected by the proposed amendments;
- The existence or nature of the potential impact of the proposed amendments on small entity companies discussed in the analysis; and
- How to quantify the impact of the proposed amendments.

Respondents are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rule amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VIII. STATUTORY AUTHORITY AND TEXT OF THE PROPOSED AMENDMENTS

The amendments contained in this release are being proposed under the authority set forth in Sections 3(b), 6, 7, 10, and 19(a) of the Securities Act; Sections 12, 13, 14, 15(d) and 23(a) of the Exchange Act; and Sections 8, 20(a), 24(a), 30 and 38 of the Investment Company Act.

List of Subjects

17 CFR Parts 229, 239, 240, 249, 270 and 279

Reporting and recordkeeping requirements, Securities.

TEXT OF THE PROPOSED AMENDMENTS

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II, of the Code of Federal Regulations as follows:

PART 229 - STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975 - REGULATION S-K

1. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 777iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Amend §229.401 by:

a. revising paragraph (e)(1);

b. in paragraph (e)(2) revising the phrase "Indicate any other directorships" to read "Indicate any other directorships held, including any other directorships held during the past five years,";

c. in paragraph (f), introductory text, revise the phrase "during the past five years" to read "during the past ten years".

The revisions read as follows:

§229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

(e) Business experience. (1) Background. Briefly describe the business experience during the past five years of each director, executive officer, person nominated or chosen to become a director or executive officer, and each person named in answer to paragraph (c) of Item 401, including: Each person's principal occupations and employment during the past five years; the name and principal business of any corporation or other organization in which such occupations and employment were carried on; and whether such corporation or organization is a parent, subsidiary or other affiliate of the registrant. In addition, for each director or person nominated or chosen to become a director, briefly discuss the specific experience, qualifications, attributes or skills that qualify that person to serve as a director for the registrant at the time that the disclosure is made, and as a member of any committee that the person serves on or is chosen to serve on (if known), in light of the registrant's business and structure. If material, this disclosure should cover more than the past five years, and include information about the person's risk assessment skills, particular areas of expertise, or other relevant qualifications. When an

executive officer or person named in response to paragraph (c) of Item 401 has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation shall be included as to the nature of the responsibility undertaken by the individual in prior positions to provide adequate disclosure of his or her prior business experience. What is required is information relating to the level of his professional competence, which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

* * * * *

3. Amend §229.402 by:

a. redesignating paragraph (b)(1), introductory text, paragraph (b)(1)(i) through paragraph (b)(1)(vi) as paragraph (b)(1)(i), introductory text, and paragraph (b)(1)(i)(A) through paragraph (b)(1)(i)(F);

b. redesignating paragraph (b)(2), introductory text, paragraph (b)(2)(i) through paragraph (b)(2)(xv) as paragraph (b)(1)(ii), introductory text, paragraphs (b)(1)(ii)(A) through paragraph (b)(1)(ii)(O);

c. redesignating the Instructions to Item 402(b) as Instructions to Item 402(b)(1)(i) and (b)(1)(ii);

d. adding a heading to newly redesignated paragraph (b)(1)(i);

e. revising the introductory text to newly redesignated paragraph (b)(1)(ii);

f. revising newly redesignated Instructions to Item 402(b)(1)(i) and (b)(1)(ii);

g. adding new paragraph (b)(2);

h. adding Instructions to Item 402(b);

i. revising Instruction 2 to Item 402(c)(2)(iii) and (iv), paragraphs (c)(2)(v) and (c)(2)(vi), the Instructions to Item (c)(2)(v) and (vi), and paragraph (c)(2)(ix)(G);

j. revising the Grants of Plan-Based Awards Table in paragraph (d)(1);

k. removing the period at the end of paragraphs (d)(2)(iii) and (d)(2)(iv) and adding a semi colon in its place;

l. adding “and” at the end of paragraph (d)(2)(vi), removing “and” at the end of paragraph (d)(2)(vii) and adding a period in its place;

m. removing paragraph (d)(2)(viii) and Instruction 7 to Item 402(d);

n. revising paragraphs (k)(2)(iii) and (k)(2)(iv) and the Instruction to Item (k)(2)(iii) and (iv);

o. revising paragraph (k)(2)(vii)(I) and Instruction to Item 402(k);

p. revising Instruction 2 to Item 402(n)(2)(iii) and (iv);

q. revising paragraphs (n)(2)(v), (n)(2)(vi) and the Instruction to Item 402(n)(2)(v) and (vi);

r. revising paragraph (n)(2)(ix)(G);

s. revising paragraphs (r)(2)(iii), (r)(2)(iv) and (r)(2)(vii)(I) before the Instruction, and Instruction to Item 402(r).

The revisions and additions read as follows:

§229.402 (Item 402) Compensation.

* * * * *

(b) Compensation discussion and analysis. (1)(i) Compensation discussion and analysis for the named executive officers. * * *

* * * * *

(ii) While the material information to be disclosed under Compensation Discussion and Analysis for the Named Executive Officers will vary depending upon the facts and

circumstances, examples of such information may include, in a given case, among other things, the following:

* * * * *

Instruction 1 to Item 402(b)(1)(i) and (b)(1)(ii). The purpose of the Compensation Discussion and Analysis for the Named Executive Officers is to provide to investors material information that is necessary to an understanding of the registrant's compensation policies and decisions regarding the named executive officers.

Instruction 2 to Item 402(b)(1)(i) and (b)(1)(ii). The Compensation Discussion and Analysis for the Named Executive Officers should be of the information contained in the tables and otherwise disclosed pursuant to this Item. It should also cover actions regarding executive compensation that were taken after the registrant's last fiscal year's end. Actions that should be addressed might include, as examples only, the adoption or implementation of new or modified programs and policies or specific decisions that were made or steps that were taken that could affect a fair understanding of the named executive officer's compensation for the last fiscal year. Moreover, in some situations it may be necessary to discuss prior years in order to give context to the disclosure provided.

(2) Compensation discussion and analysis of the registrant's overall compensation program as it relates to the registrant's risk management. To the extent that risks arising from the registrant's compensation policies and overall actual compensation practices for employees generally may have a material effect on the registrant, discuss the registrant's policies or practices of compensating its employees, including non-executive officers, as they relate to risk management practices and/or risk-taking incentives. While the situations requiring disclosure will vary depending on the particular registrant and compensation policies, situations that may

trigger disclosure include, among others, compensation policies: at a business unit of the company that carries a significant portion of the registrant's risk profile; at a business unit with compensation structured significantly differently than other units within the registrant; at business units that are significantly more profitable than others within the registrant; at business units where compensation expense is a significant percentage of the unit's revenues; and that vary significantly from the overall risk and reward structure of the registrant, such as when bonuses are awarded upon accomplishment of a task, while the income and risk to the registrant from the task extend over a significantly longer period of time. The purpose of this paragraph (b)(2) is to provide investors material information concerning how the registrant compensates and incentivizes its employees that may create risk. While the information to be disclosed pursuant to this paragraph (b)(2) will vary depending upon the nature of the registrant's business and the compensation approach, the following are examples of the issues that the registrant may need to address for the business units or employees discussed:

(i) The general design philosophy of the registrant's compensation policies for employees whose behavior would be most impacted by the incentives established by the policies, as such policies relate to or affect risk taking by employees on behalf of the registrant, and the manner of its implementation;

(ii) The registrant's risk assessment or incentive considerations, if any, in structuring compensation policies or in awarding and paying compensation;

(iii) How the registrant's compensation policies relate to the realization of risks resulting from the actions of employees in both the short term and the long term, such as through policies requiring claw backs or imposing holding periods;

(iv) The registrant's policies regarding adjustments to its compensation policies to address changes in its risk profile;

(vi) Material adjustments the company has made to its compensation policies or practices as a result of changes in risk profile; and

(vii) The extent to which the registrant monitors its compensation policies to determine whether its risk management objectives are being met with respect to incentivizing its employees.

Instruction 1 to Item 402(b). The Compensation Discussion and Analyses provided pursuant to paragraph (b) should focus on the material principles underlying the registrant's compensation policies and decisions and the most important factors relevant to analysis of those policies and decisions. The Compensation Discussion and Analyses shall reflect the individual circumstances of the registrant and shall avoid boilerplate language and repetition of the more detailed information set forth in the tables and narrative disclosures that follow.

Instruction 2 to Item 402(b). Registrants are not required to disclose target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm for the registrant. The standard to use when determining whether disclosure would cause competitive harm for the registrant is the same standard that would apply when a registrant requests confidential treatment of confidential trade secrets or confidential commercial or financial information pursuant to Securities Act Rule 406 (17 CFR 230.406) and Exchange Act Rule 24b–2 (17 CFR 240.24b–2), each of which incorporates the criteria for non-disclosure when relying upon Exemption 4 of the Freedom of Information Act (5

U.S.C. 552(b)(4)) and Rule 80(b)(4) (17 CFR 200.80(b)(4)) thereunder. A registrant is not required to seek confidential treatment under the procedures in Securities Act Rule 406 and Exchange Act Rule 24b-2 if it determines that the disclosure would cause competitive harm in reliance on this instruction; however, in that case, the registrant must discuss how difficult it will be for the executive or how likely it will be for the registrant to achieve the undisclosed target levels or other factors.

Instruction 3 to Item 402(b). Disclosure of target levels that are non-GAAP financial measures will not be subject to Regulation G (17 CFR 244.100 through 244.102) and Item 10(e) (§229.10(e)); however, disclosure must be provided as to how the number is calculated from the registrant's audited financial statements.

(c) * * *

(2) * * *

Instructions to Item 402(c)(2)(iii) and (iv).

* * * * *

2. Registrants need not include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer pursuant to a registrant's program under which stock, equity-based or other forms of non-cash compensation may be received by a named executive officer instead of a portion of annual compensation earned in a covered fiscal year. However, the receipt of any such form of non-cash compensation instead of salary or bonus earned for a covered fiscal year must be disclosed in the appropriate column of the Summary Compensation Table corresponding to that fiscal year (e.g., stock awards (column (e)); option awards (column (f)); all other compensation (column (i))), or, if made pursuant to a non-equity incentive plan and therefore not reportable in the

Summary Compensation Table when granted, a footnote must be added to the salary or bonus column so disclosing and referring to the Grants of Plan-Based Awards Table (required by paragraph (d) of this Item) where the award is reported.

(v) For awards of stock, the aggregate grant date fair value computed in accordance with FAS 123R (column (e));

(vi) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FAS 123R (column (f));

Instruction 1 to Item 402(c)(2)(v) and (vi). For awards reported in columns (e) and (f), include a footnote disclosing all assumptions made in the valuation by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

Instruction 2 to Item 402(c)(2)(v) and (vi). If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise price of options or SARs previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), or otherwise has materially modified such awards, the registrant shall include, as awards required to be reported in column (f), the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R, with respect to that repriced or modified award.

* * * * *

(ix) * * *

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in columns (e) or (f); and

* * * * *

(d) * * *

(1) * * *

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 Under-lying Options (#)	Exercise or Base Price of Option Awards ($/Sh)
		Thresh-old ($)	Target ($)	Maxi-mum ($)	Thresh-old (#)	Target (#)	Maxi-mum (#)			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)
PEO										
PFO										
A										
B										
C										

* * * * *

(k) * * *

(2) * * *

(iii) For awards of stock, the aggregate grant date fair value computed in accordance with FAS 123R (column (c));

(iv) For awards of stock options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FAS 123R (column (d));

Instruction to Item 402(k)(2)(iii) and (iv). For each director, disclose by footnote to the appropriate column, the aggregate number of stock awards and the aggregate number of option awards outstanding at fiscal year end.

