ASSOCIATION OF CORPORATE COUNSEL

Moderator: (David Maltz)
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(David Maltz): Hi. Welcome to today's Webcast on the SEC's proposed rules on executive compensation. This is (David Maltz). I'm the Chair of the (34 Act Subcommittee) and will moderate today's presentation.

As you all know, on January 27th, the SEC put out its 370-page proposing release on, among other things, the new rules for executive compensation disclosure. These rules would represent some of the most significant changes in the compensation disclosure arena since the original adoption of Item 402.

We have a great panel of presenters from Morgan Lewis and are grateful that they have agreed to do this Webcast for us. (Althea Day) is (of) Counsel in the Employee Benefits and Executive Comp practice in the D.C. office. (Jim McKenzie) is a partner in the Business Transactions practice in Philadelphia, and (Mims Zabriskie) is a partner in the Employee Benefits and Executive Comp practice in the Philadelphia office as well.

We plan to save about 10 minutes at the end of the presentation to respond to questions. But please send in your questions as you think of them, by typing your question into the box in the lower right-hand corner of the page and then clicking on the submit button.

Also I want to mention that you can print out a hard copy of the presentation materials by clicking on the Webcast slides, which is link number one under the links box.

Last, I should note that if you have any technical problems with the Webcast, please e-mail accwebcast@compartners.com for real-time help.

Without any further ado, I'll hand it over to (Mims).

(Mims Zabriskie): Thank you, (David). And thank you for asking us to participate in this program today.

As you can see from our bios, (Althea) and I are -- work in the area of Executive Compensation Planning and Design. And (Jim) works in the area of Securities Law and Corporate Law. So we're each coming from this from a little bit different perspective. Our focus today is on the corporate governance aspects and the compensation aspects -- compensation planning aspects of these new disclosure requirements.

And why is that so important now? Well, it's because it's really important to be discussing now, with your compensation committee, with management, what these new -- these proposed disclosure requirements would require be disclosed next year, so that when you go into 2006 and are setting either 2006 compensation or reviewing existing programs, you understand what it is you currently have, what's being proposed, and how that will look when it's disclosed next year. So we'll talk a bit about that, but that's really our overall focus here, is what do you need to be doing now -- what do you need to know about these rules, and what do you need to be doing now in connection with the rules.

So first, some general observations. The proposed rules do set forth a comprehensive disclosure -- require comprehensive disclosure of all items of compensation. And that's a recurring theme: all items of compensation, total compensation. There's a combination of tabular disclosure and narrative description. The basic principle is you need to identify and quantify executive compensation. There is limited relief for small-business issuers.

The basic structure of these -- of the compensation disclosure is -- first there's a compensation discussion and analysis section that would replace the current compensation committee report. And (Jim) will talk a bit more detail about those requirements and how they differ from what's currently required.

There's seven tables of disclosure for executive compensation. And we'll go through those tables and show you what they look like, and give you a sense of some of the detail that will have to be provided. The rules will require a narrative discussion of severance agreements, (change-of-control) benefits, and an estimate of the dollar amount. So even though a severance (or) (change-of-control) could be sometime in the future, (you'll) have to estimate the dollar amount. There's a new director compensation table. And all of this will have to be in plain English.

Let's go through, just very briefly, the high points of the seven required tables. And (Althea) will go through this in detail in a few minutes.

First of all, the first set of tables relates to current compensation. There's a summary compensation table, with its new now-well-known column for total compensation. There are two supplemental tables: one for current performance-based (awards) and the other for non-performance-based awards. There are two equity compensation tables: one table for outstanding equity awards at year end and another table that will show what options have been exercised and what stock has vested during the year.

The third set of tables relates to post-employment compensation. There's a table for estimated -- that will show estimated annual retirement benefits under defined benefit plans; both qualified plans and supplemental plans. And then there'll be a table for non-qualified defined contribution plan benefits. And then finally, there's a table for showing director compensation, cash and equity compensation for the last year.

How is this different from the current disclosure requirements? Well, first of all, the compensation committee report has been eliminated and replaced by this new compensation discussion and analysis. The stock price performance graph is gone, and the 10-year option and SAR repricing table will be gone.

So let's talk for a moment about who needs to be covered under these new rules: which executive officers will need to be disclosed in the new -- under the new proposal. First of all, all individuals who served as the principal executive officer at any time during the last fiscal year have to be named in the table -- so there's the CEO -- then any individual who's served as the principal financial officer during the last year -- that's the CFO -- then the three most highly compensated executive officers at the end of the year other than those two -- so that's the basic rule -- then up to two additional former officers who would have been included if they hadn't terminated employee, similar to the current rule.

