A Comprehensive Analysis of the SEC's Executive Compensation Disclosure Rules

McGUIREWOODS
Relationships That Drive Results

Updated January 2007

A COMPREHENSIVE ANALYSIS OF THE SEC'S EXECUTIVE COMPENSATION DISCLOSURE RULES

Updated Through January 24, 2007

On August 11, 2006, the Securities and Exchange Commission (the "SEC") adopted extensive and far reaching amendments to the disclosure requirements for executive and director compensation, as well as related matters. The final new rules (the "Rules") are contained in SEC Releases 33-8732 and 34-54302 (the "Release") [www.sec.gov/rules/final/2006/33-8732.pdf]. The provisions of the Rules about stock option reporting were revised in SEC Releases 33-8765 and 34-55009 on December 22, 2006. The SEC staff also issued Telephone Interpretations about the Rules on January 24, 2007.

The Rules require dramatically different disclosures by public companies about their compensation policies than previously required and completely revise the executive and director compensation portions of proxies and other filings. Other important changes affect disclosures about related party transactions, director independence and other corporate governance matters and security ownership of officers and directors. The Rules apply to disclosure in proxy statements, registration statements and other SEC filings (such as Form 8-K).

Highlights of the Rules include:

- Companies are required to present a new management "Compensation Discussion and Analysis," in addition to a revamped compensation committee report.
- The Summary Compensation Table is expanded to include a "total compensation" column and a column showing the increase in value of pension plan benefits and above-market earnings on nonqualified defined-contribution and other deferred compensation plan benefits.
- The Summary Compensation Table is supplemented by a new table requiring disclosure for all "plan-based" awards.
- New disclosures are added about the value of equity grants when made and when exercised.
- The disclosure of perks is expanded and made more detailed.
- The disclosure of post-employment compensation is expanded, including two new retirement/deferred compensation tables providing more detailed information and new narrative disclosure of severance and change in control benefits.
- The principal financial officer is included as a named executive officer, even if not in the top five officers by compensation.
- Director compensation is disclosed on a summary compensation table with footnotes.
- All disclosures are in "plain English."
- Disclosure about compensation committee governance and operations is expanded.
- Disclosure of transactions with related persons is expanded, although the threshold for disclosure is raised from $60,000 to $120,000.

OVERVIEW OF RULES

The purpose of the Rules is to provide more detailed and comprehensive disclosure about the compensation paid to executives and directors. Under the Rules, executive compensation disclosure in Item 402 of Regulation S-K is structured into four segments:

1. The Compensation Discussion and Analysis provides a narrative overview of compensation policies and decisions made under those policies.

2. The Summary Compensation Table and a supplemental table for plan-based awards provide a look at total compensation paid, including the value of any equity grants that may vest in the future.

3. Two new tables provide more information on outstanding equity grants and information on amounts realized when equity grants were exercised or vested during the year.

4. New tables cover retirement benefits and nonqualified deferred compensation in greater detail by individual officer and require estimates of payments in the event of severance or a change in control.

All of the new tables need to be followed by narrative explanations in plain English.

One area in which the SEC clearly intends to change prevailing reporting practices is in the disclosure of perquisites or "perks." Between a reduced $10,000 threshold for reporting and new interpretative advice about the SEC's view of benefits that may be treated as a perk, perk disclosure is substantially expanded.

Another area of emphasis is disclosure of company practices about the granting of stock options. The Release explains in detail how the new disclosure requirements apply to stock options and the Telephone Interpretations apply the same requirements to all equity grants.

Compensation paid to directors is now shown on a separate table similar to the Summary Compensation Table. More items are covered, such as amounts attributable to director charitable award programs.

The Rules also address other aspects of compensation disclosure, in particular the rules on related parties and related transactions in Item 404 of Regulation S-K. The related party transaction portions of the Rules are more principles-based and in general require more discussions about the materiality of a transaction. The $60,000 threshold for disclosure is increased to $120,000 to adjust for inflation.

Under the Rules, corporate governance disclosures are updated. The compensation committee report is revised to focus on the Committee's review of the company's Compensation Disclosure and Analysis. Additional disclosures are required about the compensation committee and its practices and procedures similar to previously required disclosures about the audit and nominating committees.

Also, the Rules amend the Form 8-K requirements to reduce the number of Form 8-K filings required to report compensation matters.

By making the new rules effective for proxies for fiscal years ending after December 15, 2006, the rules are in effect for most of the 2007 proxy season.

WHAT TO DO NOW?

The breadth and scope of these Rules will substantially lengthen the proxy drafting process for 2007. In addition, compensation decisions made in 2006 affecting 2006 compensation are disclosed in 2007 proxies under these new rules. Companies should start now to evaluate their compensation policies, procedures and structures in light of the new requirements. Advice on how to prepare for the Rules is found throughout this memo and in the Action Items section at its conclusion.

The memorandum is divided into the following sections:

TABLE LOCATOR: The tables required under the Rules are reproduced in the memorandum. Copies of the tables are located on the following pages:

A. COMPENSATION DISCUSSION & ANALYSIS

A key element of the new disclosures called for by the Rules is the Compensation Discussion and Analysis ("CD&A"). Compensation disclosure now begins with this narrative providing a general overview of a company's overall compensation program.

The CD&A is intended to serve a similar purpose for compensation disclosure as that served for financial disclosure by Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A"). The CD&A explains all material elements of a company's compensation program and provide a discussion and analysis of the material factors underlying compensation policies and decisions. The implementation of those decisions should be reflected in the data presented in the Summary Compensation Table and other tables and accompanying narrative discussions to the tables.

The CD&A replaces the prior Board Compensation Committee Report. However, the Board Compensation Committee is now required to provide a new report, similar to the Board Audit Committee report required in proxy statements, concerning its review of the CD&A and recommendation to the Board that the CD&A be included in the company's annual report or proxy statement. The CD&A requirements are described in revised Item 402(b) of Regulation S-K. The new Compensation Committee Report requirements are in Item 407(e)(5) of Regulation S-K.

The company is required to explain in the CD&A all material elements of compensation of named executive officers, including information relating to the following specific items:

- The objectives of the company's compensation program;

- What the compensation program is designed to reward;

- Each element of compensation (salary, bonus, equity, perks, etc.);

- Why the company chooses to pay each element;

- How the company determines the amount for each element to pay; and

- How each compensation element and the company's decisions regarding that element fit into the company's overall compensation objectives and affect decisions regarding other elements.

The CD&A should focus on material principles underlying executive compensation policies and decisions and avoid using boilerplate language. The purpose is not to repeat the more detailed information that follows in the tables and accompanying narrative discussions, although cross reference to that information is permitted where useful. Like other elements of the disclosures required by the Rules, the CD&A must be written in plain English.

The structure of the CD&A rule itself is intentionally principles-based because the content will vary dramatically depending upon facts and circumstances at a particular company. Given the variety and evolving nature of compensation practices at public companies, the SEC did not want to suggest in any way that items that do not fit squarely in a "box" do not need to be disclosed. However, the SEC has included in the Rules 15 examples of the type of information that might be covered:

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

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

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

- How determinations are made as to when awards are granted, including awards of equity-based compensation, such as options;

  NOTE: This item is part of the Rules' focus on option and other equity award granting practices.

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

- How specific forms of compensation are structured and implemented to reflect such items of corporate performance, including whether discretion can be or has been exercised either to award compensation absent attainment of the goal or to reduce or increase the size of the award, and if such discretion has been exercised, stating whether it affected any of the named executive officers or all compensation subject to the relevant goal;

- How specific forms of compensation are structured and implemented to reflect the named executive officer's individual performance and/or individual contribution to such items of corporate performance, describing the elements of individual performance and/or contribution that are taken into account;

- The company's policies and decisions regarding the adjustment or recovery of awards or payments if the relevant items of corporate performance are restated or otherwise adjusted in a manner that would reduce the size of an award or payment;

- The factors considered in decisions to increase or decrease compensation materially;

- How amounts realizable from prior compensation are considered in setting other elements of compensation;

- With respect to any contract that provides for payment in connection with termination or change-in-control, the basis for selecting particular events as triggering payment;

  NOTE: This is an example of a CD&A disclosure that needs to be coordinated with the narrative describing potential payments in a change-in-control situation.

- The impact of accounting and tax treatments on particular compensation;

  NOTE: The Release makes clear that this discussion should continue to include the company's Internal Revenue Code Section 162(m) policy but may need to be expanded to include other items.

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

  NOTE: The intent seems to be to identify each member of a compensation peer group or the companies that comprise an industry grouping used in compensation setting.
- Stock ownership guidelines and policies regarding hedging the economic risk of such ownership; and

- The role of executive officers in determining executive compensation.

***Analysis*:** It is likely that most companies will want to address each of these 15 items in their first CD&A unless the item is clearly inapplicable to the company. While most companies will have addressed many of these and other issues in their compensation setting, the CD&A may require a more comprehensive and well articulated statement of the policies than previously existed.

FOCUS ON EQUITY AWARDS IN CD&A: The SEC highlighted in the Release the fact that the principles-based CD&A disclosure requirements may require discussion of various aspects of a company's use of options in compensating its executives, including any programs, plans or practices a company may have with regard to the timing or dating of option grants. In the Telephone Interpretations, the SEC staff states that the same considerations should be applied to all equity awards, not only options. Specifically, the SEC has said that the company should pay particular attention to the following in drafting its CD&A:

- Does the company have a program, plan or practice to time options or other equity grants in coordination with the release of material non-public information?

- How does any such program as it applies to executive officers fit in the context of the company's programs for options or other equity grants to employees in general?

- What was the role of the Board Compensation Committee in approving and administering such a program? How did the Committee take such information into account in determining whether and in what amount to make grants? Did the Committee delegate authority to administer the program to any other persons?

