SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 228, 229, 232, 239, 240, 245, 249 AND 274

[RELEASE NOS. 33-8732; 34-54302; IC-27444; FILE NO. S7-03-06]

RIN 3235-AI80

EXECUTIVE COMPENSATION AND RELATED PERSON DISCLOSURE

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; request for additional comments.

SUMMARY: The Securities and Exchange Commission is adopting amendments to the disclosure requirements for executive and director compensation, related person transactions, director independence and other corporate governance matters and security ownership of officers and directors. These amendments apply to disclosure in proxy and information statements, periodic reports, current reports and other filings under the Securities Exchange Act of 1934 and to registration statements under the Exchange Act and the Securities Act of 1933. We are also adopting a requirement that disclosure under the amended items generally be provided in plain English. The amendments are intended to make proxy and information statements, reports and registration statements easier to understand. They are also intended to provide investors with a clearer and more complete picture of the compensation earned by a company's principal executive officer, principal financial officer and highest paid executive officers and members of its board of directors. In addition, they are intended to provide better information about key financial relationships among companies and their executive officers, directors, significant shareholders and their respective immediate family members. We also request additional

comments regarding the proposal to require compensation disclosure for three additional highly compensated employees.

DATES: Effective Date: [Insert date 60 days after publication in the Federal Register].

Comment Date: Comments regarding the request for comment in Section II.C.3.b. of this document should be received on or before [insert date 45 days after publication in the Federal Register].

Compliance Dates: Companies must comply with these disclosure requirements in Forms 8-K for triggering events that occur on or after [insert date 60 days after publication in the Federal Register] and in Forms 10-K and 10-KSB for fiscal years ending on or after December 15, 2006. Companies other than registered investment companies must comply with these disclosure requirements in Securities Act registration statements and Exchange Act registration statements (including pre-effective and post-effective amendments), and in any proxy or information statements filed on or after December 15, 2006 that are required to include Item 402 and 404 disclosure for fiscal years ending on or after December 15, 2006. Registered investment companies must comply with these disclosure requirements in initial registration statements and post-effective amendments that are annual updates to effective registration statements on Forms N-1A, N-2 (except those filed by business development companies) and N-3, and in any new proxy or information statements, filed with the Commission on or after December 15, 2006.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/final.shtml): or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-03-06 on the subject line; or
- Use the Federal Rulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington DC 20549-1090.

All submissions should refer to File Number S7-03-06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/final/shtml). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC, 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Anne Krauskopf, Carolyn Sherman, or Daniel Greenspan, at (202) 551-3500, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3010 or,

with respect to questions regarding investment companies, Kieran Brown in the Division of Investment Management, at (202) 551-6784.

SUPPLEMENTARY INFORMATION: We are amending: Items 201,[1] 306,[2] 401,[3] 402,[4] 403[5] and 404[6] of Regulations S-K[7] and S-B,[8] Item 601[9] of Regulation S-K, Item 1107[10] of Regulation AB,[11] Item 304[12] of Regulation S-T,[13] and Rule 100[14] of Regulation BTR.[15] We are also adding new Item 407 to Regulations S-K and S-B. In addition, we are amending Rules 13a-11,[16] 14a-3,[17] 14a-6,[18] 14c-5,[19] 15d-11[20] and 16b-3[21] under the Securities Exchange Act of 1934.[22] We are adding Rules 13a-20 and 15d-

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1 17 CFR 229.201 and 17 CFR 228.201.

2 17 CFR 229.306 and 17 CFR 228.306.

3 17 CFR 229.401 and 17 CFR 228.401.

4 17 CFR 229.402 and 17 CFR 228.402.

5 17 CFR 229.403 and 17 CFR 228.403.

6 17 CFR 229.404 and 17 CFR 228.404.

7 17 CFR 229.10 et seq.

8 17 CFR 228.10 et seq.

9 17 CFR 229.601.

10 17 CFR 229.1107.

11 17 CFR 229.1100 et seq.

12 17 CFR 232.304.

13 17 CFR 232.10 et seq.

14 17 CFR 245.100.

15 17 CFR 245.100 et seq.

16 17 CFR 240.13a-11.

17 17 CFR 240.14a-3.

18 17 CFR 240.14a-6.

19 17 CFR 240.14c-5.

20 17 CFR 240.15d-11.

21 17 CFR 240.16b-3.

22 15 U.S.C. 78a et seq.

20 under the Exchange Act. We are further amending Schedule 14A[23] under the Exchange Act, as well as Exchange Act Forms 8-K,[24] 10,[25] 10SB,[26] 10-Q,[27] 10-QSB,[28] 10-K,[29] 10-KSB[30] and 20-F.[31] Finally, we are amending Forms SB-2,[32] S-1,[33] S-3,[34] S-4[35] and S-11[36] under the Securities Act of 1933,[37] Forms N-1A,[38] N-2,[39] and N-3[40] under the Securities Act and the Investment Company Act of 1940,[41] and Form N-CSR[42] under the Investment Company Act and the Exchange Act.

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23 17 CFR 240.14a-101.

24 17 CFR 249.308.

25 17 CFR 249.210.

26 17 CFR 249.210b.

27 17 CFR 249.308a.

28 17 CFR 249.308b.

29 17 CFR 249.310.

30 17 CFR 249.310b.

31 17 CFR 249.220f.

32 17 CFR 239.10.

33 17 CFR 239.11.

34 17 CFR 239.13.

35 17 CFR 239.25.

36 17 CFR 239.18.

37 15 U.S.C. 77a et seq.

38 17 CFR 239.15A and 274.11A.

39 17 CFR 239.14 and 274.11a-1.

40 17 CFR 239.17a and 274.11b.

41 15 U.S.C. 80a-1 et seq.

42 17 CFR 249.331 and 274.128.

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I. Background and Overview

On January 27, 2006, we proposed revisions to our rules governing disclosure of executive compensation, director compensation, related party transactions, director independence and other corporate governance matters, current reporting regarding compensation arrangements and beneficial ownership.[43] We received over 20,000 comment letters in response to our proposals. In general, commenters supported the proposals and their objectives. We are adopting the rules and amendments substantially as proposed, with certain modifications to address a number of points that commenters raised.

The amendments to the compensation disclosure rules are intended to provide investors with a clearer and more complete picture of compensation to principal executive officers, principal financial officers, the other highest paid executive officers and directors. Closely related to executive officer and director compensation is the participation by executive officers, directors, significant shareholders and other related persons in financial transactions and relationships with the company. We are also adopting revisions to our disclosure rules regarding related party transactions and director independence and board committee functions.

Finally, some compensation arrangements must be disclosed under our rules relating to current reports on Form 8-K. Accordingly, we are reorganizing and more appropriately focusing our requirements on the type of compensation information that should be disclosed on a real-time basis.

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[43] Executive Compensation and Related Party Disclosure, Release No. 33-8655 (Jan. 27, 2006) [71 FR 6542] (the "Proposing Release").

Since the enactment of the Securities Act and the Exchange Act,[44] the Commission has on a number of occasions explored the best methods for communicating clear, concise and meaningful information about executive and director compensation and relationships with the company.[45] The Commission also has had to reconsider executive and director compensation disclosure requirements in light of changing trends in executive compensation. Most recently, in 1992, the Commission adopted amendments to the disclosure rules that eschewed a mostly narrative disclosure approach adopted in 1983 in favor of formatted tables that captured all compensation, while categorizing the various elements of compensation and promoting comparability from year to year and from company to company.[46]

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44 Initially, disclosure requirements regarding executive and director compensation were set forth in Schedule A to the Securities Act and Section 12(b) of the Exchange Act, which list the type of information to be included in Securities Act and Exchange Act registration statements. Item 14 of Schedule A called for disclosure of the "remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly, during the past year and ensuing year to (a) the directors or persons performing similar functions, and (b) its officers and other persons, naming them wherever such remuneration exceeded $25,000 during any such year." Section 12(b) of the Exchange Act as enacted required disclosure of "(D) the directors, officers, and underwriters, and each security holder of record holding more than 10 per centum of any class of any equity security of the issuer (other than an exempted security), their remuneration and their interests in the securities of, and their material contracts with, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer;" and "(E) remuneration to others than directors and officers exceeding $20,000 per annum."

45 In 1938, the Commission promulgated its first executive and director compensation disclosure rules for proxy statements. Release No. 34-1823 (Aug. 11, 1938) [3 FR 1991]. At different times thereafter, the Commission has adopted rules mandating narrative, tabular, or combinations of narrative and tabular disclosure as the best method for presenting compensation disclosure in a manner that is clear and useful to investors. See, e.g., Release No. 34-3347 (Dec. 18, 1942) [7 FR 10653] (introducing first tabular disclosure); Release No. 34-4775 (Dec. 11, 1952) [17 FR 11431] (introducing separate table for pensions and deferred remuneration); Uniform and Integrated Reporting Requirements: Management Remuneration, Release No. 33-6003 (Dec. 4, 1978) [43 FR 58151] (the "1978 Release") (expanding tabular disclosure to cover all forms of compensation); and Disclosure of Executive Compensation, Release No. 33-6486 (Sept. 23, 1983) [48 FR 44467] (the "1983 Release") (limiting tabular disclosure to cash remuneration).

46 Executive Compensation Disclosure, Release No. 33-6962 (Oct. 16, 1992) [57 FR 48126] (the "1992 Release"); See also Executive Compensation Disclosure; Securityholder Lists and Mailing Requests, Release No. 33-7032 (Nov. 22, 1993) [58 FR 63010] (the "1993 Release"), at Section II.

We believe this tabular approach remains a sound basis for disclosure. However, especially in light of the complexity of and variations in compensation programs, the very formatted nature of those rules has resulted in too many cases in disclosure that does not inform investors adequately as to all elements of compensation. In those cases investors may lack material information that we believe they should receive.

We are thus today adopting an approach that builds on the strengths of the requirements adopted in 1992 rather than discarding them. However, today's amendments do represent a thorough rethinking of the rules in place prior to these amendments, combining a broader-based tabular presentation with improved narrative disclosure supplementing the tables. This approach will promote clarity and completeness of numerical information through an improved tabular presentation, continue to provide the ability to make comparisons using tables, and call for material qualitative information regarding the manner and context in which compensation is awarded and earned.

The amendments that we publish today require that all elements of compensation must be disclosed. We also have sought to structure the revised requirements sufficiently broadly so that they will continue to operate effectively as new forms of compensation are developed in the future.

Under the amendments, compensation disclosure will now begin with a narrative providing a general overview. Much like the overview that we have encouraged companies to provide with their Management's Discussion and Analysis of Financial

Condition and Results of Operations (MD&A),[47] the new Compensation Discussion and Analysis calls for a discussion and analysis of the material factors underlying compensation policies and decisions reflected in the data presented in the tables. This overview addresses in one place these factors with respect to both the separate elements of executive compensation and executive compensation as a whole. We are adopting the overview substantially as proposed, but, in response to comments, we are requiring a separate report of the compensation committee similar to the report required of the audit committee,[48] which will be considered furnished and not filed.[49]

Following the Compensation Discussion and Analysis, we have organized detailed disclosure of executive compensation into three broad categories:

- compensation with respect to the last fiscal year (and the two preceding fiscal years), as reflected in an amended Summary Compensation Table that presents compensation paid currently or deferred (including options, restricted stock and similar grants) and compensation consisting of current earnings or awards that are part of a plan, and as supplemented by a table providing back-up information for certain data in the Summary Compensation Table;

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47 Item 303 of Regulation S-K [17 CFR 229.303]. See also Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33-8350 (Dec. 19, 2003) [68 FR 75055], at Section III.A.

48 The Audit Committee Report, required by Item 306 of Regulations S-B [17 CFR 228.306] and S-K [17 CFR 229.306] prior to these amendments, will now be required by Item 407(d) of Regulations S-B and S-K.

49 The Compensation Committee Report that we adopt today is not deemed to be "soliciting material" or to be "filed" with the Commission or subject to Regulation 14A or 14C [17 CFR 240.14a-1 et seq. or 240.14c-1 et seq.], other than as specified, or to the liabilities of Section 18 of the Exchange Act [15 U.S.C. 78r], except to the extent a company specifically requests that the report be treated as filed or as soliciting material or specifically incorporates it by reference into a filing under the Securities Act or the Exchange Act, other than by incorporating by reference the report from a proxy or information statement into the Form 10-K. Instructions 1 and 2 to Item 407(e)(5).

- holdings of equity-related interests that relate to compensation or are potential sources of future gains, with a focus on compensation-related equity interests that were awarded in prior years and are "at risk," whether or not these interests are in-the-money, as well as recent realization on these interests, such as through vesting of restricted stock or the exercise of options and similar instruments; and
- retirement and other post-employment compensation, including retirement and deferred compensation plans, other retirement benefits and other post-employment benefits, such as those payable in the event of a change in control.

We are requiring improved tabular disclosure for each of the above three categories and appropriate narrative disclosure that provides material information necessary to an understanding of the information presented in the individual tables.[50] We have made some modifications from the proposal in response to comments.

We also solicit additional comments regarding the proposed disclosure requirement of the total compensation and job description of up to an additional three most highly compensated employees who are not executive officers or directors but who earn more than the named executive officers. In particular, we have specific requests for comment as to whether the proposal should be modified to apply only to large accelerated filers who would disclose the total compensation for the most recent fiscal year and a description of the job position for each of their three most highly compensated employees whose total compensation is greater than any of the named executive officers, whether or

[50] This narrative disclosure, together with the Compensation Discussion and Analysis noted above, will replace the narrative discussion that was required in the Board Compensation Report on Executive Compensation prior to these amendments. The narrative disclosure, along with the rest of the amended executive officer and director compensation disclosure, other than the new Compensation Committee Report, will be company disclosure filed with the Commission.

not such persons are executive officers. Under this approach, employees who have no responsibility for significant policy decisions within either the company, a significant subsidiary or a principal business unit, division, or function, would be excluded from the determination of the three most highly compensated employees and no disclosure regarding them would be required.

Finally, we are adopting a director compensation table that is similar to the amended Summary Compensation Table.[51]

We also highlight in the release that the principles-based disclosure rules we are adopting today, including but not limited to the Compensation Discussion and Analysis section, may require disclosure of various aspects of a company's use of options in compensating its executives and directors, including any programs, plans or practices a company may have with regard to the timing or dating of option grants.