Now, this is an important point. When you're looking at compensation levels for including these officers in addition to the CEO and CFO, you have to look at total compensation for the year, not just salary and bonus; total compensation. So one of the things we can talk about in a moment is it probably makes sense early on to start identifying who may well be in this table, because there may be people who are not expecting to be in the table who will show up.

And then this is new. There is a requirement that there be a narrative disclosure of the position -- not the name -- but the position and total compensation of up to three additional persons, who are not executive officers but whose total compensation is more than any of the named executive officers. So if you have some executives, some employees who are very highly compensated but not executive officers, they are going to have to be disclosed by position and total compensation.

Now (Jim) is going to walk us through the compensation discussion and analysis and explain how this is different from what we've had to do in the past.

(Jim McKenzie): Hi. This is (Jim McKenzie). And guess we're on page 11, the compensation discussion analysis.

Well, this is a very new section. It's going to be -- kind of go by the nickname CD&A, much like the MD&A overview. And in fact, what the -- what the staff has said in calling for this section is that this should be an introductory section to all the tables that (Mims) talked about and (Althea) will talk about in more detail.

So in front of the succession of tables that will follow, and the narrative that goes with them, what the SEC's looking for is the CD&A to precede that and to really focus on -- focus on the policies involved in compensation. They've said in the release that this is intended to be like the MD&A overview, which people have had a lot of experience with the last few years, really trying to use the MD&A overview as a way to present trends and policies, and a -- and a real guide for the rest of the MD&A that follows; the similar -- that's a similar focus here. And I think we'll expect similar type of SEC comment and review on the CD&A section, much like the MD&A overview section.

And what it's -- what it's calling for -- it calls for a discussion (and) analysis of the material factors underlying the compensation policies and decisions for the named executive officers. So again, these are the people on the comp table that (Mims) described, and typically the -- so not compensation policies for everyone in the company. But again, the focus is on the people who are named in the summary compensation table: the named executive officers.

And this is under Item 402(b1). They've identified here -- you can see on this -- on the slide -- the narrative disclosure, which -- the topics that are trying to be addressed: the objectives of the program, what it's designed to reward; the elements of compensation: reasons, determination, and the relationship of the various elements of compensation.

The CD&A is really supposed to be all-encompassing, and to cover both in-service and post-termination compensation policies. The other thing that's important to note here is that it's considered part of the (filed) proxy statement. And take a step back, and remember that in the proxy for this year, and since '92, there's been a compensation committee report which appears over the names of the members of the compensation committee. And it is not considered a filed document. The SEC had hoped that people would be more fulsome and open in their discussions of compensation, if there was -- if it was not a filed document, and therefore not subject to liability. And similarly, there was a stock price performance graph that, again, is still included but will come out under the new rule proposals. And the notion there was that the stock price performance graph linked in with the -- with the report on compensation to show the relationship between compensation and stock price.

Those are both gone, and replaced by the CD&A. But the CD&A is now a filed part. And, you know, since the SEC has said, you know, we gave you a chance to do it as a non-filed document -- that didn't work, so now it's a filed document. And it's no longer the purview of the compensation committee, though I would assume compensation committees will be very involved in this portion of the -- of the proxy statement. The liability is going to fall -- you know, like all liability under the 10-K and proxy -- going to fall to -- you know, to the full board, and everyone (sign) the 10-K. And for (33 Act) filings, where (these are) incorporated into -- liability there; potential liability (in). So that also means that the CEO and CFO certifications -- 302 certifications -- will also include this CD&A. So the -- I guess the focus now is, everyone in the -- in the organization will focus on this portion of the -- of the discussion.

They also thought the stock price performance graph really was no longer necessary, because it's pretty easy with the Internet to find stock price just about anywhere that someone's looking for it, without a need to present it in a proxy statement.

In Item 402(b2), they provide examples of what they're looking for. So this is a list of the -- most of the items that they're focused on. There's a few other examples. But this is a summary of the major ones. And you can see, you know, the real notion here is the -- you know, the policy between using long-term versus short-term compensation; you know, cash versus noncash compensation.

(Timing-of-equity) awards -- I guess the idea there is, you know, do you make your stock option or restricted stock grants at the end of the quarter, or at the beginning of the year, or, you know, whenever the board feels like it? I mean, the notion of a policy around equity awards would need to be described in here.

Corporate performance measures, individual performance measures -- you know, whether the company uses those -- not necessarily what they might be, but maybe the -- you know, a sense of the kinds of corporate performance measures, whether you're focused on stock price or earnings per share, or other kinds of corporate performance measures; and then the role of corporate versus individual performance measures.