* * * * *

(vii) * * *

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (c) or (d); and

* * * * *

Instruction to Item 402(k). In addition to the Instructions to paragraph (k)(2)(vii) of this Item, the following apply equally to paragraph (k) of this Item: Instructions 2 and 4 to paragraph (c) of this Item; Instructions to paragraphs (c)(2)(iii) and (iv) of this Item; Instructions to paragraphs (c)(2)(v) and (vi) of this Item; Instructions to paragraph (c)(2)(vii) of this Item; and Instructions to paragraph (c)(2)(viii) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (k) of this Item that correspond to analogous disclosures provided for in paragraph (c) of this Item to which they refer.

* * * * *

(n) * * *

(2) * * *

Instructions to Item 402(n)(2)(iii) and (n)(2)(iv). 1. * * *

2. Smaller reporting companies need not include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer pursuant to a smaller reporting company's program under which stock, equity-based or other forms of non-cash compensation may be received by a named executive officer instead of a portion of annual compensation earned in a covered fiscal year. However, the receipt of any such form of non-cash compensation instead of salary or bonus earned for a covered fiscal year must be disclosed in the appropriate column of the Summary Compensation Table corresponding to that fiscal year (e.g., stock awards (column (e)); option awards (column (f)); all other compensation (column (i))), or, if made pursuant to a non-equity incentive plan and therefore not reportable in the Summary Compensation Table when granted, a footnote must be added to the salary or bonus column so disclosing and referring to the narrative disclosure to the Summary Compensation Table (required by paragraph (o) of this Item) where the material terms of the award are reported.

(v) For awards of stock, the aggregate grant date fair value computed in accordance with FAS 123R (column (e));

(vi) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FAS 123R (column (f));

Instruction 1 to Item 402(n)(2)(v) and (n)(2)(vi). For awards reported in columns (e) and (f), include a footnote disclosing all assumptions made in the valuation by reference to a discussion of those assumptions in the smaller reporting company's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

Instruction 2 to Item 402(n)(2)(v) and (n)(2)(vi). If at any time during the last completed fiscal year, the smaller reporting company has adjusted or amended the exercise price of options or SARs previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), or otherwise has materially modified such awards, the smaller reporting company shall include, as awards required to be reported in column (f), the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R, with respect to that repriced or modified award.

* * * * *

(ix) * * *

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (e) or (f); and

* * * * *

(r) * * *

(2) * * *

(iii) For awards of stock, the aggregate grant date fair value computed in accordance with FAS 123R (column (c));

(iv) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FAS 123R (column (d));

* * * * *

(vii) * * *

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (c) or (d); and

* * * * *

Instruction to Item 402(r). In addition to the Instruction to paragraph (r)(2)(vii) of this Item, the following apply equally to paragraph (r) of this Item: Instructions 2 and 4 to paragraph (n) of this Item; the Instructions to paragraphs (n)(2)(iii) and (iv) of this Item; the Instructions to paragraphs (n)(2)(v) and (vi) of this Item; the Instructions to paragraph (n)(2)(vii) of this Item; the Instruction to paragraph (n)(2)(viii) of this Item; the Instructions to paragraph (n)(2)(ix) of this Item; and paragraph (o)(7) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (r) of this Item that correspond to analogous disclosures provided for in paragraph (n) of this Item to which they refer.

* * * * *

4. Amend §229.407 by revising paragraph (e)(3)(iii) and adding paragraph (h) before the Instructions to Item 407 read as follows:

§229.407 (Item 407) Corporate governance.

* * * * *

(e) * * *

(3) * * *

(iii) Any role of compensation consultants in determining or recommending the amount or form of executive and director compensation (other than any role limited to consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the registrant, and that is available generally to all salaried employees) during the registrant's last completed fiscal year, identifying such consultants, stating whether such consultants were engaged directly by the compensation committee (or persons performing the equivalent functions) or any other person, 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. If any compensation consultants or their affiliates played a role in determining or recommending the amount or form of executive and director compensation and they also provided additional services to the registrant or its affiliates during the registrant's last completed fiscal year (including consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the registrant, and that is available generally to all salaried employees), then disclose the nature and the extent of all additional services provided, as well as the aggregate fees for determining or recommending the amount or form of executive and director compensation and the aggregate fees for such additional services. Disclose whether the decision to engage the compensation consultant or their affiliates for these other services was made, subject to screening, or recommended, by management, and whether the compensation committee or the board approved such other services of the compensation consultants or their affiliates.

* * * * *

(h) Company leadership structure. Briefly describe the registrant's leadership structure, such as whether the same person serves as both principal executive officer and chairman of the board, or whether two individuals serve in those positions, and, in the case of a registrant that is an investment company, whether the chairman of the board is an "interested person" of the registrant as defined in section 2(a)(19) of the Investment Company Act. If one person serves as both principal executive officer and chairman of the board, or if the chairman of the board of a registrant that is an investment company is an "interested person" of the registrant, disclose whether the registrant has a lead independent director and what specific role the lead independent director plays in the leadership of the registrant. This disclosure should indicate why the registrant has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the registrant. In addition, disclose the extent of the board's role in the registrant's risk management and the effect that this has on the company's leadership structure.

* * * * *

PART 239 — FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

5. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

6. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c**,** 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

7. Amend §240.14a-2 by revising paragraph (b)(1) introductory text; and paragraph (b)(1)(ix) to read as follows:

§240.14a-2 Solicitations to which §240.14a-3 to §240.14a-15 apply.

* * * * *

(b) * * *

(1) Any solicitation by or on behalf of any person who does not, at any time during such solicitation, seek directly or indirectly, either on its own or another's behalf, the power to act as proxy for a security holder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent or authorization. Provided, however, that for purposes of this paragraph (b)(1), the term "form of revocation" does not include an unmarked duplicate of a form of proxy that the registrant provides to security holders if the person who furnishes such unmarked duplicate requests that it be returned directly to the registrant, and provided further that the exemption set forth in this paragraph shall not apply to:

* * * * *

(ix) Any person, whether or not a security holder of the registrant who, because of a substantial interest in the subject matter of the solicitation, is likely to receive a benefit from a successful solicitation other than a benefit:

(A) Realized as a security holder of the registrant that would be shared pro rata by all other holders of the same class of securities; or

(B) Arising from the person's employment with the registrant; and

* * * * *

8. Amend §240.14a-4 by revising paragraphs (d)(4) and (e) to read as follows:

§240.14a-4 Requirements as to proxy.

* * * * *

(d) * * *

(4) To consent to or authorize any action other than the action proposed to be taken in the proxy statement, or matters referred to in paragraph (c) of this section. A person shall not be deemed to be a bona fide nominee and the person shall not be named as such unless the person has consented to being named in the proxy statement and to serve if elected. Provided, however, that nothing in this §240.14a-4 shall prevent any person soliciting in support of nominees who, if elected, would constitute a minority of the board of directors, from seeking authority to vote for nominees named in the registrant's or one or more other persons' proxy statements, so long as the soliciting party:

(i) Seeks authority to vote in the aggregate for the number of director positions then subject to election;

(ii) Represents that it will vote for all the nominees named in such other proxy statements, other than those nominees specified by the soliciting party;

(iii) Provides the security holder an opportunity to withhold authority with respect to any other nominee named in such other proxy statements by writing the name of that nominee on the form of proxy;

(iv) States on the form of proxy and in the proxy statement that there is no assurance that the nominees named in such other proxy statements will serve if elected with any of the soliciting party's nominees; and

(v) If seeking authority to vote for nominees named in one or more other non-registrant persons' proxy statements, represents in the proxy statement that:

(A) It has not agreed and will not agree to act, directly or indirectly, as a group or otherwise engage in any activities that would be deemed to cause the formation of a "group" as determined under section 13(d)(3) of the Exchange Act (15 U.S.C. 78m(d)(3)) and in Regulation 13D-G (§§240.13d-1 through 240.13d-102) with any such other non-registrant person or persons; and

(B) It has not acted and otherwise will not act as a "participant," as defined in Schedule 14A (§240.14a-101), in any solicitation by any such other non-registrant person or persons.

(e) The proxy statement or form of proxy shall provide, subject to objectively determinable reasonable specified conditions, that the shares represented by the proxy will be voted and that where the person solicited specifies by means of a ballot provided pursuant to paragraph (b) of this section a choice with respect to any matter to be acted upon, the shares will be voted in accordance with the specifications so made.

* * * * *

9. Amend §240.14a-12 by revising paragraph (a)(1)(i) to read as follows:

§240.14a-12 Solicitation before furnishing a proxy statement.

(a) * * *

(1) * * *

(i) The identity of the participants in the solicitation (as defined in Instruction 3 to Item 4 of Schedule 14A (§240.14a-101)) and a description of their direct or indirect interests, by security holdings or otherwise, or, if that information previously has been filed either as part of a proxy statement or other soliciting materials under a cover page in the form set forth in Schedule 14A (§240.14a-101) in connection with the solicitation, a prominent legend in clear, plain language advising security holders where they can obtain that filed information; and

* * * * *

10. Amend §240.14a-101 by:

a. revising paragraph (b) of Item 7;

b. in Item 22:

i. redesignating paragraph (b)(3) as paragraph (b)(3)(ii);

ii. adding new paragraph (b)(3)(i); and

iii. redesignating Instruction to paragraph (b)(3) as Instruction to paragraph (b)(3)(ii);

iv. redesignating paragraph (b)(4), introductory text, and paragraph (b)(4)(i) through paragraph (b)(4)(iv) as new paragraph (b)(4)(i), introductory text, and paragraph (b)(4)(i)(A) through paragraph (b)(4)(i)(D);

v. adding new paragraph (b)(4)(ii); and

vi. revising paragraph (b)(11).

The revisions and additions read as follows:

§240.14a-101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 7. Directors and executive officers.

* * * * *

(b) The information required by Items 401, 404(a) and (b), 405 and 407(d)(4), (d)(5) and (h) of Regulation S–K (§229.401, §229.404(a) and (b), §229.405 and §229.407(d)(4), (d)(5) and (h) of this chapter).

* * * * *

Item 22. Information required in investment company proxy statement.

* * * * *

(b) Election of Directors. * * *

(3)(i) For each director or nominee for election as director, briefly discuss the specific experience, qualifications, attributes, or skills that qualify that person to serve as a director for the Fund at the time that the disclosure is made, and as a member of any committee that the person serves on or is chosen to serve on (if known), in light of the Fund's business and structure. If material, this disclosure should cover more than the past five years, and include information about the person's risk assessment skills, particular areas of expertise, or other relevant qualifications.

* * * * *

(4) * * *

(ii) Unless disclosed in the table required by paragraph (b)(1) of this Item or in response to paragraph (b)(4)(i) of this Item, indicate any directorships held during the past five years by each director or nominee for election as director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l) or subject to the requirements of section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or any company registered

as an investment company under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), as amended, and name the companies in which the directorships were held.

* * * * *

(11) Provide in tabular form, to the extent practicable, the information required by Items 401(f) and (g), 404(a), 405, and 407(h) of Regulation S-K (§§229.401(f) and (g), 229.404(a), 229.405, and 229.407(h) of this chapter).

Instruction to Item 22(b)(11). Information provided under paragraph (b)(8) of this Item 22 is deemed to satisfy the requirements of Item 404(a) of Regulation S-K for information about directors, nominees for election as directors, and Immediate Family Members of directors and nominees, and need not be provided under this paragraph (b)(11).

PART 249 -- FORMS, SECURITIES EXCHANGE ACT OF 1934

11. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a et seq. and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

12. By amending Form 8-K (referenced in §249.308) by adding Item 5.07 under the caption "Information to Be Included in the Report" after the General Instructions read as follows:

Note: The text of Form 8-K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8-K

* * * * *

General Instructions

* * * * *

Information to Be Included in the Report

* * * * *

Item 5.07 Submission of Matters to a Vote of Security Holders.

If any matter was submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) A brief description of each other matter voted upon at the meeting and state the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes as to each such matter, including a separate tabulation with respect to each nominee for office.

