May 2015

SEC Approves Proposed Rules for Executive Compensation

On April 29, 2015, the Securities and Exchange Commission (SEC) narrowly approved proposed rules requiring certain reporting companies to disclose the relationship between pay to named executive officers and performance by the reporting companies and their respective peers.

If approved for publication and adopted, the rule would require a covered company to disclose in its proxy statement executive pay and performance information for itself and companies in its peer group. The stated objectives include (i) greater transparency for companies and (ii) better informed shareholders when electing directors and casting advisory votes on executive compensation.

WHO IS REQUIRED TO DISCLOSE THE INFORMATION?

- Most reporting companies would be required to disclose the information for the five most recently completed fiscal years
- Smaller reporting companies would be required to disclose the information for the three most recently completed fiscal years[1]
- Foreign private issuers, registered investment companies and emerging growth companies are exempt from the disclosure requirements[2]

WHEN DOES THE DISCLOSURE BEGIN?

- The proposed rules would be phased-in
- Most reporting companies would be required to disclose the information for three years in the first proxy statement, adding another year of disclosure in each of the two subsequent annual proxy filings
- Smaller reporting companies would disclose the information for two years in the first proxy statement, adding an additional year of disclosure in their subsequent annual proxy statements

WHAT INFORMATION IS DISCLOSED BY LARGER COVERED COMPANIES?

The proposed rules would require covered companies to disclose in a table the following information:

- Executive compensation actually paid for the principal executive officer, adjusted for pensions and equity awards
- Average compensation actually paid to the remaining named executive officers identified in the Rule 402 summary compensation table
- Total executive compensation reported in the summary compensation table for the principal executive officer
- Average compensation of the amounts reported for the remaining named executive officers

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[1] "Smaller reporting companies" are reporting companies that (i) have a common equity public float of less than $75 million or (ii) are unable to calculate their public float and have annual revenue of $50 million or less.

[2] "Emerging growth companies" are issuers whose initial public offering was or will be completed after Dec. 8, 2011, and have total annual gross revenues of less than $1 billion during their most recently completed fiscal year.

- The covered company's total shareholder return (TSR) on an annual basis
- TSR of the peer group companies on an annual basis

WHAT INFORMATION IS DISCLOSED BY SMALLER REPORTING COMPANIES?

The proposed rules would require covered companies to disclose in a table the following information:

- Executive compensation actually paid for the principal executive officer adjusted for equity awards
- Average compensation actually paid to the remaining named executive officers identified in the Rule 402 summary compensation table
- Total executive compensation reported in the summary compensation table for the principal executive officer
- Average compensation of the amounts reported for the remaining named executive officers
- The covered company's TSR on an annual basis

WHICH EXECUTIVES ARE COVERED?

- Generally, the named executive officers for whom disclosure is required under Rule 402 in the summary compensation table
- Principal executive officer provided separately in actual detail
- Remaining named executive officers collectively in average amounts

WHAT IS COMPENSATION "ACTUALLY PAID"?

- For most reporting companies, the total compensation reported in the summary compensation table adjusted by footnote for pension/defined benefit amounts and equity awards
- Pension/defined benefit amounts adjusted by deducting the change in value and adding back actuarially determined service costs
- For most reporting companies, equity awards are considered actually paid on the vesting date at the fair value (rather than the fair value on the grant date)

HOW IS THE INFORMATION DISCLOSED?

- Tabular format
- Tagged in an interactive data format using eXtensible Business Reporting Language (XBRL)

If approved for publication by the SEC, the proposed rules will be published for comment on the SEC website and in the Federal Register. Interested parties will have sixty days from publication in the Federal Register within which to comment. Now is the time to review and prepare comments.

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