Discretion (rate) performance bonuses -- that's really, if performance bonuses aren't achieved at target levels, you know, does the board still -- or the comp committee have the discretion to reward bonuses, even if they're not met? And what's the company's policy on that factors in materially increasing or decreasing compensation -- benchmarking, whether you're using a consultant to provide benchmarking against peer groups, how they use that, how -- you know, how that (fees into) compensation. And finally here, role of the executive officers in determining executive compensation: What is the executive officer's participation in setting compensation? Is it all the comp committee, is it mix of comp committee and CEO and other officers?

So again, policy-focused. But you can see they've identified a lot of specific examples that they're -- that they're looking for.

(Mims Zabriskie): (Jim), before you change to the (site) -- I think when we look at this list, it's one thing to think, Well, that's what we'll have to deal with a year from now. But then think: A year from now, Counsel's going to be writing the compensation discussion and analysis about compensation that was given, provided in 2006. So these are the factors that you're going to have to be looking at, writing that report. So that's why I think it's extremely important to consider now, when the compensation committee is reviewing compensation and setting compensation -- go through these steps and consider how it's going -- how you would describe it a year from now when you -- when you write your compensation discussion and analysis, and what do you want that to look like or not look like.

(Jim McKenzie): Yes, I think you're -- that's absolutely right, (Mims). I mean, if -- really -- and I think a lot of these things are certainly, you know, discussed. But maybe they don't have a particular policy, or the policy is decided more towards the end of the year, rather than earlier in the year. So certainly, I think it's important for compensation committees, as well as -- you know, as well as the executive officers, to understand what's coming, so that they can really gear their discussions to -- you know, to focus on some of these, rather than kind of getting to the end of the year and saying everything's discretionary. I don't think that's going to really look great.

Finally, there's -- I guess -- this is an area, I'm sure, that we'll have a lot of discussion about over time -- is, Well, what -- you know, what are they really looking for? Are they looking for, you know, specific earnings-per-share targets that we've set for our executive compensation? And, you know, the rules say that, you know, you don't have to disclose confidential information. So I think there's going to be a real balance in companies trying to both meet the requirements of the CD&A -- as well as, you know, some of the narrative for the tables -- but also, you know, keep confidential information that they don't want to have out there.

And I think certainly -- I'm sure clients are going to err on the side of keeping things confidential and describing the policies, you know, in more generic terms; although clearly, it can't be too generic. The footnotes to the -- to Item 402(b) make it clear that (it is) not boilerplate disclosure; that boilerplate's not permitted. They're not looking for repetition of the detailed information in the comp tables and the narrative. So this is really intended to be a separate disclosure, and not a rehash of what you're going to read later in the narrative, under some of the compensation tables or in some of the footnotes.

So I think -- and it's supposed to be to put into perspective the table. So it isn't -- it can't be too generic; it does need to be tailored pretty specifically to the policies that really do apply to this group of executive officers for the company.

So I think this is going to be an area that certainly the early adopters will -- you know, will garner a lot of interest from people, seeing how their CD&As come out. And I -- and I'm sure it's going to also be a challenge to draft certainly the tables and the footnotes. It's a little easier to follow specific rules; it's certainly going to be more challenging to really come up with a, you know, comprehensive policy disclosure.

I will pass it now to (Althea).

(Althea Day): Hi, I'm (Althea Day). And I'm going to walk you through some of the actual tables that will be required to include the disclosure.

First table we're going to talk about is the summary compensation table. But just to set the context here -- as (Mims) said earlier, all compensation must be disclosed. And our summary compensation table is a table that will in fact summarize all of the current compensation that's being provided.

You can think of the tables as breaking the compensation. They'll be reported down into broad categories -- three broad categories, the first being current compensation. And that's really addressed in the summary compensation table and the two supplemental tables to current compensation. The second broad category is equity compensation, where there's disclosure relating to equity-based interests awarded in prior years, and -- both awards that are not yet vested and those that are vested. And the third broad category to consider in terms of disclosure is retirement and other post-employment compensation. And this includes retirement plans, both non-qualified plans and post-termination benefits, such as change-of-control benefits.

Talking first about the summary compensation table -- it will include the following columns. And all of these columns will express amounts as dollars.

Can I have control of the slides, please? Thank you.

The summary compensation table shows that we'll be disclosing compensation for the fiscal year that just ended, as well as the prior two fiscal years. And look first to column C, which is your total compensation table. And this is the new column that will capture all the compensation (reported) in columns D through I. Everything that's reported on the summary compensation table will be reported in dollars, so no reporting on the basis of shares.