We are also modifying, as proposed, some of the Form 8-K requirements regarding compensation. Form 8-K requires disclosure within four business days of the entry into, amendment of, and termination of, material definitive agreements that are entered into outside of the ordinary course of business. Under our definition of material contracts in Item 601 of Regulation S-K for the purposes of determining what exhibits are required to be filed, many agreements regarding executive compensation are deemed to be material agreements entered into outside the ordinary course. When, in 2004, for purposes of consistency, we looked to this definition for use in the Form 8-K requirements, we incorporated all of these executive compensation agreements into the Form 8-K disclosure requirements. Therefore, many agreements regarding executive

compensation, including some not related to named executive officers, have been required to be disclosed on Form 8-K within four business days of the applicable triggering event. Consistent with our intent that Form 8-K capture only events that are unquestionably or presumptively material to investors, we are today amending the Form 8-K requirements substantially as proposed.

We believe that executive and director compensation is closely related to financial transactions and relationships involving companies and their directors, executive officers and significant shareholders and respective immediate family members. Disclosure requirements regarding these matters historically have been interconnected, given that relationships among these parties and the company can include transactions that involve compensation or analogous features. Such disclosure also represents material information in evaluating the overall relationship with a company's executive officers and directors. Further, this disclosure provides material information regarding the independence of directors. The related party transaction disclosure requirements were adopted piecemeal over the years and were combined into one disclosure requirement beginning in 1982.[52] In light of many developments since then, including the increasing focus on corporate governance and director independence, we believe it is necessary to revise our requirements. Today's amendments update, clarify and somewhat expand the related party transaction disclosure requirements. The amendments fold into the disclosure requirements for related party transactions what had been a separate disclosure

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[51] We had proposed similar amendments, which we did not act on, regarding director compensation in 1995. Streamlining and Consolidation of Executive and Director Compensation Disclosure, Release No. 33-7184 (Aug. 6, 1995) [60 FR 35633] (the "1995 Release"), at Section I.B.

[52] Disclosure of Certain Relationships and Transactions Involving Management, Release No. 33-6441 (Dec. 2, 1982) [47 FR 55661] (the "1982 Release").

requirement regarding indebtedness of management and directors.[53] Further, we are adopting a requirement that calls for a narrative explanation of the independence status of directors under a company's director independence policies. We intend this requirement to be consistent with recent significant changes to the listing standards of the nation's principal securities trading markets.[54] We also are consolidating this and other corporate governance disclosure requirements regarding director independence and board committees, including new disclosure requirements about the compensation committee, into a single expanded disclosure item.[55]

In order to ensure that these amended requirements result in disclosure that is clear, concise and understandable for investors, we are adding Rules 13a-20 and 15d-20 under the Exchange Act to require that most of the disclosure provided in response to the amended items be presented in plain English. This extends the plain English requirements currently applicable to portions of registration statements under the Securities Act to the disclosure required under the items that we have amended, which impose requirements for Exchange Act reports and proxy or information statements incorporated by reference into those reports.

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[53] Prior to these amendments, related party transactions were disclosed under Item 404(a) of Regulations S-K and S-B, while indebtedness was separately required to be disclosed under Item 404(c) of Regulation S-K.

[54] See, e.g., NASD and NYSE Rulemaking: Relating to Corporate Governance, Release No. 34-48745 (Nov. 4, 2003) [68 FR 64154] (the "NASD and NYSE Listing Standards Release"). This new requirement will replace the disclosure requirement about director relationships that could affect independence specified in Item 404(b) of Regulation S-K prior to these amendments.

[55] New Item 407 of Regulations S-K and S-B.

Finally, we are amending our beneficial ownership disclosure requirements as proposed to require disclosure of shares pledged by named executive officers, directors and director nominees, as well as directors' qualifying shares.[56]

II. Executive and Director Compensation Disclosure

Executive and director compensation disclosure has been required since 1933, and the Commission has had disclosure rules in this area applicable to proxy statements since 1938. In 1992, the Commission proposed and adopted substantially revised rules that embody our current requirements.[57] In doing so, the Commission moved away from narrative disclosure and back to using tables that permit comparability from year to year and from company to company. As we noted in the Proposing Release, although the reasoning behind this approach remains fundamentally sound, significant changes are appropriate. Much of the concern with the tables adopted in 1992 had also been their strength: they were highly formatted and rigid.[58] Thus, information not specifically called for in the tables had sometimes not been provided. For example, the highly formatted and specific approach had led some to suggest that items that did not fit squarely within a "box" specified by the rules need not have been disclosed.[59] As another example, because the tables did not call for a single figure for total compensation, that information had generally not been provided prior to today's amendments, although

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56 Item 403(b) of Regulations S-K and S-B.

57 1992 Release.

58 See, e.g., Council of Institutional Investors' Discussion Paper on Executive Pay Disclosure, Executive Compensation Disclosure: How it Works Now, How It Can Be Improved, at 11 (available at www.cii.org/site_files/pdfs/CII%20pay%20primer%20edited.pdf).

59 For examples, see, e.g., The Corporate Counsel (Sept.–Oct. 2005) at 6-7; The Corporate Counsel (Sept.– Oct. 2004) at 7; but see Alan L. Beller, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission, Remarks Before Conference of the NASPP, The Corporate Counsel and the Corporate Executive (Oct. 20, 2004) , available at www.sec.gov/news/speech/spch102004alb.htm.

there had been considerable commentary indicating that a single total figure is high on the list of information that some investors wish to have. To preserve the strengths of the former approach and build on them, we are taking several steps in adopting amendments to Item 402,[60] substantially as we proposed:

- first, we are retaining the tabular approach to provide clarity and comparability while improving the tabular disclosure requirements;
- second, we are confirming that all elements of compensation must be included in the tables;
- third, we are providing a format for the amended Summary Compensation Table that requires disclosure of a single figure for total compensation; and
- finally, we are requiring narrative disclosure comprising both a general discussion and analysis of compensation and specific material information regarding tabular items where necessary to an understanding of the tabular disclosure.

A. Options Disclosure

1. Background

Many companies use stock options to compensate their employees, including executives. In a simple stock option, a company may grant an employee the right to purchase a specified number of shares of the company's stock at a specific price, called the exercise price and usually set as the market price of the company's stock on the grant date. While some options require no future service from the employee, most include vesting provisions, such that the employee does not earn the option unless he remains

[60] The discussion that follows focuses on amendments to Item 402 of Regulation S-K, with Section II.D.1. explaining the different amendments to Item 402 of Regulation S-B. References throughout the following discussion are to Items of Regulation S-K, unless otherwise indicated.

employed by the company for a specified period of service. Often a company will grant a specific number of options that will then vest proportionately in staggered increments over a set time period. For example, if the grant vests at a rate of 20% per year for five years, the option for the last 20% is earned by the employee's provision of five years of services. Most options become exercisable upon vesting and remain exercisable until their stated expiration. Generally, upon termination of the employment relationship, however, an employee loses unvested options, and has a limited term (e.g., 90 days) to exercise vested options.[61]

Options have most often been issued "at-the-money" – i.e., with an exercise price equal to the market price of the underlying stock at the date of grant – but may also be issued either "in-the-money" – i.e., with an exercise price below the market price of the underlying stock at the date of grant – or "out-of-the-money" – i.e., with an exercise price above the market price of the underlying stock at the date of grant. An option holder benefits only when the company's stock price is above the exercise price when the employee exercises the option. Hence, setting a lower exercise price increases the value of the option.

As some commentators have observed, using options for compensation purposes may have advantages. These commentators point out that, unlike salary and bonus compensation, stock option compensation does not require the payment of cash by the company, and therefore can be particularly attractive to companies for which cash is a scarce resource. Stock option compensation may also provide an incentive for employees to work to increase the company's stock price. Additionally, some companies may be

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[61] More complex stock options can include provisions that alter the terms of the instrument based on whether performance or other targets are met.

able to use stock option compensation to help retain employees, because an employee with unvested in-the-money options forfeits their potential value if he leaves the company's employ.

At the same time, other commentators stress that option compensation is not without costs and disadvantages. Options granted to employees, if ultimately exercised with the resulting issuance of the underlying stock, give rise to a dilution of the interests in the company held by existing stockholders. Options that are not in-the-money may not provide a retention benefit, and some managers believe that options that fall out-of-the-money (or are "underwater") not only fail to motivate employees but, in fact, can result in poor employee morale and resultant turnover, especially at companies where option compensation is an important component of total compensation. In addition, options with shorter vesting periods or longer term options approaching their vesting dates may provide incentives to employees to focus on increasing the company's stock price in the short term rather than working toward achieving longer term business goals and objectives that would enable the company to achieve and sustain future success.

The Commission does not seek to encourage or discourage the use of stock options or any other particular form of executive compensation. The federal securities laws, however, do require full and fair disclosure of compensation information to the extent material or required by Commission rule.

2. Required Option Disclosures

The Commission acknowledged the importance to investors of proper disclosure of executives' option compensation throughout the Proposing Release. The existing body of rules regarding disclosure of executive stock option grants, however, has not

previously contained a line-item requirement with respect to information regarding programs, plans or practices concerning the selection of stock option grant dates or exercise prices.[62] The disclosure we proposed in January, along with related disclosure we also adopt today, should provide investors with more information about option compensation.[63] We have summarized below the various provisions of the rules that we adopt today that relate to options disclosure.[64]

a. Tabular Disclosures

The following disclosures are required in the tables we adopt today. These provisions are discussed in more detail later in the section relating to each particular table.

- As proposed and adopted, grants of stock options will be disclosed in the Summary Compensation Table at their fair value on the date of grant, as determined under FAS 123R. By basing the executive compensation disclosure on the full grant date fair value computed in accordance with FAS 123R,

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62 Our existing rules for companies' disclosure do prohibit material misrepresentations of option grant dates, as well as any resulting material misstatements of affected financial statements. Companies are also required under our existing rules to disclose any material information that may be necessary to make their other disclosures, in the light of the circumstances under which they are made, not misleading. See, e.g., Rule 12b-20 under the Exchange Act [17 CFR 240.12b-20].

63 We note that Exchange Act Rule 16a-3 [17 CFR 240.16a-3] sets forth the general reporting requirements under Exchange Act Section 16(a). Prior to August 2002, a number of transactions between an issuer and its officers or directors – such as the granting of options – were required to be disclosed following the end of the fiscal year in which the transaction took place although individuals could disclose those transactions earlier if they chose to. In implementing Section 403(a) of the Sarbanes-Oxley Act of 2002, in August 2002, the Commission required immediate disclosure of these transactions for the first time. As a result, since August 2002, grants, awards and other acquisitions of equity-based securities from the issuer, including those pursuant to employee benefit plans (which were previously reportable on an annual basis on Form 5) have been required to be reported by officers and directors on Form 4 within two business days. Ownership Reports and Trading by Officers, Directors and Principal Security Holders, Release No. 34-46421 (Aug. 27, 2002) [56 FR 56461] at Section II.B.

64 We also note that under our rules regarding disclosure of director compensation, the concerns and considerations for disclosure of option timing or dating practices in the executive compensation

companies will give shareholders an accurate picture of the value of options at the time they are actually granted to the highest-paid executive officers.[65]

- A separate table including disclosure of equity awards, the Grants of Plan-Based Awards Table, requires disclosure of the grant date as determined pursuant to FAS 123R.[66] The grant date is generally considered the day the decision is made to award the option as long as recipients of the award are notified promptly. Even if the option's exercise price is set based on trading prices as of an earlier date or dates, the grant date does not change.
- If the exercise price is less than the closing market price of the underlying security on the date of the grant, a separate, adjoining column would have to be added to this table showing that market price on the date of the grant.[67]
- If the grant date is different from the date the compensation committee or full board of directors takes action or is deemed to take action to grant an option, a separate, adjoining column would have to be added to this table showing the date the compensation committee or full board of directors took action or was deemed to take action to grant the option.[68]

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realm would also apply when the recipients of the stock option grants are directors of the company.

65 Item 402(c)(2)(vi).

66 Item 402(d)(2)(ii) and Item 402(a)(6)(iv).

67 Item 402(d)(2)(vii).

68 Item 402(d)(2)(ii).

Further, if the exercise or base price of an option grant is not the closing market price per share on the grant date, we require a description of the methodology for determining the exercise or base price.[69]

b. Compensation Discussion and Analysis

Companies will also be required to address matters relating to executives' option compensation in the new Compensation Discussion and Analysis section, particularly as they relate to the timing and pricing of stock option grants. Without being an exhaustive list, several of the examples provided in Item 402(b)(2) illustrate how these types of issues and questions might be covered in a company's disclosure. For example, Item 402(b)(2)(iv) shows that how the determination is made as to when awards are granted could be required disclosure. This example was included in part to note that material information to be disclosed under Compensation Discussion and Analysis may include the reasons a company selects particular grant dates for awards, such as for stock options. Similarly, other examples we provide in Item 402(b)(2) illustrate how the material information to be disclosed under Compensation Discussion and Analysis might need to include the methods a company uses to select the terms of awards, such as the exercise prices of stock options.

i. Timing of Option Grants

We understand that some companies grant options in coordination with the release of material non-public information. If the company had since the beginning of the last fiscal year, or intends to have during the current fiscal year, a program, plan or practice to select option grant dates for executive officers in coordination with the release

[69] Instruction 3 to Item 402(d).

of material non-public information, the company should disclose that in the Compensation Discussion and Analysis section. For example, a company may grant awards of stock options while it knows of material non-public information that is likely to result in an increase in its stock price, such as immediately prior to a significant positive earnings or product development announcement. Such timing could occur in at least two ways:

- the company grants options just prior to the release of material non-public information that is likely to result in an increase in its stock price (whether the date of that release of material non-public information is a regular date or otherwise pre-announced, or not); or
- the company chooses to delay the release of material non-public information that is likely to result in an increase in its stock price until after a stock option grant date.

Although the facts would be slightly different, a company also may coordinate its grant of stock options with the release of negative material non-public information. Again, such timing could occur in at least two ways:

- the company delays granting options until after the release of material non-public information that is likely to result in a decrease in its stock price; or
- the company chooses to release material non-public information that is likely to result in a decrease in its stock price prior to an upcoming stock option grant.