- What was the role of executive officers in the company's program for option or other equity grant timing?

- Does the company set the grant date for options or other equity awards for new executives in coordination with the release of material non-public information?

- Does the company plan to time, or has it timed, its release of material non-public information for the purpose of affecting the value of executive compensation?

- Does the company have programs for awarding options and setting the grant price based on stock price on a date other than the grant date or using a formula or other method to select a price based on a period before, after or surrounding the grant date?

Analysis**:** Recent attention to questionable option granting practices at a number of companies is clearly the driver for the SEC's emphasis on how the rules are responsive to investors' desire for additional information on this subject. The Release makes it clear that the SEC is not condemning all practices that companies may engage in with respect to their option programs or the use of options as an element of compensation. However, this is clearly an area about which it believes that company practices should be more transparent to investors than they may have been in the past.

PERFORMANCE TARGETS: Generally following prior practice, companies are not required to disclose in their CD&A the specific quantitative or qualitative performance-related factors considered in determining executive compensation BUT ONLY if the disclosure would result in competitive harm for the company. In addition, companies are not required to disclose any factors or criteria involving confidential commercial or business information, the disclosure of which would result in competitive harm to the company.

However, the instructions to the Rules state that the standard to be applied in deciding not to disclose this information should be the same standard used by a company when it requests confidential treatment for information included in its SEC reports. While it is not necessary for the company to actually submit a confidential treatment request for undisclosed information of this type, the SEC may require support for the exclusion of this information if the SEC reviews its CD&A. The Telephone Interpretations emphasize that SEC staff review may require a demonstration that the standard is met. In addition, the Release requires that where targets or other performance-related factors are not disclosed, the company disclose how difficult or easy it is expected to be for the individual or the company to achieve them. To the extent that a performance target level or criteria has been publicly disclosed, a company cannot withhold the information.

The CD&A instructions take note that some performance measures that may be disclosed (either in terms of specific targets or by description) involve the use of non-GAAP financial measures. The instructions provide relief from the general rules regarding the disclosure of non-GAAP information. However, the company must provide some explanation of how the measures may be calculated from the audited financial statements.

Analysis: The SEC clearly intends for more information about performance targets to be disclosed. The instructions change the standard for not disclosing information from the previous "would have an adverse effect on the registrant" to the new "would result in competitive harm for the registrant." As a practical matter, it may be more desirable to disclose a target level of performance than it is to determine how to characterize the ease or difficulty of achieving that target level.

NOT A FISCAL YEAR REPORT: The Release also clarifies that while the focus of the CD&A is on compensation programs, policies and decisions affecting named executive officers for the most recent fiscal year of the company, in order for it to provide a proper overview, the CD&A may also need to talk about past programs, on-going programs or programs or decisions that have been made for the future or after the end of the fiscal year in question.

DISCUSSION OF INDIVIDUAL EXECUTIVES: The CD&A is not required to discuss each named executive officer's compensation on an individual basis, as long as policies or decisions for the named executive officers are materially similar. However, to the extent that the policies or decisions for a particular named executive officer are materially different, which is often the case for the chief executive officer, that individual's compensation should be discussed separately. This approach differs from the previous Board Compensation Committee report which expressly required separate discussion of the chief executive officer's compensation.

***Analysis*:** In administering their decision-making process for compensation for 2006, such as individual bonuses, companies should be mindful of the disclosures that would be required in the CD&A and should consider documenting how they have addressed some of the specific issues that need to be discussed.

CD&A IS "FILED": Unlike the previous Board Compensation Committee Report that it replaces, the CD&A is "filed" for purposes of the proxy rules and incorporation by reference into 1934 and 1933 Act filings. This means the company and its certifying officers have liability for its content if it is inaccurate or misleading through omission. The company's disclosure controls and procedures that apply to the preparation of its Form 10-K and proxy statement need to be expanded to apply to the CD&A. The Compensation Committee also needs to be involved, as explained in the next section.

***Analysis*:** The fact that the CD&A is filed may require increased attention to documentation, both to support certifications by the CEO and CFO under the Sarbanes-Oxley Act and to permit underwriters and counsel to conduct adequate due diligence and deliver opinions in connection with securities offerings.

B. COMPENSATION COMMITTEE REPORT

The proposed rules called for the CD&A to entirely replace the previous Board Compensation Committee Report. However, in response to comments expressing concern that such an approach might lead to decreased attention to executive compensation matters at the Board level, the Rules require a new Compensation Committee Report in addition to the CD&A. It is very similar to the previously required Audit Committee report and must state whether:

- The Compensation Committee has reviewed and discussed the CD&A with management; and
- Based on the review and discussions, the Compensation Committee recommended to the Board that the CD&A be included in the company's Form 10-K and proxy statement.

Unlike the Audit Committee report, the Compensation Committee Report is required to be included or incorporated by reference in the Form 10-K so that it is presented along with the CD&A. However, it is only required once during each fiscal year, and is "furnished" rather than "filed" notwithstanding its placement in the Form 10-K. The name of each Committee member must appear below the report and it may be relied upon by the company's certifying officers when they provide their certifications with respect to the Form 10-K.

Analysis: The Release tries to clarify the relationship between company management and the compensation committee as to the CD&A, but there are some lingering gray areas. The SEC states that the CD&A is to cover company policies and decisions under those policies but not compensation committee deliberations. However, many of those policies are set by the compensation committee. The new Compensation Committee Report is now focused on the committee's review of the CD&A. While the exact lines of responsibility are in flux, it is clear that the preparation of the CD&A requires significant collaboration between management and the compensation committee.

C. PERFORMANCE GRAPH

The proposed rules also called for the elimination of the Performance Graph that accompanied the previous Board Compensation Committee Report. It was intended to be related to the compensation discussion and show the correlation, if any, between compensation and corporate performance, as reflected by stock price. The SEC felt that compensation practices may take into account many other measures of corporate performance which are to be reflected in the CD&A. In addition, the information available in the graph itself is accessible from a variety of sources for the investor who is interested in it. However, comments on the proposed rules were to the effect that investors found the information presented in the graph useful and convenient.

Consequently, the SEC has retained a requirement for presentation of the graph, but not as part of a company's executive compensation disclosures. The requirements for the graph itself are in new Item 201(e) of Regulation S-K. Disclosure under that item is required in the company's annual report to shareholders which must accompany or precede proxy materials for an annual meeting (see Rule 14a-3(b)(9)). The graph continues to be furnished and not filed and need not be incorporated by reference in other filings.

D. NAMED EXECUTIVE OFFICER CHANGES

The Rules revise the definition of named executive officers ("NEOs") who must be included in the Summary Compensation Table and related disclosures. Under the Rules, the NEOs are:

- All persons serving as the ***principal executive officer*** or who served in that capacity in the last fiscal year.
- All persons serving as the ***principal financial officer*** or who served in that capacity in the last fiscal year.
- The next three highest paid executive officers serving at the end of the last fiscal year.
- Up to two additional individuals who would have been in the three highest paid executive officers except they were not serving at the end of the last fiscal year.

Unlike the prior rules, the Rules specifically require the "principal financial officer" of the company to be one of the NEOs. This should not constitute a major difference for most companies, however, since the principal financial officer in many cases would already be included as one of the most highly compensated officers of the company.

The Rules also re-designate the chief executive officer title as the "principal executive officer." The titles of principal executive officer and principal financial officer are consistent with usage in the Sarbanes-Oxley Act certification provisions. However, a company should use the officer's actual titles on the tables.

The minimum total compensation threshold for disclosure remains at $100,000 as determined in the next paragraph. If one of the three most highly compensated executive officers only served as an executive officer for part of the year, disclosure is required of the officer's total compensation for the entire year.

However, there is a significant change in the calculation of compensation for this purpose. The three most highly compensated officers of a company are identified based on their "Total" compensation for the last fiscal year (column (j) of the Summary Compensation Table) minus the amount in the "Change in Pension Value and Nonqualified Deferred Compensation Earnings" column (column (h) of the Summary Compensation Table). The Summary Compensation Table is on page 13. The same definition of compensation applies for the $100,000 threshold. Under the prior rules, this determination was made based on salary and bonus amounts only.

***Analysis*:** Since "total compensation" includes many more types of compensation than salary and bonus, the Rules make it more difficult to determine in advance the group of three most highly compensated officers. Also, since the total compensation number now includes the current year portion of the fair value of stock options, it is more likely that officers will exceed the $100,000 threshold. The exclusion of retirement benefits prevents early retirement subsidies and similar benefit provisions in retirement plans from affecting NEO determinations.

As was previously the case for the chief executive officer, the Rules require that all persons who served as either the company's principal executive officer or principal financial officer during the last fiscal year to be treated as named executive officers. Thus, unlike prior practice, additional disclosures are required if more than one individual served as the principal financial officer of the company during the last fiscal year.

Finally, under the Rules, companies are no longer permitted to exclude an officer from being a named executive officer on the basis that the officer received an unusually large amount of cash compensation that was not part of a recurring arrangement and was unlikely to continue. This is consistent with the new focus on total compensation. However, companies can continue to exclude executive officers from being named executive officers due to the officer receiving cash compensation attributed primarily to an overseas assignment.

The proposed rules would have required that the total compensation and positions (but not the names) of up to three additional individuals be disclosed in the narrative disclosure that accompanies the Summary Compensation Table, if such individuals had higher total compensation than any of the NEOs. This proposal was criticized as likely requiring disclosures about actors, salesmen, traders and others not in policy making positions. The SEC has reproposed this part of the rule with the limitation that the employee must have responsibility for significant policy decisions in order to be covered. The new proposal is also that the rule would only apply to large accelerated filers. This proposal has not been implemented for the 2007 proxy season.

