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SEC Promulgates Additional Disclosure Regarding Compensation, Risk Management, and Corporate Governance

The SEC has adopted rules requiring additional disclosure regarding executive and employee compensation, risk management, and corporate governance. Effective February 28, 2010, the rules will apply to annual reporting and proxy disclosure for calendar 2009 and thereafter. The changes are described below.

Stock and Stock Based Awards

Under existing rules, a company includes in the Summary Compensation Table as compensation to each named executive officer (NEO) the value of stock and stock option awards recognized for financial reporting purposes during each fiscal year reported in the table. The new rule requires disclosure, instead, of the aggregate grant date fair value of the awards, including any stock option re-pricing, as determined for financial reporting purposes pursuant to FASB ASC Topic 718. Awards subject to a performance condition are to be valued reflecting the probable outcome of the condition, consistent with ASC 718, with the maximum possible value disclosed in a footnote. Parallel changes apply to the Director Compensation Table.

The new reporting rules apply to each of the years reported in the table, requiring re-computation of amounts included in previous years for 2009 NEOs.

Compensation Consultants

In addition to disclosure currently required regarding the company's use of compensation consultants, under circumstances set forth below, the stated disclosure must be provided.

| Who engaged compensation consultant | Nature of services | Additional required disclosure |
|--|---|--|
| Board, compensation committee, or management | Executive or director ("E/D") compensation only | None |
| Board or compensation committee | E/D compensation and other services for which fees exceed \$120,000 | Amount of fees for E/D compensation services Amount of fees for other services Whether engagement for other services was made or recommended by management Whether compensation committee or board approved engagement for other services |
| Management | E/D compensation and other services for which fees exceed \$120,000 | Amount of fees for E/D compensation services Amount of fees for other services |
| Management and board or compensation committee engage separate consultants | Any | None |
| Board, compensation committee, or management | Only regarding broad-based plan that treats E/D same as salaried employees or providing non-customized information, such as surveys | None |

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Compensation Risk Management

Disclosure of a company's risk management practices is required, if the company's compensation policies applicable to employees (not limited to officers) are reasonably likely to have a material adverse effect on the company. The new rule provides examples of situations that might require disclosure and, in such cases, what information might be necessary to disclose.

Additional Information Regarding Directors and Executive Officers

In addition to each director's (or director nominee's) business experience, the new rules require disclosure of the "specific experience, qualifications, attributes or skills that led to the conclusion that the person should serve as a director ... at the time the disclosure is made, in light of the [company's] business and structure." This disclosure is required with respect to directors on staggered boards that are continuing in office, as well as nominees for election or re-election. The new rule does not specify the particular information to be disclosed, but the adopting release says that, if a person is chosen because of qualifications for a particular board committee or expertise in risk assessment or financial reporting, this information should be disclosed.

Disclosure of nominating committee procedures is expanded to include whether the committee considers diversity in identifying director candidates and how any such program is implemented. The company is allowed to characterize diversity however it chooses, and may include diversity of viewpoint, professional experience, education, or other individual qualities, as well as group identity.

The requirement to disclose a director's other public company board memberships is extended to cover board memberships held during the past five years.

The past period during which involvement of directors or executive officers in specified legal proceedings must be disclosed is increased from five years to ten. The following are added to the kinds of proceedings that must be disclosed:

- Any judicial or administrative proceeding (not subsequently reversed) in which the person was found to have committed mail or wire fraud;
- Any judicial or administrative proceeding (not subsequently reversed) in which the person was found to

have violated any law respecting financial institutions or insurance companies or any settlement of such a proceeding (other than a settlement between private litigants);

- Any disciplinary sanction or order by a securities or commodities self-regulatory organization.

Corporate Governance

The new rules require companies to disclose whether the roles of CEO and chairman of the board are held by one person or two and why the arrangement is believed appropriate for the company. If the offices are held by one person, and the board has designated a lead director, the reasons for and functions of the position must be stated.

Under the new rules, the company must also describe the board's role in oversight of credit, liquidity, operational, or other risk. Although not specified in the rule, the adopting release suggests disclosure of the relationship between the board and senior management in dealing with risk; how the board executes its function, whether, for example, by the entire board or the audit or another committee; and whether risk management personnel report directly to the board (or board committee).

Reporting of Stockholder Meeting Results

Form 8-K is amended to require reporting of stockholder meeting voting results within four days after the meeting. Requirements for such reporting in Forms 10-K and 10-Q have been deleted.

For further information on the contents of this alert, please contact David C. Fischer at 212.407.4827 or dfischer@loeb.com.