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in Instruction 3 to Item 4 of Schedule 14A (17 CFR 240.14a-101)) terminating any solicitation subject to Rule 14a-12(c), including the cost or anticipated cost to the registrant.

Instruction 1 to Item 5.07. The four business day period for reporting the event under this Item 5.07 shall begin to run on the day on which the meeting ended. If the matter voted upon at the meeting relates to a contested election of directors and the information called for by this Item is not definitively determined at the end of the meeting, the registrant shall disclose on Form 8-K under this Item 5.07 the preliminary voting results within four business days after the preliminary voting results are determined; provided that in such an event, the registrant shall file

an amended report on Form 8-K under this Item 5.07 within four business days after the final voting results are certified.

Instruction 2 to Item 5.07. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

Instruction 3 to Item 5.07. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

Instruction 4 to Item 5.07. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to Regulation 14A under the Act, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

Instruction 5 to Item 5.07. Paragraph (c) must be answered for all matters voted upon at the meeting, including both contested and uncontested elections of directors.

Instruction 6 to Item 5.07. If the registrant has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

Instruction 7 to Item 5.07. If the registrant has published a report containing all the information called for by this item, the item may be answered by a reference to the information contained in such report.

* * * * *

13. Amend Form 10-Q (referenced in §249.308a) by removing Item 4 in Part II—Other Information, and redesignating Items 5 and 6 as Items 4 and 5.

14. Amend Form 10-K (referenced in §249.310) by removing Item 4 in Part I, and redesignating Items 5 through 15 as Items 4 through 14.

PART 274 — FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

15. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

* * * * *

16. Form N-1A (referenced in §§239.15A and 274.11A), Item 17 is amended by:

a. revising the heading to paragraph (b);

b. revising paragraph (b)(1);

c. redesignating paragraph (b)(3), introductory text, and paragraph (b)(3)(i) through paragraph (b)(3)(iv) as paragraph (b)(3)(i), introductory text, and paragraph (b)(3)(i)(A) through paragraph (b)(3)(i)(D);

d. adding new paragraph (b)(3)(ii); and

e. adding paragraph (b)(10).

The revisions and additions read as follows:

Note: The text of Form N-1A does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N-1A

* * * * *

Item 17. Management of the Fund

* * * * *

(b) Leadership Structure and Board of Directors.

(1) Briefly describe the Fund's leadership structure, including the responsibilities of the board of directors with respect to the Fund's management and whether the chairman of the board is an interested person of the Fund. If the chairman of the board is an interested person of the Fund, disclose whether the Fund has a lead independent director and what specific role the lead independent director plays in the leadership of the Fund. This disclosure should indicate why the Fund has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the Fund. In addition, disclose the extent of the board's role in the Fund's risk management and the effect that this has on the Fund's leadership structure.

* * * * *

(3) * * *

(ii) Unless disclosed in the table required by paragraph (a)(1) of this Item 17 or in response to paragraph (b)(3)(i) of this Item 17, indicate any directorships held during the past five years by each director in any company with a class of securities registered pursuant to section 12 of the Securities Exchange Act (15 U.S.C. 78l) or subject to the requirements of section 15(d) of the Securities Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the Investment Company Act, and name the companies in which the directorships were held.

* * * * *

(10) For each director, briefly discuss the specific experience, qualifications, attributes, or skills that qualify that person to serve as a director for the Fund at the time that the disclosure

is made, and as a member of any committee that the person serves on, in light of the Fund's business and structure. If material, this disclosure should cover more than the past five years, and include information about the person's risk assessment skills, particular areas of expertise, or other relevant qualifications.

* * * * *

17. Form N-2 (referenced in §§239.14 and 274.11a-1), Item 18 is amended by:

a. redesignating paragraph 5, introductory text, and paragraph 5(a) through paragraph 5(d) as paragraph 5(b), introductory text, and paragraph 5(b)(1) through paragraph 5(b)(4);

b. adding new paragraph 5(a);

c. redesignating paragraph 6, introductory text, and paragraph 6(a) through paragraph 6(d) as paragraph 6(a), introductory text, and paragraph 6(a)(1) through paragraph 6(a)(4);

d. adding new paragraph 6(b); and

e. adding paragraph 17.

The additions read as follows:

Note: The text of Form N-2 does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N-2

* * * * *

Item 18. Management

* * * * *

5.(a) Briefly describe the Registrant's leadership structure, including whether the chairman of the board is an interested person of the Registrant, as defined in section 2(a)(19) of

the 1940 Act (15 U.S.C. 80a-2(a)(19)). If the chairman of the board is an interested person of the Registrant, disclose whether the Registrant has a lead independent director and what specific role the lead independent director plays in the leadership of the Registrant. This disclosure should indicate why the Registrant has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the Registrant. In addition, disclose the extent of the board's role in the Registrant's risk management and the effect that this has on the Registrant's leadership structure.

* * * * *

6. * * *

(b) Unless disclosed in the table required by paragraph 1 of this Item 18 or in response to paragraph 6(a) of this Item 18, indicate any directorships held during the past five years by each director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l) or subject to the requirements of section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the 1940 Act, and name the companies in which the directorships were held.

* * * * *

17. For each director, briefly discuss the specific experience, qualifications, attributes, or skills that qualify that person to serve as a director for the Registrant at the time that the disclosure is made, and as a member of any committee that the person serves on, in light of the Registrant's business and structure. If material, this disclosure should cover more than the past five years, and include information about the person's risk assessment skills, particular areas of expertise, or other relevant qualifications.

* * * * *

18. Form N-3 (referenced in §§239.17a and 274.11b), Item 20 is amended by:

a. redesignating paragraph (d), introductory text, and paragraph (d)(i) through paragraph (d)(iv) as paragraph (d)(ii), introductory text, and paragraph (d)(ii)(A) through paragraph (d)(ii)(D);

b. adding new paragraph (d)(i);

c. redesignating paragraph (e), introductory text, and paragraph (e)(i) through paragraph (e)(iv) as paragraph (e)(i), introductory text, and paragraph (e)(i)(A) through paragraph (e)(i)(D);

e. adding new paragraph (e)(ii); and

f. adding paragraph (o).

The additions read as follows:

Note: The text of Form N-3 does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N-3

* * * * *

Item 20. Management

* * * * *

(d)(i) Briefly describe the Registrant's leadership structure, including whether the chairman of the board is an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder. If the chairman of the board is an interested person of the Registrant, disclose whether the Registrant has a lead independent director and what specific role the lead independent director plays in the leadership of the Registrant. This disclosure should indicate why the Registrant has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the Registrant. In

addition, disclose the extent of the board's role in the Registrant's risk management and the effect that this has on the Registrant's leadership structure.

(e) * * *

(ii) Unless disclosed in the table required by paragraph (a) of this Item 20 or in response to paragraph (e)(i) of this Item 20, indicate any directorships held during the past five years by each director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l) or subject to the requirements of section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the 1940 Act, and name the companies in which the directorships were held.

* * * * *

(o) For each director, briefly discuss the specific experience, qualifications, attributes, or skills that qualify that person to serve as a director for the Registrant at the time that the disclosure is made, and as a member of any committee that the person serves on, in light of the Registrant's business and structure. If material, this disclosure should cover more than the past five years, and include information about the person's risk assessment skills, particular areas of expertise, or other relevant qualifications.

* * * * *

By the Commission.

Elizabeth M. Murphy
Secretary

July 10, 2009

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) of

THE SECURITIES ECHANGE ACT OF 1934

ANNOTATED BY

L. ERIC LOEWE

SVP, GENERAL COUNSEL AND SECRETARY

INSWEB CORPORATION

ASSOCIATION OF CORPROATE COUNSEL ANNUAL MEETING

OCTOBER 18-21, 2009

BOSTON, MASSACHUSSETTS

Form 10-K

Introduction – Periodic Disclosure Obligations under the Securities Exchange Act

The U.S. securities laws require publicly traded companies to disclose information on a periodic basis – annual reports, quarterly reports and current reports. The general form for annual reports is Form 10-K, a comprehensive summary of a public company's performance. Although similarly named, the annual report on Form 10-K is distinct from the glossy "annual report to shareholders", which a company must send to its shareholders in connection with a proxy statement for the annual meeting at which directors are to be elected. The 10-K includes information about the history, organizational structure, executive compensation, equity, subsidiaries, and audited financial statements of the reporting company.

A company is also required to file quarterly reports on Form 10-Q. The 10-Q requires less detailed disclosures than the Form 10-K, and the quarterly financials are unaudited. A Form 10-Q is filed for the first, second and third quarters of a company's fiscal year; information for the fourth quarter of a company's fiscal year is covered by the annual Form 10-K. If certain events occur in the period between filings, for example the resignation of a director or the entry into a material agreement, the company must file a current report on Form 8-K.

Historically, all companies were required to file the Form 10-K within 90 days after their fiscal year end. In recent years, amid calls for accelerated reporting timeframes, the SEC adopted multiple deadlines based entirely on the filer's public float. Thus, "large accelerated filers" (defined as public float in excess of $700 million) must file the report within 60 days after the end of the fiscal year; "accelerated filers" (defined as public float between $75 million and $700 million) must file the report within 75 days after the end of the fiscal year; and other filers must file the report within 90 days after the end of the fiscal year (SEC Release 33-8644).

The process of preparing the Form 10-K usually begins shortly after the fiscal year when the company sends a "Directors and Officers Questionnaire" to each director, officer. The questionnaire solicits information on a wide variety of matters that must be addressed in the 10-K, including confirmation of background information on the directors and officers and the timely filing of ownership reports. A sample D&O Questionnaire is attached as Appendix A.

The Form 10-K and other periodic reports are filed using the EDGAR system. EDGAR, the Electronic Data-Gathering, Analysis, and Retrieval system, performs automated collection, validation, indexing, acceptance, and forwarding of submissions filed by public companies with the SEC. Rules regarding electronic filing requirements are found in Regulation S-T (17 CFR 232.10 et seq.). Companies that plan to file directly with the SEC, rather than through a third-party (e.g. Merrill or Bowne) also

should be familiar with the EDGAR Filer Manual available on the SEC's website at http://www.sec.gov/info/edgar.shtml.

The Form 10-K is separated into four "Parts", and each Part has multiple "Items." For each Item the SEC provides an "Instruction" that describes the information that must be disclosed. Unfortunately, in most cases the Instructions merely reference Regulation S-K (17 CFR Part 229) as the source for detailed information about the contents of each Item.

The SEC also issued ten General Instructions concerning the overall layout and preparation of the 10-K filing, including signatures and incorporation by reference. In addition, Item 10 of Regulation S-K (17 CFR 229.10) provides the rules regarding the use of projections, non-GAAP financial measures, incorporation by reference, and security ratings in a filing. Beginning in 2007, the SEC undertook an initiative to reduce the burden of periodic reporting on smaller public companies. This effort culminated with the creation of a new category of filer – the "smaller reporting company" – with reduced disclosure obligations. Item 10 defines "smaller reporting company: and lists the scaled reporting requirements applicable to them. The complete text of Item 10 can be found in Appendix B to this article.

This article should be viewed as an annotation to the Form 10-K. The discussion for each Item begins with the text of the SEC's instruction for that Item, followed by a comment section that includes a description of the applicable regulatory provisions and practice pointers.

Annotated Form 10-K

PART I

Item 1. Description of Business

Form 10-K Instruction: "Furnish the information required by Item 101 of Regulation S-K (§ 229.101 of this chapter) except that the discussion of the development of the registrant's business need only include developments since the beginning of the fiscal year for which this report is filed."

Comment: This Item includes: a description of the general development of the business (e.g. when and where incorporated, how it is organized, how many employees); financial information about segments (e.g. percentage of revenues derived from each segment); a narrative description of the business (e.g. what the company does or intends to do); financial information about geographic areas (e.g. domestic versus international revenues); and other available information (how and where to find information about the company, including its website).