E. SUMMARY COMPENSATION TABLE

Another of the biggest changes under the new disclosure requirements is a major reorganization of the Summary Compensation Table ("SCT"). The SCT continues to serve as the principal disclosure vehicle under the Rules, but in a significantly revised fashion.

The revised SCT:

- adds a column for the disclosure of each named executive officer's "total compensation,"
- includes the portion of the fair value of option grants recognized in the current year rather than the number of shares,

- eliminates the prior division between annual and long-term incentive compensation,
- adds a column for disclosure of annual increases in pension plan benefits and above-market earnings on nonqualified defined-contribution and other deferred compensation plan benefits,
- is supplemented by a new table for the disclosure of specific terms relating to plan-based awards, and
- is amplified and explained in a narrative section that accompanies both the SCT and the new supplemental table for plan-based awards.

This is what the SCT looks like under the Rules:

SUMMARY COMPENSATION TABLE

Name and Principal Position (a)	Year (b)	Salary ($) (c)	Bonus ($) (d)	Stock Awards ($) (e)	Option Awards ($) (f)	Non-Equity Incentive Plan Compensation ($) (g)	Change in Pension Value and Nonqualified Deferred Compensation Earnings ($) (h)	All Other Compensation ($) (i)	Total ($) (j)
PEO	__ __ __								
PFO	__ __ __								
A	__ __ __								
B	__ __ __								
C	__ __ __								

1. <u>Total Compensation Column</u>

Column (j) in the SCT is used to disclose the named executive officers' "total compensation" for each of the company's last three fiscal years. The "total compensation" figure is the sum of the figures appearing in columns (c) through (i) of the table. Unlike the prior SCT, which provided for disclosure of certain amounts in terms of the number of underlying securities, the "total compensation" figure (like all figures in the SCT) is disclosed as a dollar amount.

The Rules clearly require that <u>all</u> compensation of the named executive officers be disclosed. There are only three exceptions to this requirement:

- perks with an aggregate value of less than $10,000 for a named executive officer;
- at-market earnings on nonqualified defined contribution and other deferred compensation plan benefits; and
- the value of group-life, health, hospitalization, and medical reimbursement plan benefits (provided the plans are nondiscriminatory).

The dollar amount of every other form of compensation must be disclosed in the appropriate column (c) – (i).

2. Salary and Bonus Columns

Columns (c) and (d) in the SCT are used for disclosure of the named executive officers' salary and bonus for each of the last three fiscal years. The Rules retain the required disclosure of salary and bonus in their prior form, with two important changes.

First, the Rules require that the amount of any salary, bonus or *any other compensation* that has been earned, but the receipt of which has been deferred until a future year, must be reported in the appropriate column in the SCT. Previously under Item 402, deferred amounts were only included in the salary and bonus columns, and are required to be disclosed in separate footnotes only when the named executive officer *elected* to defer the amounts. However, the Rules require disclosure of all forms of deferred compensation in the SCT (not just deferred salary and bonuses, and regardless of the reason for the deferral) but eliminates the separate footnote requirement. The Rules require that the amount deferred generally be reflected as a "contribution" in the separate Nonqualified Deferred Compensation table (discussed below).

If an executive voluntarily forgoes salary or bonus to receive a share-based award, the forgone amount is shown in the Salary or Bonus column in the SCT for the year, rather than in the Stock or Option Awards columns. The award is reported in the Grants of Plan-Based Awards table. The equity award is not shown on the SCT, except for the incremental portion of the equity award that is more valuable than the forgone salary or bonus, if any.

Second, where the amount of salary or bonus cannot be determined as of the latest practicable date prior to the issuance of the SCT, the Rules require that this fact be disclosed in a footnote to the table, along with the expected date on which such salary or bonus will be determined. Once the amount of the salary or bonus has been determined or paid, the Rules require the company to file a Form 8-K which discloses the salary or bonus amount along with a new total compensation figure including such amount. (In contrast, under the prior rules, disclosure of salary or bonus amounts that could not be calculated as of the latest practicable date was typically delayed until the next Form 10-K or proxy statement was filed.)

The Rules also clarify the intended distinction between "bonuses" reportable in the "Bonus" column and non-equity incentive plan awards that are reportable in column (g) of the SCT. A "bonus" is any cash award based on satisfaction of a performance target that was not pre-established and communicated to the named executive officer, or which has an outcome that was not substantially uncertain at the time the performance target was established and communicated to the executive. A typical example is a signing bonus for a newly hired executive or a discretionary bonus made after the end of a fiscal year.

In contrast, a non-equity incentive plan award is an award where the outcome with respect to the relevant performance target is substantially uncertain to be met at the time the performance target is established and communicated to the executive. The length of the performance period is not relevant so a typical annual performance-based bonus plan is reported in column (g).

Analysis: Many companies have reported their annual performance-based bonus plan payments under the "Bonus" column. Payments under many of those plans are now moved to column (g). The fact that executive officers have zero in the Bonus column on the SCT may have to be addressed in the narrative to the table and in the CD&A, particularly if the CD&A uses common language to refer to an annual performance-based incentive plan as the "Bonus Plan."

3. "Plan-Based Awards" Columns

The next three columns in the SCT – stock awards, option awards, and non-equity incentive plan compensation – cover so-called "plan-based awards," the material terms of which are further disclosed in the supplemental Grants of Plan-Based Awards table that accompanies the SCT.

a. Stock Awards and Options Awards Columns

Column (e) of the SCT requires disclosure of the aggregate dollar amount of compensation attributable to all stock-based awards that derive value based on the issuer's equity securities or that provide for settlement in the form of the issuer's equity securities. These awards include restricted stock, restricted stock units, phantom stock and phantom stock units, common stock equivalent units and other equity awards granted during the fiscal year that do not have "option-like features."

Column (f) of the SCT requires disclosure of the aggregate dollar amount of compensation paid as options, stock appreciation rights, and similar-equity based instruments that do have option-like features.

Both performance-based awards and awards that are not performance-based are reported in each of these columns.

The dollar amount of compensation reported for stock and option awards is determined based on their "fair value" on the date they are granted (instead of disclosure of the number of shares underlying the awards, as was the case under the prior rules). Fair value must be computed in accordance with the requirements of FAS 123R financial accounting standards. FAS 123R is the Statement of Financial Accounting Standards No. 123 (revised 2004).

The amount disclosed in column (e) or (f) for a share-based award is the annual compensation expense for the award that is recognized over the requisite service period in accordance with FAS 123R with one adjustment. For share-based awards with service-based vesting conditions, the fair value of the award is not adjusted by an estimate of forfeitures.

The amounts shown in columns (e) and (f) also reflect negative adjustments that may arise under FAS 123R. That negative number is taken into account in defining Total Compensation. The negative adjustments may occur for several reasons. Because forfeitures are not included in the fair value calculations, if a named executive officer forfeits an award that was previously reported, the amount of compensation previously reported would be shown as a negative when forfeited. Footnote disclosure is required for awards or portions of awards that are forfeited.

There also may be other negative adjustments under FAS 123R, particularly for awards with performance-based vesting. These awards are reported on the SCT only when it is "probable" that the performance condition will be achieved. If an award made in a prior year was not deemed probable of achievement when granted, but later becomes probable, the cost for all prior service is shown in the year when achievement becomes probable. If the award ultimately were not paid because the performance condition was not achieved, the cost previously shown would be reversed as a negative number on the SCT for that year.

In addition to the current expense for awards made in the last completed fiscal year, the current year expense for share-based awards made in earlier years that have not been fully recognized is included in columns (e) and (f). Regardless of the FAS 123R transition method chosen by the company for its financial statements, the company must use the "modified prospective transition method" for purposes of the SCT.

The reported value must also include the amount of any earnings on the awards, such as actual dividends or dividend equivalents, in the year in which they are paid, if those earnings were not taken into account in calculating the grant-date fair value of the awards under FAS 123R. It is unclear how dividends are to be treated for awards made before the new Rules go into effect or before FAS 123R was in effect. The reported dollar amount of compensation is not adjusted in future years, even if the calculated FAS 123R value fails to approximate the actual compensation earned under the awards.

A footnote is also required to explain the assumptions used in determining fair value. This can be accomplished by reference to the issuer's financial statements or the footnotes to those statements, or by references to the discussion of those assumptions in the MD&A disclosure in the issuer's annual report. The difference in forfeiture assumptions should be noted. If the column includes the value of grants from prior years, the assumptions used for all of those years must be disclosed.

In accordance with FAS 123R, the incremental increase in value is reported for an option, stock appreciation right or other option-like award that is re-priced or otherwise materially modified in the year in which the modification occurs.

If a discretionary stock award is made after the end of the year but based on performance in the last completed fiscal year, the currently recognized expense is shown on the SCT. However, the award would not be in the Grants of Plan-Based Awards table until the next year.

The original Rules would have required the entire fair value to be shown in the year of grant but the Rules were changed by the December 22, 2006 release. The reporting of the full grant-date fair value under FAS 123R is shown in the Grants of Plan-Based Awards table.

Analysis: Here is an example of how these requirements are applied to an option grant.

In 2006, an option grant is made to a named executive officer. The grant has a grant-date fair value of $900,000 under FAS 123R and $1 million when not adjusted for estimated forfeitures. The grant has a five-year graded vesting schedule (20% per year) and is not subject to any performance-based conditions. In the proxy for the 2006 fiscal year, $200,000 (20% of $1 million) would be shown, since estimated forfeitures are not taken into account. In each of the next four years, another $200,000 would be shown in the Option Awards column if the executive continues in employment and vesting occurs. If the executive leaves after three years and forfeits 40% of the award, no further amounts are reported and no adjustment is made in the year of forfeiture to reflect amounts disclosed in previous years because the forfeited portion of the award ($400,000) had not been disclosed.