The Commission does not express a view as to whether or not a company may or may not have valid and sufficient reasons for such timing of option grants, consistent with a company's own business purposes. Some commentators have expressed the view

that following these practices may enable a company to receive more benefit from the incentive or retention effect of options because recipients may value options granted in this manner more highly or because doing so provides an immediate incentive for employee retention because an employee who leaves the company forfeits the potential value of unvested, in-the-money options. Other commentators believe that timing option grants in connection with the release of material non-public information may unfairly benefit executives and employees.

Regardless of the reasons a company or its board may have, the Commission believes that in many circumstances the existence of a program, plan or practice to time the grant of stock options to executives in coordination with material non-public information would be material to investors and thus should be fully disclosed in keeping with the rules we adopt today. Consistent with principles-based disclosure, companies should consider their own facts and circumstances and include all relevant material information in their corresponding disclosures.[70] If the company has such a program, plan or practice, the company should disclose that the board of directors or compensation committee may grant options at times when the board or committee is in possession of material non-public information. Companies might also need to consider disclosure about how the board or compensation committee takes such information into account when determining whether and in what amount to make those grants.

Although it is not an exhaustive list, there are some elements and questions about option timing to which we believe a company should pay particular attention when drafting the appropriate corresponding disclosure.

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[70] Relevant material information might include disclosure in response to the examples in Item 402(b)(2) in the Compensation Discussion and Analysis section, discussed below.

- Does a company have any program, plan or practice to time option grants to its executives in coordination with the release of material non-public information?
- How does any program, plan or practice to time option grants to executives fit in the context of the company's program, plan or practice, if any, with regard to option grants to employees more generally?
- What was the role of the compensation committee in approving and administering such a program, plan or practice? How did the board or compensation committee take such information into account when determining whether and in what amount to make those grants? Did the compensation committee delegate any aspect of the actual administration of a program, plan or practice to any other persons?
- What was the role of executive officers in the company's program, plan or practice of option timing?
- Does the company set the grant date of its stock option grants to new executives in coordination with the release of material non-public information?
- Does a company plan to time, or has it timed, its release of material non-public information for the purpose of affecting the value of executive compensation?

Disclosure would also be required where a company has not previously disclosed a program, plan or practice of timing option grants, but has adopted such a program, plan or practice or has made one or more decisions since the beginning of the past fiscal year to time option grants.

ii. Determination of Exercise Price

Separate from these timing issues, some companies may have a program, plan or practice of awarding options and setting the exercise price based on the stock's price on a date other than the actual grant date. Such a program, plan or practice would also require disclosure, including, as appropriate, in the tables described in II.A.2.a above and in the Compensation Discussion and Analysis section. Again, as with the timing matters discussed above, companies should consider their own facts and circumstances and include all relevant material information in their corresponding disclosures.

Similar to such a practice of setting the exercise price based on a date other than the actual grant date, some companies have provisions in their option plans or have followed practices for determining the exercise price by using formulas based on average prices (or lowest prices) of the company's stock in a period preceding, surrounding or following the grant date. In some cases these provisions may increase the likelihood that recipients will be granted in-the-money options. As these provisions or practices relate to a material term of a stock option grant, they should be discussed in the Compensation Discussion and Analysis section.

B. Compensation Discussion and Analysis

We are adopting a new Compensation Discussion and Analysis section.[71] As we proposed, this section will be an overview providing narrative disclosure that puts into

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[71] Item 402(b). In addition to the narrative Compensation Discussion and Analysis, we are amending the rules so that, to the extent material, additional narrative disclosure will be provided following certain tables to supplement the disclosure in the table. See, e.g., Section II.C.3.a., discussing the narrative disclosure to the Summary Compensation Table and the Grants of Plan-Based Awards Table. We are also requiring disclosure of compensation committee procedures and processes as well as information regarding compensation committee interlocks and insider participation in compensation decisions as part of new Item 407 of Regulation S-K. See Section V.D., below.

context the compensation disclosure provided elsewhere.[72] Commenters generally supported the new Compensation Discussion and Analysis section.[73] This overview will explain material elements of the particular company's compensation for named executive officers by answering the following questions:

- What are the objectives of the company's compensation programs?
- What is the compensation program designed to reward?
- What is each element of compensation?
- Why does the company choose to pay each element?
- How does the company determine the amount (and, where applicable, the formula) for each element?

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72 See Jeffrey N. Gordon, Executive Compensation: What's the Problem, What's the Remedy? The Case for Compensation Discussion and Analysis, 30 J. Corp. L. 695 (2005) (arguing that the Commission should require proxy disclosure that includes a "Compensation Discussion and Analysis" section that collects and summarizes all the compensation elements for senior executives, providing a "bottom line assessment" of the different compensation elements and an explanation as to why the board thinks such compensation is warranted).

73 See, e.g., letters from British Columbia Investment Management Corporation ("BCIMC"); Leo J. Burns ("L. Burns"); CFA Centre for Financial Market Integrity, dated April 13, 2006 ("CFA Centre 1"); Chamber of Commerce of the United States of America ("Chamber of Commerce"); Board of Fire and Police Pension Commissioners of the City of Los Angeles ("F&P Pension Board"); F&C Asset Management; Foley & Lardner LLP ("Foley"); Hermes Investment Management Limited; Governance for Owners USA, Inc. ("Governance for Owners"); International Association of Machinists and Aerospace Workers ("IAM"); Board of Trustees of the International Brotherhood of Electrical Workers Pension Benefit Fund ("IBEW PBF"); International Brotherhood of Teamsters ("Teamsters"); Remuneration Committee of the International Corporate Governance Network; Investment Company Institute ("ICI"); Institutional Shareholder Services ("ISS"); jointly, California Public Employees' Retirement System, California State Teachers' Retirement System, Co-operative Insurance Society – UK, F&C Asset Management – UK, Illinois State Board of Investment, London Pensions Fund Authority – UK, New York State Common Retirement Fund, New York City Pension Funds, Ontario Teachers' Pension Plan, PGGM Investments – Netherlands, Public Sector and Commonwealth Super (PSS/CSS) – Australia, RAILPEN Investments – UK, State Board of Administration (SBA) of Florida, Stichting Pensioenfonds ABP – Netherlands, UniSuper Limited – Australia, and Universities Superannuation Scheme – UK ("Institutional Investors Group"); The Pension Boards –United Church of Christ ("PB-UCC"); State of Wisconsin Investment Board; and T. Rowe Price Associates, Inc.

- How do each element and the company's decisions regarding that element fit into the company's overall compensation objectives and affect decisions regarding other elements?

As proposed, the second question also asked what the compensation program is designed not to reward. Commenters stated that compensation committees often may not consider this objective in developing compensation programs, expressing concern that the question could generate potentially limitless disclosure that would not add meaning to disclosure of what the compensation program is designed to award.[74] In response to this concern, we have not included this question in the rule as adopted.

1. Intent and Operation of the Compensation Discussion and Analysis

The purpose of the Compensation Discussion and Analysis disclosure is to provide material information about the compensation objectives and policies for named executive officers without resorting to boilerplate disclosure. The Compensation Discussion and Analysis is intended to put into perspective for investors the numbers and narrative that follow it.

As described in the Proposing Release and as adopted, the Compensation Discussion and Analysis requirement is principles-based, in that it identifies the disclosure concept and provides several illustrative examples. Some commenters suggested that a principles-based approach would be better served without examples, on the theory that "laundry lists" would lead to boilerplate.[75] Other commenters expressed

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[74] See, e.g., letters from American Bar Association, Committee on Federal Regulation of Securities ("ABA"); Committee on Securities Regulation of the New York City Bar ("NYCBA"); and WorldatWork ("WorldatWork").

[75] See, e.g., letter from Curt Kollar ("C. Kollar").

the opposite view – that more specific description of required disclosure topics would more effectively elicit meaningful disclosure.[76]

As we explained in the Proposing Release, overall we designed the proposals to state the requirements sufficiently broadly to continue operating effectively as future forms of compensation develop, without suggesting that items that do not fit squarely within a "box" specified by the rules need not be disclosed. We believe that the adopted principles-based Compensation Discussion and Analysis, utilizing a disclosure concept along with illustrative examples, strikes an appropriate balance that will effectively elicit meaningful disclosure, even as new compensation vehicles develop over time.

We wish to emphasize, however, that the application of a particular example must be tailored to the company and that the examples are non-exclusive. We believe using illustrative examples helps to identify the types of disclosure that may be applicable. A company must assess the materiality to investors of the information that is identified by the example in light of the particular situation of the company. We also note that in some cases an example may not be material to a particular company, and therefore no disclosure would be required. Because the scope of the Compensation Discussion and Analysis is intended to be comprehensive, a company must address the compensation policies that it applies, even if not included among the examples. The Compensation Discussion and Analysis should reflect the individual circumstances of a company and should avoid boilerplate disclosure.

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[76] See, e.g., letters from CFA Centre 1 and Hewitt Associates LLC ("Hewitt").

We have adopted, substantially as proposed, the following examples of the issues that would potentially be appropriate for the company to address in given cases in the Compensation Discussion and Analysis:

- policies for allocating between long-term and currently paid out compensation;
- policies for allocating between cash and non-cash compensation, and among different forms of non-cash compensation;
- for long-term compensation, the basis for allocating compensation to each different form of award;
- how the determination is made as to when awards are granted, including awards of equity-based compensation such as options;
- what specific items of corporate performance are taken into account in setting compensation policies and making compensation decisions;
- how specific elements of compensation are structured and implemented to reflect these items of the company's performance and the executive's individual performance;
- the factors considered in decisions to increase or decrease compensation materially;
- how compensation or amounts realizable from prior compensation are considered in setting other elements of compensation (e.g., how gains from prior option or stock awards are considered in setting retirement benefits);
- the impact of accounting and tax treatments of a particular form of compensation;
- the company's equity or other security ownership requirements or guidelines and any company policies regarding hedging the economic risk of such ownership;

- whether the company engaged in any benchmarking of total compensation or any material element of compensation, identifying the benchmark and, if applicable, its components (including component companies); and
- the role of executive officers in the compensation process.

At the suggestion of a commenter,[77] we have expanded the example addressing how specific forms of compensation are structured to reflect company performance to also address implementation. We have made a similar change with regard to the example regarding the executive's individual performance.[78] As adopted, this example includes not only whether discretion can be exercised (either to award compensation absent attainment of the relevant performance goal(s) or to reduce or increase the size of any award or payout), as proposed, but also whether such discretion has been exercised. By doing this, we move to the Compensation Discussion and Analysis overview an example of a material factor that had been proposed for the narrative disclosure that follows the Summary Compensation Table,[79] and expand its scope so that it is no longer limited to non-equity incentive plans. Because of the policy significance of decisions to waive or modify performance goals, we believe that they are more appropriately discussed in the Compensation Discussion and Analysis.

As discussed in Section II.A. above, a company's policies, programs and practices regarding the award of stock options and other equity-based instruments to compensate executives may require disclosure and discussion in the Compensation Discussion and Analysis. As with all disclosure in the Compensation Discussion and Analysis, a

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[77] See letter from ABA.

[78] We have also reordered this example, so it is clearer that the items of company performance referenced are the ones noted in the immediately preceding example.

company must evaluate the specific facts and circumstances of its grants of options and equity-based instruments and provide such disclosure if it supplies material information about the company's compensation objectives and policies for named executive officers.

Further in response to comment,[80] we have revised the example addressing how the determination is made as to when awards are granted so that it is not limited to equity-based compensation, as was proposed, but we clarify in the rule as adopted that it would include equity-based compensation, such as stock options.[81] Regarding the example noting the impact of accounting and tax treatments of a particular form of compensation, some commenters urged that companies be required to continue to disclose their Internal Revenue Code Section 162(m) policy.[82] The adoption of this example should not be construed to eliminate this discussion. Rather, this example indicates more broadly that any tax or accounting treatment, including but not limited to Section 162(m), that is material to the company's compensation policy or decisions with respect to a named executive officer is covered by Compensation Discussion and Analysis. Tax consequences to the named executive officers, as well as tax consequences to the company, may fall within this example.

In addition, we have followed commenters' recommendations to add the following specific examples addressing additional factors:

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79 This example had been proposed as Item 402(f)(1)(iv).

80 See letter from ABA.

81 This example is discussed in more detail above in Section II.A., the discussion of stock option disclosure.

82 See, e.g., letters from Buck Consultants; Frederic W. Cook & Co., Inc., dated March 9, 2006 ("Frederic W. Cook & Co."); Thomas Rogers; and WorldatWork. The Commission has construed the Board Compensation Committee Report on Executive Compensation (which had been required to be furnished by Item 402(k) prior to these amendments) to require discussion of this policy. 1993 Release at Section III.

- company policies and decisions regarding the adjustment or recovery of awards or payments if the relevant company performance measures upon which they are based are restated or otherwise adjusted in a manner that would reduce the size of an award or payment;[83] and
- the basis for selecting particular events as triggering payment with respect to post-termination agreements (e.g., the rationale for providing a single trigger for payment in the event of a change-in-control).[84]

Commenters also requested clarification as to whether Compensation Discussion and Analysis is limited to compensation for the last fiscal year, like the former Board Compensation Committee Report on Executive Compensation that was required prior to these amendments.[85] While the Compensation Discussion and Analysis must cover this subject, the Compensation Discussion and Analysis may also require discussion of post-termination compensation arrangements, on-going compensation arrangements, and policies that the company will apply on a going-forward basis.[86] Compensation Discussion and Analysis should also cover actions regarding executive compensation that

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83 See, e.g., letters from Amalgamated Bank Long-View Funds ("Amalgamated"); CFA Centre 1; and Council of Institutional Investors, dated March 29, 2006 ("CII"). Section 304 of the Sarbanes-Oxley Act of 2002 [codified at 15 U.S.C. 7243] provides that if a company is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws, the principal executive officer and principal financial officer of the company shall reimburse the company for any bonus or other incentive-based or equity-based compensation received by that person from the company during the 12-month period following the first public issuance or filing with the Commission (whichever first occurs) of the financial document embodying such financial reporting requirement, and any profits realized from the sale of securities of the company during that 12-month period. This example would not necessarily be limited to policies covering only situations contemplated by Section 304.

84 See letter from Anonymous, dated April 10, 2006.

85 See, e.g., letters from Buck Consultants; Frederic W. Cook & Co.; and Mercer Human Resource Consulting, Inc., dated April 10, 2006 ("Mercer").

were taken after the last fiscal year's end. Actions that should be addressed might include, as examples only, the adoption or implementation of new or modified programs and policies or specific decisions that were made or steps that were taken that could affect a fair understanding of the named executive officer's compensation for the last fiscal year. Moreover, in some situations it may be necessary to discuss prior years in order to give context to the disclosure provided.