The summary compensation table is intended to be the principal disclosure vehicle regarding all executive compensation. So it is really comprehensive.

So as I said, your first column, C, is your total compensation. The next two columns, D and E, will be disclosing the compensation for salary and bonus in the appropriate column. And this will capture not only compensation that was earned and paid during the year, but also compensation that was earned and deferred. Deferred amounts will be disclosed in a footnote, and that will help to clarify which amounts -- which are also disclosed in later tables regarding deferred compensation -- were already reported, rather than indicating that they are additional compensation.

The next three columns -- stock awards, option awards and non-stock incentive plan compensation -- cover plan-based awards. Your stock awards column, column F, will be reporting stock-related awards that derive their value from the company's equity securities, such as restricted stock, (which is) just stock units and similar instruments, but not instruments that have option features. Those -- in your column F, you will report not only stock awards that have no performance feature -- such as those that are simply time-vested -- but also awards that do have a performance feature.

Option awards will be reported in column G. So that will be where option awards, SARs and similar stock-based compensation is reported. The value, rather than the number of securities underlying the award, must be used in doing this reporting. And remember, you're reporting on the basis of dollars. For purposes of this reporting, you're going to be using your FAS 123 financial accounting standards.

Now, under FAS 123R, compensation cost is calculated as the fair value. And it's generally recognized for financial reporting purposes over the period in which the employee is required to provide services in exchange for the award. However, for purposes of this table, your compensation cost will be calculated on the grant-date fair value. But you'll include the total amount in the year in which the award is made. So it'll be heavily skewed towards current compensation.

The last column is the all-other-compensation column. And it is just that: all other compensation. And we will spend a few minutes talking about that.

Can we please advance a slide?

In the all-other-compensation column, all other compensation is reported that is not reported in one of the other columns. So here, each item of compensation that exceeds $10,000 in value must be separately reported and identified, unless -- with the exception of aggregate (prerequisites) and benefits, the aggregate of which is less than $10,000.

(You know, I'll pause). It looks like we're having trouble advancing the slides.

(Mims Zabriskie): Yes.

(Althea Day): But you can print the slides. If you go to links and click on Webcast slides, you can print the slides. And hopefully, control will come back in a moment.

Female: I'm sorry, (Althea).

(Althea Day): Thank you, (Mims).

Male: (Althea), did you -- did you try to advance them?

(Althea Day): Yes. Having technical difficulties here. Well, we'll keep going, and ...

Female: We'll keep going.

Female: Yes.

Female: When -- if you have the slides printed out, or when you can get to them on the screen, you'll see that all other compensation includes (prerequisites) and other personal benefits, earnings on deferred compensation, tax reimbursements, discounted securities purchases, payments and accruals on termination plans -- retirement plans -- as well as contributions to defined contribution plans, and the increase in pension actuarial value, under defined benefit pension plans, both qualified and non-qualified -- insurance premiums and everything else.

(Althea Day): Now, in terms of the (prerequisites) and benefits -- as I indicated before, unless the aggregate value of the (prerequisites) and personal benefits provided by the company is less than $10,000, it must be separately identified. If the -- if the (prerequisite) or benefit is valued at the greater of $25,000 or 10 percent of the total (prerequisites) and personal benefit amounts, its separate value must also be disclosed.

In determining what is a (prerequisite) or personal benefit, the -- thank you -- be moving along here -- the item is not a (prerequisite) or personal benefit that needs to be disclosed on this chart if it is integrally and directly related to the performance of the executive's duties. But the SEC is taking a pretty restrictive view in what constitutes something that is integrally and directly related to the performance of the executive's duty.

For example, travel to and from business meetings, business entertainment, and having an office at your job location are not considered (prerequisite) or personal benefit items. But otherwise, if something -- if an item of compensation confers a direct or indirect benefit that has a personal aspect, regardless of whether it may be provided for some business reason or for the convenience of the company, it is considered a (prerequisite) or personal benefit. The only exception would be benefits that are provided on a nondiscriminatory basis to all employees.

The SEC has said specifically that club memberships not used exclusively for business entertainment purposes, personal financial (or) tax advice, personal travel using vehicles that are owned or leased by the company, housing and other living expenses -- these are all (prerequisites) and personal benefits that would need to be disclosed.

I note also that these benefits will be determined on their incremental value to the company and not on the value that might be reported for tax-reporting purposes. So it's a little different than I, as someone working in the executive compensation arena, may be used to seeing.

