TELL ME MORE! MORE! MORE! SEC PROPOSES ADDITIONAL COMPENSATION AND GOVERNANCE DISCLOSURE RULES

July 15, 2009

To Our Clients and Friends:

The Securities and Exchange Commission (SEC) has proposed changes to the compensation and corporate governance disclosure rules that would – if adopted – be effective for the 2010 proxy season. The proposed rules are subject to a 60-day comment period and may be revised as a result of any comments and further consideration by the SEC. As proposed, the changes include:

- Additional Compensation Discussion and Analysis (CD&A) disclosure, requiring – if "material" – a discussion of how compensation policies for the company's employees (not just the named executive officers) affect the company's risk and risk management.
- Use of the full grant date value of equity awards (as opposed to the FAS 123R value recognized by the company in its financial statements) in the Summary Compensation Table and the Directors Compensation Table.
- Additional disclosure regarding the experience and qualifications of directors.
- New disclosures about the company's leadership structure and the board's role in the risk management process.
- Additional disclosure regarding services performed by compensation consultants, their compensation and how they are selected.

In addition, the SEC has proposed to accelerate the timing of reporting voting results by transferring the disclosure requirement from the 10-Q and 10-K to a Form 8-K filed within four business days of the vote. The SEC has also proposed technical amendments to the proxy solicitation process that are intended to "provide clarity and address issues that have arisen."

REVISED COMPENSATION AND GOVERNANCE DISCLOSURE PROPOSALS

Additional Compensation Discussion and Analysis. Under the proposed rules, public companies would be required to include a discussion of how the company's compensation policies for its employees affect the company's risk and the management of that risk. The

CD&A currently only requires a discussion of the compensation paid to the company's named executives officers (including the chief executive officer, the chief financial officer and the next three highest paid executive officers). The "enhanced" disclosure would apply to the compensatory arrangements of ***any*** of the company's employees, if the arrangement "may have a material effect on the company."

While the SEC declined to define what constitutes a "material effect on the company," it has offered a number of examples, including compensation policies and practices at a business unit of the company that carries a significant portion of the company's risk profile; compensation structured significantly differently than other units within the company; that is significantly more profitable than others within the company; or where compensation expense is a significant percentage of the unit's revenues. In addition, companies would be required to discuss compensation policies and practices that vary significantly from the overall risk and reward structure of the company (for example, bonuses that relate to specific services when the risk to the company with respect to such services extends over a significantly longer time period).

Issues that would need to be addressed in the CD&A include (but are not limited to):

- The philosophy of the compensation policies as they relate to or affect risk-taking by employees on behalf of the company, and how the philosophy is put into practice;
- The company's risk assessment or incentive considerations in structuring the policies or in awarding and paying the compensation;
- How the policies relate to the realization of risks resulting from the actions of employees in both the short-term and the long-term (the SEC highlights "clawbacks" and holding periods as examples);
- How the company adjusts its compensation policies to address changes in its risk profile and material adjustments the company has made as a result of changes in its risk profile; and
- The extent to which the company monitors its policies to determine whether its risk management objectives are being met with respect to incentivizing its employees.

Amended Equity Compensation Disclosure. The SEC is also proposing to reverse itself (again) on how equity compensation is to be disclosed in the Summary Compensation Table and the Directors Compensation Table. As proposed, companies would disclose the full grant date value of equity awards in the year of grant, instead of disclosing the FAS 123R value that is recognized by the company in its financial statements incrementally over the vesting period, as is now required. (The grant date value of the awards would no longer be disclosed in the Grants of Plan-Based Awards Table.)

This proposed rule could change who among the company's executive officers, other than the chief executive officer and the chief financial officer, are the highest paid officers (and thus, the named executive officers) because it will likely affect the amounts reported in the Summary Compensation Table with respect to stock awards and stock options, and therefore, the amounts reported in the Total Compensation column. Examples of awards that could have a particular disparate impact include new hires grants and off-cycle grants to fewer than all executives. For companies that received financial assistance from the U.S. Treasury under the Troubled Asset Relief Program (TARP), this proposed rule could also affect the determination of which employees are subject to TARP's compensation restrictions.

The SEC has also proposed that the dollar value of elective salary and bonus deferrals in exchange for stock, options or other non-cash compensation would no longer be reported in the Salary or Bonus columns of the Summary Compensation Table. Instead, the grant date value of the equity or other non-cash compensation would be reported in the Stock Awards, Option Awards or All Other Compensation columns.

It is not clear what, if any, transition relief the SEC would provide with respect to the amounts that are to be reported for 2008 and 2007 in next year's proxy statement. As proposed, the 2007 and 2008 numbers would be recomputed under the new rules. However, the SEC is soliciting comments for viable alternative methods of reporting compensation in prior years.

Additional Director Disclosure. Under the proposed rules, companies would have to disclose each director's and director nominee's "experience, qualifications, attributes, or skills that qualify that person to serve as a director of the company" and as a member of any board committee that the person may serve on, including risk assessment skills, areas of expertise and other qualifications. Companies would also be required to disclose (i) any directorships held by the person at public companies at any time during the past five years (rather than just current directorships), and (ii) any material legal proceedings in which the person was involved during the past 10 years.

New Company Leadership and Risk Management Disclosure. Under the proposed rules, companies would be required to include in their proxy statements a discussion "of the company's leadership structure and why the company believes it is the best structure for it at the time of the filing." Companies would also have to discuss whether and why they have separated or combined the chief executive officer and board chairman positions. In addition, companies would have to disclose the board's role in the company's risk management process.

Additional Compensation Consultant Disclosure. Companies are currently required to disclose the role of compensation consultants in determining or recommending executive and director compensation, identifying the consultants, stating whether they are engaged directly by the compensation committee, describing the nature and scope of their assignment, and the material elements of the instructions given to them. The proposed rules would require additional disclosure of any other services provided by the consultant and a breakdown of the fees paid to the consultant for the executive and director compensation-related services and other services. The company would also be required to disclose whether the consultant's engagement for the other services was subject to screening or reviewed by management, and whether the board or compensation committee approved the non-compensation-related services.

Please contact any of us if you would like to discuss these proposals further or how they may affect your company's future filings.

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