The Compensation Discussion and Analysis should be sufficiently precise to identify material differences in compensation policies and decisions for individual named executive officers where appropriate. Where policies or decisions are materially similar, officers can be grouped together. Where, however, the policy or decisions for a named executive officer are materially different, for example in the case of a principal executive officer, his or her compensation should be discussed separately.

2. Instructions to Compensation Discussion and Analysis

We are adopting instructions to make clear that the Compensation Discussion and Analysis should focus on the material principles underlying the company's executive compensation policies and decisions, and the most important factors relevant to analysis of those policies and decisions, without using boilerplate language or repeating the more detailed information set forth in the tables and related narrative disclosures that follow. The instructions also provide that the Compensation Discussion and Analysis should concern the information contained in the tables and otherwise disclosed.[87] Because this section is intended to provide meaningful analysis, it may specifically refer to the tabular

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[86] Forward looking information in the Compensation Discussion and Analysis will fall within the safe harbors for disclosure of such information. See, e.g., Securities Act Section 27A [15 U.S.C. 77z-2] and Exchange Act Section 21E [15 U.S.C. 78u-5].

[87] Instruction 2 to Item 402(b).

or other disclosures where helpful to make the discussion more robust. A commenter raised a concern that the instruction not to repeat information set forth in the other disclosures might somehow limit the disclosure made in Compensation Discussion and Analysis.[88] We have revisited this instruction, which is intended to encourage analysis and to forestall mere repetition of the information in the tables, to provide that repetition and boilerplate language should be avoided. The instruction does not prohibit or discourage discussion of that specific information.

We are adopting an instruction to make clear that, as was the case with the Board Compensation Committee Report on Executive Compensation required prior to the adoption of these amendments, companies are not required to disclose target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm to the company.[89] Some commenters objected that this instruction would impair the quality of information disclosed by making it difficult to assess the link between pay and company performance, and suggested that competitive harm would be mitigated if disclosure were required on an after-the-fact basis, after the performance related to the award is measured.[90] Different commenters stated that performance targets often are based on confidential, competitively sensitive business plans, and that requiring disclosure could encourage the

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[88] See letter from ABA.

[89] Instruction 4 to Item 402(b). Prior to these amendments, Instruction 2 to Item 402(k) had provided a similar exclusion for this type of information.

[90] See, e.g., letters from American Federation of Labor and Congress of Industrial Organizations, dated April 5, 2006 ("AFL-CIO"); CII; Governance for Owners; IAM; and The Honorable Barney Frank, United States Representative (MA).

use of more generic targets that could hinder a company's goal of pay-for-performance.[91] Other commenters observed that companies rarely use a performance metric for a single year or plan cycle, but select measures because of their relevance to the company's business strategy over several years, so that even disclosure on an after-the-fact basis could reveal proprietary business information that would be useful to competitors.[92] Having considered these comments, we remain persuaded that this disclosure, even on an after-the-fact basis could pose significant risk of competitive harm and we are therefore not requiring it in those cases in which the factors or criteria considered involve confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm to the company.

As noted in the Proposing Release, in applying this instruction, we intend the standard for companies to use in making a determination that this information does not have to be disclosed to be the same one that would apply when companies request confidential treatment of confidential trade secrets or confidential commercial or financial information that otherwise is required to be disclosed in registration statements, periodic reports and other documents filed with us.[93] Under this approach, to the extent a performance target has otherwise been disclosed publicly, non-disclosure pursuant to this instruction would not be permitted. To make these standards clearer and respond to commenters' concerns that companies may exploit the instruction to exclude information in inappropriate circumstances, we are revising this instruction as adopted to clearly

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91 See, e.g., letter from Sullivan & Cromwell LLP ("Sullivan").

92 See, e.g., letter from Mercer.

93 See Securities Act Rule 406 [17 CFR 230.406], Exchange Act Rule 24b-2 [17 CFR 240.24b-2], Exemption 4 of the Freedom of Information Act [5 U.S.C. 552(b)(4)], and Rule 80(b)(4) promulgated under the Freedom of Information Act [17 CFR 200.80(b)(4)].

apply the same standard as for confidential treatment requests. Companies will not be required, however, to submit confidential treatment requests in order to rely on the instruction.[94] To mitigate commenters' concerns that omission of specific performance targets would impair the quality of disclosure, the instruction requires additional disclosure regarding the significance of the undisclosed target. Specifically, if the company uses target levels for specific quantitative or qualitative performance-related factors, or other factors or criteria that it does not disclose in reliance on the instruction, the company must discuss how difficult it will be for the executive or how likely it will be for the company to achieve the undisclosed target levels or other factors. In addition, as discussed below, the Compensation Discussion and Analysis will be considered soliciting material and will be filed with the Commission. This disclosure will be subject to review by the Commission and its staff. Therefore, if a company uses target levels that otherwise would need to be disclosed but does not disclose them in reliance on the instruction, the company may be required to demonstrate to the Commission or its staff that the particular factors or criteria involve confidential trade secrets or confidential commercial or financial information and why disclosure would result in competitive harm. If the Commission or its staff ultimately determines that a company has not met these standards, then the company will be required to disclose publicly the factors or criteria used. In response to a commenter's concern,[95] we have also added an instruction

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[94] While the instruction adopted today, like the instruction that it replaces, does not require a company to seek confidential treatment under the procedures in Securities Act Rule 406 and Exchange Act Rule 24b-2 with regard to the exclusion of the information from the disclosure provided in response to this item, the standards specified in Securities Act Rule 406, Exchange Act Rule 24b-2, Exemption 4 of the Freedom of Information Act and Rule 80(b)(4) promulgated under the Freedom of Information Act still apply and are subject to review and comment by the staff of the Commission.

[95] See letter from ABA.

to clarify that disclosure of a target level that applies a non-GAAP financial measure will not be subject to the general rules regarding disclosure of non-GAAP financial measures but the company must disclose how the number is calculated from the audited financial statements.[96]

One commenter stated that the Compensation Discussion and Analysis of a new public company should be permitted to be a prospective-only discussion.[97] While we agree the most significant disclosure in that situation may be future plans, we do not believe a prospective-only discussion is appropriate. Instead, companies may emphasize the new plans or policies.

3. "Filed" Status of Compensation Discussion and Analysis and the "Furnished" Compensation Committee Report

We proposed that the Compensation Discussion and Analysis would be considered a part of the proxy statement and any other filing in which it was included. Unlike the Board Compensation Committee Report on Executive Compensation that was required prior to these amendments, we proposed that the Compensation Discussion and Analysis would be soliciting material and would be filed with the Commission. Therefore, it would be subject to Regulation 14A or 14C and to the liabilities of Section 18 of the Exchange Act.[98] In addition, to the extent that the Compensation Discussion and Analysis and any of the other disclosure regarding executive officer and director compensation or other matters are included or incorporated by reference into a periodic report, the disclosure would be covered by the certifications that principal executive

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[96] Instruction 5 to Item 402(b). The non-GAAP financial measure provisions are specified in Regulation G [17 CFR 244.100 - 102], Item 10(e) of Regulation S-K [17 CFR 229.10] and Item 10(h) of Regulation S-B [17 CFR 228.10].

[97] See letter from ABA.

officers and principal financial officers are required to make under the Sarbanes-Oxley Act of 2002.[99] Likewise, a company's disclosure controls and procedures[100] apply to the preparation of the company's proxy statement and Form 10-K, including the Compensation Discussion and Analysis.

We noted in the Proposing Release that in adopting the rules that have applied since 1992, the Commission took into account comments that the Board Compensation Committee Report on Executive Compensation should be furnished rather than filed to allow for more open and robust discussion in the reports.[101] The Board Compensation Committee Reports on Executive Compensation that were provided prior to today's amendments in general did not suggest that this treatment resulted in such discussion, nor the more transparent disclosure that the comments suggested would result.[102] Further, we noted that we believe that it is appropriate for companies to take responsibility for disclosure involving board matters as with other disclosure.

Some commenters supported the proposal to have the Compensation Discussion and Analysis filed, noting among other things that filing should lead to increased accuracy and better disclosure.[103] Other commenters objected to this treatment, claiming

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98 15 U.S.C. 78r.

99 Exchange Act Rules 13a-14 [17 CFR 240.13a-14] and 15d-14 [17 CFR 240.15d-14]. See also Certification of Disclosure in Companies' Quarterly and Annual Reports, Release No. 34-46427 (Aug. 29, 2002) [67 FR 57275], at n. 35 (the "Certification Release") (stating that "the certification in the annual report on Form 10-K or 10-KSB would be considered to cover the Part III information in a registrant's proxy or information statement as and when filed").

100 Exchange Act Rules 13a-15 [17 CFR 240.13a-15] and 15d-15 [17 CFR 240.15d-15].

101 1992 Release, at Section II.H.

102 See also Martin D. Mobley, Compensation Committee Reports Post-Sarbanes-Oxley: Unimproved Disclosure for Executive Compensation Policies and Practices, 2005 Colum. Bus. L. Rev. 111 (2005).

103 See, e.g., letters from AFL-CIO; American Federation of State, County and Municipal Employees; California Public Employees' Retirement System ("CalPERS"); Paul Hodgson, Senior Research Associate, Executive and Board Compensation, the Corporate Library ("Corporate Library");

that certification by principal executive officers and principal financial officers with regard to the disclosure included in the annual report on Form 10-K, including particularly the Compensation Discussion and Analysis, would inappropriately insert these officers into the compensation committee's deliberative process, potentially calling into question the committee's independence.[104] Further, many commenters expressed the view that the Compensation Discussion and Analysis should, in effect, be the report of the compensation committee, submitted under the names of its members, for which they should be accountable.[105]

Some of these objections may reflect a misconception of the purpose of the Compensation Discussion and Analysis. Although the Compensation Discussion and Analysis discusses company compensation policies and decisions, the Compensation Discussion and Analysis does not address the deliberations of the compensation committee, and is not a report of that committee. Consequently, in certifying the Compensation Discussion and Analysis, principal executive officers and principal financial officers will not need to certify as to the compensation committee deliberations.

However, in response to concerns of commenters that compensation committees should continue to be focused on the executive compensation disclosure process, we are

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Connecticut Retirement Plans and Trust Funds, dated April 10, 2006 ("CRPTF"); Southwestern Pennsylvania and Western Maryland Area Teamsters and Employers Pension Fund ("Teamsters PA/MD"); Teamsters Local 671 Health Services and Insurance Plan ("Teamsters Local 671"); Walden Asset Management ("Walden"); and Western PA Teamsters & Employers Welfare Fund ("Western PA Teamsters Fund").

[104] See, e.g., letters from The Corporate & Securities Law Committee and the Employment & Labor Law Committee of the Association of Corporate Counsel ("ACC"); Compass Bancshares, Inc. ("Compass Bancshares"); National Association of Manufacturers ("NAM"); Peabody Energy Corporation ("Peabody Energy"); and WorldatWork.

[105] See, e.g., letters from Jesse Brill, Chair of CompensationStandards.com and Chair of the National Association of Stock Plan Professionals, dated March 1, 2006 ("J. Brill 1"); CFA Centre 1; CRPTF; Frederic W. Cook & Co.; and Hewitt.

adopting a Compensation Committee Report similar to the Audit Committee Report.[106] Drawing on commenters' suggestions for a new Compensation Committee Report,[107] the rules we adopt today require the compensation committee to state whether:

- the compensation committee has reviewed and discussed the Compensation Discussion and Analysis with management; and
- based on the review and discussions, the compensation committee recommended to the board of directors that the Compensation Discussion and Analysis be included in the company's annual report on Form 10-K and, as applicable, the company's proxy or information statement.

Unlike the Audit Committee Report, the Compensation Committee Report will be required to be included or incorporated by reference into the company's annual report on Form 10-K, so that it is presented along with the Compensation Discussion and Analysis when that disclosure is provided in the Form 10-K or incorporated by reference from a proxy or information statement.[108] Like the Audit Committee Report, the Compensation Committee Report will only be required one time during any fiscal year.[109] The name of each member of the company's compensation committee (or, in the absence of a compensation committee, the persons performing equivalent functions or the entire board

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106 We are moving the audit committee report previously required by Item 306 of Regulations S-K and S-B to Item 407(d) under the amendments adopted today. See Section V.D., below.

107 See, e.g., letters from J. Brill 1; California State Teachers' Retirement System ("CalSTRS"); CFA Centre 1; and Professor William J. Heisler.

108 The audit committee report is only required in a company proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). See Instruction 3 to Item 407(d).

109 Instruction 3 to Item 407(e)(5). The audit committee instruction is specified in Instruction 2 to Item 407(d).

of directors) must appear below the disclosure.[110] This report will be "furnished" rather than "filed." The principal executive officer and principal financial officer will be able to look to the Compensation Committee Report in providing their certifications required under Exchange Act Rules 13a-14 and 15d-14.[111]

4. Retention of the Performance Graph

In light of the Compensation Discussion and Analysis requirement, we proposed to eliminate both the Board Compensation Committee Report on Executive Compensation and the Performance Graph.[112] The report and the graph were intended to be related and to show the relationship, if any, between compensation and corporate performance, as reflected by stock price. The rules we adopt today eliminate the Board Compensation Committee Report on Executive Compensation, as we proposed, in favor of the more comprehensive Compensation Discussion and Analysis and the new Compensation Committee Report, as described immediately above.[113]

Given the widespread availability of stock performance information about companies, industries and indexes through business-related Web sites or similar sources, we proposed to eliminate the requirement for the Performance Graph in the belief that it was outdated, particularly since the disclosure in the Compensation Discussion and

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110 Item 407(e)(5)(ii).

111 We note that one commenter suggested that the Compensation Discussion and Analysis should not be required of companies that have only registered the offer and sale of debt securities. See letter from Financial Security Assurance Holdings Ltd. The Compensation Discussion and Analysis is intended to put into perspective for investors the numbers and narrative that follow it. This section will provide a broader discussion than just that of the relationship of compensation to the performance of the company as reflected by stock price. Therefore, we believe it is appropriate for all companies that are not small business issuers or foreign private issuers filing on forms specified for their use to include the information.

112 Prior to these amendments, the Board Compensation Committee Report on Executive Compensation had been required by Item 402(k) and the Performance Graph had been required by Item 402(l).