One last comment on the (prerequisites) and personal benefits: They're determined without regard to whether something will be characterized as an ordinary or necessary business expense for tax purposes. Again, these benefits are really -- you're looking at whether it's something that's integrally related to the job duties of the executive or not.

Some of the other items that are included in your other-compensation would be earnings on deferred compensation. All earnings on non-qualified deferred comp -- regardless of whether the earnings are above market, as is currently disclosed -- must be disclosed. You need to do a separate footnote that would identify and quantify amounts that are in excess of $10,000.

All tax reimbursements -- that would be tax (gross-up) payments -- or other amounts reimbursed during the fiscal year for the payment of taxes, must also be reported, as would any securities purchase from the company or any of its subsidiaries at a discount from fair-market value. The exception to that disclosure would be if the discount is generally -- available generally, either to all security holders or to all salaried employees. Finally, with regard to insurance premiums, the dollar value of the premiums must be disclosed.

Now, there are two supplemental tables to the summary compensation table. One is a table that relates to the grants of performance-based awards; the other is a table that is describing -- or reporting the grants of all other equity awards.

For the grants of performance-based awards, on this table you'll be reporting non-stock grants of incentive plan awards, stock-based incentive plan awards, option awards, restricted stock awards, anything -- any type of performance-based award.

Now, this disclosure will complement what is put in the summary compensation table. Your summary table will reflect the grant-date fair value awards.

Can we move the slides forward? All right.

The two equity compensation tables -- keep going -- keep going -- the two equity compensation tables are -- the first one reports equity that has previously been awarded in -- back up -- has been previously awarded and remains outstanding, that are unexercised options or unvested stock awards. The second table reflects amounts realized upon the exercise of options or SARs or upon the vesting of other equity awards.

So -- the table that reflects the amount of -- go back one more -- the table that's describing the outstanding equity awards at the fiscal year end reflects the (amounts) of prior awards outstanding, indicating those that are in the money. And you would have footnote disclosure for the expiration dates. You would want to separately identify options or awards that are exercisable and un-exercisable, and the vesting dates for the shares of stock. If you have an expiration date that is after the fiscal year end but prior to the time that you're actually doing this reporting, you would want to put in the footnote what actually happened with that option: Was it exercised, or did it expire unexercised?

The last table that we'll be -- that I'll be discussing is the option (exercises) and stock vesting table. This table, again, is indicating which shares have actually been exercised or vested during the fiscal year. So whereas the prior table indicated the number of option or stock-based awards that are outstanding, this table will show what was actually realized on those awards: when they vested or were exercised during the year.

The last column on this table, column D, picks up the fair value that was previously reported in your summary compensation table. So this is to address the issue of perhaps perceiving this compensation as being reported twice. So it was previously reported in the compensation table at -- when it was granted. And on this table, we'll see how much the executive actually realized on those awards.

With this, I'll turn the presentation back over to (Mims) to discuss disclosures of post-employment compensation.

(Mims Zabriskie): Thank you, (Althea). And I hope we can get our slides to move along – see if I can make (it work).

Well, after we've heard all about current compensation and equity compensation, the last broad category is post-employment compensation. And there are two tables here. The first one -- if we can see the next slide, that would be helpful -- the first -- the first table will show defined benefit retirement plan benefits. And these are both qualified plan benefits and non-qualified supplemental plan benefits. So any defined benefit plan. And I'll show you the table in just a moment.

But the table will be accompanied by a narrative explanation. And the narrative explanation has to go into actually a fair amount of detail. What are the terms and conditions? What is the benefit formula? Who's eligible? If the participant can elect a lump sum, you're going to have to show the amount of the lump sum and the valuation method; the specific elements of compensation included, the reason for the plan, and then any company policies relating to the plan. For example, if the company grants extra service credit -- for example, for executives who are terminated employment close to retirement age -- that's supposed to be disclosed (if it's a) company policy. So that's significantly more disclosure than we're using to seeing for defined benefit plans.

And here's the table. It's -- there'll be a separate -- obviously separate line for each person, and then a separate line for each plan that the person is in. So (again), it's the qualified pension plan and the supplemental plans that are defined benefit plans. (We'll) need to show the estimated normal retirement annual benefit, and then an estimated early retirement annual benefit. When you calculate these benefits, you project forward compensation at the current level. So just assume the person is making the same amount of compensation for future years.

So this is going to be a new public disclosure, which then tracks back to -- you want to make certain your compensation committee understands these dollar amounts and understands what's going to -- and what they're providing. This is part of the whole total compensation analysis, tally sheet analysis. The compensation committee and the board need to understand what is the total package that's being provided.