Although it is tempting to think of this Item as merely an introduction, the Item actually calls for a fair amount of substantive disclosure. The amount of detail that must be provided, of course, will vary from company to company: a large complex organization with international and domestic operations and multiple product lines likely will require a particularly extensive discussion. Topics that are often included in the narrative are:

- Business strategy – including how various business segments are managed
- Principal competitors
- Government regulation that impacts its business

It is important to review carefully the Item 1 material each year, and to update the description to reflect changes in the business.

Item 1A. Risk Factors

Form 10-K Instruction: "Set forth, under the caption "Risk Factors," where appropriate, the risk factors described in Item 503(c) of Regulation S-K (§229.503(c) of this chapter) applicable to the registrant. Provide any discussion of risk factors in plain English in accordance with Rule 421(d) of the Securities Act of 1933 (§230.421(d) of this chapter). Smaller reporting companies are not required to provide the information required by this Item."

Comment: This Item requires disclosure of the significant factors that make transactions in the company's stock speculative or risky. To comply with the "plain English" mandate, each risk factor should be written concisely and organized logically with subheadings or

bullet lists. Most importantly, it should only address real risks that specifically apply to the registrant and explain how the risk affects the registrant.

Common risk factors include:

- Outcome of pending or anticipated litigation
- Protection of intellectual property
- Dependence on a limited number of suppliers or customers
- Impact of specific economic trends (e.g. increasing fuel costs) on the business.

Item 1B. Unresolved Staff Comments

Form 10-K Instruction: "If the registrant is an accelerated filer or a large accelerated filer, as defined in Rule 12b-2 of the Exchange Act (§240.12b-2 of this chapter), or is a well-known seasoned issuer as defined in Rule 405 of the Securities Act (§230.405 of this chapter) and has received written comments from the Commission staff regarding its periodic or current reports under the Act not less than 180 days before the end of its fiscal year to which the annual report relates, and such comments remain unresolved, disclose the substance of any such unresolved comments that the registrant believes are material. Such disclosure may provide other information including the position of the registrant with respect to any such comment."

Comment: Passage of the Sarbanes-Oxely Act in 2002 added a requirement for the SEC's Division of Corporate Finance to undertake some level of review of each reporting company at least once every three years; however, a significant number of companies are reviewed more frequently. The Division's review of the Exchange Act reports is focused on "critical disclosures that appear to conflict with Commission rules or the applicable accounting standards or on disclosure that appears to be materially deficient in explanation or clarity." If the company disagrees with a SEC comment and the disagreement isn't resolved before the filing of the 10-K, the company must describe the nature of the unresolved comments, but they also may include a description of their position. Note that this Item applies to large accelerated filers, accelerated filers and well-known seasoned issuers.

Item 2. Properties

Form 10-K Instruction: "Furnish the information required by Item 102 of Regulation S-K (§ 229.102 of this chapter)."

Comment: This Item calls for information, including location and general character, of the principal plants, mines and other materially important physical properties of the company and its subsidiaries. It also requires the company to describe which business segments use the properties described and whether the property is owned, leased or

subject to any major encumbrance. If the company uses properties in multiple states or countries, a tabular presentation likely will be the best method to respond to the Item.

Item 3. Legal Proceedings

Form 10-K Instruction: "(a) Furnish the information required by Item 103 of Regulation S-K (§ 229.103 of this chapter).

(b) As to any proceeding that was terminated during the fourth quarter of the fiscal year covered by this report, furnish information similar to that required by Item 103 of Regulation S-K (§ 229.103 of this chapter), including the date of termination and a description of the disposition thereof with respect to the registrant and its subsidiaries."

Comment: Item 3 calls for a description of any material pending legal proceedings, including governmental enforcement actions, in which the company or any of its subsidiaries is a party or of which any of their property is the subject. In this Item, "material" means that damages in an individual legal proceeding, or a group of lawsuits having the same factual and legal basis, may exceed 10% of the company's consolidated assets. A truly ordinary and routine lawsuit that is typical for the business may not be material. On the other hand, a relatively small lawsuit might need to be disclosed if the company expects a great number of similar lawsuits that become material when aggregated.

A somewhat different threshold is used to determine if legal proceedings relating to environmental matters are material and must be disclosed. In addition to the 10% of assets test, enforcement actions by a governmental authority relating to the environment must be disclosed unless the company reasonably believes that monetary sanctions, if any, will be less than $100,000.

All legal proceedings disclosed must include the name of the court or agency in which the proceedings are pending, the date instituted, the identification of the principal parties, and a description of the facts underlying the suit and the relief sought.

Item 4. Submission of Matters to a Vote of Security Holders

Form 10-K Instruction: "If any matter was submitted during the fourth quarter of the fiscal year covered by this report to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information: (a) The date of the meeting and whether it was an annual or special meeting. (b) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting. (c) A brief description of each other matter voted upon at the meeting and state the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes as to each such

matter, including a separate tabulation with respect to each nominee for office. (d) A description of the terms of any settlement between the registrant and any other participant (as defined in Instruction 3 to Item 4 of Schedule 14A (17 CFR 240.14a-101) terminating any solicitation subject to Rule 14a-12(c), including the cost or anticipated cost to the registrant."

Comment: Reporting the outcome and other facts about shareholders meetings held during a quarter is a required element of the quarterly filings on Form 10-Q. Since no 10-Q is filed for the fourth quarter, this Item calls for that information to be included in the Form 10-K. However, companies typically file their 10-K before the annual meeting of shareholders; therefore this Item is usually answered "None" unless a special meeting was held during the fourth quarter

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Form 10-K Instruction: "(a) Furnish the information required by Item 201 of Regulation S-K (17 CFR 229.201) and Item 701 of Regulation S-K (17 CFR 229.701) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act. If the Item 701 information previously has been included in a Quarterly Report on Form 10-Q or in a Current Report on Form 8-K (17 CFR 249.308), it need not be furnished.

(b) If required pursuant to Rule 463 (17 CFR 230.463) of the Securities Act of 1933, furnish the information required by Item 701(f) of Regulation S-K (§229.701(f) of this chapter).

(c) Furnish the information required by Item 703 of Regulation S-K (§229.703 of this chapter) for any repurchase made in a month within the fourth quarter of the fiscal year covered by the report. Provide disclosures covering repurchases made on a monthly basis. For example, if the fourth quarter began on January 16 and ended on April 15, the chart would show repurchases for the months from January 16 through February 15, February 16 through March 15, and March 16 through April 15."

Comment: The key portions of the referenced portions of Regulation S-K require the company to: identify the principal United States market or markets in which each class of its common stock is traded. In some cases, the company may simply state that there is no established public trading market for a class of its stock. However, if the principal United States market is an exchange, the company must provide the high and low sales prices for the equity for each full quarterly period within the two most recent fiscal years and any subsequent interim period for which financial statements are included.

The section also requires the company to:

- state the approximate number of holders of each class of common equity as of the latest practicable date.
- state the frequency and amount of any cash dividends declared on each class of its common equity and also describe restrictions on the payment of dividends. If the company does not have a record of paying dividends even when it has sufficient earnings, the company should disclose whether they have an intention to pay dividends in the future; and
- provide a graph comparing the yearly percentage change in the company's cumulative total shareholder return on a class of common stock registered to a recognized stock market index (e.g. S&P 500) and a peer group.

Unless it has already been provided in a Form 10-Q or Form 8-K, the company must also furnish information about the company's unregistered sales of its securities within the past three years.

Notwithstanding the Instruction to furnish all of the information called for by Item 201 of Regulation S-K, the SEC recently clarified that the Item 201(d) disclosure (equity compensation plans) should be included in Part III, Item 12. (See Staff Compliance and Disclosure Interpretations dated May 29, 2009.)

Also, the performance graph required by Item 201(e) is only required in the 10-K if the company is using the 10-K to fulfill the requirements of Exchange Act Rule 14a-3 or Rule 14c-3 relating to the annual report to shareholders that accompanies the proxy statement for shareholder meetings at which directors will be elected (the so-called "Form 10-K Wrap"). Unless the company is using a "Form 10-K wrap" approach to satisfy the requirements of Rule 14a-3 or Rule 14c-3, the inclusion of the performance graph in the Form 10-K would not satisfy these requirements.

Item 6. Selected Financial Data

Form 10-K Instruction: "Furnish the information required by Item 301 of Regulation S-K (§229.301 of this Chapter)."

Comment: This Item contains tables of selected financial data for at least each of the last five fiscal years. The regulation explains that the purpose of the selected financial data "shall be to supply in a convenient and readable format selected financial data which highlight certain significant trends in the company's financial condition and results of operations." At a minimum, the tables will include: net sales or operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock (including long-term debt, capital leases, and redeemable preferred stock as defined in Rule 5-02(27)(a) of Regulation S-X ; and cash dividends declared per common share. However, in keeping with the intent of the Regulation, the company should include other data that is important to an understanding of the company's financial condition and results of operations. Footnotes may be required to explain factors that affect the

comparability of the data between periods.

Item 7. Management's Discussion and Analysis of Financial Condition and results of Operations

Form 10-K Instruction: "Furnish the information required by Item 303 of Regulation S-K (§229.303 of this Chapter)."

Comment: One of the key portions of the Form 10-K (and Form 10-Q), the MD&A gives management's views on the financial and operating results and important trends impacting the company. Year-to-year and other periodic comparisons are used to highlight the significance and direction of key data points. Other portions of the Form 10-K include detailed tables of numerical data, but the MD&A is an opportunity for management to explain the principal factors underlying the results and describe the future outlook for the business.

The following topics are specifically required to be addressed in the MD&A:

- Liquidity
- Capital resources.
- Results of operations.
- Off-balance sheet arrangements.
- Tabular disclosure of contractual obligations.

The SEC at times has been critical of the MD&A disclosures. Specifically, the SEC criticized MD&A disclosures that simply recited data supplied in the financial statements and elsewhere. The emphasis of MD&A should be on the "analysis" of the company's past performance, and prospects for the future, such that investors can "see the company through the eyes of management."

Item 7A. Quantitative and Qualitative Disclosures about Market Risk

Form 10-K Instruction: "Furnish the information required by Item 305 of Regulation S-K (§229.305 of this Chapter)."

Comment: The quantitative information about market risk (including interest rate risk, foreign currency exchange rate risk, and commodity price risk) can be provided using one of the following three disclosure alternatives:

- Table of market risk sensitive instruments
- Sensitivity analysis disclosures
- Value at risk disclosures

In preparing this quantitative information, companies are asked to categorize market risk sensitive instruments into instruments entered into for trading purposes and

instruments entered into for purposes other than trading purposes. Separate quantitative information should be given for each category, including material information relating to interest rate risk, foreign currency exchange rate risk, commodity price risk, and other relevant market risks, such as equity price risk.

If applicable, companies should also describe and discuss material limitations that cause the market risk information not to reflect fully the net market risk exposures of the entity. Finally, it is important for the company to discuss the reasons for material quantitative changes in market risk exposures between the current and preceding fiscal years.

Item 7A also requires qualitative information about market risk, which includes a description of the company's primary market risk exposures and how those exposures are and will be managed.

Item 8. Financial Statements and Supplementary Data

(a) Form 10-K Instruction: "(a) Furnish financial statements meeting the requirements of Regulation S-X (§ 210 of this chapter), except § 210.3-05 and Article 11 thereof, and the supplementary financial information required by Item 302 of Regulation S-K (§ 229.302 of this chapter). Financial statements of the registrant and its subsidiaries consolidated (as required by Rule 14a-3(b)) shall be filed under this item. Other financial statements and schedules required under Regulation S-X may be filed as "Financial Statement Schedules" pursuant to Item 15, Exhibits, Financial Statement Schedules, and Reports on Form 8-K, of this form.