Analysis regarding the elements of corporate performance that a given company's policies might reach is intended to allow broader discussion than just that of the relationship of compensation to the performance of the company as reflected by stock price. Many commenters objected to eliminating the Performance Graph, however, stating that it provides an easily accessible visual comparison of a company's performance relative to its peers and the market, and provides a standardized source for this type of information.[114] In light of the significance of this disclosure to a broad spectrum of commenters, we have decided to retain the Performance Graph in the amendments we adopt today.

However, we remain of the view that the Performance Graph should not be presented as part of executive compensation disclosure. In particular, as noted above, the disclosure in the Compensation Discussion and Analysis regarding the elements of corporate performance that a given company's policies consider is intended to encourage broader discussion than just that of the relationship of executive compensation to the performance of the company as reflected by stock price. Presenting the Performance Graph as compensation disclosure may weaken this objective. Accordingly, we have decided to retain the requirements for the Performance Graph, but have moved them to the disclosure item entitled "Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters."[115] As retained, the Performance Graph will

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113 Section II.B.3.

114 See, e.g., letters from CalSTRS; CFA Centre 1; CII; IUE-CWA Pension Fund and 401(k) Plan ("IUE-CWA"); John W. Hamm; NYCBA; Standard Life Investments Limited ("Standard Life"); and Vivient Consulting LLC.

115 New Item 201(e) of Regulation S-K [17 CFR 229.201(e)] will require the Performance Graph. Consistent with our belief that the Performance Graph should not be linked to the compensation disclosure, we have not retained the portion of the language that was included in Instruction 4 to Item 402(l) prior to these amendments, which conditioned that other performance measures in

continue to be "furnished" rather than "filed." The Performance Graph will be required only in the company's annual report to security holders that accompanies or precedes a proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting), and will not be deemed to be soliciting material under the proxy rules or incorporated by reference into any filing except to the extent that the company specifically incorporates it.[116]

C. Compensation Tables

To enhance the benefits of the tabular approach to eliciting compensation disclosure,[117] we proposed to reorganize and streamline the tables to provide a clearer and more logical picture of total compensation and its elements for named executive officers. We are adopting reorganized compensation tables and related narrative disclosure that cover three broad categories:

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addition to total return may be included in the graph only so long as the compensation committee (or persons performing equivalent functions or the entire board if there is no such committee) provided a description of the link between the measure and the level of compensation in the Board Compensation Committee Report on Executive Compensation. As a result, companies may include other performance measures, such as return on average common shareholders' equity, so long as the meaning of any such measures is clear from the Performance Graph and any related legend or other disclosure.

[116] Instructions 7 and 8 to Item 201(e). A "small business issuer" as defined in Regulation S-B, is not required to provide the Performance Graph. Instruction 6 to Item 201(e). Because Nasdaq has registered as a national securities exchange under Section 6 of the Exchange Act [15 U.S.C. 78f], the former separate reference to "Nasdaq market" is not retained. See Release No. 34-53128 (Jan. 13, 2006) ordering that the application of The NASDAQ Stock Market LLC for registration as a national securities exchange be granted. We also adopt a conforming revision to Rules 304(d) and (e) of Regulation S-T [17 CFR 232.304(d) and (e)], and we make technical revisions to those rules to correctly reference Item 22(b)(7)(ii) of Form N-1A and to eliminate the references to "prospectuses."

[117] The tabular disclosure and related narrative disclosure under amended Item 402 applies, as it did prior to today's amendments, to named executive officers, with amended Item 402(k) applying to directors, as described in Section II.C.9. below. As discussed below in Section II.C.6.a., we are adopting certain changes to the definition of named executive officer.

1. compensation with respect to the last fiscal year (and the two preceding fiscal years), as reflected in a revised Summary Compensation Table that presents compensation paid currently or deferred (including options, restricted stock and similar grants) and compensation consisting of current earnings or awards that are part of a plan, and as supplemented by one table providing back-up information for certain data in the Summary Compensation Table;[118]
2. holdings of equity-based interests that relate to compensation or are potential sources of future compensation, focusing on compensation-related equity-based interests that were awarded in prior years[119] and are "at risk," as well as recent realization on these interests, such as through vesting of restricted stock or the exercise of options and similar instruments;[120] and
3. retirement and other post-employment compensation, including retirement and deferred compensation plans, other retirement benefits and other post-employment benefits, such as those payable in the event of a change in control.[121]

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118 The table supplementing the Summary Compensation Table is the Grants of Plan-Based Awards Table, discussed below in Section II.C.2., which combines into a single table the disclosure of the proposed Grants of Performance-Based Awards Table and the proposed Grants of All Other Equity Awards Table. The accompanying narrative disclosure requirement is discussed below in Section II.C.3.a.

119 Under the disclosure rules as adopted, these interests will be disclosed as current compensation for those prior years.

120 Information regarding holdings of such equity-based interests that relate to compensation will be disclosed in the Outstanding Equity Awards at Fiscal Year-End Table, discussed below in Section II.C.4.a. Information regarding realization on holdings of equity-based interests will be required in the Option Exercises and Stock Vested Table discussed below in Section II.C.4.b.

121 Disclosure regarding retirement and post-employment compensation is required in the Pension Benefits Table, discussed below in Section II.C.5.a., the Nonqualified Deferred Compensation Table, discussed below in Section II.C.5.b., and the narrative disclosure requirement for other potential post-employment payments discussed below in Section II.C.5.c.

Reorganizing the tables along these themes should help investors understand how compensation components relate to each other. At the same time, we are retaining the ability for investors to use the tables to compare compensation from year to year and from company to company.

As we noted in the Proposing Release, by more clearly organizing the compensation tables to explain how the elements relate to each other, we may in some situations be requiring disclosure of both amounts earned (or potentially earned) and amounts subsequently paid out. This approach raises the possible perception of "double counting" some elements of compensation in multiple tables. However, a particular item of compensation only appears once in the Summary Compensation Table. In order to explain the item of compensation, it may also appear in one or more of the other tables. We believe the possible perception of double disclosure is outweighed by the clearer and more complete picture the disclosure in the additional tables will provide to investors. We strongly encourage companies to use the narrative following the tables (and where appropriate the Compensation Discussion and Analysis) to explain how disclosures relate to each other in their particular circumstances.

Commenters stated their general support for the format and presentation of the proposed tables.[122] We are adopting the tables substantially as proposed with some revisions, as noted below, in response to comments.

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[122] See, e.g., letters from CFA Centre 1; jointly, Jennifer Clowes, Lindsey Erskine, Kendra Freeck and Kapri Malesich; F&P Pension Board; IAM; IBEW PBF; Plumbers & Pipefitters National Pension Fund; and Standard Life.

1. Compensation to Named Executive Officers in the Last Three Completed Fiscal Years -- The Summary Compensation Table and Related Disclosure

Under today's amendments, the Summary Compensation Table continues to serve as the principal disclosure vehicle regarding executive compensation. This table, as amended, shows the named executive officers' compensation for each of the last three years, whether or not actually paid out. Consistent with the requirements prior to today's amendments, the amended Summary Compensation Table continues to require disclosure of compensation for each of the company's last three completed fiscal years.[123]

As we proposed, the amendments add disclosure of a figure representing total compensation, as reflected in other columns of the Summary Compensation Table, and simplify the presentation from that of the table prior to these amendments. As described in greater detail below, the amendments also provide for a supplemental table disclosing additional information about grants of plan-based awards. Narrative disclosure will follow the two tables, providing disclosure of material information necessary to an understanding of the information disclosed in the tables.

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[123] Prior to today's amendments, an instruction to Item 402(b) permitted the exclusion of information for fiscal years prior to the last completed fiscal year if the company was not a reporting company pursuant to Exchange Act Section 13(a) or 15(d) at any time during that year, unless the company previously was required to provide information for any such year in response to a Commission filing requirement. This instruction has been retained and redesignated as Instruction 1 to Item 402(c) in the amended rule.

SUMMARY COMPENSATION TABLE

Name and Principal Position (a)	Year (b)	Salary ($) (c)	Bonus ($) (d)	Stock Awards ($) (e)	Option Awards ($) (f)	Non-Equity Incentive Plan Compen-sation ($) (g)	Change in Pension Value and Nonquali-fied Deferred Compensa-tion Earnings ($) (h)	All Other Compen-sation ($) (i)	Total ($) (j)
PEO[124]	_____ _____ _____								
PFO[125]	_____ _____ _____								
A	_____ _____ _____								
B	_____ _____ _____								
C	_____ _____ _____								

[124] "PEO" refers to principal executive officer. See Section II.C.6.a. below for a description of the proposed named executive officers for whom compensation disclosure is required.

[125] "PFO" refers to principal financial officer.

a. Total Compensation Column

We are modifying the Summary Compensation Table to provide a clearer picture of total compensation. As we proposed, we are requiring that all compensation be disclosed in dollars and that a total of all compensation be provided.[126] The new "Total" column aggregates the total dollar value of each form of compensation quantified in the other columns (revised columns (c) through (i)). This column responds to concerns that investors, analysts and other users of Item 402 disclosure have not been able to compute aggregate amounts of compensation using the disclosure in the table as specified prior to these amendments in a manner that was accurate or comparable across years or companies. Many commenters expressed their support for the proposal to include a Total column.[127]

Other commenters expressed concerns that, as proposed, the total number was an amalgam of dissimilar types of compensation.[128] These concerns centered on the mix of compensation elements reported in the Summary Compensation Table being measured at different times and having different valuation methods, so that a Total column in effect would combine "apples" with "oranges."[129] To address this issue, some commenters suggested dividing the Total column into two separate columns reporting Total Earned

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126 Instruction 2 to Item 402(c) (requiring all compensation values in the Summary Compensation Table to be reported in dollars and rounded to the nearest dollar). Prior to today's amendments, some stock-based compensation was disclosed in per share increments rather than in dollar amounts. Instruction 2 to Item 402(c) further requires, where compensation was paid or received in a different currency, footnote disclosure identifying that currency and describing the rate and methodology used for conversion to dollars.

127 See, e.g., letters from CFA Centre 1; CII; Frederic W. Cook & Co.; ISS; Standard Life; and Walden. In addition, over 20,000 form letters from individuals specifically supported this proposal. See Letter Type A, available at www.sec.gov/rules/proposed/s70306.shtml.

128 See, e.g., letters from Fenwick & West LLP ("Fenwick"); Chamber of Commerce; and Hodak Value Advisors, LLC ("Hodak Value Advisors").

129 See, e.g., letters from Caterpillar Inc. and Corporate Library.

Compensation and Total Contingent Compensation.[130] Others recommended two separate Summary Compensation Tables – one for compensation that had been earned or realized and another for compensation that remained contingent or an opportunity.[131]

As we noted in the Proposing Release, the Summary Compensation Table is designed to disclose all compensation. Each element of compensation is only disclosed once in the Summary Compensation Table, although it may also be disclosed in some of the other tables. We realize that the timing of when particular items of compensation are disclosed in the Summary Compensation Table varies depending on the form of the compensation.[132] Given the various forms and complexities of compensation and the different periods they may be designed to relate to,[133] it is unavoidable that the timing of disclosure may vary from element to element in this table.[134]

We note that some commenters were particularly concerned that non-equity incentive plan awards are reported when earned, while equity incentive plan awards are reported based on grant date value when awarded.[135] No single accepted standard for measuring non-equity incentive plan awards at grant date currently exists. Some

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130 See, e.g., letters from Business Roundtable ("BRT") and Mercer.

131 See, e.g., letters from Eli Lilly and Company ("Eli Lilly"); Hewitt; Society of Corporate Secretaries & Governance Professionals ("SCSGP"); Towers Perrin, dated April 10, 2006 ("Towers Perrin"); and Watson Wyatt Worldwide ("Watson Wyatt").

132 Compensation is generally calculated in a manner that reflects the cost of the compensation to the company and its shareholders.

133 See, e.g., letter from ABA (noting that option grants made early in the year may be viewed by the compensation committee primarily as an award for the prior year's performance or as an incentive for future performance).

134 The approach as to the timing of disclosure that we proposed and that we adopt today is the same approach that has been used in the Summary Compensation Table since it was first proposed in 1992. See Executive Compensation Disclosure, Release No. 33-6940 (June 23, 1992) [57 FR 29582] (noting that the Summary Compensation Table will "provide shareholders a concise, comprehensive overview of compensation awarded, earned or paid in the reporting period").

135 See, e.g., letters from ACC; Amalgamated; BDO Seidman, LLP ("BDO Seidman"); CII; IUE-CWA; and Mercer.

commenters nonetheless suggested that we require grant date fair value estimates of non-equity incentive plan awards in the Summary Compensation Table.[136] We do not believe it is appropriate at this time for us to develop such a standard expressly for compensation disclosure purposes. Nevertheless, we believe that the Summary Compensation Table that we adopt today, including a total of all of the various elements presented, provides meaningful disclosure to investors and allows for comparability between companies and within a company.

However, in response to comments, we have created a separate column for the annual change in actuarial value of defined benefit plans and earnings on nonqualified deferred compensation.[137] As proposed, these compensation elements would have been included in the aggregate amount reported in the All Other Compensation column. We believe that presenting these items in a separate column will permit investors and other users of the Summary Compensation Table to readily identify elements included in the Total column that may relate principally to longevity of service. These items will not be used to determine the officers included in the table.[138]

We proposed that the new column disclosing total compensation would appear as the first column providing compensation information.[139] Some commenters suggested moving this column to the right of the table, so that it would follow – rather than precede

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136 See, e.g., letters from CII; IUE-CWA; and CRPTF. Information about the amounts that could be earned under non-equity incentive plans is required to be disclosed in the Grants of Plan-Based Awards Table when such awards are granted.

137 See Section II.C.1.d.i. below, which describes a modification of the proposed Summary Compensation Table disclosure of nonqualified deferred compensation earnings to present only the above-market or preferential portion in this table.

138 See Section II.C.6.b. below describing how in response to commenters this column is excluded from total compensation for the purpose of identifying named executive officers.

139 Columns (a) and (b) specify the executive officer and the year in question.

– the relevant component numbers.[140] In response to these comments, we have moved the Total column to the final column in the table.

b. Salary and Bonus Columns

The first columns providing compensation information that we are requiring are the salary and bonus columns (columns (c) and (d), respectively), which are retained substantially in their previous form. However, we are adopting some changes, as proposed, that will give an investor a clearer picture of the total amount earned.