The second post-employment compensation table is for non-qualified defined contribution plan benefits. So your underlying 401(k) plan, a qualified plan, doesn't have to show up in this table. But your excess plan or any -- or any deferred compensation plan would show up in this table.

Again, the narrative explanation will accompany the table. It must show the types of compensation that may be deferred. It will have to disclose the measures of calculating interest or earnings and quantify the rate. So for those plans that have a fairly generous interest rate that's credited each year on deferred compensation, that will have to show up in this -- in the narrative discussion.

This is a -- this shows you what that table will look like: the employee contributions, the company contributions, the aggregate earnings, any withdrawals, and then the aggregate balance. So going to see that each year -- what's in the deferred compensation plan.

Now, if you've had enough of tables, that's good because we can pause from the tables for a moment. And the last category that has to be disclosed, in narrative form, are any severance arrangements, termination arrangements, or change-in-control agreements. So there'll be a narrative disclosure not too dissimilar from what's there now, as far as the first part; that is what are the terms of the agreements. But there's some very important differences. The narrative disclosure has to include -- has to address the specific circumstances that will trigger payment: why (that) the person could be entitled to receive payment, the amount of the estimated payment and the method of payment; and then what factors you're using to determine payment levels.

And here, for example, in change-in-control agreements, you're talking about what are the circumstances in which a person could receive change-in-control agreements, (you know), what kinds of triggers are there under the change-in-control agreements, and then how much would be paid under that change-of-control agreement under certain circumstances? So even though there's complete uncertainty that an amount will ever be paid, we're going to have to quantify that amount based on specified assumptions; assumptions that we -- that we specify in here as to what you're using. And that includes not only the severance amount but any tax gross-ups, 280 G gross-ups -- will all have to be disclosed. If there are any material conditions to payment such as a non-compete or non-solicitation covenant, that would show up as well.

So this is a huge change to be putting, you know, in the proxy statement. And again, before the compensation committee and the board -- what is it you could -- you could have to pay if there was a change-in-control or severance.

Now (Jim's) going to talk a bit about the new director compensation table.

(Jim McKenzie): Hi. The new Item 402(l) talks about director compensation in a lot more detail than we've been used to. And the -- historically, director compensation has been -- you know, not been targeted to any of the individual directors but more presented broadly as, for example, the (per meeting) fees and the annual retainer. And the notion historically had been that director compensation was pretty much the same for all directors. And so that was adequate. And there's been different initiatives by the SEC over the years to seek more detail on director compensation, but hasn't gotten anywhere until now.

And so, now the directors are going to end up in (very) much the same boat as the executive officers. And the table disclosing director compensation is going to appear, which we'll (look at) the next slide, in a second.

But right now, you see that the table is real focused on including all compensation. And it's really intended to match the increasing complexity of director compensation, and the amounts particularly that are earned by different people in different roles.

The (perq) total, much like the executive compensation table, is also $10,000. And there's (going to be) footnote disclosure of outstanding equity awards, which -- I'm not sure why they didn't just, you know, require an outstanding equity award table for directors, but for some reason they thought footnote disclosure -- that -- (and) contains all the same information that's in the officer type equity award table -- would be sufficient. But you'll end up with a footnote that's going to have the same information that appears in the executive officer table that shows the outstanding equity award. So -- not sure why they did it that way, but people may end up just doing (mini-tables) in their footnotes, anyway.

Narrative explanation, like the other tables -- again, the focus is any material factors necessary to an understanding of the disclosure. And I think here is where you'll start to -- where you'll see the old disclosure. The narrative explanation will probably describe, you know, the -- we pay audit committees this much, we pay compensation committee this much, we pay the chairman this much, we have a retainer fee structure. So I think the broad descriptions of director compensation that we're used to in the proxy is really going to be the narrative explanation.

So let's take a look at the director comp table. And you'll see it looks a lot like the summary comp table. And in fact, like summary comp table, it has everyone identified by name, down in the first column. And here, the footnote -- there's a footnote that permits you to group. So if you have directors who have the same compensation, you're able to group them, not identify them, for example. If all your audit committee members have the same compensation, you could, you know, group them somehow. But probably based on people in different roles -- you'll probably end up not being able to do those groupings, and for the most part name each director specifically.

And again, like the summary comp table, the first column of dollars is a total column. And it will include all the amounts to the right side of the total column. The column C here is fees earned. So this is all the cash fees earned in whatever fashion, whether for retainer or (per meeting) fees; the combined cash. And then we've got stock and option awards that are the same requirements as the summary compensation table for executive officers.

