

SEC Approves Proxy Disclosure Enhancements

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On December 16, 2009, the SEC voted to approve final rules on proxy disclosure and solicitation enhancements which had been initially proposed by the SEC in July 2009. As stated in the SEC's adopting release, the new rules will be effective February 28, 2010, meaning they will apply to the 2010 proxy season for substantially all calendar year issuers. The new rules will require revisions to director and officer questionnaires in connection with the expanded disclosure in the areas outlined below.

Compensation Disclosure

Companies will be required to address compensation policies and practices for all employees, including non-executives, if the compensation policies and practices create risks that are reasonably likely to have a material adverse effect on the company. This disclosure should not be provided in the CD&A, as originally proposed.

Director Qualifications Disclosure

The proxy statement must include additional biographical information for each director and director nominee. Specifically, companies now have to disclose the particular experience, qualifications, attributes or skills leading the board to conclude that the person should serve as a director for the company.

Other Director Positions and Disclosure of Legal Proceedings

The new rules also require disclosure of director positions held at public companies or registered investment companies during the past five years even if the director or nominee no longer serves on those boards. The new rules lengthen from five to 10 years the time during which disclosure of legal proceedings involving directors, nominees and executive officers is required and also expand the list of legal proceedings requiring disclosure.

Board Diversity

Companies will be required to disclose whether, and how, a nominating committee considers diversity in determining nominees for director. If the nominating committee has a policy with regard to diversity considerations in determining nominees for director, the company must also disclose how the policy is implemented and how the effectiveness of the policy is evaluated. The SEC declined to adopt a definition of diversity stating that companies should be permitted to define diversity (to include differences of viewpoint or background as well as diversity concepts such as race, gender and national origin) in ways they consider appropriate.

Board Leadership

Companies will be required to disclose their board (not management) leadership structures. As adopted, this requirement involves disclosure of whether and why a company has chosen to combine or separate the principal executive officer and board chairman positions and why the company believes its board leadership structure is the most appropriate for the company as of the time of filing. Where these roles are combined and the company also has a lead director who chairs meetings of the independent directors, disclosure will be required of whether and why the company has a lead independent director and the role the lead independent director has in the overall leadership structure. Companies will also be required to disclose the board's role in overseeing risk and the board's involvement in the oversight of risk

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management processes.

Equity Award Valuation

Companies will be required to disclose equity awards, such as options and restricted stock units, at their aggregate fair market value on the date of grant instead of the current requirement to report the annual accounting charge in the applicable compensation tables. For performance-based awards, this value should take into account a probability factor, and the potential maximum value will be required to be disclosed in a footnote to the table. Companies will also be required to recalculate prior year equity award values in their Summary Compensation Table. However, companies will not be required to include different named executive officers for any preceding year that may result from the recalculation.

Compensation Consultant Disclosure

The proxy statement must disclose the independence of and potential conflicts of interest involving compensation consultants that provide advice to management, the board or compensation committee on executive or director compensation. Disclosure will be required where:

- The board or compensation committee has engaged its own compensation consultant, and this consultant (including its affiliates) also provides additional services to the company in an amount in excess of \$120,000 during the last fiscal year; and
- The board or compensation committee has not engaged its own compensation consultant, but a compensation consultant (including its affiliates) provides executive compensation consulting services and additional services to the company in an amount in excess of \$120,000 during the last fiscal year.

Fee and related disclosure is not required for consultants that work with management (without regard to the nature of the engagement) if the board of directors has its own (different) consultant.

Form 8-K Reporting of Annual Meeting Voting Results

Lastly, companies will be required to report the results of any shareholder vote on Form 8-K within four business days after the meeting at which the vote was held.

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