(b) A smaller reporting company may provide the information required by Article 8 of Regulation S-X in lieu of any financial statements required by Item 8 of this Form."

Comment: In Item 8, the company provides the customary audited financial statements (i.e. income statement, balance sheet, statement of stockholders equity, and statement of cash flows), and footnotes, all presented in accordance with Regulation S-X (17 CFR Part 210) and GAAP.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

Form 10-K Instruction: "Furnish the information required by Item 304(b) of Regulation S-K (§ 229.304(b) of this chapter)."

Comment: In most cases the company will be able to report "None" for this Item. However, there is always a concern that a change in accountants, whether by resignation, termination, or declining to stand for re-election, signals a disagreement

with the former accountant over financial reporting. Consequently, this section requires the company to disclose the existence and nature of any disagreement with the former accountant and also state the effect on its financial statements if the former accountants' position had been followed. This disclosure also is required when a change in accountants occurs after a reportable event (e.g. the former accountant's having advised the company that the internal controls necessary for the company to develop reliable financial statements do not exist).

The term "disagreements" encompasses more than formal disputes. The Instructions to Item 304 of Regulation S-K (17 CFR 229.304) state that the term includes "any difference of opinion concerning any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure which (if not resolved to the satisfaction of the former accountant) would have caused it to make reference to the subject matter of the disagreement in connection with its report." However, the term "disagreements" does not include initial differences of opinion that are later resolved to the former accountant's satisfaction by additional facts or information.

Item 9A. Controls and Procedures

Form 10-K Instruction: "Furnish the information required by Item 307 and 308 of Regulation S-K (§229.307 and §229.308 of this chapter)."

Comment: This Item requires a statement by the CEO and CFO that they have evaluated the company's disclosure controls and procedures and states their conclusions whether the disclosure controls and procedures are effective to provide assurance that all required information relating to the company is included in the annual report. The CEO and CFO also must disclose any material changes in the company's internal control over financial reporting since the last periodic report. If a company does not have a CEO or CFO, the disclosure must be made by persons performing similar functions.

Item 9A(T). Controls and Procedures

Form 10-K Instruction: "(a) If the registrant is neither a large accelerated filer nor an accelerated filer as those terms are defined in §240.12b-2 of this chapter, furnish the information required by Items 307 and 308T of Regulation S-K (17 CFR 229.307 and 229.308T) with respect to an annual report that the registrant is required to file for a fiscal year ending on or after December 15, 2007 but before December 15, 2009. (b) This temporary Item 9A(T) will expire on June 30, 2010."

Comment: This is a temporary Item created by the phased effective dates of the regulations relating to disclosure of controls and procedures. It applies to smaller reporting companies.

The SEC's Division of Corporate Finance takes the view that failing to provide management's report on the effectiveness of the company's disclosure controls in the Form 10-K is a material deficiency and the company would not be timely or current in its Exchange Act reporting. As a result, the company would not be eligible to file new Form S-3 or Form S-8 registration statements, Rule 144 would not be available to shareholders, and the company would have to suspend sales under already effective registration statements. Note that it is the failure to provide the report, not the conclusion reached by management in the report about the effectiveness of the disclosure controls, that causes the Form 10-K to be materially deficient in the eyes of the SEC.

Item 9B. Other Information

Form 10-K Instruction: "The registrant must disclose under this item any information required to be disclosed in a report on Form 8-K during the fourth quarter of the year covered by this Form 10-K, but not reported, whether or not otherwise required by this Form 10-K. If disclosure of such information is made under this item, it need not be repeated in a report on Form 8-K which would otherwise be required to be filed with respect to such information or in a subsequent report on Form 10-K."

Comment: This Item requires companies to include in the 10-K any information that should have been filed as a Current Report on Form 8-K, regardless of whether the 10-K would otherwise require the disclosure. To avoid this acknowledgement of non-compliance, companies should implement internal procedures (e.g. weekly officer disclosure meetings) to ensure that information is timely disclosed according to the rules governing Form 8-K.

Part III

Note: The information required by Part III may be, and often is, omitted from the Form 10-K. Instead, it typically is incorporated by reference from a definitive proxy statement pursuant to Regulation 14A filed within 120 days after the end of the fiscal year covered by the Form 10-K.

Item 10. Directors, Executive Officers and Corporate Governance

Form 10-K Instruction: "Furnish the information required by Items 401, 405, 406 and 407(c)(3), (d)(4) and (d)(5) of Regulation S-K (§ 229.401, § 229.405, § 229.406 and § 229.407(c)(3), (d)(4) and (d)(5) of this chapter)."

Comment: This Item focuses on information relating to the directors, executive officers, and a number of corporate compliance matters. The company is required to provide the

name, age, and a description of the background of each director, director nominee and each executive officer. The background information must cover the most recent five year period and describe the person's principal occupations and employment, any other directorships, and involvement in any bankruptcy, criminal, or legal proceeding. In addition, the company must disclose any arrangement or understanding by which an individual serves or will serve as an executive officer or director. For example, a significant shareholder may have the right to name one or more directors. Also, the SEC Compliance and Disclosure Interpretations state that companies must supply the name, age and background information of each "significant employee," if such employee is a *de facto* executive officer.

Other corporate compliance matters dealt with in this Item are:

- Identification of any director, officer, or 10% shareholder that failed to timely file the ownership reports (i.e. Forms 3, 4 or 5) and to also state the number of late filed reports.
- Existence of a code of ethics that applies to the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If no code of ethics has been adopted, the company must explain why it has not done so.
- Description of any material changes to its procedures for stockholders to recommend nominees to the board of directors.
- Identification of each member on its separately-designated standing audit committee, or a committee performing similar functions. The company also must identify the financial expert on the audit committee. Alternatively, the company must explain why it does not have an audit committee or a financial expert.

Item 11. Executive Compensation

Form 10-K Instruction: "Furnish the information required by Item 402 of Regulation S-K (§ 229.402 of this chapter) and paragraph (e)(4) and (e)(5) of Item 407 of Regulation S-K (§ 229.407(e)(4) and (e)(5) of this chapter)."

Comment: In this Item, the company provides detailed information about executive compensation in a number of tables: Summary, Grants of plan-based awards, Option exercises and stock vested, Pension Benefits, Nonqualified defined contribution and other nonqualified deferred compensation plans, outstanding equity awards, and directors' compensation. The rules provide very specific instructions relating to the format and contents of these tables. The company, however, is also required to describe executive compensation in a narrative form; this is the Compensation Discussion and Analysis ("CD&A"). Like the MD&A, it provides shareholders with information about how the executive compensation plan is designed, including the metrics that are used to measure executive performance and the data that was relied upon to set thresholds. It also includes information about payments upon a change in control.

A key issue reporting companies have with the CD&A is the perceived harm from disclosure of performance targets. The SEC Compliance and Disclosure Interpretations state that the *only basis* for non-disclosure of material performance targets is competitive harm. Merely asserting competitive harm is not sufficient; a full competitive harm analysis must be undertaken based on the established standards for what constitutes confidential commercial or financial information. These standards have largely been addressed in case law, including *National Parks and Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); *National Parks and Conservation Association v. Kleppe*, 547 F.2d 673 (D.C. Cir. 1976); and *Critical Mass Energy Project v. NRC*, 931 F.2d 939 (D.C. Cir. 1991), *vacated & reh'g en banc granted*, 942 F.2d 799 (D.C. Cir. 1991), *grant of summary judgment to agency aff'd en banc*, 975 F.2d 871 (D.C. Cir. 1992). When a material performance target is not disclosed, the company must discuss how difficult it will be for the executive or how likely it will be for the company to achieve the undisclosed target levels.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

Form 10-K Instruction: "Furnish the information required by Item 201(d) of Regulation S-K (§ 229.201(d) of this chapter) and Item 403 of Regulation S-K (§ 229.403 of this chapter)."

Comment: This Item will include a table that provides aggregated information for the most recent fiscal year about the company's compensation plans (including individual compensation arrangements) under which equity securities of the company are authorized for issuance. The information in the table is separated into: all compensation plans previously approved by security holders; and all compensation plans not previously approved by security holders. For each category, the table contains three columns: the number of securities to be issued upon exercise; the weighted-average exercise price of the outstanding options, warrants and rights; and the number of securities remaining available for future issuance under the plan, excluding the securities reflected in the first column.

The Item also requires disclosure, in separate tables, of the security ownership of certain beneficial owners and the security ownership of management. Some or all of a person's derivative security interests (e.g. stock options) will be included based on the definition of "beneficially owned" set out in Rule 13d-3(d)(1) under the Exchange Act, which also contains instructions for the unique calculation of the percentages displayed in the table.

Item 13. Certain Relationships and Related Transactions, and Director Independence

Form 10-K Instruction: "Furnish the information required by Item 404 of Regulation S-K (§ 229.404 of this chapter) and Item 407(a) of Regulation S-K (§ 229.407(a) of this chapter)."

Comment: This Item requires disclosure of a number of other corporate governance matters:

- Description of transactions between the company and related persons (e.g. directors or officers) in which the amount involved exceeds $ 120,000, and in which any related person had or will have a direct or indirect material interest.
- Description of the company's policies regarding the review, approval or ratification of transactions with related persons.
- Identification of which directors are independent

Item 14. Principal Accounting Fees and Services

Form 10-K Instruction: "Furnish the information required by Item 9(e) of Schedule 14A (§240.14a-101 of this chapter).

(1) Disclose, under the caption Audit Fees, the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant's annual financial statements and review of financial statements included in the registrant's Form 10-Q (17 CFR 249.308a) or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years.

(2) Disclose, under the caption Audit-Related Fees, the aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit or review of the registrant's financial statements and are not reported under Item 9(e)(1) of Schedule 14A. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(3) Disclose, under the caption Tax Fees, the aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax advice, and tax planning. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(4) Disclose, under the caption All Other Fees, the aggregate fees billed in each of the last two fiscal years for products and services provided by the principal

accountant, other than the services reported in Items 9(e)(1) through 9(e)(3) of Schedule 14A. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(5) (i) Disclose the audit committee's pre-approval policies and procedures described in paragraph (c)(7)(i) of Rule 2-01 of Regulation S-X. (ii) Disclose the percentage of services described in each of Items 9(e)(2) through 9(e)(4) of Schedule 14A that were approved by the audit committee pursuant to paragraph (c)(7)(i)(C) of Rule 2-01 of Regulation S-X.

(6) If greater than 50 percent, disclose the percentage of hours expended on the principal accountant's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees."

Comment: Concern about the independence of the company's outside auditors, who earn substantial fees from the audit, tax and other accounting matters, led to very detailed rules governing the relationship. This Item addresses the disclosure of information concerning compliance with those rules.

PART IV

Item 15. Exhibits, Financial Statement Schedules

Form 10-K Instruction: "(a) List the following documents filed as a part of the report:

> **(1) All financial statements;**
>
> **(2) Those financial statement schedules required to be filed by Item 8 of this form, and by paragraph (b) below.**
>
> **(3) Those exhibits required by Item 601 of Regulation S-K (§ 229.601 of this chapter) and by paragraph (b) below. Identify in the list each management contract or compensatory plan or arrangement required to be filed as an exhibit to this form pursuant to Item 15(b) of this report.**

(b) Registrants shall file, as exhibits to this form, the exhibits required by Item 601 of Regulation S-K (§ 229.601 of this chapter).

(c) Registrants shall file, as financial statement schedules to this form, the financial statements required by Regulation S-X (17 CFR 210) which are excluded from the annual report to shareholders by Rule 14a-3(b) including (1) separate financial statements of subsidiaries not consolidated and fifty percent or less owned persons; (2) separate financial statements of affiliates whose securities are pledged as collateral; and (3) schedules."