If, instead of graded vesting, the vesting schedule of the executive's award had called for five-year cliff vesting in 2010 and the executive left in 2009 with zero options vested and was in the SCT for that year, the 2009 proxy would show a negative amount in the Options Award column of $600,000, thus canceling out the amount of the previously disclosed compensation for 2006, 2007 and 2008 that ultimately was not earned.

If the award were instead subject to performance-based vesting conditions, the FAS 123R compensation cost of the award would not be reported in the SCT until it is probable that the performance-based condition would be met. For example, if the 2006 stock option required the executive to remain employed for the three-year period ending on December 31, 2009 and conditioned vesting on the company meeting a target level of return on equity for that period, the cost of the award in 2006 would not be reported until the year in which it was determined that attainment of the return on equity target was "probable." If that probability occurred in 2007, the 2007 SCT would show both the 2006 and 2007 amounts.

b. Non-Equity Incentive Plan Compensation Column

Column (g) of the Summary Compensation Table is used for disclosure of the named executive officers' non-equity incentive plan awards.

A "non-equity incentive plan award" is generally any award where the relevant performance measure is not based on the price of the company's equity securities or which may not be settled by issuance of the company's equity securities. Also, the outcome with respect to the performance measure must be substantially uncertain at the time it is established and communicated to the named executive officer.

Unlike disclosure of stock-based and option awards in the SCT, disclosure of non-equity incentive plan awards is required to be made only in the year in which the award is earned (whether or not payment is actually made in such year or in a later year), instead of the year in which the award is granted. However, the Rules also require the material terms of all non-equity incentive plan awards to be disclosed in the year of grant in the separate Grants of Plan-Based Awards table, discussed below. Earnings (if any) on outstanding non-equity incentive plan awards are also required to be disclosed under column (g).

Column (g) is used for reporting the amount earned under an annual or shorter period performance-based cash plan as well as long-term cash incentive awards. For an annual plan, an adjustment can be made in the column headings on the Grants of Plan-Based Awards table to reflect that there are no future payments.

Payments under a performance award are reported here, rather than in the Bonus column, even if a compensation committee reserved and/or exercised negative discretion to reduce the amount payable under the award.

4. Change in Pension Value and Nonqualified Deferred Compensation Earnings Column

In a departure from prior requirements, the Rules require the aggregate increase of the actuarial value of a named executive officer's qualified and nonqualified defined-benefit plans accrued during the year as well as any above-market earnings on nonqualified defined-contribution plan benefits to be disclosed in a separate column in the SCT (column (h)).

Each element of compensation reported in revised column (h) is required to be identified and quantified in a footnote to the SCT (regardless of the amount).

Earnings on nonqualified deferred compensation are required to be disclosed in column (h) only if they are "above-market or preferential." Interest is above-market or preferential if it is 120% or more of the applicable federal long-term rate; dividends must be compared to the dividend rate on the company's common stock. However, all earnings on nonqualified deferred compensation are required to be disclosed in the Nonqualified Deferred Compensation table (discussed below), including earnings that are not above-market or preferential.

The change in pension value disclosure includes the increase of the actuarial present value in both qualified defined benefit plans and nonqualified defined-benefit plans, commonly known as SERPs. The disclosure includes both increases in the actuarial value due to additional years of service, compensation increases, plan amendments, etc., and increases or decreases in value attributable to interest. A negative value for one plan offsets positive values from other plans. However, a negative total may not be shown in the column according to the Telephone Interpretations. Additional disclosure relating to defined-benefit plan benefits is made in the Pension Plan Table, discussed below.

Analysis: The instructions for the Pension Plan table have more information about the methodology to calculate actuarial present value. Those instructions should also apply to the amount shown in the SCT.

The Rules provide that the amounts reported in column (h) are not counted for purposes of determining who are a company's named executive officers.

5. All Other Compensation Column

The next to last column (column (i)) in the SCT is used to disclose any other compensation not required to be disclosed in any other column.

A non-exclusive list of some specific types of compensation to be reported in the "All Other Compensation" includes:

- Perquisites and other personal benefits totaling at least $10,000 per named executive officer (see additional detailed discussion below);
- Amounts paid or accrued during the year in connection with any termination or constructive termination of employment or a change in control (excluding pension plan payments which have already been accrued and reported in column (h) of the SCT, unless such payments have been accelerated pursuant to a change in control);
- Company contributions to defined contribution plans (such as matching contributions to a company 401(k) plan);
- The dollar value of any insurance premiums paid by the company with respect to life insurance for the benefit of the named executive officer;
- Tax gross-ups; and
- The compensation cost associated with company securities purchased at a discount. A discount under a tax-qualified Section 423 employee stock purchase plan is not required to be disclosed.

Under the Rules, any single item of "All Other Compensation" with a value in excess of $10,000 is separately identified by type and quantified in a footnote.

Distributions from any tax-qualified or nonqualified defined benefit or defined contribution plan are not disclosed here. The only exception is if the amounts are accelerated pursuant to a change in control.

6. Perks

The SEC has been increasingly focused on the disclosure of perquisites and other personal benefits ("perks") for several years. An example is the SEC's 2005 enforcement action involving errors in disclosing perks by Tysons Foods. The treatment of perks in the Rules makes it clear that the SEC is looking for substantially expanded disclosures of perks. In the Release, the SEC notes the importance of this subject to many investors. There are two particularly significant aspects to the treatment of perks in the Rules. One is a substantial reduction in the thresholds for disclosure. The other is the SEC's interpretative advice about what needs to be disclosed as a perk.

To determine when disclosure is required, there are three important points about thresholds:

- Perks are included in the total dollar figure in the "All Other Compensation" column (column (i) of the SCT) if the perks have a total value of $10,000 or more (down from a threshold of the lesser of $50,000 or 10% of annual salary and bonus).

- If the $10,000 threshold is met, all perks have to be identified by type in a footnote. According to the Telephone Interpretations, this identification includes even perks for which the company has no incremental cost.

- In the footnote, the amount of an individual perk has to be shown if the perk is valued at the greater of $25,000 or ten percent of the total perks (previously required only if the perk was 25% of total perks).

The identification of a perk generally would have more specificity involved than was common practice before the Rules. For example, a "travel and entertainment" category in a footnote could not cover two different company-financed benefits, such as theater tickets and personal travel expenses on the same trip.

The other clear consequence of the new rules is an expansive reach for what constitutes a perk. The SEC does not provide a definition of a perk but provides interpretative advice that offers two guiding principles to identify whether an item is a "perk":

- An item is not a perk "if it is integrally and directly related to the performance of the executive's duties," such as an office, secretarial support, or a reserved parking space.

- Otherwise, an item is a perk if "it confers a direct or indirect benefit that has a personal aspect, without regard to whether it may be provided for some business reason or for the convenience of the company, unless it is generally available on a non-discriminatory basis to all employees."

The first step in a perk analysis is whether the item is integrally and directly related to job duties. If it is, then that item cannot be a perk, regardless of how it is provided. For example, use of a company jet on a business trip is not a perk even if there are less expensive travel alternatives. Another example is a laptop computer necessary for doing business out of the office, even if the computer is also used for some non-business purposes such as receiving personal email.

However, the SEC clearly views the "integrally and directly related" requirement as being narrow. The item must be necessary to do the job, not just have some company benefit.

An example of something that would not be considered "integrally and directly related" to an executive's job duties would be when a company requires an executive to use a company jet for personal travel for security reasons. The security requirement may be a legitimate business concern for the company but personal travel on the jet is not integrally and directly related to the performance of the executive's job.

The second step involves whether the item confers a benefit with a direct or indirect personal aspect. If an item has any personal benefit, the item is a perk unless it is generally available to all employees on a non-discriminatory basis. The SEC's view is that the general availability requirement requires the benefit to be available to all employees to whom it may lawfully be provided. A restriction based on a job category or pay scale does not make an item generally available.

In the Release, the SEC lists a number of benefits that it considers to be perks, including:

- club memberships not used exclusively for business,

- personal financial or tax advice,

- personal travel using company vehicles,

- personal travel financed by the company,

- personal use of property owned or leased by the company,
- relocation assistance or other housing or living expenses,
- security provided during personal travel or at a personal residence,
- commuting expenses, and
- discounts on the company's products or services not generally available to employees on a non-discriminatory basis.

The list of benefits that are clearly not perks to the SEC is much smaller, including travel to business meetings, business entertainment, and security during business travel.

The Rules do not change the prior method of valuing perks. The value is the aggregate incremental cost to the company. However, the Rules do require some new disclosure about the methodology for determining aggregate incremental cost. If any individual perk is valued at the greater of $25,000 or ten percent of the total perks, the method for determining the aggregate incremental value of that perk is included in a footnote. This requirement is particularly likely to apply to the personal use of company aircraft. If an executive reimburses the company for the total cost (not just incremental cost) of a benefit, that item is not a perk that needs to be disclosed.

Neither the treatment of an item as a perk nor the amount of the perk is controlled or affected for disclosure purposes by the federal income tax treatment or the accounting treatment of the item.

Analysis: The valuation of certain perks has drawn much attention in recent years. For example, company practices vary widely in valuing personal use of corporate aircraft under the aggregate incremental cost method. The SEC did not provide any guidance about how to determine aggregate incremental cost. However, SEC officials have indicated for some time that tax and accounting valuation standards are not appropriate for purposes of executive compensation disclosure.