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New York

Partners

| | | |
|---------------------------|----------------------|--------------|
| DAVID P. ANSEL | DANSEL@LOEB.COM | 212.407.4837 |
| NORWOOD P. BEVERIDGE, JR. | NBEVERIDGE@LOEB.COM | 212.407.4970 |
| GREGORY J. BLASI | GBLASI@LOEB.COM | 212.407.4236 |
| GIOVANNI CARUSO | GCARUSO@LOEB.COM | 212.407.4866 |
| MIRIAM L. COHEN | MCOHEN@LOEB.COM | 212.407.4103 |
| STEPHEN H. COHEN | SCOHEN@LOEB.COM | 212.407.4279 |
| WALTER H. CURCHACK | WCURCHACK@LOEB.COM | 212.407.4861 |
| ERIC DOERING | EDOERING@LOEB.COM | 212.407.4214 |
| ANGELA M. SANTORO DOWD | ADOWD@LOEB.COM | 212.407.4097 |
| KEVIN M. EISENBERG | KEISENBERG@LOEB.COM | 212.407.4123 |
| DAVID C. FISCHER | DFISCHER@LOEB.COM | 212.407.4827 |
| JEFFREY S. FRIED | JFRIED@LOEB.COM | 212.407.4987 |
| SCOTT J. GIORDANO | SGIORDANO@LOEB.COM | 212.407.4104 |
| STAN JOHNSON | SJOHNSON@LOEB.COM | 212.407.4938 |
| ROBERT B. LACHENAUER | RLACHENAUER@LOEB.COM | 212.407.4854 |
| FRANK LEE | FLEE@LOEB.COM | 212.407.4825 |
| FRANK J. MARINARO | FMARINARO@LOEB.COM | 212.407.4285 |
| COREY N. MARTIN | CMARTIN@LOEB.COM | 212.407.4841 |
| BARRY T. MEHLMAN | BMEHLMAN@LOEB.COM | 212.407.4812 |
| MITCHELL S. NUSSBAUM | MNUSSBAUM@LOEB.COM | 212.407.4159 |
| ANDREW M. ROSS | AROSS@LOEB.COM | 212.407.4838 |
| LLOYD L. ROTHENBERG | LROTHENBERG@LOEB.COM | 212.407.4937 |
| DAVID S. SCHAEFER | DSCHAEFER@LOEB.COM | 212.407.4848 |
| IRA A. SCHREGER | ISCHREGER@LOEB.COM | 212.407.4044 |
| FRAN M. STOLLER | FSTOLLER@LOEB.COM | 212.407.4935 |
| TAHRA T. WRIGHT | TWRIGHT@LOEB.COM | 212.407.4122 |

Senior Counsel

| | | |
|---------------|-------------------|--------------|
| RONIT FISCHER | RFISCHER@LOEB.COM | 212.407.4816 |
|---------------|-------------------|--------------|

Los Angeles

Partners

| | | |
|----------------------|---------------------|--------------|
| MARIA ASPINWALL | MASPINWALL@LOEB.COM | 310.282.2377 |
| CURTIS W. BAJAK | CBAJAK@LOEB.COM | 310.282.2024 |
| ROBERT S. BARRY, JR. | RBARRY@LOEB.COM | 310.282.2258 |
| KENNETH R. BENBASSAT | KBENBASSAT@LOEB.COM | 310.282.2340 |
| KARL E. BLOCK | KBLOCK@LOEB.COM | 310.282.2225 |
| JENNIFER BOROW | JBOROW@LOEB.COM | 310.282.2311 |
| GERALD M. CHIZEVER | GCHIZEVER@LOEB.COM | 310.282.2121 |
| ALLAN B. DUBOFF | ADUBOFF@LOEB.COM | 310.282.2141 |
| HAROLD A. FLEGELMAN | HFLEGELMAN@LOEB.COM | 310.282.2394 |
| CHANNING D. JOHNSON | CJOHNSON@LOEB.COM | 310.282.2322 |
| CHRISTOPHER J. KELLY | CKELLY@LOEB.COM | 310.282.2263 |
| THOMAS ROHLF | TROHLF@LOEB.COM | 310.282.2240 |
| PAUL W. A. SEVERIN | PSEVERIN@LOEB.COM | 310.282.2059 |
| MARK A. STREAMS | MSTREAMS@LOEB.COM | 310.282.2326 |
| LORETTA THOMPSON | LCTHOMPSON@LOEB.COM | 310.282.2331 |
| LAWRENCE VENICK | LVENICK@LOEB.COM | 310.282.2318 |

Chicago

Partners

| | | |
|---------------------|--------------------|--------------|
| TIMOTHY CARROLL | TCARROLL@LOEB.COM | 312.464.3173 |
| JAMES INENDINO | JINENDINO@LOEB.COM | 312.464.3148 |
| ELIZABETH L. MAJERS | EMAJERS@LOEB.COM | 312.464.3142 |