As we proposed, compensation that is earned, but for which payment will be deferred, must be included in the salary, bonus or other column, as appropriate. A new instruction, applicable to the entire Summary Compensation Table, provides that if receipt of any amount of compensation is currently payable but has been deferred for any reason, the amount so deferred must be included in the appropriate column.[141] This treatment is no longer limited to salary and bonus, as it was prior to these amendments, and under the amended rules this treatment applies regardless of the reason for the deferral.[142]

We also proposed that the amount so deferred must be disclosed in a footnote to the applicable column. As described below, the amount deferred will also generally be reflected as a contribution in the deferred compensation presentation.[143] The proposed

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140 See, e.g., letters from Buck Consultants; Frederic W. Cook & Co.; and SCSGP.

141 Instruction 4 to Item 402(c).

142 Prior to the amendments, this requirement was triggered only if the officer elected the deferral. We are amending this requirement as we proposed to cover all deferrals, no matter who has initiated the deferrals.

143 See Section II.C.5.b., describing the Nonqualified Deferred Compensation Table. Disclosure of these amounts as contributions will now be required for nonqualified deferred compensation plans. This disclosure will not be required for qualified plans. Nonqualified deferred compensation plans and arrangements provide for the deferral of compensation that does not satisfy the minimum

footnote disclosure was intended to clarify the extent to which amounts disclosed in the Nonqualified Deferred Compensation Table described below represent compensation already reported, rather than additional compensation. Because commenters thought it could lead to potential double counting, we have not adopted this proposed footnote requirement.[144]

As proposed, we have eliminated the delay that existed under the former rules where salary or bonus for the most recent fiscal year is determined following compliance with Item 402 disclosure. Under our new rules, where salary or bonus cannot be calculated as of the most recent practicable date, a current report under Item 5.02 of Form 8-K will be triggered by a payment, decision or other occurrence as a result of which either of such amounts become calculable in whole or part.[145] The Form 8-K will include disclosure of the salary or bonus amount and a new total compensation figure including that salary or bonus amount.

c. Plan-Based Awards

As we proposed, the next three columns -- Stock Awards, Option Awards and Non-Equity Incentive Plan Compensation -- cover plan-based awards.

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coverage, nondiscrimination and other rules that "qualify" broad-based plans for favorable tax treatment under the Internal Revenue Code.

144 See, e.g., letter from WorldatWork. As described in Section II.C.5.b. below, however, we have adopted the corresponding footnote proposed for the Nonqualified Deferred Compensation Table.

145 New Item 5.02(f) of Form 8-K and Instruction 1 to Item 402(c)(2)(iii) and (iv). Prior to these amendments, in the event that such amounts were not determinable at the most recent practicable date, they were generally reported in the annual report on Form 10-K or proxy statement for the following fiscal year. We believe providing the information more quickly is appropriate and are therefore adopting the use of a current report on Form 8-K. Instruction 1 to Item 402(c)(2)(iii) and (iv) requires that the company disclose in a footnote that the salary or bonus is not calculable through the latest practicable date and the date that the salary or bonus is expected to be determined. We proposed to include this requirement in an instruction to proposed paragraph (e) of Item 5.02 of Form 8-K. We are adopting it as a separate paragraph of Item 5.02 in order to make it clearer that it is a separate triggering event.

i. Stock Awards and Option Awards Columns

As proposed and adopted, the Stock Awards column (column (e)) discloses stock-related awards that derive their value from the company's equity securities or permit settlement by issuance of the company's equity securities and, as we have clarified, are thus within the scope of FAS 123R for financial reporting, such as restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or other similar instruments that do not have option-like features.[146] Valuation is based on the grant date fair value of the award determined pursuant to FAS 123R for financial reporting purposes. Stock awards granted pursuant to an equity incentive plan are also included in this column to ensure consistent reporting of stock awards and to ensure their inclusion in the revised Summary Compensation Table.[147]

Awards of options, stock appreciation rights, and similar equity-based compensation instruments that have option-like features that, as we have clarified, are within the scope of FAS 123R, must be disclosed in the Option Awards column (column (f)) in a manner similar to the treatment of stock and other equity-based awards under the

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[146] Generally speaking, a restricted stock award is an award of stock subject to vesting conditions, such as performance-based conditions or conditions based on continued employment for a specified period of time. This type of award is referred to as "nonvested equity shares" in FAS 123R. Phantom stock, phantom stock units, common stock equivalent units and other similar awards are typically awards where an executive obtains a right to receive payment in the future of an amount based on the value of a hypothetical, or notional, amount of shares of common equity (or in some cases stock based on that value). To the extent that the terms of phantom stock, phantom stock units, common stock equivalents or other similar awards include option-like features, the awards will be required to be included in the Option Awards column. Prior to these amendments, restricted stock awards were valued in the Summary Compensation Table by multiplying the closing market price of the company's unrestricted stock on the date of grant by the number of shares awarded.

[147] Prior to these amendments, these performance-based stock awards could be reported at the company's election as incentive plan awards under what was then specified in Instruction 1 to Item 402(b)(2)(iv). Our amendments today eliminate this alternative.

amendments.[148] Instead of the disclosure of the number of securities underlying the awards as was the case prior to today's amendments, this column requires disclosure of the grant date fair value of the award as determined pursuant to FAS 123R. In order to calculate a total dollar amount of compensation, the value rather than the number of securities underlying an award must be used. The FAS 123R valuation must be used whether the award itself is in the form of stock, options or similar instruments or the award is settled in cash but the amount of payment is tied to performance of the company's stock.[149]

Under FAS 123R, the compensation cost is initially measured based on the grant date fair value of an award,[150] and generally recognized for financial reporting purposes over the period in which the employee is required to provide service in exchange for the award (generally the vesting period). Some commenters suggested that rather than requiring disclosure of the grant date fair value of equity awards, we should require a company to disclose just the portion of the award expensed in the company's financial

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148 A stock appreciation right usually gives the executive the right to receive the value of the increase in the price of a specified number of shares over a specified period of time. These awards may be settled in cash or in shares.

149 As proposed, we are eliminating the requirement that had been specified in Options/SAR Grants in Last Fiscal Year Table under Item 402(c)(2)(vi) to report the potential realizable value of each option grant under 5% or 10% increases in value or the present value of each grant (computed under any option pricing model). These alternative disclosures are no longer necessary insofar as the grant date fair value of equity-based awards is included in the Summary Compensation Table.

150 Under FAS 123R, the classification of an award as an equity or liability award is an important aspect of the accounting because the classification will affect the measurement of compensation cost. Awards with cash-based settlement, repurchase features, or other features that do not result in an employee bearing the risks and rewards normally associated with share ownership for a specified period of time would be classified as liability awards under FAS 123R. For an award classified as an equity award under FAS 123R, the compensation cost recognized is fixed for a particular award, and absent modification, is not revised with subsequent changes in market prices or other assumptions used for purposes of the valuation. In contrast, liability awards are initially measured at fair value on the grant date, but for purposes of recognition in financial statement reporting are then re-measured at each reporting date through the settlement date under FAS 123R. These re-measurements would not be the basis for executive compensation disclosure under our amended rules, unless the award has been modified, as described later in this release.

statements.[151] These commenters expressed concerns that disclosing the full grant date fair value would be inconsistent with the company's financial statements, would overstate compensation earned related to service rendered for the year, and would be inconsistent with the presentation of non-equity incentive plan compensation. Other commenters expressed support for requiring companies to report the full grant date fair value in the year of the award because it would provide a more complete representation of compensation.[152]

We are adopting these columns substantially as proposed.[153] Under our amendments, the compensation cost calculated as the grant date fair value will be shown as compensation in the year in which the grant is made.[154] As we stated in the Proposing Release, we believe that this approach is more consistent with the purpose of executive compensation disclosure. We are adopting an approach that subscribes to the measurement method of FAS 123R based on grant date fair value, but also provides for

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151 See, e.g., letters from the SEC Regulations Committee of the American Institute of Certified Public Accountants ("AICPA"); Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.; Chamber of Commerce; Computer Sciences Corporation ("Computer Sciences"); Deloitte & Touche LLP; Ernst & Young LLP ("E&Y"); Fenwick; Foley; HR Policy Association ("HRPA"); American Bar Association, Joint Committee on Employee Benefits ("ABA-JCEB"); and KPMG LLP ("KPMG").

152 See, e.g., letters from CalPERS; CFA Centre 1; CRPTF; L. Burns; Governance for Owners; Laborers International Union of North America; Nancy Lucke Ludgus ("N. Ludgus"); Institutional Investors Group; State Board of Administration (SBA) of Florida ("SBAF"); Teamsters Local 671; Teamsters PA/MD; United Church Foundation, Inc. ("UCF"); Washington State Investment Board ("WSIB"); and Western PA Teamsters Fund.

153 Item 402(c)(2)(v) and (vi).

154 FAS 123R requires a company to aggregate individuals receiving awards into relatively homogenous groups with respect to exercise and post-vesting employment termination behaviors for the purpose of determining expected term, for example executives and non-executives. The rules we adopt today are not intended to change the method used to value employee stock options for purposes of FAS 123R or to affect the judgments as to reasonable groupings for purposes of determining the expected term assumption required by FAS 123R. Under the rules we adopt today, where a company uses more than one group, the measurement of grant date fair value for purposes of Item 402 would be derived using the expected term assumption for the group that includes the named executive officers (or the group that includes directors for purposes of Item 402(k)).

immediate disclosure of compensation. This timing of disclosure of option awards remains the same as it has been since 1992. The only change is that the awards are now disclosed in dollars rather than numbers of units or shares. Disclosing these awards as they are expensed for financial statement reporting purposes would not mirror the timing of disclosure of non-equity incentive plan compensation. While we have imported a financial statement reporting principle to enable disclosure of compensation costs, executive compensation disclosure must continue to inform investors of current actions regarding plan awards – a function that would not be fulfilled applying financial reporting recognition timing. If a company does not believe that the full grant date fair value reflects compensation earned, awarded or paid during a fiscal year, it can provide appropriate explanatory disclosure in the accompanying narrative section. Furthermore, disclosing grant date fair value will give investors a clearer picture of the value of any in-the-money awards. As we proposed, the number of shares underlying an award and other details regarding the award must be disclosed in a separate table covering grants of plan-based awards supplementing the Summary Compensation Table.[155] This supplemental table, which combines the disclosure that would have been required by the proposed Grants of Performance-Based Awards Table and Grants of All Other Equity Awards Table, discloses equity awards granted pursuant to incentive plans separately from other equity awards.

We are adopting as proposed an instruction that requires a footnote referencing the discussion of the relevant assumptions in the notes to the company's financial

[155] See Section II.C.2., discussing the Grants of Plan-Based Awards Table required by Item 402(d).

statements or the discussion of relevant assumptions in the MD&A.[156] The same instruction also provides that the referenced sections will be deemed to be part of the disclosure provided pursuant to Item 402. The referenced sections containing this disclosure are required in the company's annual report to shareholders that must precede or accompany the company's proxy statement.[157] In the case of Internet disclosure of proxy materials, companies could provide hyperlinks from the proxy statement to the referenced sections contained in the annual report.[158] While some commenters recommended requiring these valuation assumptions to be presented in the proxy statement,[159] we believe that investors will be able to easily access this information without requiring it to be repeated from other documents.

We proposed that previously awarded options or freestanding stock appreciation awards that the company repriced or otherwise materially modified during the last fiscal year be disclosed in the Summary Compensation Table based on the total fair value of the award as so modified. Under FAS 123R, only the incremental fair value, computed as of the repricing or modification date, is recognized for such an award. Several commenters recommended conforming Summary Compensation Table reporting to the incremental fair value recognition approach of FAS 123R, objecting that the proposed total fair value approach would inappropriately double count the fair value of many modified awards.[160]

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156 Instruction 1 to Item 402(c)(2)(v) and (vi).

157 See Exchange Act Rule 14a-3 [17 CFR 240.14a-3].

158 In addition, in December 2005, we proposed rules that would allow companies and other persons to use the Internet to satisfy proxy material delivery requirements. Internet Availability of Proxy Materials, Release No. 34-52926 (Dec. 8, 2005) [70 FR 74597].

159 See, e.g., letters from Buck Consultants; CII; Frederic W. Cook & Co.; and IUE-CWA.

160 See, e.g., letters from AICPA; Cleary Gottlieb Steen & Hamilton LLP ("Cleary"); Compass Bancshares; Cravath, Swaine & Moore LLP ("Cravath"); Hewitt; KPMG; Leggett & Platt, Incorporated ("Leggett & Platt"); SCSGP; and Sullivan.

As adopted, the new rules reflect this recommendation.[161] Grants of reload or restorative options, however, are reportable based on total grant date fair value because they are new awards that do not replace previously cancelled awards.[162]

We proposed that all earnings, such as dividends, be included in the Stock Awards and Option Awards columns when paid. Several commenters noted that the value of the right to receive dividends is factored into the grant date fair value computed under FAS 123R.[163] If the stock award or option award entitles the holder to receive dividends, then such "dividend protection" is included in the grant date fair value computed under FAS 123R. We are persuaded by the commenters that subsequent disclosure of the value of dividends in these circumstances, as they are received, would repeat in the same table compensation that was previously disclosed. Therefore, we have revised the requirement. However, we note that if the stock award or option award does not entitle the holder to receive dividends, then "dividend protection" is not included in the grant date fair value computed under FAS 123R. Accordingly, the value of any dividends received would not have been previously disclosed in the Summary Compensation Table as part of the grant date fair value of the award. In order to appropriately capture the compensation in these latter circumstances, we are adopting a requirement to disclose any earnings on stock awards or option awards that are not included in the grant date fair value computation for those awards in the All Other Compensation column of the Summary Compensation Table when the dividends or other

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161 Instruction 2 to Item 402(c)(2)(v) and (vi).

162 Generally speaking, reload or restorative options are grants of new options that are granted automatically when an executive exercises the old option. Reload or restorative options are treated as new grants under FAS 123R.