7. Narrative Disclosure to SCT and Supplemental Plan-Based Awards Table

The Rules require companies to provide additional narrative disclosure of any other material factors necessary to understand the information disclosed in the SCT and supplemental Grants of Plan-Based Awards table (discussed below). The Rules mention several types of "material factors" that might be suitable for the narrative disclosure section:

- the terms of a named executive officers' employment agreements, if such terms are required for an understanding of items disclosed in the tables (the SEC specifically states that the mere filing of employment agreements may be insufficient to meet this requirement);
- a description of any repricings or other material modifications (such as extensions of exercise periods, changes in vesting or forfeiture conditions, changes to applicable performance criteria, etc.) to any outstanding options or other stock-based awards that occurred during the year; and
- an explanation of the level of salary and bonus in proportion to total compensation; and
- a general description of the formula or criteria to be applied in determining the amounts payable, the vesting schedule, the performance-based conditions or any other material conditions applicable to awards that are disclosed in the supplemental Grants of Plan-Based Awards Table (excluding any factor, criteria or performance condition that involves confidential trade secrets or other confidential information).

8. Transition Rule

The Summary Compensation Table continues to provide information on a rolling three-year period: the last completed fiscal year and the two prior years. However, there is a three-year transition for the new table format. In 2007, only one year of compensation is reported in the table. A company will not be required to restate any prior year compensation disclosure to comply with the new requirements.

F. THE GRANTS OF PLAN-BASED AWARDS TABLE

The Summary Compensation Table is accompanied by a supplemental table called *Grants of Plan-Based Awards*. The table is designed to provide comprehensive material information concerning awards made during the last fiscal year under any "plan," which is defined for purposes of the new rules as any contract, authorization or arrangement, whether or not contained in any formal document. The table is organized based on two general characteristics: whether the award was an equity or non-equity award and whether it was performance-based or not linked to performance.

The SEC considered it necessary to add this table because the Summary Compensation Table only includes the value of awards and not other key features, such as the number of shares underlying those awards or the grant date or exercise price of stock options. The table is required to have accompanying footnote and narrative disclosure, as discussed below. For ease of viewing, the table is divided below but would be shown as one table in the disclosure:

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		
		Thresh-old ($)	Target ($)	Maxi-mum ($)	Thresh-old (#)	Target (#)	Maxi-mum (#)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
PEO							
PFO							
A							
B							
C							

All Other Stock Awards: Number of Shares of Stock or Units (#) (i)	All Other Option Awards: Number of Securities Under-lying Options (#) (j)	Exercise or Base Price of Option Awards ($/sh) (k)	Grant Date Fair Value of Stock and Option Awards (l)	**OPTIONAL between (b) and (c)** Date of [Committee] Action	**OPTIONAL before (c)** Number of Units (#)	**OPTIONAL before (l)** Closing Market Price on Grant Date ($)
PEO						
PFO						
A						
B						
C						

The table is similar in some respects to the old LTIP/option grants in last fiscal year tables, but requires a much broader array of information. The Rules rely on FAS 123R to define performance-based awards as awards subject to either a performance condition or a market condition. In general, a performance condition is a target defined by the employer's own operations or activity (such as an internal rate of return or earnings per share). A market condition is based on the issuer's share price, including comparison to an index. The performance condition or market condition can affect any element of the award, including vesting, exercise price or amount payable.

The table covers only the named executive officers. There are 12 required columns plus up to three more columns that must be added under certain circumstances, as noted below.

Column (b): Grant date for any equity-based awards granted during the year. In addition, the instructions call for the placement of a new column immediately after this column if the reported grant date is different from the date on which the compensation committee (or other committee or the full board) took action or was deemed to take action to grant such awards. The additional column would report the date of that committee or board action.

Columns (c)-(e): The threshold, target and maximum dollar amount of payouts under non-equity incentive plan awards granted during the year. If the awards are denominated in units or other rights (such as units which are assigned a hypothetical dollar value), a column would need to be added directly before column (c) that quantified the number of units or other rights awarded. In the case of reporting for an annual plan in which there are no contingent future payments, the heading above these columns can be changed to "Estimated **Possible** Payouts Under Non-Equity Incentive Plan Awards".

Columns (f)-(h): The threshold, target and maximum number of shares of stock or shares underlying stock options that may be paid out or may vest under equity incentive plan awards granted during the year.

Column (i): The number of shares of stock granted during the year under equity plans that are not performance-based. This includes restricted stock that has only a time vesting requirement.

Column (j): The number of shares of stock underlying options granted during the year that are not performance-based. This includes stock options with time vesting or no vesting.

Column (k): The per-share exercise price for all options granted during the fiscal year. Similar to the special rule for column (b), an additional column would be inserted directly after this column if the exercise price is less than the closing market price of the company's stock on the date the option was granted. The additional column would report that closing market price. In addition, the narrative following the table would need to describe the methodology used to determine the exercise price.

Column (l): The grant date fair value of each equity award made during the year. This column reports the full fair value of the award, rather than only the current year recognized expense that is shown on columns (e) and (f) of the Summary Compensation Table. If the exercise price of a previously granted option is adjusted during a year, the incremental fair value of the modification or repricing is reported.

Each award granted to a named executive officer during the year must be reported on a separate line, and the particular plan under which the award was granted must be identified if awards were granted under more than one plan during the year. The rules are not specific as to how the identity of the plan must be disclosed, but presumably this information could be disclosed in the narrative following the table.

This narrative following the table provides significant information about each award. In addition to a general description of the formula or criteria to be applied in determining the amounts payable under the award, the narrative may need to cover such information as:

- any vesting schedule,
- whether dividends are paid and information on the dividend rate, and
- a description of the performance-based conditions and any other material conditions applicable to the award (but no confidential information).

SPECIAL OPTION/OTHER EQUITY DISCLOSURES: For stock options, the narrative includes a description of when an option is first exercisable, whether there are any tandem awards (and if so, the value of the award and the number of securities under the tandem award), reload features, tax-reimbursement provisions and provisions which would accelerate or waive exercisability conditions (such as in the event of a change in control). Similar disclosures would be made for other equity awards as appropriate.

Finally, narrative disclosure is required to describe how any option, SAR or other equity-based award was repriced or materially modified. Examples of material modifications that could trigger such disclosure include extension of exercise periods, changes to vesting conditions and changes in how dividends or dividend equivalents are treated under the award. Certain types of repricings do not require disclosure. These include (1) repricings that occur through a pre-existing formula or plan provision that results in periodic adjustment of the exercise price of an option or SAR, (2) a general anti-dilution provision in the award or in the plan under which it was granted or (3) changes to the award as a result of a recapitalization or similar transaction that affects all holders of that class of securities.

G. NEW EQUITY COMPENSATION TABLES

In an expansion of the prior disclosure requirements for outstanding equity awards, the Rules require disclosure of all of the equity compensation awards held by a named executive officer at the end of the fiscal year and the amount of benefits that had been realized under such awards during the year. This information is presented in two new tables that replace the "Aggregated Option/SAR Exercises in Last Fiscal Year and "FY-End Option/SAR Values" table under the old rules, and which expand upon the types of information previously required to be included in that table.

The <u>*Outstanding Equity Awards at Fiscal Year End*</u> table requires disclosure of each named executive officer's equity awards as of the end of the fiscal year. The table includes both awards that are subject to performance conditions and non-performance-based awards. The table looks as follows:

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

	Option Awards					Stock Awards			
Name (a)	Number of Securities Underlying Unexercised Options (#) Exercisable (b)	Number of Securities Underlying Unexercised Options (#) Unexercisable (c)	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#) (d)	Option Exercise Price ($) (e)	Option Expiration Date (f)	Number of Shares or Units of Stock That Have Not Vested (#) (g)	Market Value of Shares or Units of Stock That Have Not Vested ($) (h)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#) (i)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested ($) (j)
PEO									
PFO									
A									
B									
C									

The columns relating to stock options (columns (b) through (f)) must be completed on an award-by-award basis, thus resulting in separate line entries for multiple awards. The only exception to this rule is that multiple awards may be aggregated if they have identical expiration dates and exercise prices.

Stock or option awards that are subject to performance or market conditions which have not be met (as determined under FAS 123R) are reported in columns (d), (i) and (j). Once those conditions are met, options are reported in columns (b) and (c) and stock awards are reported in columns (g) and (h) until they vest.

As with the Summary Compensation Table and Grants of Plan-Based Awards table described above, specific footnote disclosure is required for this table. First, a footnote must be added to explain the vesting dates for options, other stock awards (such as restricted stock) and for awards under incentive plans. Vesting needs to be separately identified by award. Second, a separate footnote is needed if an award was transferred by the named executive officer other than for value. The footnote must explain the nature of the transfer.

The *Option Exercises and Stock Vested* table requires disclosure for each named executive officer of the options and SARs that were exercised during the year, as well as other types of equity awards that vested during the year, such as restricted stock and restricted stock units. Thus, this table reports those awards that cease to be reported in the Outstanding Equity Awards at Fiscal Year End table. As with that table, the columns are organized based on whether they relate to options or other types of equity awards. The table looks as follows:

OPTION EXERCISES AND STOCK VESTED

	Option Awards		Stock Awards	
Name of Executive Officer (a)	Number of Shares Acquired on Exercise (#) (b)	Value Realized On Exercise ($) (c)	Number of Shares Acquired on Vesting (#) (d)	Value Realized on Vesting ($) (e)
PEO				
PFO				
A				
B				
C				

The values reported in column (c) for the shares received upon exercise of a stock option and in column (e) for shares that vested under other stock awards are based on the market value of those shares at the time of exercise or vesting, as applicable. If any other consideration is paid to the executive at the time of exercise or vesting (such as a tax reimbursement payment), that amount is not reported in this table but must instead be included in the All Other Compensation column of the Summary Compensation Table. Columns (c) and (e) help compare the FAS 123R fair value of the award which was previously reported in the Summary Compensation Table to the market value of the shares realized by the named executive officer under the award. However, the fair value of the award is not required to be included in the table or a footnote.

H. POST-EMPLOYMENT COMPENSATION

The Rules contain significant revisions to the way in which post-employment compensation is disclosed. Under the Rules, the prior pension plan table and narrative disclosure are replaced by a new Pension Benefits table, a new Nonqualified Deferred Compensation table, and a new narrative disclosure of arrangements under which named executive officers could receive payments upon termination of employment or a change in control.

