FENWICK & WEST LLP

CORPORATE & SECURITIES LAW UPDATE

SEC Position Allows Stockholders to Make Stock Plan Proposals

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On July 15, 2002, the SEC announced a change in its long-standing policy regarding stockholder proposals relating to equity compensation plans. Under the new policy, public companies may no longer exclude from their proxy statements for annual meetings certain kinds of stockholder proposals relating to these stock plan proposals.

What has changed?

Under previous SEC policy, companies were generally not required to include in their proxy statements stockholder proposals related to equity compensation plans (except those used to compensate only senior executive officers or directors), because stock plans were considered part of the “ordinary business” of the company and proposals could be excluded under Rule 14a-8(i)(7). However, this exception to the rule does not apply to proposals that focus on "sufficiently significant social policy issues." Given the increased level of public debate regarding shareholder approval of equity compensation plans in recent weeks, the SEC will no longer treat certain shareholder proposals regarding shareholder approval of equity compensation plans as "ordinary business" of the company.

What is the new SEC policy?

If a stockholder submits a stockholder proposal in a timely manner and complies with the other requirements of Rule 14a-8, an issuer will not be permitted to exclude from its annual meeting proxy statement any stock plan proposal that:

- may be used to compensate only senior executive officers and directors; or
- potentially would result in material dilution to existing stockholders, regardless of who is eligible to participate in the plan.

What has not changed?

The policy change is limited to the proposals covering shareholder approval of equity compensation plans. It does not apply to other proposals related to equity compensation or to cash compensation.

When will this new policy take effect?

The new policy will take effect immediately.

When might we expect to receive stockholder proposals?

If a stockholder proposal is to be presented at a regularly scheduled annual meeting, the company must receive it at least 120 days before the anniversary of the prior year’s annual meeting proxy statement. Therefore the deadline for shareholders consenting to make

proposals regarding stock plans of issuers with fiscal years ending June 30, 2002 will be relatively soon. The deadline for issuers with fiscal years ending December 31, 2002 is not until late 2002.

If you would like to review the text of the Staff Legal Bulletin Number 14A, please click here: http://www.sec.gov/interps/legal/cfslb14a.htm

If you have any questions about this SEC policy change, please contact Horace Nash (hnash@fenwick.com), Jeffrey Vetter (jvetter@fenwick.com) or Eileen Robinett (erobinett@fenwick.com), all of whom helped to prepare this update. You may also contact any member of your Fenwick & West team or mail to: fwcsu@fenwick.com.