163 See, e.g., letters from Cleary; Emerson Electric Co. ("Emerson"); Foley; Hewitt; SCSGP; and Towers Perrin.

earnings are paid.[164] In addition, the material terms of any equity award (including whether dividends will be paid, the applicable dividend rate and whether that rate is preferential) may be factors to be discussed in the related narrative section.[165]

We had proposed a definition of "non-stock incentive plan" that some commenters stated would result in confusing and potentially anomalous treatment of some awards.[166] To clarify the reporting treatment of different types of awards, we have:

- adopted a separate definition of "equity incentive plan" as "an incentive plan or portion of an incentive plan under which awards are granted that fall within the scope of FAS 123R";[167] and
- defined "non-equity incentive plan" as "an incentive plan or portion of an

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164 Item 402(c)(2)(ix)(G).

165 Item 402(e)(1)(iii), discussed in Section II.C.3.a. below.

166 See, e.g., letter from ABA.

167 Item 402(a)(6)(iii). An equity incentive plan includes plans that have a performance or market condition. As defined in Appendix E of FAS 123R, a performance condition is "a condition affecting the vesting, exercisability, exercise price or other pertinent factors used in determining the fair value of an award that relates to both (a) an employee's rendering service for a specified (either explicitly or implicitly) period of time and (b) achieving a specified performance target that is defined solely by reference to the employer's own operations (or activities). Attaining a specified growth rate in return on assets, obtaining regulatory approval to market a specified product, selling shares in an initial public offering or other financing event, and a change in control are examples of performance conditions for purposes of this Statement. A performance target also may be defined by reference to the same performance measure of another entity or group of entities. For example, attaining a growth rate in earnings per share that exceeds the average growth rate in earnings per share of other entities in the same industry is a performance condition for purposes of this Statement. A performance target might pertain either to the performance of the enterprise as a whole or to some part of the enterprise, such as a division or an individual employee." An award also would be considered to have a performance condition if it is subject to a market condition, which is "a condition affecting the exercise price, exercisability, or other pertinent factors used in determining the fair value of an award under a share-based payment arrangement that relates to the achievement of (a) a specified price of the issuer's shares or a specified amount of intrinsic value indexed solely to the issuer's shares or (b) a specified price of the issuer's shares in terms of a similar (or index of similar) equity security (securities)." An award that vests on an accelerated basis upon the occurrence of a change in control is not considered an award under an equity incentive plan if (a) the award contains no other performance or market conditions and (b) the award would otherwise vest based on the completion of a specified employee service period.

incentive plan that is not an equity incentive plan."[168]

ii. Non-Equity Incentive Plan Compensation Column

The Non-Equity Incentive Plan Compensation column (column (g)) will report, as proposed, the dollar value of all amounts earned during the fiscal year pursuant to non-equity incentive plans.[169] This column includes all other incentive plan awards not included in the stock awards and option awards columns.[170] Compensation awarded under an incentive plan that is not within the scope of FAS 123R will be disclosed in the Summary Compensation Table in the year when the relevant specified performance criteria under the plan are satisfied and the compensation earned, whether or not payment is actually made to the named executive officer in that year.

The grant of an award under a non-equity incentive plan will be disclosed in the supplemental Grants of Plan-Based Awards Table in the year of grant, which may be some year prior to the year in which compensation under the non-equity incentive plan is reported in the Summary Compensation Table.[171] As noted above, several commenters recommended Summary Compensation Table reporting of non-equity incentive plan awards on a grant date fair value basis, consistent with the reporting of equity incentive

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168 Item 402(a)(6)(iii). See also discussion of the definition of "incentive plan" at Section II.C.1.f. below.

169 Item 402(c)(2)(vii). An incentive plan generally provides for compensation intended to serve as an incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the company or an affiliate, the company's stock price, or any other performance measure. See Item 402(a)(6)(iii) for the definition of "incentive plan."

170 Awards disclosed in this column, column (g), are not covered by FAS 123R for financial reporting purposes because they do not involve share-based payment arrangements. Awards that involve share-based payment arrangements should be disclosed in the Stock Awards or Option Awards columns, as appropriate.

171 See Section II.C.2., discussing the Grants of Plan-Based Awards Table.

plans.[172] However, because there is not one clearly required or accepted standard for measuring the value at grant date of these non-equity incentive plan awards that reflects the applicable performance contingencies, as there is for equity-based awards with FAS 123R, we are not including such a value in the Summary Compensation Table. Instead, we continue the disclosure approach of reflecting these items of compensation when earned.[173]

Once the disclosure has been provided in the Summary Compensation Table when the specified performance criteria have been satisfied and the compensation earned, and the grant of the award has been disclosed in the Grants of Plan-Based Awards Table, no further disclosure will be specifically required when payment is actually made to the named executive officer. Some commenters objected to Summary Compensation Table reporting of awards for which the relevant performance condition has been satisfied that remain subject to forfeiture conditions (such as conditions requiring continued service or conditions that provide for forfeiture based on future company performance).[174] We continue to believe that satisfaction of the relevant performance condition (including an interim performance condition in a long term plan) is the event that is material to investors for Summary Compensation Table reporting purposes. We encourage companies to use the related narrative section to disclose material features that are not

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172 See, e.g., letters from Amalgamated; Anonymous Compensation Consultant; BDO Seidman; CII; CRPTF; Mercer; and Teamsters Local 671. See discussion at Section II.C.1.a. above.

173 Prior to these amendments, Items 402(b)(2)(iv)(C) and 402(e) required disclosure of long-term incentive plan payouts when earned.

174 See, e.g., letters from Mercer; Watson Wyatt; and Richard E. Wood.

reflected in the tabular disclosure including, for example, subsequent forfeitures of amounts reported in the table with respect to previous fiscal years.[175]

As proposed and adopted, earnings on outstanding non-equity incentive plan awards are also included in the Non-Equity Incentive Plan Compensation column and identified and quantified in a footnote to the table.[176]

d. Change in Pension Value and Nonqualified Deferred Compensation Earnings Column

As we proposed, we are expanding the Summary Compensation Table to include information regarding the aggregate increase in actuarial value to the named executive officer of all defined benefit and actuarial plans (including supplemental plans) accrued during the year and earnings on nonqualified deferred compensation. However, as mentioned above, we have decided to present this information in a separate column rather than include it in the All Other Compensation column as proposed.[177] Footnote identification and quantification of the full amount of each element is required.[178] Any amount attributable to the defined benefit and actuarial plans that is a negative number

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175 Commenters' issues concerning the scope of awards reportable in this column, in particular as compared to compensation reportable in the bonus column, are discussed in Section II.C.1.f. below.

176 Item 402(c)(2)(vii). These earnings were reportable prior to today's amendments in the Other Annual Compensation or All Other Compensation columns of the Summary Compensation Table under Items 402(b)(2)(iii)(C)(3) and 402(b)(2)(v)(C), respectively.

177 See the discussion of the Total column in Section II.C.1.a. above and the discussion of determination of named executive officers in Section II.C.6. below.

178 Instruction 3 to Item 402(c)(2)(viii). In contrast, as proposed to be disclosed in the All Other Compensation Column, separate identification and quantification of each element would have been required only if the element exceeded $10,000, although the amounts would have been included in that column without regard to size.

should be disclosed by footnote, but should not be reflected in the amount reported in the column.[179]

i. Earnings on Deferred Compensation

We proposed to require disclosure of all earnings on compensation that is deferred on a basis that is not tax-qualified, including non-tax qualified defined contribution retirement plans.[180] Prior to our amendments, these earnings were required to be disclosed only to the extent of any portion that was "above-market or preferential." This limitation generated criticism that the rule prior to today's amendments permitted companies to avoid disclosure of substantial compensation.

Some commenters supported this proposal.[181] However, many commenters asserted that the Summary Compensation Table should continue to require disclosure only of earnings at above-market or preferential rates.[182] Commenters stated that differences in earnings on nonqualified deferred compensation among executives may result entirely from the executives' investment acumen and decisions as to amounts to defer. Commenters further claimed that deferred amounts invested at market rates are conceptually no different from amounts invested directly by an executive. Absent providing an above-market return, contributing additional amounts or guaranteeing

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179 Instruction 3 to Item 402(c)(2)(viii).

180 Nonqualified defined contribution and other nonqualified deferred compensation plans are plans providing for deferral of compensation that do not satisfy the minimum coverage, nondiscrimination and other rules that "qualify" broad-based plans for favorable tax treatment under the Internal Revenue Code. A typical 401(k) plan, by contrast, is a qualified deferred compensation plan.

181 See, e.g., letters from CFA Centre 1 and jointly, Lucian A. Bebchuk, Jesse M. Fried and Robert J. Jackson, Jr. ("Professor Bebchuk, et al").

182 See, e.g., letters from American Academy of Actuaries' Pension Committee ("Academy of Actuaries"); BRT; Frederic W. Cook & Co.; Computer Sciences; Kimball International, Inc.; NAM; and Sullivan.

investment returns, commenters asserted that the company has no role in the annual growth of the account.

We are persuaded that Summary Compensation Table disclosure of nonqualified deferred compensation earnings should continue to be limited to the above-market or preferential portion.[183] As under the rule prior to these amendments, the above-market or preferential portion is determined for interest by reference to 120% of the applicable federal long-term rate and for dividends by reference to the dividend rate on the company's common stock.[184] Footnote or narrative disclosure of the company's criteria for determining any portion considered to be above-market may be provided. The above-market or preferential earnings in this column would always be positive, as it would not be possible for above-market or preferential losses to occur.

However, we do not overlook the fact that the company is obligated to pay the executive the entire amount of the nonqualified deferred compensation account, which represents a claim on company assets and is part of a plan that provides the executive with tax benefits.[185] To reflect this obligation, we have decided to require disclosure of all earnings on nonqualified deferred compensation in the separate Nonqualified Deferred Compensation Table, as we proposed.[186] The disclosure required by that table discloses the rate at which the company's obligation grows on an annual basis.

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[183] Item 402(c)(2)(viii)(B).

[184] Instruction 2 to Item 402(c)(2)(viii), which is based on the language which had appeared in Instructions 3 and 4 to Item 402(b)(2)(iii)(C) prior to these amendments.

[185] Nonqualified defined contribution and other nonqualified deferred compensation plans are generally unfunded, and their taxation is governed by Section 409A of the Internal Revenue Code [26 U.S.C. 409A].

[186] This separate table is discussed in Section II.C.5.b. below.

Further, the method of calculating earnings on deferred compensation plans is an example of a factor that may be material and therefore described in the narrative disclosure to the Summary Compensation Table and the Grants of Plan-Based Awards Table.[187]

ii. Increase in Pension Value

We proposed to require Summary Compensation Table disclosure of the aggregate increase in actuarial value to the executive officer of defined benefit and actuarial plans (including supplemental plans) accrued during the year.

In contrast to defined contribution plans, for which the Summary Compensation Table requires disclosure of company contributions, the rules prior to our amendments did not require disclosure of the annual change in value of defined benefit plans, such as pension plans, in which the named executive officers participated.[188] The annual increase in actuarial value of these plans may be a significant element of compensation that is earned on an annual basis, thus we proposed to include it in the computation of total compensation.

Such disclosure is necessary to permit the Summary Compensation Table to reflect total compensation for the year. Such disclosure also permits a full understanding of the company's compensation obligations to named executive officers, given that defined benefit plans guarantee what can be a lifetime stream of payments and allocate risk of investment performance to the company and its shareholders. In addition

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187 See Section II.C.3.a. below.

188 A typical defined contribution plan is a retirement plan in which the company and/or the executive makes contributions of a specified amount, and the amount that is paid out to the executive depends on the return on investments from the contributed amounts. A typical defined benefit plan is a retirement plan in which the company pays the executive specified amounts at retirement which are not tied to investment performance of the contributions that fund the plan.

commentators have noted that the absence of such a disclosure requirement creates an incentive to shift compensation to pensions, results in the understatement of non-performance-based compensation, and distorts pay comparisons between executives and between companies.

We are adopting the requirement substantially as proposed.[189] As proposed and adopted, an instruction specifies that this disclosure applies to each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans and supplemental executive retirement plans, but excluding defined contribution plans.[190] The retirement section, discussed below, provides more information regarding these covered plans.[191]

Some commenters raised issues regarding computation of the amount to be disclosed.[192] In response to these comments, we have revised the language of the requirement as adopted to clarify that the disclosure applies to the change, from the pension plan measurement date used for the company's audited financial statements for the prior completed fiscal year to the pension plan measurement date used for the company's audited financial statements for the covered fiscal year, in the actuarial present value of the named executive officer's accumulated benefit under all defined benefit and actuarial pension plans (including supplemental plans). The disclosure therefore includes both:

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189 Item 402(c)(2)(viii)(A).

190 Instruction 1 to Item 402(c)(2)(viii). Defined benefit plans include, for example, cash balance plans in which the retiree's benefit may be determined by the amount represented in an account rather than based on a formula referencing salary while still employed.

191 See Section II.C.5.a., discussing the Pension Benefits Table.

- the increase in value due to an additional year of service, compensation increases, and plan amendments (if any); and
- the increase (or decrease) in value attributable to interest.

As discussed below, this disclosure relates to the disclosure provided in the Pension Benefits Table[193] and promotes company-to-company comparability. In computing the amount to be disclosed, the company must use the assumptions it uses for financial reporting purposes under generally accepted accounting principles.[194]

Other commenters objected to this item's potential to "distort" the Total column and the determination of named executive officers.[195] As described above, we continue to believe that inclusion of this element in the table is necessary to permit the Summary Compensation Table to reflect total compensation. However, we have addressed commenters' concerns by segregating this item and above-market or preferential earnings on nonqualified deferred compensation from the All Other Compensation column, presenting their sum in a separate column so that it will be deducted from the total for purposes of determining the named executive officers.[196]

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192 See, e.g., letters from Academy of Actuaries; Frederic W. Cook & Co.; ABA-JCEB; and Mercer.

193 Item 402(h), discussed in Section II.C.5.a. below.

194 Instruction 1 to Item 402(c)(2)(viii) and Instruction 2 to Item (h)(2). Regarding such key assumptions as interest rate, form of benefit, number of years of service, level of compensation used to determine the benefit and mortality tables, a company must use the same assumptions as it applies pursuant to Financial Accounting Standards Board Statement of Financial Accounting Standards No. 87, Employers' Accounting for Pensions (FAS 87) both for this Summary Compensation Table column and the separate Pension Benefits Table.

