



## **SEC Proposes New Rules for Proxy Compensation Disclosure**

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The Securities and Exchange Commission today unanimously approved the release of proposal to amend the proxy rules, particularly regarding disclosure of executive compensation. Key points are:

- First major overhaul to proxy compensation disclosure in 14 years.
- Changes aimed at being “comprehensive and comprehensible” – stress on comparability company to company and revealing now obscure compensation
- In addition to proxy compensation disclosure, changes proposed for:
  - Related-party transaction proxy disclosure
  - Disclosure of director independence
  - Form 8-K disclosure rules for executive compensation
- Key proxy compensation disclosure changes proposed:
  - Described as covering three broad categories
    - .. Compensation in last three fiscal years
    - .. Equity as a compensation vehicle
    - .. Payments and benefits payable following termination of employment or a change in control
  - Summary Compensation Table will include:
    - .. A column showing total annual compensation
      - This is a sum of all following columns
    - .. Salary and bonus columns continue as currently
    - .. Dollar amount of fair value of options granted in fiscal year
      - Fair value determined per FAS 123R but shown entirely in year of grant rather than spread over vesting period
    - .. Payouts from non-stock based programs
    - .. Perquisites if value exceeds \$10,000 plus any gross ups
    - .. Change in present value of pension/retirement benefits in the fiscal year plus any defined contributions
    - .. All amounts earned on deferred compensation
    - .. All other compensation column a catchall catching everything else except perquisites below the \$10,000 threshold

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- New “Compensation Disclosure and Analysis” (“CDA”) section
  - .. Replaces current Compensation Committee Report and performance graph
  - .. SEC staff describes the CDA as explaining
    - What are the objectives of compensation program, what is it designed to reward or not to reward
    - What are its pay elements
    - Why are those pay elements provided
    - How does the company determine the amount of each pay element
- New or revised tables
  - .. Equity awards outstanding at year end, with values
  - .. Value realized in last fiscal year by exercise of options SARs and vesting of other equity awards
    - The original fair value will also be shown here for comparison purposes
  - .. Retirement benefits, defined contribution plus defined benefits
  - .. Estimated payments and benefits relating to termination or change in control
- SEC staff says biggest changes in area of post-termination pay and benefits
  - .. Table will show potential retirement plan payouts and benefits
  - .. A table will show non-qualified deferred compensation information, including contributions, withdrawals and earnings in the last fiscal year (unclear if this will show account balances)
  - .. Cash plus benefits and perquisites to be payable following termination or a change in control, including amounts
- NEOs will be determined based on total compensation, not just salary and bonus
  - .. Defined as CEO, CFO, plus the three other most highly compensation executive officers
- Disclosure will be required in the Summary Compensation Table for **up to three non-executive officers**; they will not be named, but job titles given
- Disclosure for director compensation reworked to be complete
- Interpretive guidance to be included in upcoming release regarding what are perquisites
- Some issues discussed where disclosure of fair value of options in year of grant depart from FAS 123R rules
  - .. Fact that measured fair value not spread over vesting period noted above
  - .. In the event of repricing, the fair value of the surrendered award will not be netted against the fair value of the new award
- Proxy must be written in “Plain English”

- Changes to director independence disclosure rules aimed at consolidating rules that are now spread all over in various rules that emanated from Sarbanes-Oxley, and to coordinate with exchange and Nasdaq rules
- Related party transactions
  - Tersely described as simplifying
  - Disclosure of procedures for Board or Committee review and approval of related party transactions
  - SEC disclosure threshold would go from \$60,000 to \$120,000
- Form 8-K to focus on “unquestionably or presumptively material events”
  - Only NEO compensation will be covered (eliminating disclosure of compensation changes for directors and non-NEOs)
  - Sounds like narrower triggering events than currently, but not clear from the meeting
- The SEC and staff did not discuss the anticipated effective date for the new rules
  - They will not be effective for most 2006 proxy statements
  - No indication of whether voluntary early compliance will be encouraged. To preserve inter-company comparability, presumably it will not be
  - The written proposing release normally comes several business days after the SEC meeting