Comment: Item 601 of regulation S-K specifies the categories of documents that must be included as exhibits, including material contracts. Special attention should be given to any contract that involves the company and an executive officer or director, including any compensatory plan, as these are always material. Documents that were previously disclosed in a Form 8-K or 10-Q can be incorporated by reference. There are special rules and procedures for obtaining confidential treatment of portions of documents that are included in a securities filing (see 17 CFR 240.24b-2 and 17 CFR 200.80).

Item 601(a)(4) provides that if a material contract "is executed or becomes effective during the reporting period," then it shall be filed as an exhibit, even if the contract was not material at the end of the reporting period.

Appendix A
Sample Directors and Officers Questionnaire

1. BIOGRAPHICAL INFORMATION. (All Directors and Executive Officers) Please review the biographical information attached as Exhibit A and indicate whether or not there are any necessary changes to your biographical summary.

2. GENERAL INFORMATION. (All Directors and Executive Officers)
   A. Your date of birth: _____, ____
   B. Is there any arrangement between you and any other person(s) (naming such person(s)) pursuant to which you were or are to be selected as a director or executive officer, excluding any arrangements with persons acting solely in their capacities as directors or officers of the Company?
   C. Family Relationships. (All Directors and Executive Officers) Please indicate below whether there are any family relationships between you and any director or executive officer of the Company or any person nominated or selected by the Company to become a director or executive officer. (NOTE: For the purposes of this question, "family relationship" means any relationship by blood, marriage or adoption not more remote than first cousin.)
   D. Other Directorships. (Directors Only) Listed below are other directorships you identified on last year's questionnaire. Please review this list and identify every other company of which you are currently a director, indicate whether you serve on the audit committee and, for each such company, indicate, if you know, whether the company has a class of securities that is publicly traded or if the company is otherwise required to file periodic reports with the SEC, or is registered as an investment company under the Investment Company Act of 1940.
   E. Personal Involvement in Certain Legal Proceedings. (All Directors and Executive Officers) In answering the following questions, please describe all of the following events which have occurred within the past five years:

      NOTE: For the purposes of computing the five-year period referred to in this question, the date of a reportable event shall be the date on which the final order, judgment or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments or decrees have lapsed. With respect to bankruptcy petitions, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final.

F. Bankruptcy/Insolvency. Have you filed, or had filed against you, a petition under the Federal Bankruptcy Code or any state insolvency law? Has a court appointed a receiver, fiscal agent or similar officer for business or property, or for any partnership, corporation, or business association for which you were a general partner or executive officer, during or within two years after your term of office?

G. Criminal Proceedings. Have you been convicted of a crime or named in a criminal proceeding which is currently pending (excluding traffic violations and other minor offenses)?

H. Court Injunction Against Certain Business/Financial Activities. Have you been the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction permanently or temporarily enjoining you from, or otherwise limiting, any of the following activities:

(i)Acting as (1) a person regulated by the Commodity Futures Trading Commission ("CFTC") or as an associate of any such person, (2) an investment adviser, underwriter, broker or dealer in securities, or (3) an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company; or engaging in or continuing any conduct or practice in connection with any such activity; or
(ii)Engaging in any type of business practice; or
(iii)Engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of federal or state securities laws or federal commodities laws?

I. Suspension (by Federal or State Authorities) for Security/ Commodity Transaction Activities. Were you the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any federal or state authority barring, suspending or otherwise limiting for more than 60 days your right to engage in any activity described in subparagraph (A) above or to be associated with person engaged in any such activity?

J. Violations of Securities/Commodities Laws. Have you been found by a court in a civil action or by the Securities and Exchange Commission or the CFTC to have violated any federal or state securities law or federal commodities law, which judgment or finding has not been subsequently reversed, suspended or vacated?

3. LEGAL PROCEEDINGS OF THE COMPANY. (All Directors and Executive Officers)

A. *Exhibit B* lists the current legal proceedings involving the Company. To your knowledge, is there any other legal proceeding (including administrative and tax proceedings and investigations by governmental authorities) pending or contemplated to which the Company or any

subsidiary is (or would be) a party or of which any of their property is (or would be) the subject? .

B. Adverse Interest. Is there any legal proceeding or investigation set forth on *Exhibit B* or in your response to Question 5(a) above in which you have, or any *associate* of yours has, a material interest adverse to that of the Company or any subsidiary?

4. DIRECTORS' COMPENSATION.
   A. Standard Arrangements. *Exhibit C* sets forth information about the standard arrangements concerning the Company's compensation of directors. Please review *Exhibit C* in answering the questions below and provide any additional information or corrections that may be required to make the information accurate and complete:
   B. Other Arrangements. (Directors Only) Have you received any other compensation for any service as a director during the Company's last fiscal year, other than any amount specified by any standard arrangement in effect for directors generally, including any amounts received under consulting contracts entered into in consideration of your service as a director?

5. EMPLOYMENT CONTRACTS AND TERMINATION OF EMPLOYMENT AND CHANGE IN CONTROL ARRANGEMENTS. (All Directors and Executive Officers)
   A. Employment Contract. *Exhibit D* hereto sets forth information about the terms of all employment contracts between executive officers and the Company or any subsidiary. Please review *Exhibit D* and indicate if there are any changes.
   B. Termination of Employment and Change In Control Arrangements. Other than as described in Exhibit D, please describe any compensatory plan or *arrangement*, other than defined benefit, pension or retirement plans, pursuant to which you will receive payments upon your resignation, retirement or other termination of employment with the Company or from a change in control of the Company or a change in your responsibilities following a change in control of the Company. Include the amount of payments to be received. If such provisions are part of any compensation plan, such as a stock option plan, state the title of the plan.

6. COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION. (All Directors and Executive Officers)
   If you are aware of any of the following events or relationships that existed during the last fiscal year, please describe below:
   - A current or former officer or employee of the Company participated during the fiscal year in any deliberations of the Company's Board of Directors concerning executive officer compensation.

- An executive officer of the Company served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of such a committee, the board) of another entity, one of whose executive officers was then serving as a member of the Company's Compensation Committee.
- An executive officer of the Company served as a director of another entity, one of whose executive officers served on the Company's compensation committee.
- An executive officer of the Company served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of such a committee, the board) of another entity, one of whose executive officers served as a director of the Company.

7. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS. (All Directors and Executive Officers**)**

A. Indebtedness. Have you, any *associate* or any *family member* been indebted to the Company or any subsidiary at any time since the beginning of the Company's last fiscal year?
If "Yes", please state as to each such person (i) the largest aggregate amount of indebtedness outstanding at any time during such period, (ii) the nature of the indebtedness and of the transaction in which it was incurred, (iii) the amount thereof outstanding as of the most recent date practicable, and (iv) the rate of interest paid or charged thereon:

B. Material Interests in Transactions with Company. Please describe briefly any transaction since the beginning of the Company's last fiscal year, or any currently proposed transaction, to which the Company or any subsidiary was or is to be a party, in which the amount involved exceeds $60,000, and in which any of the following persons had or is to have a material interest (either directly or indirectly through, e.g., such person's position as a 10%-or-greater equity owner, executive officer or general partner of a party to the transaction).
(i) Any director (or nominee for election as a director) or executive officer of the Company;
(ii) Any security holder who is known to you to own of record or *beneficially* more than 5% of any class of the outstanding voting securities of the Company; or
(iii) Any *family member* of the foregoing.
NOTE: Examples of possible interests which must be disclosed are where a specified person (i) was, is, or proposes to be an officer, director or employee of a major creditor, customer or supplier of the Company or has an interest in any such creditor, customer or supplier; (ii) is a seller, buyer, lessee or lessor of property to or from the Company or any subsidiary; (iii) is the lender or guarantor of a loan made to, or are a borrower from, the Company or any subsidiary; (iv) is

the debtor under an obligation which the Company or any subsidiary guarantees; or (v) is a buyer of securities or evidences of indebtedness from the Company or any subsidiary.

If applicable, please name such person(s), including yourself, and state the person's relationship to the Company, the nature of the person's interest in the transaction and the amount of such interest (without regard to the profit or loss involved):

C. Material Contracts. Please describe any contracts or agreements (unless described elsewhere in this Questionnaire) to which you or any of your *associates* is a party (1) which are to be performed in whole or in part in the future or (2) which were made within the last two years, and to which the Company or any subsidiary is a party, or in which the Company or any subsidiary has a beneficial interest, or to which the Company or any subsidiary has succeeded by assumption or assignment.

D. Business Relationships. (Directors Only)
Please indicate whether, at any time since the beginning of the Company's last fiscal year, you have been an executive officer of or own or have owned, of record or *beneficially*, in excess of 10% of the equity in any for-profit or not-for-profit organization which has had any commercial relationship with the Company (including its subsidiaries, if any):

(i) Legal Services. Are you or have you been a member of, or of counsel to, a law firm that the Company has retained since the beginning of the Company's last fiscal year or proposes to retain during the current fiscal year?

(ii) Investment Banking. Are you or have you been a partner or executive officer of any investment banking firm which has performed services for the Company since the beginning of the Company's last fiscal year, or which the Company proposes to have perform services during the current fiscal year?

E. Other Relationships. Please state below whether you are aware of any other relationships that are substantially similar in nature and scope to those listed in Questions 7 (a) through (c).

8. DIRECTOR INDEPENDENCE (DIRECTORS ONLY).
The following items relate to whether an individual may be deemed to be an independent director for purposes of the listing standards of The NASDAQ Stock Market.

(i) Past Employment. Have you been employed by the Company or any parent or subsidiary at any time within the past three years:

(ii) Family Member Serving as Executive. Has any *family member* been employed as an executive officer of the Company or any parent or subsidiary at any time within the past three years:

(iii) Payments. Have you or any *family member* accepted any payments of any kind from the Company or any parent or subsidiary in excess of $120,000 during any period of twelve consecutive months within the three prior fiscal years of the Company, except (i) compensation for service as a member of the Company's Board of Directors or a committee thereof, (ii) compensation paid to a *family member* who is not an executive officer or (iii) benefits under a tax-qualified retirement plan or non-discretionary compensation:

(iv) Consulting or Advisory Fees. Have you or a family member accepted any consulting, advisory, or any other compensatory fee from the Company or any parent or subsidiary since the beginning of the last fiscal year, except compensation for service as a member of the Company's Board of Directors or a committee thereof:

(v) Related Party Transactions. To the extent not described in response to Question 10 above, during the current fiscal year or any of the previous three fiscal years, have you or any *family member* been a partner in, or a controlling shareholder or executive officer of, any for-profit or nonprofit organization that made payments to or received payments from the Company or any parent or subsidiary for property or services in excess of the greater of $200,000 or 5% of the recipient's gross revenues for such fiscal year?

(vi) Compensation Committee Interlocks. To the extent not described in response to Question 9 above, at any time during the past three years, have you or any *family member* been an executive officer of another company where any of the Company's then current executives served on such other company's compensation committee?

(vii) Affiliation with Outside Auditor. Do you have a business relationship with any Ernst & Young Entity, other than one pursuant to which an EY Entity performs professional services, or an ownership interest of five percent or more in, or serve as an officer or director of, any entity (public or private) that has a business relationship with any EY Entity? If so, please specify the name of the person or entity that has the business relationship, a description of the business relationship, and the dollar amounts involved.

(viii) Other Relationships. Are you are aware of any other relationships to which you or any *family member* are a party that could potentially interfere with your exercise of independent judgment as a member of the Company's Board of Directors or any committee thereof, please describe?