1. Pension Benefits Table

The old disclosure under Item 402, which consists of a general table showing estimated benefits payable upon retirement at set compensation levels and years of service, is replaced by a new table. The new table requires disclosure of the actuarial present value of each named executive officer's accumulated benefits under each qualified and nonqualified defined-benefit retirement plan, as well as the number of years of service credited to the executive and any pension plan payments made to the executive during the last fiscal year.

The actuarial present value and other information is computed as of the pension plan measurement date for financial statement reporting purposes for the company's last completed fiscal year. Assumptions used to calculate the actuarial present value must conform to generally accepted accounting principles and must be described in a narrative section accompanying the table. The same assumptions must be used as are used for the company's financial reporting purposes, except for assumed retirement age. Retirement can be assumed to occur at normal retirement age and compensation at retirement is to be based on current compensation (instead of a projected amount). If a plan has an early retirement age that does not involve any benefit reduction, that age should be used to determine the value of benefits, rather than the plan's stated normal retirement age. If an executive will be entitled to a benefit enhancement if the executive works additional years, the benefit calculation should assume that the executive works the necessary additional years to earn the enhancement. A separate row must be included in the table for each different plan in which the named executive officer participates.

The new table looks as follows:

PENSION BENEFITS

Name (a)	Plan Name (b)	Number of Years Credited Service (#) (c)	Present Value of Accumulated Benefit ($) (d)	Payments During Last Fiscal Year ($) (e)
PEO				
PFO				
A				
B				
C				

The table is required to be supplemented by additional narrative disclosure, in which material factors necessary to an understanding of each plan must be described. The SEC indicated that these "material factors" might include:

- All material terms and conditions of each disclosed plan, including benefit formulas, eligibility standards, and early retirement provisions;
- The specific elements of compensation used in determining the named executive officers' benefits;
- If a single officer participates in more than one plan, the reason for each plan; and
- Any company policies regarding the crediting of additional years of service.

Analysis: Because of Section 409A of the Internal Revenue Code, many companies froze old nonqualified retirement plans, such as SERPs, as of 2004 and started new plans for 2005 and later years. This arrangement requires separate lines on the table and separate narrative disclosure of the terms of the frozen and active plans. If these plans are merged, the separate lines could be eliminated but not the separate narrative descriptions of the different benefit provisions in the merged plan.

2. Nonqualified Deferred Compensation Table

In addition to the Pension Benefits table, which applies solely to a named executive officer's participation in qualified and nonqualified defined-benefit plans, the Rules also require a separate, new Nonqualified Deferred Compensation table for the disclosure of employer and employee contributions to, earnings under, and aggregate balances of nonqualified defined contribution and other deferred compensation plans.

The table looks as follows:

NONQUALIFIED DEFERRED COMPENSATION

Name (a)	Executive Contributions in Last FY ($) (b)	Registrant Contributions in Last FY ($) (c)	Aggregate Earnings in Last FY ($) (d)	Aggregate Withdrawals/Distributions ($) (e)	Aggregate Balance at Last FYE ($) (f)
PEO					
PFO					
A					
B					
C					

Unlike the old Item 402, all earnings are to be disclosed, regardless of whether they are determined to be above-market or preferential.

A company is required to use footnotes to identify and explain portions of "contributions" and "earnings" entries that are also reported on the same-year's Summary Compensation Table, as well as to identify portions of the "aggregate balance" entry that had been reported on the Summary Compensation Table for the named executive officer in prior years.

Like the Pension Benefits table, the Nonqualified Deferred Compensation table must also be supplemented by additional narrative disclosure, in which any material factors necessary to an understanding of the table are disclosed. The SEC listed several examples of material factors, including:

- Types of compensation that may be deferred and any limitations on the amounts of compensation that may be deferred;
- The measures for determining earnings under the plan, including whether the measures are selected by the named executive officer or the company and the frequency and manner in which such measures may be changed, with quantification of any earnings measures applicable during the last fiscal year; and
- Material terms regarding payouts, withdrawals and distributions.

Analysis: Section 409A of the Internal Revenue Code defines "nonqualified deferred compensation plan" very broadly. Section 409A applies to all nonqualified arrangements under which compensation is promised in one year and payable in a future year, whether such arrangements are written or unwritten, or whether they are broad-based or cover only a single individual. Companies will want to consider carefully the potential disclosure of any arrangement subject to Section 409A.

3. Other Potential Post-Employment Payments

Under the Rules, potential post-employment compensation that is or may become payable upon an actual or constructive termination of employment or a change in control of the company must be disclosed separately in narrative format. The old $100,000 threshold for disclosure for post-employment payable compensation is eliminated and the prior disclosure rules are expanded to include disclosure of the following:

- The specific circumstances that would trigger termination or change-in-control benefits;
- The estimated payments and benefits that would be provided in each circumstance, including the form, duration and the source of such payments (including perquisites and health care benefits);
- Any specific factors used to determine the payment and benefit levels;
- Any material conditions on receipt of payments, including the type and duration of any restrictive covenants and provisions regarding the waiver and breach of these covenants;
- The amounts of any related tax gross-ups; and
- Any other material factors necessary for understanding the termination and change-in-control arrangements.

Although the old $100,000 disclosure threshold for potential post-employment payments has been eliminated, there is still a $10,000 disclosure threshold for the aggregate amount of any post-employment perquisites before disclosure is required.

Analysis: The narrative disclosure section accompanying the Summary Compensation Table describes employment agreements, which frequently contain termination and change-in-control provisions. To coordinate with these disclosures, disclosure of termination and change-in-control provisions in employment agreements should be made in the narrative disclosure section accompanying the Summary Compensation Table only when termination or change-in-control compensation under these provisions has been paid during the year and is being disclosed in the appropriate place in the Summary Compensation Table (generally, column (i)). Where the termination or change-in-control provision has not yet been triggered, the disclosure regarding it should be made in the narrative section describing potential post-employment payments.

Under the Rules, quantitative disclosure of dollar amounts of estimated payments and benefits upon each potential triggering event is required even where uncertainties exist as to the amounts that may be payable. In the case of any uncertainty, the company is required to make reasonable estimates regarding the amount of payments and benefits and to disclose the material assumptions underlying such estimates. For purposes of applying this rule, a company may assume that the triggering event took place on the last business day of the company's last fiscal year and that the price per share of the company's securities was the closing market price as of that date.

Analysis: The requirement to quantify expected payments presents a number of practical considerations. First, the amounts disclosed should be coordinated with tally sheet or other summaries of such payments that are periodically presented to the company's compensation committee for purposes of compensation setting. Second, estimating the value of certain payments may require consideration of a variety of different factors. For example, estimating the amount of a tax gross-up payment to cover the golden parachute excise tax will require reliance on a number of assumptions, including the estimated value of future stock option vesting and benefit payments, estimates as to future tax rates and estimates as to the executive's future taxable compensation. These calculations will take time and may require the assistance of outside experts.

No disclosure is necessary for any post-termination arrangements that do not discriminate in scope, terms or operation in favor of a company's executive officers and that are generally available to all salaried employees (e.g., a broad-based salaried severance plan).

I. SMALL BUSINESS ISSUERS

The Rules make amendments to Item 402 of Regulation S-B for small business issuers, although the disclosure requirements are substantially less. Small business issuers are required to provide only the Summary Compensation Table and the Outstanding Awards at Fiscal Year-End Table, with related narrative disclosures. Importantly, a Compensation Discussion and Analysis (CD&A) is not required.

The disclosures are for only two years and for a maximum of three NEOs. The principal executive officer and up to two other officers are covered. Certain tabular, footnote and narrative requirements are simplified. Significantly, disclosures regarding changes in pension plan values are not required.

J. DIRECTOR COMPENSATION TABLE

Under the Rules, disclosure concerning director compensation is governed by S-K Item 402(l) (S-B Item 402(f) for small business issuers). Companies are required to provide both tabular and narrative disclosure of all compensation paid to or earned by a director for service as a director. Tabular disclosures are presented in a Director Compensation table in the format shown below. Although similar to the Summary Compensation Table, the Director Compensation table provides information for the last completed fiscal year only. An individual who was a director for any part of the last completed fiscal year must be included in the table.

DIRECTOR COMPENSATION

Name (a)	Fees Earned or Paid in Cash ($) (b)	Stock Awards ($) (c)	Option Awards ($) (d)	Non-Equity Incentive Plan Compensation ($) (e)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (f)	All Other Compensation ($) (g)	Total ($) (h)
A							
B							
C							
D							
E							

Column (b) on fees includes all retainer, meeting, committee, chairman and other similar fees. Only fees paid in cash are reported in this column.

Column (c) for stock awards uses the same current year recognized amount of the "fair value" under FAS 123R as applied for executives under column (e) of the Summary Compensation Table. As with the SCT, this includes amounts recognized in the current year from awards in previous years. Presumably, the discussion of the assumptions used for FAS 123R could largely be handled by reference to the Summary Compensation Table notes.

Column (d) for Option Awards also reports the amount of the fair value under FAS 123R recognized for the current year under new and previously granted options. This column reports the same type of grants as column (f) of the Summary Compensation Table.

The footnotes for columns (c) and (d) include the full grant date fair value of the awards for the current year. This is similar to the value shown in column (l) of the Grants of Plan-Based Awards table for executives.

Column (e) for Non-Equity Incentive Plan Compensation covers the same type of plans as are reported in column (g) of the Summary Compensation Table. These types of plans are relatively unusual for directors.

Column (f) on Change in Pension Value and Nonqualified Deferred Compensation Earnings is based on the same reporting requirements that apply to column (h) in the Summary Compensation Table. Even though most companies froze director pension plans years ago, there may be a change in the annual actuarial present value of those frozen benefits due to age of the director, changes in actuarial assumptions and other factors.