And here, I'll just note something under the stock awards, which might be interesting. It includes awards in the year. So it includes the value -- the 123R value of the stock awarded during the fiscal year, but also includes earnings on previously outstanding stock. And in this case, what am

I talking about? The most common element of that would be a dividend paid on restricted stock that hasn't yet vested. And that is compensation. And if you have a dividend-paying company that pays -- that permits dividends to be paid on unvested shares of restricted stock -- so you might have restricted stock that was granted, you know, one, two, three years ago -- the dividends on that stock are going to be added to any new stock grants and appear in this column D. That applies for directors as well as for executive officers. But I think it's going to be, you know, maybe a little bit of a surprise, when people see that additional amount, especially for -- dividend-paying company that's being added into the total comp award.

We get over to the far-right column: all other compensation. Again, this is as comprehensive as the all other compensation for executive officers. It does include each of the items that are required. It's got the (prerequisite) requirement. And again, for any -- if the total (perqs) are over $10,000, there's a requirement to include (perqs) in this column.

Two other items that I'll note, that directors also have to provide in the all-other-compensation column -- one is consulting fees that a director may earn. And it says, including consulting fees from joint ventures. So if there's some kind of a joint venture arrangement where the director is, you know, receiving fees, that gets caught as well -- and then, finally, something called legacy charitable program annual costs. And again, this is the notion maybe that a company has endowed a chair at Harvard in the name of one of its directors. And this -- and that would be not -- well, not comp in the director's pocket; it's (in) honor, and it's deemed as compensatory. And so the dollar cost of funding that annual legacy charitable program would be included in the all-other-compensation table as well. So this truly is an attempt to reach all elements of compensation.

I'll note a few other reforms here that are beyond the comp arena just quickly. One of note is that the related party disclosure under 404. Due to inflation, they've increased the $60,000 threshold to $120,000 reporting threshold for related-party transactions. So that's a welcome increase. Then there's a lot more disclosure on director independence, corporate governance. There's --

the compensation committee now joins the audit committee and nominating committee under Item 407 as disclosures of the details of the workings and the roles of those committees. So that's more detail about the compensation committee. There's previously been audit and nominating committee (adjoined to) that.

Disclosure of pledge shares -- this is an interesting item, I guess, in order to (ferret out) -- on the table of beneficial ownership -- shares that are identified as beneficially owned, but are pledged. They're now (being required) to disclose which of those shares are pledged, like if it's deemed that that's information that investors would want to know -- whether their officers have, well, maybe having large stockholdings -- if they've pledged a lot of their stock for loans or other things.

And finally, from 8-K reforms which they -- there are a number of results of the work with the new 8-K rules has an opportunity to fix a few things that they're seeing, specifically in the employment area, removing employment agreements from Item 101, material contract disclosure, and instead moving the whole arena of employment agreements into Item 502 of 8-K, and focusing on the named executive officers there -- you know, not every executive officer -- but the named -- 502 previously focused on principal executive officers, while Item 101 was kind of all executive officers. Now Item 502 will focus on the named executive officers from the summary comp table of the prior year. And the disclosure -- (while) they're expanded in some areas past employment agreements to get information into the 8-K, they've also noted that it should be brief disclosure, and probably most issuers have been doing in a more extensive 402 level disclosure. And it really doesn't need to be that extensive. That's really for the proxy statement. So there are a number of -- (I will point you to the) 8-K (reforms) -- they're important to read through when they come out.

So I don't want to give them too short a shift, but we need to move on. And I'll pass this to (Mims).

(Mims Zabriskie): Thanks, (Jim). We're going to just tie it all together now. And if you have questions, please feel free to send them in, and we will answer them.

The (big) question is: What should companies be doing in 2006?

I think it makes sense to start pulling together and looking at total compensation. There are a number of tally sheets on (compensationstandards.com), on that Web site, if you want to see some sample tally sheets. I think also another approach would be to take these charts that are going to be required in the proxy and start filling those in, and see what they look like. And make sure that you're getting the information you need.

And (then) I would say sitting down with management and with the CEO, with the head of the compensation committee, and start the discussion about what's going to be required: What do you need to be doing this year, as far as, you know, reviewing this overall compensation? Is this -- is this the compensation you believe you're providing to the executives? Is this appropriate? Why are you providing it? Start going through that analysis.

On the (prerequisites) -- you know, get a handle on what (perqs) are being provided. How will they be valued in the proxy? Does the compensation committee know what they are? Because some of the -- some (prerequisites) may have just evolved over time and haven't really been looked at closely. So now that they're going to be put under a microscope, you'd rather ferret that out early in the -- in the fiscal year, make sure everybody's looking at it, and make sure that's exactly what you want to be in place when you go to the shareholders next year.