9. ELIGIBILITY TO SERVE ON COMPENSATION COMMITTEE AS "OUTSIDE DIRECTOR". (NON-EMPLOYEE DIRECTORS ONLY)
   To determine whether you would qualify as an "outside director" for purposes of Section 162(m) of the Internal Revenue Code, please state and describe below whether:

   - In the last year, have you received any compensation from the Company for prior services as an employee (including compensation resulting from stock options granted to you as an employee, such as upon the exercise of a nonstatutory stock option or a disqualifying disposition of an incentive stock option), other than benefits under a tax-qualified retirement plan?
   - Have you ever served as an officer of the Company?
   - Do you have a beneficial ownership interest of 5% or more of any other entities to which, based on your actual knowledge or reasonable certainty, the Company has paid any remuneration or become contractually obligated to do so since the beginning of the Company's last fiscal year?
   - Since the beginning of the last fiscal year, have you received remuneration from the Company directly or indirectly, or the Company has become contractually obligated to pay such remuneration (including, to your knowledge, remuneration paid or to be paid to an entity listed above under paragraph (c) or any entity where you were employed or self-employed at the time the Company paid or became contractually obligated to pay such remuneration), other than as compensation for service as a member of the Board of Directors or any committee thereof?

10. FINANCIAL EXPERTISE (NON-EMPLOYEE DIRECTORS ONLY).
    The following items relate to an individual's qualifications as a member of the Audit Committee of the Board of Directors.
    A. Financial and Accounting Experience. Please describe any positions you have held, or any qualifications or experience you have, that required an understanding of or provided experience with respect to (i) generally accepted accounting principles ("GAAP") and financial statements, (ii) assessment of the application of GAAP in connection with accounting for estimates, accruals and reserves, (iii) preparation, auditing, analysis or evaluation of financial statements that presented a breadth and level of complexity generally comparable to the breadth and complexity of the Company's financial statements, or supervision of another person engaged in such activities, (iv) internal controls and procedures for financial reporting or (v) audit committee functions:
    B. Financial and Accounting Education, Certifications and Licenses. Please describe any education you have had, and any professional

certifications, licenses or memberships you hold, relating to finance or accounting:

11. SECURITY OWNERSHIP. (All Directors and Executive Officers)
    A. Beneficial Ownership. *Exhibit E* contains a summary of Form 4s filed during the last fiscal year. Please compare *Exhibit E to* your personal records and indicate if the information is accurate.
    B. In addition to the number of shares you will have the *right to acquire* directly under the Company's stock option plans, are there any other arrangements pursuant to which you will have the *right to acquire* indirectly, or to acquire "voting power" or "investment power" with respect to, shares of the Company's Common Stock:
    C. 5% Stockholders. Please review the list of stockholders who own 5% or more of the outstanding shares of the Company's stock in *Exhibit F*. Please identify any other person, entity, or group who, to your knowledge, holds *beneficial ownership* of at least 5% of the outstanding shares of the Company's Common Stock (238,993 shares as of February 4, 2009), or any person or entity who, to your knowledge, has the right to acquire beneficial ownership of at least 5% of the Company's Common Stock:
    D. Change in Control. Please describe any *arrangement* known to you (including any pledge by any person of securities of the Company known to you), the operation of which may at a subsequent date result in a change in *control* of the Company.
    E. Voting Arrangements. Please state whether you know or have any reason to believe that 5% or more of any class of the Company's voting securities is held or is to be held subject to any voting agreement, voting trust or other similar agreement, and if so, state the amount of such securities so held or to be held and the duration of the agreement, and, if known, give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the agreement:

12. FORM 5. (All Directors and Executive Officers) Certain transactions that are exempt from a Form 4 filing, such as gifts and inheritances and certain small acquisitions made other than from the Company, must be reported once a year on a Form 5 if not previously reported voluntarily on Form 4. In addition, any transactions or holdings that should have been reported during the fiscal year on Form 3 or 4, but were not so reported, must be reported on Form 5.

13. BOARD AND COMMITTEE MEETINGS Attached to this questionnaire as *Exhibit G* is a list of all meetings of the Board of Directors and committees of the Board held during the Company's last fiscal year, indicating which of those meetings you attended, according to the Company's records. Please review and indicate whether the information contained in *Exhibit G* is accurate.

14. CERTAIN ACTIVITIES. (All Directors and Executive Officers) If you know of any of the following matters, please describe the circumstances surrounding such matter: any political contributions by the Company or from its assets, whether legal or illegal; the disbursement or receipt of Company funds outside the normal system of accountability; the improper or inaccurate recording of payments and receipts on the books of the Company or any subsidiary; payments, whether direct or indirect, to or from any foreign or domestic government, official, employee (excluding anyone whose duties are essentially ministerial or clerical), agent, political party, official thereof or candidate either (i) to influence an act or decision by the payee in an official capacity (including a decision not to perform official functions) or (ii) to induce him to use his influence with any governmental instrumentality in order to assist the payor in obtaining, retaining or directing business, or any transaction which has as its intended effect the transfer of Company assets for the purpose of effecting such a payment; or any other matters of a similar nature involving disbursements of Company assets.

15. FURTHER INFORMATION. (All Directors and Executive Officers) The regulations of the Securities and Exchange Commission require that, if otherwise disclosable, the information you have furnished in response to the questions above be included in the Proxy Statement and/or Form 10-K. If you know of any additional information necessary to make the answers you have given above not misleading in the light of the circumstances under which your answers were made, please furnish it below.

The undersigned has furnished the information called for in this Questionnaire expressly for use in connection with the preparation and filing of the Company's Proxy Statement and Form 10-K. The undersigned represents and warrants to any persons who may be liable in respect of the preparation of such documents, that the answers given in the Questionnaire are correctly stated to the best of the knowledge, information and belief of the undersigned.

The undersigned will review all drafts and amendments to the Proxy Statement and Form 10-K received by the undersigned and promptly notify the Company of any change in such answers that may occur.

Date: _____ Signature: _____

Appendix B
17 CFR 229.10

[Code of Federal Regulations]
[Title 17, Volume 2]
[Revised as of April 1, 2008]
From the U.S. Government Printing Office via GPO Access
[CITE: 17CFR229.10]

[Page 410-416]

TITLE 17--COMMODITY AND SECURITIES EXCHANGES

CHAPTER II--SECURITIES AND EXCHANGE COMMISSION

PART 229_STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933,

Subpart 229.1_General

Sec. 229.10 (Item 10) General.

(a) Application of Regulation S-K. This part (together with the General Rules and Regulations under the Securities Act of 1933, 15 U.S.C. 77a et seq., as amended (Securities Act), and the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq., as amended (Exchange Act) (parts 230 and 240 of this chapter), the Interpretative Releases under these Acts (parts 231 and 241 of this chapter) and the forms under these Acts (parts 239 and 249 of this chapter)) states the requirements applicable to the content of the non-financial statement portions of:

(1) Registration statements under the Securities Act (part 239 of this chapter) to the extent provided in the forms to be used for registration under such Act; and

(2) Registration statements under section 12 (subpart C of part 249 of this chapter), annual or other reports under sections 13 and 15(d) (subparts D and E of part 249 of this chapter), going-private transaction statements under section 13 (part 240 of this chapter), tender offer statements under sections 13 and 14 (part 240 of this chapter), annual reports to security holders and proxy and information statements under section 14 (part 240 of this chapter), and any other documents required to be filed under the Exchange Act, to the extent provided in the forms and rules under that Act.

(b) Commission policy on projections. The Commission encourages the use in documents specified in Rule 175 under the Securities Act (Sec. 230.175 of this chapter) and Rule 3b-6 under the Exchange Act (Sec. 240.3b-6 of this chapter) of management's projections of future economic performance that have a reasonable basis and are presented in an appropriate format. The guidelines set forth herein represent the Commission's views on important factors to be considered in formulating and disclosing such projections.

(1) Basis for projections. The Commission believes that management must have the option to present in Commission filings its good faith assessment of a registrant's future performance. Management, however, must have a reasonable basis for such an assessment. Although a history

of operations or experience in projecting may be among the factors providing a basis for management's assessment, the Commission does not believe that a registrant always must have had such a history or experience in order to formulate projections with a reasonable basis. An outside review of management's projections may furnish additional support for having a reasonable basis for a projection. If management decides to include a report of such a review in a Commission filing, there also should be disclosure of the qualifications of the reviewer, the extent of the review, the relationship between the reviewer and the registrant, and other material factors concerning the process by which any outside review was sought or obtained. Moreover, in the case of a registration statement under the Securities Act, the reviewer would be deemed an expert and an appropriate consent must be filed with the registration statement.

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(2) Format for projections. In determining the appropriate format for projections included in Commission filings, consideration must be given to, among other things, the financial items to be projected, the period to be covered, and the manner of presentation to be used. Although traditionally projections have been given for three financial items generally considered to be of primary importance to investors (revenues, net income (loss) and earnings (loss) per share), projection information need not necessarily be limited to these three items. However, management should take care to assure that the choice of items projected is not susceptible of misleading inferences through selective projection of only favorable items. Revenues, net income (loss) and earnings (loss) per share usually are presented together in order to avoid any misleading inferences that may arise when the individual items reflect contradictory trends. There may be instances, however, when it is appropriate to present earnings (loss) from continuing operations, or income (loss) before extraordinary items in addition to or in lieu of net income (loss). It generally would be misleading to present sales or revenue projections without one of the foregoing measures of income. The period that appropriately may be covered by a projection depends to a large extent on the particular circumstances of the company involved. For certain companies in certain industries, a projection covering a two or three year period may be entirely reasonable. Other companies may not have a reasonable basis for projections beyond the current year. Accordingly, management should select the period most appropriate in the circumstances. In addition, management, in making a projection, should disclose what, in its opinion, is the most probable specific amount or the most reasonable range for each financial item projected based on the selected assumptions. Ranges, however, should not be so wide as to make the disclosures meaningless. Moreover, several projections based on varying assumptions may be judged by management to be more meaningful than a single number or range and would be permitted.

(3) Investor understanding. (i) When management chooses to include its projections in a Commission filing, the disclosures accompanying the projections should facilitate investor understanding of the basis for and limitations of projections. In this regard investors should be cautioned against attributing undue certainty to management's assessment, and the Commission believes that investors would be aided by a statement indicating management's intention regarding the furnishing of updated projections. The Commission also believes that investor understanding would be enhanced by disclosure of the assumptions which

in management's opinion are most significant to the projections or are the key factors upon which the financial results of the enterprise depend and encourages disclosure of assumptions in a manner that will provide a framework for analysis of the projection.

(ii) Management also should consider whether disclosure of the accuracy or inaccuracy of previous projections would provide investors with important insights into the limitations of projections. In this regard, consideration should be given to presenting the projections in a format that will facilitate subsequent analysis of the reasons for differences between actual and forecast results. An important benefit may arise from the systematic analysis of variances between projected and actual results on a continuing basis, since such disclosure may highlight for investors the most significant risk and profit-sensitive areas in a business operation.

(iii) With respect to previously issued projections, registrants are reminded of their responsibility to make full and prompt disclosure of material facts, both favorable and unfavorable, regarding their financial condition. This responsibility may extend to situations where management knows or has reason to know that its previously disclosed projections no longer have a reasonable basis.

(iv) Since a registrant's ability to make projections with relative confidence may vary with all the facts and circumstances, the responsibility for determining whether to discontinue or to resume making projections is best

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left to management. However, the Commission encourages registrants not to discontinue or to resume projections in Commission filings without a reasonable basis.

(c) Commission policy on security ratings. In view of the importance of security ratings (ratings) to investors and the marketplace, the Commission permits registrants to disclose, on a voluntary basis, ratings assigned by rating organizations to classes of debt securities, convertible debt securities and preferred stock in registration statements and periodic reports. In addition, the Commission permits, pursuant to Rule 134(a)(14) under the Securities Act (Sec. 230.134(a)(14) of this chapter), voluntary disclosure of ratings assigned by any nationally recognized statistical rating organizations (NRSROs) in certain communications deemed not to be a prospectus (tombstone advertisements). Set forth herein are the Commission's views on important matters to be considered in disclosing security ratings.