Column (g), All Other Compensation, of the Director Compensation table includes, but is not limited to:

- perks and other personal benefits if they total greater than $10,000;
- tax gross-ups or other tax reimbursement payments;
- the compensation cost (calculated in accordance with FAS 123R) for any security purchased from the company or its subsidiary at a discount from the market price on the date of purchase, unless the discount is generally available to all security holders or to all salaried employees of the company;
- annual company contributions to vested and unvested defined contribution and other deferred compensation plans;
- consulting fees;
- awards under director legacy or charitable awards programs;
- the dollar value of any insurance premiums paid by, or on behalf of, the company for life insurance for the director's benefit; and
- dividends if the dividends were not included in the grant date fair value reported when the stock was awarded and reported in column (c) or (d).

A footnote is required for column (g) to identify any item that is not a perk and whose value exceeds $10,000. If total perks exceed $10,000, each type of perk must be identified by type. If any perk exceeds the greater of $25,000 or 10% of the total perks, that perk must be quantified in the footnote.

A special rule applies to any tax gross up or reimbursement made on a perk. The tax reimbursement must be separately identified even if all underlying perks are not disclosed due to being less than $10,000 in total.

In addition to disclosures specifically required by the columns in the Director Compensation Table, companies are required to provide footnote disclosure of the outstanding equity awards at fiscal year end for each director. Companies must disclose in a footnote each director's aggregate number of stock awards and aggregate number of option awards outstanding at fiscal year end.

Analysis: No disclosure is required in the director compensation discussion of any amounts paid to a named executive officer that are disclosed in the Summary Compensation Table with a footnote indicating the amounts that reflect compensation for services as a director.

Directors can be grouped in a single row of the table if all elements and amounts of compensation are identical. Following the table, narrative disclosure describes any material factors necessary to an understanding of the table such as a breakdown of the types of fees. If any director has a different compensation arrangement from the rest of the directors, that director is identified and the terms of the arrangement are described.

K. PLAIN ENGLISH REQUIREMENT

The Rules require that disclosures under Items 402, 403, 404 and 407 be provided in "plain English" when the disclosure is included in reports required to be filed under Exchange Act Sections 13(a) or 15(d). The "plain English" requirement is found in Exchange Act Rules 13a-20 and 15d-20. The "plain English" principles include the following:

- present information in clear, concise sections, paragraphs and sentences;
- use short sentences;
- use definite, concrete, everyday words;
- use the active voice;
- avoid multiple negatives;
- use descriptive headings and subheadings;
- use a tabular presentation or bullet lists for complex material, wherever possible;
- avoid legal jargon and highly technical business and other terminology;
- avoid frequent reliance on glossaries or defined terms as the primary means of explaining information, and
- in designing the presentation of the information, include pictures, logos, charts, graphs, schedules, tables or other design elements.

L. CORPORATE GOVERNANCE DISCLOSURE

The Rules consolidate the disclosure requirements regarding director independence and related corporate governance disclosure requirements under a single disclosure item. Item 407 of Regulations S-K and S-B updates disclosure requirements regarding director independence to reflect current requirements and listing standards.

The Rules require identification of the independent directors of the company (and, in the case of disclosure in proxy or information statements, nominees for director) under the definition for determining board independence applicable to the company. The Rules also require disclosure of any members of the compensation, nominating and audit committee that the company has not identified as independent.

The Rules require a company that relies on an exemption when determining if its board meets the independence requirement applicable to it to disclose the exemption relied upon and the basis for concluding the exemption is applicable.

An issuer that has adopted definitions of independence for directors and committee members must disclose whether those definitions are posted on the company's Web site, or include the definitions as an appendix to the company's proxy materials at least once every three years or if the policies have been materially amended since the beginning of the company's last fiscal year. Further, if the policies are not on its Web site or in the current proxy statement, the company must disclose in which of the prior fiscal years the policies were included in the proxy statement.

For each director or director nominee identified as independent, any transactions, relationships or arrangements not disclosed under the Related Party disclosure requirements must be disclosed if they were considered by the board of directors in determining that the applicable independence standards were met. However, those transactions, relationships or arrangements may be described by "category or type." The description must be sufficiently detailed so that the nature of the transaction, relationship or arrangement is readily apparent.

Independence disclosure is required for any person who served as a director of the company during any part of the year, even if the person no longer serves as director at the time of filing the registration statement or report or, if the information is in a proxy statement, if the director's term of office as a director will not continue after the meeting.

The audit committee charter is no longer required to be delivered to security holders if it is posted on the company's Web site.

The Rules include the disclosure previously required regarding compensation committee interlocks and insider participation in compensation decisions.

For registrants other than registered investment companies, the Rules eliminate a prior proxy disclosure requirement about directors who have resigned or declined to stand for re-election (now covered by Form 8-K). For registered investment companies, which do not file Form 8-K, the requirement has been moved to Item 22(b) of Schedule 14A. Also, the Rules combine various proxy disclosure requirements regarding board meetings and committees into one location.

Committee disclosure for small business issuers is similar to that for other issuers, except that disclosure regarding compensation committee interlocks and insider participation in compensation decisions is not required.

M. NEW COMPENSATION COMMITTEE INFORMATION

The Rules require similar disclosure regarding compensation committees as has been required regarding audit and nominating committees of the board of directors. The company must describe the committee's processes and procedures for the consideration and determination of executive and director compensation including a number of specified items:

- The scope of the committee's authority;
- The extent to which the committee's authority can be delegated and to whom it may be delegated;
- The role of executive officers in determining or recommending executive or director compensation; and
- Any role of a compensation consultant and details about the relationship.

While a company must discuss the role compensation consultants play in the compensation committee's processes and procedures, this discussion is not required to disclose the executive officers of the company contacted by a compensation consultant (as was originally proposed). The disclosure covers the material elements of the directions given to the consultants and the scope of their assignment.

N. RELATED PERSON DISCLOSURES

The Rules revise the disclosure rules regarding related party transactions and director independence and board committee functions in Item 404. The Rules increase the $60,000 threshold for disclosure to $120,000 to adjust for inflation.

1. Principles Based Disclosure

The Rules change the approach to related party disclosure by basing the requirement upon a general statement of the principle for disclosure, followed by specific disclosure requirements and instructions. The intent is to have a more principles-based disclosure and eliminate some of the bright lines for disclosure.

A company will disclose based on whether the related person had, or will have, a direct or indirect material interest in the transaction. The materiality of any interest continues to be determined on the basis of the significance of the information to investors in light of all the circumstances and the significance of the interest to the person having the interest. The relationship of the related persons to the transaction, and with each other, and the amount involved in the transaction is among the factors to be considered in determining the materiality of the information to investors.

2. Indebtedness

The Rules eliminate the prior distinction between indebtedness and other types of related person transactions. As a result, the Rules change some situations in which indebtedness disclosure is required. First, disclosure of indebtedness transactions is required with regard to all related persons covered by the related person transaction disclosure requirement, except significant shareholders. Second, the Rules require disclosure of all material indirect interests in indebtedness transactions of related persons (or their family members).

3. Definitions

The operation of the Rules depends upon definitions of the terms "transaction," "related person" and "amount involved". The term "transaction" has a broad scope and includes, but not be limited to, any financial transaction, arrangement or relationship or any series of similar transactions, arrangements or relationships. The term "transactions" includes indebtedness and guarantees of debt.

The term "related person" is substantially the same list of persons as is covered by the prior rules, except that the definition includes stepchildren, stepparents, and any person (other than a tenant or employee) sharing the household of a related person.

The definition of "amount involved" clarifies that the amounts reported must be in dollars even if the amount was set or expensed in a different currency. Under the Rules, the term "amount involved" means the dollar value of the transaction, or series of similar transactions, and includes:

- in the case of any lease or other transaction providing for periodic payments or installments, the aggregate amount of all periodic payments or installments due on or after the beginning of the company's last fiscal year, including any required or optional payments due during or at the conclusion of the lease; and

- in the case of indebtedness, the largest aggregate principal amount of all indebtedness outstanding at any time since the beginning of the company's last fiscal year and all amounts of interest payable on it during the last fiscal year.

4. Description of Transaction

The company is required to describe the transaction, including:

- the person's relationship to the company;

- the person's interest in the transaction with the company, including the related person's position or relationship with, or ownership in, a firm, corporation, or other entity that is a party to or has an interest in the transaction; and

- the dollar value of the amount involved in the transaction and of the related person's interest in the transaction.

Registrants are also required to disclose any other information regarding the transaction or the related person in the context of the transaction that is material to investors in light of the circumstances of the particular transaction.

The Rules require disclosure for all transactions involving the company and a person (other than a significant shareholder or family member of such shareholder) that occurred during the last fiscal year, if the person was a "related person" during any part of that year. In the case of significant shareholders, disclosure is required as to a transaction which takes place after the person becomes a significant shareholder or which takes place before that time but continues after the person becomes a significant shareholder.

As was previously the case, disclosure is required for three years in registration statements filed pursuant to the Securities Act or the Exchange Act. The Rules eliminate the previous Section 16(b) disclosure requirement.

5. Exceptions

The Rules provide exceptions for certain categories of transactions. These exceptions include compensation to executive officers and directors, subject to the satisfaction of certain conditions. Disclosure is reduced for certain types of indebtedness and there are exceptions for situations where the person's interest in the transaction is indirect and minimal.

6. Procedures for Approval of Related Person Transactions

The Rules require a description of the material features of the company's policies and procedures for the review, approval or ratification of reportable transactions with related persons. While the material features of such policies and procedures vary depending on the particular circumstances, examples of such features may include:

- the types of transactions that are covered by such policies and procedures, and the standards to be applied pursuant to such policies and procedures;

- the persons or groups of persons on the board of directors or otherwise who are responsible for applying such policies and procedures; and

- whether such policies and procedures are in writing and, if not, how such policies and procedures are evidenced.

