

Quick Reference Guide to New SEC compensation disclosure requirements

Tax > Compensation and benefits > Quick reference guides

On Aug. 11, 2006, the Securities and Exchange Commission released new rules on disclosure requirements for executive and director compensation and other related topics. These rules were adopted to provide shareholders with greater transparency related to executive and director compensation. The rules require full disclosure of all components of compensation, both cash and non-cash, in a broad-based tabular presentation. The rules also require a "Compensation Discussion and Analysis" section that provides a narrative overview of the compensation disclosures in "plain English." This reference guide highlights selected parts of the new disclosure requirements.

Named executives

Only the compensation of certain named executive officers ("NEOs") is subject to separate disclosure:

- Principal Executive Officer ("PEO");
- Principal Financial Officer ("PFO");
- Three highest paid employees if their total compensation for the prior fiscal year was greater than \$100,000 and the individual has responsibility for policy decisions at significant subsidiaries, business units or functions; and

- Up to two additional former executive officers who would have been included if employment continued.

Summary compensation table

The summary compensation table lists compensation for each executive for the past three years.

- Total compensation is reported by component:
 - Base salaries,
 - Bonuses,
 - Stock awards,
 - Stock option awards,
 - Non-equity incentive plan compensation,
 - Change in pension value and nonqualified deferred compensation, and
 - All of other compensation not reported in other columns, including perquisites.
- Total compensation is listed in its own summary column.

Compensation Discussion and Analysis ("CD&A")

This new section is required to disclose compensation policies and practices related to NEOs and must be certified by the PEO and PFO. The CD&A is intended to

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provide the “why” and “how” related to each component of compensation, covering:

- What the compensation program is designed to reward and the objectives of the program;
- Compensation elements included in the plan;
- Rationale for selecting the various elements and how each supports the compensation objectives;
- How the company determined the amount of compensation;
- Performance targets unless two tests are met:
 - Disclosure of the information would cause competitive harm, and
 - Information must be preserved as confidential with controls against disclosure;
- Policies for the following:
 - Allocating between long-term and current compensation, and
 - Allocating between cash and non-cash compensation;
- Factors considered when compensation is materially increased or decreased;
- If the company benchmarks compensation, the company must:
 - Discuss the benchmarking process and methods, and
 - Identify what compensation components were benchmarked;
- Role executives play in setting compensation;
- A particular focus has been placed on stock-granting practices:
 - How/if the compensation committee or full board of directors considers the pending release of material non-public information when determining stock option grant dates,

- Role of the compensation committee in approving and administering such programs, practices or procedures,
- Role of the executives in the program, plan or practice of option timing, and
- Standards that apply if the exercise price of options granted is based on a date other than the grant date or on an average price formula.

A compensation committee report is also required stating the committee has reviewed and discussed the CD&A with management.

Grants of plan-based awards

Information concerning formula-based incentives, stock options and stock granted to executives must be disclosed in tabular format:

- For share-based awards:
 - Options and other stock awards granted at fair market value (“FMV”) on the grant date,
 - Grant date and value of stock awards as determined under FAS 123(R),
 - If “in-the-money” on grant date, the FMV of the options on the grant date,
 - Date the compensation committee or full board of directors took action to grant the options if not the grant date, and
 - If the exercise price does not equal the FMV of the stock on the grant date the following must be described:
 - Methodology for determining the price, and
 - All relevant information considered;
- Estimated future payouts of non-equity incentive awards.

Additional required tables

In addition to summary compensation and plan-based awards, the disclosures must include the following tables:

- Outstanding equity awards at fiscal year-end,
- Options exercised and stock vested,
- Pension benefits,
- Nonqualified deferred compensation, and
- Director compensation.

Termination and change-in-control arrangements

Companies are required to provide narrative disclosure of payments or other benefits for each NEO triggered by termination, including resignation, severance, retirement, or constructive termination; a change in control of the company; or a change in the named executive's responsibilities. The following disclosures are required regardless of whether the contracts, plans, agreements or arrangements are written or unwritten:

- Circumstances that trigger payment,
- A description and amount of the estimated benefit to be paid under each circumstance,
- A description of how benefit levels are determined under various triggering events, and
- Other material factors pertaining to such contracts, agreements, plans or arrangements.

Effective dates

Compliance is required for:

- Form 10-K and 10-KSB:
 - Fiscal years ending after Dec. 15, 2006;
- Form 8-K:
 - Triggering events that occur 60 days or more after Nov. 7, 2006;

- Proxy and information statements for registrants:
 - Statements filed on or after Dec. 15, 2006;
- Securities Act and Exchange Act registration statements:
 - Filed after Dec. 15, 2006;
- Initial registration statements and post-effective amendments:
 - Filed on or after Dec. 15, 2006.

Important notes

- Final rules were released in November 2006, amended in December 2006, but are subject to change based on further SEC guidance. The SEC also issued interpretive guidance in January 2007.
- We have attempted to address some of the most significant requirements of the new rules. This guide is not all inclusive.

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