(1) Securities Act filings. (i) If a registrant includes in a registration statement filed under the Securities Act any rating(s) assigned to a class of securities, it should consider including: (A) Any other rating intended for public dissemination assigned to such class by a NRSRO (additional NRSRO rating) that is available on the date of the initial filing of the document and that is materially different from any rating disclosed; and (B) the name of each rating organization whose rating is disclosed; each such rating organization's definition or description of the category in which it rated the class of securities; the relative rank of each rating within the assigning rating organization's overall classification system; and a statement informing investors that a security rating is not a recommendation to buy, sell or hold securities, that it may be subject to revision or withdrawal at any time by the assigning rating organization, and that each rating should be evaluated independently of any other rating. The registrant also

should include the written consent of any rating organization that is not a NRSRO whose rating is included. With respect to the written consent of any NRSRO whose rating is included, see Rule 436(g) under the Securities Act (Sec. 230.436(g) of this chapter). When the registrant has filed a registration statement on Form F-9 (Sec. 239.39 of this chapter), see Rule 436(g) (Sec. 230.436(g) of this chapter) under the Securities Act with respect to the written consent of any rating organization specified in the Instruction to paragraph (a)(2) of General Instruction I of Form F-9.

(ii) If a change in a rating already included is available subsequent to the filing of the registration statement, but prior to its effectiveness, the registrant should consider including such rating change in the final prospectus. If the rating change is material or if a materially different rating from any disclosed becomes available during this period, the registrant should consider amending the registration statement to include the rating change or additional rating and recirculating the preliminary prospectus.

(iii) If a materially different additional NRSRO rating or a material change in a rating already included becomes available during any period in which offers or sales are being made, the registrant should consider disclosing such additional rating or rating change by means of post-effective amendment or sticker to the prospectus pursuant to Rule 424(b) under the Securities Act (Sec. 230.424(b) of this chapter), unless, in the case of a registration statement on Form S-3 (Sec. 239.13 of this chapter), it has been disclosed in a document incorporated by reference into the registration statement subsequent to its effectiveness and prior to the termination of the offering.

(2) Exchange Act filings. (i) If a registrant includes in a registration statement or periodic report filed under the Exchange Act any rating(s) assigned to a class of securities, it should consider including the information specified in paragraphs (c)(1)(i)(A) and (B) of this section.

(ii) If there is a material change in the rating(s) assigned by any NRSRO(s) to any outstanding class(es) of securities of a registrant subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act, the registrant should consider filing a report

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on Form 8-K (Sec. 249.308 of this chapter) or other appropriate report under the Exchange Act disclosing such rating change.

(d) Incorporation by Reference. Where rules, regulations, or instructions to forms of the Commission permit incorporation by reference, a document may be so incorporated by reference to the specific document and to the prior filing or submission in which such document was physically filed or submitted. Except where a registrant or issuer is expressly required to incorporate a document or documents by reference (or for purposses of Item 1100(c) of Regulation AB (Sec. 229.1100(c)) with respect to an asset-backed issuer, as that term is defined in Item 1101 of Regulation AB (Sec. 229.1101)), reference may not be made to any document which incorporates another document by reference if the pertinent portion of the doucment containing the information or financial statements to be incorporated by reference includes an incorporation by reference to another document. No document on file with the Commission for more than five years may be incorporated by reference except:

(1) Documents contained in registration statements, which may be

incorporated by reference as long as the registrant has a reporting requirement with the Commission; or

(2) Documents that the registrant specifically identifies by physical location by SEC file number reference, provided such materials have not been disposed of by the Commission pursuant to its Records Control Schedule (17 CFR 200.80f).

(e) Use of non-GAAP financial measures in Commission filings. (1) Whenever one or more non-GAAP financial measures are included in a filing with the Commission:

(i) The registrant must include the following in the filing:

(A) A presentation, with equal or greater prominence, of the most directly comparable financial measure or measures calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP);

(B) A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historical non-GAAP measures presented, and quantitative, to the extent available without unreasonable efforts, for forward-looking information, of the differences between the non-GAAP financial measure disclosed or released with the most directly comparable financial measure or measures calculated and presented in accordance with GAAP identified in paragraph (e)(1)(i)(A) of this section;

(C) A statement disclosing the reasons why the registrant's management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial condition and results of operations; and

(D) To the extent material, a statement disclosing the additional purposes, if any, for which the registrant's management uses the non-GAAP financial measure that are not disclosed pursuant to paragraph (e)(1)(i)(C) of this section; and

(ii) A registrant must not:

(A) Exclude charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity measures, other than the measures earnings before interest and taxes (EBIT) and earnings before interest, taxes, depreciation, and amortization (EBITDA);

(B) Adjust a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur within two years or there was a similar charge or gain within the prior two years;

(C) Present non-GAAP financial measures on the face of the registrant's financial statements prepared in accordance with GAAP or in the accompanying notes;

(D) Present non-GAAP financial measures on the face of any pro forma financial information required to be disclosed by Article 11 of Regulation S-X (17 CFR 210.11-01 through 210.11-03); or

(E) Use titles or descriptions of non-GAAP financial measures that are the

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same as, or confusingly similar to, titles or descriptions used for GAAP financial measures; and

(iii) If the filing is not an annual report on Form 10-K or Form 20-F (17 CFR 249.220f), a registrant need not include the information

required by paragraphs (e)(1)(i)(C) and (e)(1)(i)(D) of this section if that information was included in its most recent annual report on Form 10-K or Form 20-F or a more recent filing, provided that the required information is updated to the extent necessary to meet the requirements of paragraphs (e)(1)(i)(C) and (e)(1)(i)(D) of this section at the time of the registrant's current filing.

(2) For purposes of this paragraph (e), a non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that:

(i) Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

(ii) Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable measure so calculated and presented.

(3) For purposes of this paragraph (e), GAAP refers to generally accepted accounting principles in the United States, except that:

(i) In the case of foreign private issuers whose primary financial statements are prepared in accordance with non-U.S. generally accepted accounting principles, GAAP refers to the principles under which those primary financial statements are prepared; and

(ii) In the case of foreign private issuers that include a non-GAAP financial measure derived from or based on a measure calculated in accordance with U.S. generally accepted accounting principles, GAAP refers to U.S. generally accepted accounting principles for purposes of the application of the requirements of this paragraph (e) to the disclosure of that measure.

(4) For purposes of this paragraph (e), non-GAAP financial measures exclude:

(i) Operating and other statistical measures; and

(ii) Ratios or statistical measures calculated using exclusively one or both of:

(A) Financial measures calculated in accordance with GAAP; and

(B) Operating measures or other measures that are not non-GAAP financial measures.

(5) For purposes of this paragraph (e), non-GAAP financial measures exclude financial measures required to be disclosed by GAAP, Commission rules, or a system of regulation of a government or governmental authority or self-regulatory organization that is applicable to the registrant. However, the financial measure should be presented outside of the financial statements unless the financial measure is required or expressly permitted by the standard-setter that is responsible for establishing the GAAP used in such financial statements.

(6) The requirements of paragraph (e) of this section shall not apply to a non-GAAP financial measure included in disclosure relating to a proposed business combination, the entity resulting therefrom or an entity that is a party thereto, if the disclosure is contained in a communication that is subject to Sec. 230.425 of this chapter, Sec. 240.14a-12 or Sec. 240.14d-2(b)(2) of this chapter or Sec. 229.1015 of this chapter.

(7) The requirements of paragraph (e) of this section shall not apply to investment companies registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8).

Note to paragraph (e). A non-GAAP financial measure that would

otherwise be prohibited by paragraph (e)(1)(ii) of this section is permitted in a filing of a foreign private issuer if:

1. The non-GAAP financial measure relates to the GAAP used in the registrant's primary financial statements included in its filing with the Commission;

2. The non-GAAP financial measure is required or expressly permitted by the standard-setter that is responsible for establishing the GAAP used in such financial statements; and

3. The non-GAAP financial measure is included in the annual report prepared by the registrant for use in the jurisdiction in which it is domiciled, incorporated or organized or for distribution to its security holders.

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(f) Smaller reporting companies. The requirements of this part apply to smaller reporting companies. A smaller reporting company may comply with either the requirements applicable to smaller reporting companies or the requirements applicable to other companies for each item, unless the requirements for smaller reporting companies specify that smaller reporting companies must comply with the smaller reporting company requirements. The following items of this part set forth requirements for smaller reporting companies that are different from requirements applicable to other companies:

Index of Scaled Disclosure Available to Smaller Reporting Companies

Item 101	Description of business.
Item 201	Market price of and dividends on registrant's common equity and related stockholder matters.
Item 301	Selected financial data.
Item 302	Supplementary financial information.
Item 303	Management's discussion and analysis of financial condition and results of operations.
Item 305	Quantitative and qualitative disclosures about market risk.
Item 402	Executive compensation.
Item 404	Transactions with related persons, promoters and certain control persons.
Item 407	Corporate governance.
Item 503	Prospectus summary, risk factors, and ratio of earnings to fixed charges.
Item 504	Use of proceeds.
Item 601	Exhibits.

(1) Definition of smaller reporting company. As used in this part,

the term smaller reporting company means an issuer that is not an investment company, an asset-backed issuer (as defined in Sec. 229.1101), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

(i) Had a public float of less than $75 million as of the last business day of its most recently completed second fiscal quarter, computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity; or

(ii) In the case of an initial registration statement under the Securities Act or Exchange Act for shares of its common equity, had a public float of less than $75 million as of a date within 30 days of the date of the filing of the registration statement, computed by multiplying the aggregate worldwide number of such shares held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of such shares included in the registration statement by the estimated public offering price of the shares; or

(iii) In the case of an issuer whose public float as calculated under paragraph (i) or (ii) of this definition was zero, had annual revenues of less than $50 million during the most recently completed fiscal year for which audited financial statements are available.

(2) Determination: Whether or not an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act, the determination is based on whether the issuer came within the definition of smaller reporting company, using the amounts specified in paragraph (f)(2)(iii) of this Item, as of the last business day of the second fiscal quarter of the issuer's previous fiscal year. An issuer in this category must reflect this determination in the information it provides in its quarterly report on Form 10-Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether or not it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10-Q following the determination, rather than waiting until the first fiscal quarter of the next year.

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(ii) For determinations based on an initial Securities Act or Exchange Act registration statement under paragraph (f)(1)(ii) of this Item, the issuer must reflect the determination in the information it provides in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether or not it is a smaller reporting company. The issuer must redetermine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (f)(2)(i) of this Item. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to redetermine its status at the conclusion of the offering covered by the registration statement based on the actual offering price

and number of shares sold.

(iii) Once an issuer fails to qualify for smaller reporting company status, it will remain unqualified unless it determines that its public float, as calculated in accordance with paragraph (f)(1) of this Item, was less than $50 million as of the last business day of its second fiscal quarter or, if that calculation results in zero because the issuer had no public equity outstanding or no market price for its equity existed, if the issuers had annual revenues of less than $40 million during its previous fiscal year.

[47 FR 11401, Mar. 16, 1982, as amended at 52 FR 21260, June 5, 1987; 58 FR 14665, Mar. 18, 1993; 58 FR 62029, Nov. 23, 1993; 60 FR 32824, June 23, 1995; 64 FR 61443, Nov. 10, 1999; 68 FR 4831, Jan. 30, 2003; 70 FR 1593, Jan. 7, 2005; 73 FR 956, Jan. 4, 2008]

ACC Extras

Supplemental resources available on www.acc.com

Corporate and Securities Litigation Update.
Program Material. October 2008
http://www.acc.com/legalresources/resource.cfm?show=163963

When the SEC Says Great Companies Got it Wrong.
Program Material. October 2008
http://www.acc.com/legalresources/resource.cfm?show=161843

Finance & Accounting for In-House Counsel.
Program Material. May 2009
http://www.acc.com/legalresources/resource.cfm?show=358195

Please note, these additional resources are provided by the Association of Corporate Counsel and not by the faculty of this session.