The Rules also require identification of any transactions required to be reported where the company's policies and procedures did not require review, approval or ratification or where such policies and procedures were not followed.

7. Promoters

The Rules require a company to provide disclosure regarding the identity of promoters and its transactions with those promoters if the company had a promoter at any time during the last five fiscal years. The disclosure requirements are consistent with those previously required regarding promoters. The Rules also require the same disclosure that is required for promoters for any person who acquired control, or is part of a group that acquired control, of an issuer that is a shell company.

8. Small Business Issuers

Substantially similar disclosure requirements for related party transactions and promoters apply for small business issuers except the requirement to disclose policies and procedures for reviewing related party transactions are not included; and the disclosure threshold is the lesser of $120,000 or one percent of the average of the small business issuer's total assets for the last three completed fiscal years.

Committee disclosure for small business issuers is also similar to that for other issuers, except disclosure regarding compensation committee interlocks and insider participation in compensation decisions is not required.

O. FORM 8-K CHANGES

The Rules amend certain aspects of Form 8-K. Employment compensation arrangements no longer are required to be reported under Item 1.01 (Entry into a Material Definitive Agreement). Those matters are covered under a modified, broader Item 5.02. This change similarly excludes employment compensation arrangements from Item 1.02 (Termination of a Material Definitive Agreement). The SEC has explained that the reason for these changes is due to concerns that Form 8-K disclosures do not appear always to be "unquestionably or presumptively material." The changes to Items 1.01 and 5.02 are intended to require real-time disclosure of employee compensation events that more clearly satisfy this materiality standard.

As amended, Items 5.02(b), (c) and (d):

- expand the information regarding retirement, resignation or termination (a Item 5.02 triggering event) to include all NEOs[1] for the company's previous fiscal year, whether or not included in the list of officers previously specified in Item 5.02; and

- require a brief description of any material plan, contract or arrangement to which a covered officer or director is a party or in which he or she participates that is entered into or materially amended in connection with an Item 5.02 triggering event, or any grant or award to any covered person, or modification thereto, under any such plan, contract or arrangement in connection with any such event.

A new Item 5.02(e) captures information regarding material employment compensation arrangements involving named executive officers that previously fell under Item 1.01. In respect of the principal executive officer, the principal financial officer, or any NEO for the company's previous fiscal year, Item 5.02(e) expands the disclosure items to include a brief description of any material new compensatory plan, contract or arrangement, or new grant or award, and any material amendment to any compensatory plan, contract or arrangement (or any modification to a grant or award), *whether or not that occurrence is in connection with an Item 5.02 triggering event*. Grants or awards (or modifications) are not required to be disclosed if they are consistent with the previously disclosed terms of a plan, contract or arrangement (whether involving cash or equity) and are disclosed in the next required Item 402 disclosure.

A new Item 5.02(f) requires disclosure of salary and bonus for the most recent fiscal year that was not available at the latest practicable date in connection with the last Item 402 disclosure (including a recalculation of total compensation to reflect the new salary and/or bonus information).

[1] A new Instruction 4 to Item 5.02 clarifies that for the purposes of Item 5.02 NEOs are the persons designated as such in the most recent SEC filing that required Summary Compensation Table disclosure.

The SEC emphasized that for amended Item 5.02 the Rules require that a *brief description* of the specified matter be included, noting that "some companies have included disclosure that resembles an updating of the disclosure required under current Item 402 of Regulation S-K." The SEC is "seeking a disclosure that informs investors of specified material events and developments."

The Rules also:

- extend to the new Item 5.02(e) the limited safe harbor under Section 10(b) and Rule 10b-5 previously applicable to other specified items under Form 8-K and exclude compliance with Item 5.02(e) from the Form S-3 eligibility requirements;

- permit companies to omit the Item 1.01 heading in a Form 8-K that discloses any other Item, so long as the substantive disclosure required by Item 1.01 is included in the Form 8-K; and

- revise the exhibit requirements under Form 20-F to require a foreign private issuer to file a copy of an employment agreement or compensatory plan with management or directors only when the foreign private issuer is required to publicly file the plan (or a portion of it) in its home country or has otherwise publicly disclosed the plan.

The Rules that require most executive compensation and related party disclosures be made in "plain English" do not apply to the executive compensation disclosures required under Item 5.02 of Form 8-K.

P. EFFECTIVE DATES

The Rules became effective for:

- **Forms 10-K** and **10-KSB** for fiscal years ending on or after December 15, 2006;

- **proxy and information statements covering registrants other than registered investment companies** filed on or after December 15, 2006 *that are required to include Item 402 and 404 disclosure for fiscal years ending on or after December 15, 2006*;

- **Securities Act registration statements covering registrants other than registered investment companies and Exchange Act registration statements** (including pre-effective and post-effective amendments) filed on or after December 15, 2006 *that are required to include Item 402 and 404 disclosure for fiscal years ending on or after December 15, 2006*;

- **Forms 8-K** for triggering events that occur on or after November 7, 2006;

- **Investment company registration statements** filed on Forms N-1A, N-2 and N-3 (except those filed by business development companies), including post-effective annual updates, filed on or after December 15, 2006;

- **proxy and information statements covering registered investment companies** filed on or after December 15, 2006.

The Rules do not require companies to "restate" compensation or related person transaction disclosure for fiscal years for which they previously were required to apply the prior rules. Instead, the Summary Compensation Table and disclosure of transactions with related persons required by amended Item 404(a) of Regulation S-K is required only for the most recent fiscal year, and therefore the information for years prior to the most recent fiscal year does not have to be presented at all. This results in phased-in implementation of the Summary Compensation Table and related amendments and amended Item 404(a) disclosure over a three-year period for Regulation S-K companies, and a two-year period for Regulation S-B companies.

During this phase-in period, companies are not required to present prior years' compensation disclosure or Item 404(a) disclosure under the former rules.

Q. ACTION ITEMS

The new rules are effective for the 2007 proxy season. Companies will want to start to evaluate their compensation policies, procedures and structures in light of the new requirements as early as possible.

In particular, the CD&A requires a detailed, comprehensive, and well thought-out analysis of the purposes behind a company's executive compensation practices, and how its individual plans and arrangements are designed to satisfy such purposes. Companies should begin drafting this CD&A as an initial part of their 2007 proxy filing season to have sufficient time to gather the necessary information and perform the requisite comprehensive analysis. The initial preparation of the CD&A requires the involvement of many different constituencies (e.g., human resources, the company's compensation committee, the committee's compensation consultant(s), the company's auditors, its internal and external lawyers, etc.).

In addition to the CD&A, many of the other disclosures require significant up-front preparation. For example, the expanded disclosure for equity and non-equity awards requires internal coordination between the parties who design and document those awards with those involved in drafting disclosures. In addition, actions need to be taken now to identify all perks that are provided to executives and to collect information regarding those perks. Payments that previously did not have to be quantified, such as expected future payments under termination/change-in-control arrangements, must be reviewed and consideration must be given to what assumptions should be used to estimate their value. As noted above, this may prove to be particularly challenging in the case of parachute tax gross-up payments.

With regard to the Summary Compensation Table, companies may want to begin now examining the different types of compensation they pay to their executives and determining where the various types of compensation fit into the table. There are some types of compensation that companies have never had to value for purposes of the Summary Compensation Table before (e.g., stock options and stock awards) and companies may want to pay particular attention to these types of compensation.

McGuireWoods is available to assist companies, compensation committees and others to interpret and apply the Rules. For assistance with respect to the Rules, you can contact:

Steven D. Kittrell
Partner
Washington Square
1050 Connecticut Avenue N.W., Suite 1200
Washington, DC 20036-5317
T: 202.857.1701
F: 202.828.2975
skittrell@mcguirewoods.com

David N. Oakey
Partner
One James Center
901 East Cary Street
Richmond, Virginia 23219-4030
T: 804.775.1022
F: 804.698.2134
doakey@mcguirewoods.com

Jeffrey R. Capwell
Partner
Bank of America Corporate Center
100 North Tryon Street, Suite 2900
Charlotte, North Carolina 28202-4011
T: 704.353.6256
F: 704.373.8823
jcapwell@mcguirewoods.com

David H. Pankey
Partner
Washington Square
1050 Connecticut Avenue N.W., Suite 1200
Washington, DC 20036-5317
T: 202.857.1716
F: 202.828.2984
dpankey@mcguirewoods.com

Jane Whitt Sellers
Partner
Bank of America Corporate Center
100 North Tryon Street
Suite 2900
Charlotte, NC 28202-4011
T: 704.373.8967
F: 704.373.8935
jsellers@mcguirewoods.com

Karl M. Strait
Partner
One James Center
901 East Cary Street
Richmond, Virginia 23219-4030
T: 804.775.1133
F: 804.698.2184
kstrait@mcguirewoods.com

James M. Anderson, III
Partner
One James Center
901 East Cary Street
Richmond, Virginia 23219-4030
T: 804.775.1044
F: 804.698.2155
jmanderson@mcguirewoods.com

James C. Williams
Of Counsel
77 West Wacker Drive
Suite 4100
Chicago, Illinois 60601-1815
T: 312.641.3025
F: 312.641.3024
jwilliams@mcguirewoods.com

La Tisha O. Chatman
Associate
World Trade Center
101 West Main Street, Suite 9000
Norfolk, Virginia 23510-1655
T: 757.640.3732
F: 757.640.3982
lchatman@mcguirewoods.com

G. William Tysse
Associate
Washington Square
1050 Connecticut Avenue N.W., Suite 1200
Washington, DC 20036-5317
T: 202.857.1730
F: 202.828.2982
gtysse@mcguirewoods.com

\4120253.6