

New SEC Disclosure Rules

On December 16, 2009, the Securities and Exchange Commission ("SEC") adopted amendments to its disclosure rules related to executive compensation and corporate governance. The rule changes are intended to improve transparency and shareholder information. The amendments will require new or revised disclosure regarding executive compensation practices, risk oversight, and other corporate governance matters.

The new rules become effective on February 28, 2010, and will apply to proxy statements (or other filings containing information covered under the new rules) filed on or after that date. The exception to this is the new rule on the reporting of equity values in the Summary Compensation Table (as discussed below), which is applied to companies with a fiscal year end on or after December 20, 2009.

Executive Compensation Related Disclosure

Revisions to the Summary Compensation Table – The new rules require the disclosure of the aggregate grant date fair value of stock awards and option awards in the Summary Compensation Table ("SCT") and the Director Compensation Table. The disclosure of performance-based stock and option awards will be reported based on the probable outcome of the performance conditions. This is expected to result in the tabular disclosure of target award values, with the requirement of maximum potential values to be reported in the table footnotes. This new rule is a change from the previous rule which required the annual accounting expense to be recognized in the SCT. The new rule will also require companies to disclose the aggregate grant date fair value of awards for the previous years shown in the table.

Disclosure Regarding Compensation Consultants – The new rules require the disclosure of fees paid to compensation consultants only in certain circumstances in order to highlight potential conflicts of interest. In general, if the board's or compensation committee's consultant or its affiliate provides other services to the company in excess of \$120,000, then the company would be required to disclose the fees paid to the consultant or its affiliate. The following paragraphs detail the specific application of the new rules.

If the board or compensation committee has engaged a compensation consultant for services related to executive or director compensation, and the consultant (or an affiliate) has provided additional services (not related to executive and director compensation) to the company in excess of \$120,000, then the company would have to disclose the following:

- Fees paid to the consultant for services related to executive and director compensation and for additional services provided to the company
- Whether the decision to engage the consultant for additional services was made or recommended by management
- Whether the board approved the additional services provided by the consultant

If the board has not engaged a consultant, but a consultant has provided services related to executive and director compensation and additional services in excess of \$120,000 to the company, then the company would be required to disclose fees paid to the consultant for services related to executive and director compensation and for additional services provided to the company.

Disclosure of fees and related items is not required for consultants that work with management if the board has engaged its own consultant. The rules clarify that consulting services including executive and the broader employee population are not treated as executive compensation services and not subject to these disclosure requirements.

Disclosure of Compensation Policies and Practices Related to Risk Management –

The new rules require disclosure of the discussion and analysis of the compensation practices and policies for all employees (not just executive officers), if the risks inherent in the practices and policies are “reasonably likely to have a material adverse effect” on the company. Companies should conduct a risk assessment to determine whether disclosure is necessary. If disclosure is necessary, it will be included in the proxy statement but **not** included in the Compensation Discussion and Analysis (“CD&A”).

Corporate Governance Related Matters

Disclosure of Director Qualifications – The new rules require companies to disclose in the proxy for each director and new nominees the particular experience, qualifications, attributes, and skills that qualify the individual to serve as a director. Additionally, any public company directorships held during the past five years (even if the director is no longer serving on that board) must be disclosed as well as acknowledgement of any legal proceedings involving directors or executive officers over the last ten (instead of five) years.

Disclosure of Board Diversity Considerations – Under the new rules, proxy disclosure is required as to whether, and if so how, a nominating committee considers diversity in indentifying director nominees. The company must also disclose how the policy is implemented and how the company assesses the effectiveness of the policy. The new rules do not have a set definition for “diversity,” but leave companies to define “diversity” as broadly or narrowly as they choose within the context of the organization.

Disclosure of Board Leadership Structure and Risk Oversight – Companies are required to disclose in the proxy the board leadership structure as well as why the company believes this board leadership structure is the best for the company. Disclosure of whether and why the company has chosen to combine or separate the CEO and board chair positions is also required. If an individual assumes the role of both CEO and chair, a discussion of whether and why the company has a lead independent director must be disclosed. Companies will also be required to disclose the extent of the board’s role in the risk oversight of the company.

Reporting of Voting Results – The new rules require companies to report annual meeting voting results in a Form 8-K within four days of the company’s annual meeting. This is a change from the previous rule allowing companies to report voting results in the Form 10-Q or Form 10-K following the annual meeting.

What’s Next

[Click here for a link to the SEC’s Adopting Release.](#) In the weeks to come, Cogent will be providing more thorough commentary on the new rules and the application to our clients.

December 18, 2009

About Cogent Compensation Partners

Cogent Compensation Partners is a leading provider of objective and expert advice on the subject of executive compensation, corporate governance, and the linkage between company performance and executive pay.

Our executive compensation consultants assist in driving together the various interests involved in the executive pay debate: employees, shareholders, institutions, and other stakeholders. Our services include compensation committee advisory, incentive plan design, compensation strategy development, board of director compensation analysis, executive compensation related shareholder proposal assistance and stock ownership guidelines development.

www.cogentcompensation.com

Cogent Compensation Partners
Two Allen Center • 1200 Smith Street, Suite 610 • Houston, TX 77002
Tel 713.427.8300 • info@cogentcompensation.com