

Corporate and Securities Law Alert

SEC Adopts FAS 123R Practice for Disclosure of Share-Based Executive Compensation

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To close out 2006 the SEC has issued a welcome amendment of its Executive Compensation Disclosure Rules (adopted in July 2006) so that the calculation and reporting of the compensation from equity awards will be easier to compare with the values reported in the company's financial statements. Although criticized in the press, the SEC has made these "interim final rules" effective with the 2007 proxy season. Companies must use these rules to determine their most highly paid executive officers for disclosure in the 2007 proxy of the compensation of "Named Executive Officers."

The following items are noted in the SEC press release on the rule changes:

- The dollar values required to be reported in the Stock Awards and Option Awards columns of the Summary Compensation Table and the Director Compensation Table are revised to disclose the compensation cost of those awards, without reflecting forfeitures, over the requisite service period, as described in FAS 123R. In other words, the cost is to be divided and reported in annual installments rather than in a lump sum in the year of the award. Forfeitures are instead required to be described in accompanying footnotes.
- The Grants of Plan-Based Awards Table is revised to require disclosure of the grant date fair value of each individual equity award on a grant-by-grant basis, computed in accordance with FAS 123R. Also, the Director Compensation Table (required under Item 402 of Regulation S-K) is revised to require footnote disclosure of the same information.
- The Grants of Plan-Based Awards Table is revised to require disclosure of any option or stock appreciation right that was repriced or otherwise materially modified during the last completed fiscal year, including the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R. This information is no longer required in the Summary Compensation Table. The Director Compensation Table required under Item 402 of Regulation S-K is revised to require footnote disclosure of the same incremental fair value information.

These new rule changes are in effect for the 2007 proxy season. The SEC has characterized these rule changes as "interim final rules" because a comment period is required by law, but we do not anticipate there will be any changes made to these rules after the comment period has ended. However, Congressman Barney Frank (chair of the House Financial Services Committee) has expressed his disappointment with the SEC's changes. His committee has oversight authority on SEC actions and could hold hearings on these changes.

The full SEC release on the rule changes and the process for submitting comments can be found at: <http://www.sec.gov/rules/final/2006/33-8765.pdf>.

If you have any questions regarding this Notice, please contact [Scott P. Spector](mailto:sspector@fenwick.com) (650.335.7251 – sspector@fenwick.com) or [Tahir J. Naim](mailto:tnaim@fenwick.com) (650.335.7326 – tnaim@fenwick.com) in the Executive Compensation and Employee Benefits Group.

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