



# ■ Public Company Financial Executive Briefing ■

## Proposed Rules to Enhance Disclosure Concerning Compensation Policies, Corporate Governance & Risk, Director & Nominee Qualifications, and Executive Stock & Option Awards

TUESDAY, SEPTEMBER 1, 2009

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### EXECUTIVE SUMMARY

Under 1933 Act Release No. 9052 (Also Published as 1934 Act Release No. 60280), the SEC has issued proposed rules that would require disclosure of additional information concerning:

1. Compensation policies
2. The role of and fee paid to compensation consultants providing additional services to the company
3. Corporate governance
4. Director and nominee qualifications

The full grant date fair value of stock and option awards. If adopted, the proposed rules would be effective for the 2010 proxy season.

### SUMMARY OF RELEASE:

*IF ADOPTED, AS PROPOSED, THE FOLLOWING CHANGES WOULD BE REQUIRED.*

#### Compensation Policies:

Under Item 402 of Reg S-K, the Compensation Discussion & Analysis (CD&A) would be changed to include information about an entity's overall compensation policies, and how it creates incentives for employees that can affect the company's risk and the management of such risk.

A discussion would be required of compensation practices for employees, including non-executive officers, if risk arising from such policies or practices could have a material effect on the company.

Examples that could trigger discussion and analysis include compensation policies or practices at business units:

1. That are significant to the entity's risk profile
2. For which compensation structure is different from other units
3. That are significantly more profitable than other units
4. For which compensation expense represents a significant percentage of the unit's revenue
5. Or - that vary significantly from the overall risk and reward structure of the entity.

Related to risks arising from compensation practices, the following would likely need to be addressed (not an all inclusive list):

- The general design philosophy of the company's compensation policies for employees whose behavior would be impacted by the incentives
- The manner in which the company's risks assessment or incentive considerations are taken into account in structuring compensation policies
- How the company's compensation policies relate to the realization of risks resulting from actions of employees in the short term and in the long term
- Changes in compensation policies
- The extent to which compensation policies are monitored

#### Summary Compensation Table

As proposed, stock and option awards would be based on full grant date fair value (i.e., the total fair value of the award, rather than only the amount recognized for financial reporting purposes for the year).

Smaller reporting companies would have to disclose full grant date fair value in the Summary Compensation Table, as opposed to current rules, which require smaller reporting companies to present a Grants of Plan-Based Awards Table.

#### Compensation Consultants

The role played by compensation consultants in determining the amount or form of executive and director compensation would need to be disclosed. If a compensation consultant (or its affiliates) also provided additional services to the company, disclosure would be required of the nature and extent of such services provided during the current year, the aggregate fees paid to the compensation consultants, whether the decision to engage the compensation consultant was made, recommended, or subject to screening or review by management, and (4) if the board's compensation committee approved all additional services rendered by the compensation consultants.

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### **Director and Nominee Disclosure**

“Directors, Executive Officers, Promoters, and Control Persons,” would be amended to require additional disclosure for each sitting director and nominee of that individual’s experience, qualifications, attributes, or skills qualifying the individual to serve as a director and, as applicable, a member of a board committee.

In addition, for each director, disclosure would be required of

- Directorships held during the previous 5 years
- Legal proceedings involving directors, executive officers, and nominees (if material to an evaluation of their ability and integrity) in the previous ten years

### **Company Leadership Structure & Risk Management**

Item 407 of Regulation S-K will require disclosure of the leadership structure, together with an explanation of the reasons the company believes such a structure is the best.

In proxy and information statements, the following disclosure would be required:

- Whether and why the positions of principal executive officer and board chair are combined or separate
- Whether and why the company has a lead independent director (If so, the role such director plays in the leadership structure)
- The board’s involvement in the company’s risk management process

### **FOR FURTHER INFORMATION, PLEASE CONTACT ONE OF THE FOLLOWING:**

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