FENWICK & WEST LLP

Corporate and Securities Law Update

New Compensation and Other Disclosure Requirements Expected

JANUARY 9, 2006

On Tuesday, January 17, 2006, the Securities and Exchange Commission will hold an open meeting to consider proposing major changes to public company disclosures of compensation and governance information. We expect that the proposals submitted by the staff will be issued for public comment and eventually adopted, but not in time to apply to the current proxy season. However, the final rules will apply to future periods and issuers will be encouraged to comply voluntarily. We also expect institutional investors and the press to pressure companies to conform to new standards early as a matter of best practice. While it is too early to have any specifics about the new requirements, we encourage all our clients and friends to recognize that change is ahead, and begin to plan for it.

The proposals to be considered by the Commission next week will be proposed new disclosure requirements for:

- executive compensation
- director compensation
- related party transactions
- director independence
- other corporate governance matters
- securities ownership of officers and directors
- plain English requirements for proxy statements

The best evidence that the rule proposals will be sweeping comes from the Chairman of the SEC, Christopher Cox, whose remarks last month included the following:

"When it comes to disclosure documents intended for investors, nothing is more complicated than the description of executive compensation. We aim to simplify it, and make it more meaningful."

"It is absurd to think that the owners of an enterprise should be denied full knowledge of how much they're paying their employees. The shareholders own the company, and the executives work for them."

"Not only will improved disclosure of company information be useful to shareholders, it will also help directors—by getting them better market information about executive compensation decisions in other companies. It will help make their judgments better informed, and less susceptible to challenge in expensive lawsuits that cost shareholders and companies alike."

"It's been 13 years since the SEC last revised its rules for executive compensation. In that time, the nature of executive pay has changed drastically. The rules simply haven't kept up. The result is that too often, technical compliance with disclosure rules doesn't adequately capture the details of the latest compensation packages."

"What we will propose is disclosure that permits a complete and accurate understanding of the compensation package."

We will summarize and analyze these rules as they are proposed and adopted. If you would like information on how to comment on a rule proposal, or if you wish to discuss the implications of potential changes on your company, please contact Horace Nash (at 650.335.7934 or hnash@fenwick.com) or Scott Spector (at 650.335.7251 or sspector@fenwick.com).