(Jim McKenzie): (Mims), a note on (perks) that -- they specifically state that, you know, taxability is not determinant of whether or not it's a (perq), and whether or not disclosure is required. So I think, (you know) certainly been a notion that, well, if it (was) taxable, it's compensation. Then it's a (perq) if it's not taxable. But they say, you know, our standards are different for disclosure than the tax rules.

So you can't say, well, it's not taxable, so therefore, I don't need to disclose it. You know, (they) really (just) very specifically stated in the rules that it's a -- it's a separate analysis. And so, you know, (perq) is broader than tax.

(Mims Zabriskie): Right. And as we've talked -- it's very important that the compensation committee articulate its compensation objectives: What is it trying to accomplish? How does each piece of compensation achieve those objectives? Look at what's been provided in the past. Is it still appropriate to provide significant, say, supplemental retirement benefits for change-in-control benefits? Is it appropriate to, you know, (re-look) at that, look at -- do some benchmarking, and consider whether you need to providing the levels that you do.

So it's not to say that this is going to result in a reduction in compensation levels, but I think it will look at a -- it will result in compensation committees having a clearer picture of the big picture, and using .some judgement as to whether this is appropriate for the organization. (Is the) compensation levels setting the tone that you want to set for the leaders of the organization?

So it's a good opportunity to really engage in an overall review. And doing it earlier rather than later will be to everyone's benefit, so that you can make appropriate adjustments (in the writing) your compensation discussion and analysis next year based on what was actually done, instead of what you sort of wished had been done.

If you -- if you are interested in making comments on the proposed regulations, the SEC comment period will continue until April 10 of 2006. So if there are areas that are of particular interest to you, feel -- obviously you (may comment).

We have just a few questions. I'll take a question, and then see if (Jim) and (Althea) have a question they want to answer. And my understanding is that you are able to print the slides -- someone asked if you need to have a password to print the slides -- without paying; without a password. But if you're not, you can feel free to either send Association of Corporate Counsel an e-mail or send any of the speakers an e-mail. Our e-mail addresses are listed. And we'll get that information right back to ACC.

And let's see -- one of the questions was relating to retiree medical and life insurance benefits. The question was: Does post-employment compensation include retiree medical and life insurance benefits?

I don't recall seeing those specifically mentioned. So I think the general rule is that if you have benefits under a group life health plan that does not discriminate in favor of executive officers, then that does not have to be disclosed if you've got a broad-based group plan. But if you've got retiree medical, retiree life insurance that's specific to executives, that's discriminatory, then that will be part of the compensation that has to be disclosed.

(Jim), do you have -- see a question that you'd like to answer?

(Jim McKenzie): I think they're all for you or (Althea).

(Mims Zabriskie): (Althea), do you want to take one?

(Althea Day): I can't see the questions, (Mims). So ...

Female: (OK) …

(Mims Zabriskie): Well, another question is, How will earnings on deferred compensation show up?

I think that that was an early question that's probably been explained. Just the summary compensation table has accounted for earnings, which is just the earnings on deferred compensation. And then there's a separate deferred compensation table. And those are relating to the non-qualified plan benefits. On the defined contribution side, you just look at the non-qualified plan benefits; whereas on the defined benefit side, you have to look at the qualified plan and the non-qualified plan benefits.

I think that's about all the -- oh, let's see -- here's a question: If the supplemental pension plan only provides a lump sum, will you have to disclose the lump sum and amount in the table, or just the manner in which the lump sum is calculated?

That's an excellent idea -- I mean, that's an excellent question. Because -- and I don't think that's clear. Because the table shows an annual benefit, but if the only amount payable is a lump sum, you -- it's not clear whether you'll be able to just have an asterisks, and put that dollar amount in the table, or -- I mean, in the footnote -- or whether you'd have to annualize it for purposes of the (table). So I think that's definitely (a) question.

Well, thank you for participating. And feel free, if you have additional questions, to e-mail them to any of us. And our e-mail addresses are listed on the last slide.

(David Maltz): Thank you, (Mims).

I'd like to thank all our presenters -- (Althea), (Mims) and (Jim) -- for a great presentation. And thanks, everyone, for joining us.

And I would like to remind everyone that if you would please take a ...

(David Maltz): ... please take a few minutes to evaluate (the) Webcast and our format -- you go -- to go to the links spot on the Webcast, number five under there, our Webcast survey, and take a few -- just a few minutes, and offer your feedback -- we would really appreciate it.

And then with that, our presentation today is over. And everyone can disconnect.

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