195 See, e.g., letters from Eli Lilly and SCSGP.

196 See Section II.C.6. below.

e. All Other Compensation Column

The next column in the Summary Compensation Table discloses all other compensation not required to be included in any other column.[197] This approach allows the capture of all compensation in the Summary Compensation Table and also allows a total compensation calculation. We confirm that disclosure of all compensation is clearly required under the rules.[198]

As proposed, we are clarifying the disclosure required in the All Other Compensation column (revised column (i)) in two principal respects:

- consistent with the requirement that the Summary Compensation Table disclose all compensation, we state explicitly that compensation not properly reportable in the other columns reporting specified forms of compensation must be reported in this column; and
- to simplify the Summary Compensation Table and eliminate confusing distinctions between items currently reported as "Annual" and "Long Term" compensation, we have moved into this column all items formerly reportable as "Other Annual Compensation."[199]

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197 Item 402(c)(2)(ix).

198 The only exception, as discussed below, is for perquisites and personal benefits if they aggregate less than $10,000 for a named executive officer. The 1992 Release, at Section II.A.4., also noted "the revised item includes an express statement that it requires disclosure of all compensation to the named executive officers and directors for services rendered in all capacities to the registrant and its subsidiaries." See also Item 402(a)(2) as stated prior to these amendments. Further, as described above, Summary Compensation Table disclosure of nonqualified deferred compensation earnings is limited to the above-market or preferential portion of earnings. As was previously the case before these amendments, companies may omit information regarding group life, health, hospitalization and medical reimbursement plans that do not discriminate in scope, terms or operation in favor of executive officers or directors of the company and that are available generally to all salaried employees. See Item 402(a)(6)(ii).

199 Prior to today's amendments, Item 402(b)(2)(iii)(c) had required the separate column entitled "Other Annual Compensation."

We also are requiring that each item of compensation included in the All Other Compensation column that exceeds $10,000 be separately identified and quantified in a footnote. We believe that the $10,000 threshold balances our desire to avoid disclosure of clearly de minimis matters against the interests of investors in the nature of items comprising compensation. Each item of compensation less than that amount will be included in the column (other than aggregate perquisites and other personal benefits less than $10,000 as discussed below), but is not required to be identified by type and amount.[200] Items to be disclosed in the All Other Compensation column include, but are not limited to, the items discussed below.

i. Perquisites and Other Personal Benefits

Perquisites and other personal benefits are included in the All Other Compensation column. As we proposed, we are adopting changes to the disclosure of perquisites and other personal benefits to improve disclosure and facilitate computing a total amount of compensation. Our amendments require the disclosure of perquisites and other personal benefits unless the aggregate amount of such compensation is less than $10,000. Some commenters thought this threshold was too high;[201] while other commenters thought it was too low.[202] While we realize that this threshold may result in the total amount of compensation reportable in the Summary Compensation Table being slightly less than a complete total amount of compensation, we believe $10,000 is a reasonable balance between investors' need for disclosure of total compensation and the

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200 See Section II.C.1.e.i. regarding separate standards for identification of perquisites and other personal benefits.

201 See, e.g., letters from Association of BellTel Retirees ("ABTR"); AFL-CIO; Amalgamated; Association of US West Retirees ("AUSWR"); Corporate Library; ISS; UCF; and Walden.

202 See, e.g., letters from Buck Consultants; Chamber of Commerce; Compass Bancshares; Computer Sciences; Eli Lilly; Emerson; Hodak Value Advisors; C. Kollar; NAM; and SCSGP.

burden on a company to track every benefit, no matter how small. Prior to today's amendments, the rule permitted omission of perquisites and other personal benefits if the aggregate amount of such compensation was the lesser of either $50,000 or 10% of the total of annual salary and bonus, allowing omission of too much information that investors may consider material.

The amendments we adopt today require, as proposed, footnote disclosure that identifies perquisites and other personal benefits. Prior to these amendments, the rule required identification and quantification only of perquisites and other personal benefits that were 25% of the total amount for each named executive officer.[203] We have modified this requirement so that, unless the aggregate value of perquisites and personal benefits is less than $10,000, any perquisite or other personal benefit must be identified and, if it is valued at the greater of $25,000 or ten percent of total perquisites and other personal benefits, its value must be disclosed.[204] Consistent with our objective to streamline the Summary Compensation Table, the revised threshold is intended to avoid requiring separate quantification of perquisites having de minimis value. Where perquisites are subject to identification, they must be described in a manner that identifies the particular nature of the benefit received. For example, it is not sufficient to characterize generally as "travel and entertainment" different company-financed benefits, such as clothing, jewelry, artwork, theater tickets and housekeeping services.

As was formerly the case, tax "gross-ups" or other reimbursement of taxes owed with respect to any compensation, including but not limited to perquisites and other

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[203] This requirement had been set forth in Instruction 1 to Item 402(b)(2)(iii)(C) prior to these amendments.

[204] Instruction 4 to Item 402(c)(2)(ix).

personal benefits, must be separately quantified and identified in the tax reimbursement category described below, even if the associated perquisites or other personal benefits are eligible for exclusion or would not require identification or footnote quantification under the rule.

In the Proposing Release, we provided interpretive guidance about factors to be considered in determining whether an item is a perquisite or other personal benefit. One commenter suggested that the Commission engage in a separate rulemaking to adopt a definition of perquisites in Regulation S-K.[205] As we noted in the Proposing Release, for decades questions have arisen as to what is a perquisite or other personal benefit required to be disclosed. We continue to believe that it is not appropriate for Item 402 to define perquisites or personal benefits, given that different forms of these items continue to develop, and thus a definition would become outdated. As stated in the Proposing Release, we are concerned that sole reliance on a bright line definition in our rules might provide an incentive to characterize perquisites or personal benefits in ways that would attempt to circumvent the bright lines. Many commenters sought additional or modified interpretive guidance, including guidance with respect to an item that is integrally and directly related to the performance of the executive's duties but has a personal benefit aspect as well.[206] Accordingly, we are providing additional explanation regarding how to apply this guidance. The amendments we adopt today require perquisites and personal benefits to be disclosed for both named executive officers and directors.[207] Further, the disclosure requirements we adopt regarding potential payments upon termination or

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[205] See letter from Chamber of Commerce.

[206] See, e.g., letter from SCSGP.

change-in-control include disclosure of perquisites.[208] Accordingly, this discussion also applies in the context of each of these disclosure requirements.

Among the factors to be considered in determining whether an item is a perquisite or other personal benefit are the following:

- An item is not a perquisite or personal benefit if it is integrally and directly related to the performance of the executive's duties.
- Otherwise, an item is a perquisite or personal benefit if it confers a direct or indirect benefit that has a personal aspect, without regard to whether it may be provided for some business reason or for the convenience of the company, unless it is generally available on a non-discriminatory basis to all employees.

We believe the way to approach this is by initially evaluating the first prong of the analysis. If an item is integrally and directly related to the performance of the executive's duties, that is the end of the analysis – the item is not a perquisite or personal benefit and no compensation disclosure is required. Moreover, if an item is integrally and directly related to the performance of an executive's duties under this analysis, there is no requirement to disclose any incremental cost over a less expensive alternative. For example, with respect to business travel, it is not necessary to disclose the cost differential between renting a mid-sized car over a compact car.

Because of the integral and direct connection to job performance, the elements of the second part of the analysis (e.g., whether there is also a personal benefit or whether the item is generally available to other employees) are irrelevant. An example of such an

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[207] For directors, the disclosure will be required in the Director Compensation Table discussed below in Section II.C.9.

[208] Item 402(j), discussed in Section II.C.5.c. below.

item could be a "Blackberry" or a laptop computer if the company believes it is an integral part of the executive's duties to be accessible by e-mail to the executive's colleagues and clients when out of the office. Just as these devices represent advances over earlier technology (such as voicemail), we expect that as new technology facilitates the extent to which work is conducted outside the office, additional devices may be developed that will fall into this category.

The concept of a benefit that is "integrally and directly related" to job performance is a narrow one. The analysis draws a critical distinction between an item that a company provides because the executive needs it to do the job, making it integrally and directly related to the performance of duties, and an item provided for some other reason, even where that other reason can involve both company benefit and personal benefit. Some commenters objected that "integrally and directly related" is too narrow a standard, suggesting that other business reasons for providing an item should not be disregarded in determining whether an item is a perquisite.[209] We do not adopt this suggested approach. As we stated in the Proposing Release, the fact that the company has determined that an expense is an "ordinary" or "necessary" business expense for tax or other purposes or that an expense is for the benefit or convenience of the company is not responsive to the inquiry as to whether the expense provides a perquisite or other personal benefit for disclosure purposes. Whether the company should pay for an expense or it is deductible for tax purposes relates principally to questions of state law regarding use of corporate assets and of tax law; our disclosure requirements are triggered by different and broader concepts.

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[209] See, e.g., letters from NACCO Industries, Inc. ("NACCO Industries") and NAM.

As we noted in the Proposing Release, business purpose or convenience does not affect the characterization of an item as a perquisite or personal benefit where it is not integrally and directly related to the performance by the executive of his or her job. Therefore, for example, a company's decision to provide an item of personal benefit for security purposes does not affect its characterization as a perquisite or personal benefit. A company policy that for security purposes an executive (or an executive and his or her family) must use company aircraft or other company means of travel for personal travel, or must use company or company-provided property for vacations, does not affect the conclusion that the item provided is a perquisite or personal benefit.

If an item is not integrally and directly related to the performance of the executive's duties, the second step of the analysis comes into play. Does the item confer a direct or indirect benefit that has a personal aspect (without regard to whether it may be provided for some business reason or for the convenience of the company)? If so, is it generally available on a non-discriminatory basis to all employees? For example, a company's provision of helicopter service for an executive to commute to work from home is not integrally and directly related to job performance (although it would benefit the company by getting the executive to work faster), clearly bestows a benefit that has a personal aspect, and is not generally available to all employees on a non-discriminatory basis. As we have noted, business purpose or convenience does not affect the characterization of an item as a perquisite or personal benefit where it is not integrally and directly related to the performance by the executive of his or her job.

A company may reasonably conclude that an item is generally available to all employees on a non-discriminatory basis if it is available to those employees to whom it

lawfully may be provided. For this purpose, a company may recognize jurisdictionally based legal restrictions (such as for foreign employees) or the employees' "accredited investor"[210] status. In contrast, merely providing a benefit consistent with its availability to employees in the same job category or at the same pay scale does not establish that it is generally available on a non-discriminatory basis to all employees.

Applying the concepts that we outline above, examples of items requiring disclosure as perquisites or personal benefits under Item 402 include, but are not limited to: club memberships not used exclusively for business entertainment purposes, personal financial or tax advice, personal travel using vehicles owned or leased by the company, personal travel otherwise financed by the company, personal use of other property owned or leased by the company, housing and other living expenses (including but not limited to relocation assistance and payments for the executive or director to stay at his or her personal residence), security provided at a personal residence or during personal travel, commuting expenses (whether or not for the company's convenience or benefit), and discounts on the company's products or services not generally available to employees on a non-discriminatory basis.

Beyond the examples provided, we assume that companies and their advisors, who are more familiar with the detailed facts of a particular situation and who are responsible for providing materially accurate and complete disclosure satisfying our requirements, can apply the two-step analysis to assess whether particular arrangements require disclosure as perquisites or personal benefits. In light of the importance of the

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[210] "Accredited investor" is defined in Securities Act Rule 501(a) [17 CFR 230.501(a)] for purposes of Regulation D [17 CFR 230.501 - 508].

subject to many investors, all participants should approach the subject of perquisites and personal benefits thoughtfully.[211]

The amendments we adopt today, as proposed, call for aggregate incremental cost to the company as the proper measure of value of perquisites and other personal benefits.[212] Some commenters instead recommended valuing perquisites based on current market values.[213] Consistent with our approach of disclosing a company's compensation costs, we remain of the view that perquisites should be valued based on aggregate incremental cost.

Finally, commenters observed that investors cannot fully understand disclosed perquisite amounts without disclosure of the methodology used to compute them.[214] We agree that this disclosure will improve investors' ability to compare the cost of perquisites from company to company. The rule as adopted requires footnote disclosure of the methodology for computing the aggregate incremental cost for the perquisites.[215]

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211 The Commission has taken action in circumstances where perquisites were not properly disclosed. See SEC v. Greg A. Gadel and Daniel J. Skrypek, Litigation Release No. 19720 (June 7, 2006) and In the Matter of Tyson Foods, Inc. and Donald Tyson, Litigation Release No. 19208 (Apr. 28, 2005).

212 Instruction 4 to Item 402(c)(2)(ix).

213 See, e.g., letters from ABTR; AUSWR; CII; Computer Sciences; Pearl Meyer & Partners; and Institutional Investors Group. As we stated in the Proposing Release, the amount attributed to perquisites and other personal benefits for federal income tax purposes is not the incremental cost for purposes of our disclosure rules unless, independently of the tax characterization, it constitutes such incremental cost. Therefore, for example, the cost of aircraft travel attributed to an executive for federal income tax purposes is not generally the incremental cost of such a perquisite or personal benefit for purposes of our disclosure rules. See IRS Regulation §1.61-21(g) [26 CFR 1.61-21(g)] regarding Internal Revenue Service guidelines for imputing taxable personal income to an employee who travels for personal reasons on corporate aircraft. These complex regulations are known as the Standard Industry Fare Level or SIFL rules.

214 See, e.g., letter from Mercer.

215 Instruction 4 to Item 402(c)(2)(ix).

ii. Additional All Other Compensation Column Items

We are adopting as proposed a requirement that items to be disclosed in the All Other Compensation column include, but are not limited to, the following items:[216]

- amounts paid or accrued pursuant to a plan or arrangement in connection with any termination (or constructive termination) of employment or a change in control;[217]
- annual company contributions or other allocations to vested and unvested defined contribution plans;[218]
- the dollar value of any insurance premiums paid by the company with respect to life insurance for the benefit of a named executive officer;[219]
- "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;[220] and

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216 All of these items were required to be disclosed either under All Other Compensation or under Other Annual Compensation prior to these amendments.

217 Unlike the text of Item 402(b)(2)(v)(A) prior to these amendments, Item 402(c)(2)(ix)(D) as amended does not refer to amounts payable under post-employment benefits. Instruction 5 to Item 402(c)(2)(ix) provides that an accrued amount is an amount for which payment has become due, such as a severance payment currently owed by the company to an executive officer. These items, as well as amounts that are payable in the future, are also the subject of disclosure as post-termination compensation, as described in Section II.C.5.c. below. For any compensation as a result of a business combination, other than pursuant to a plan or arrangement in connection with any termination of employment or change-in-control, such as a retention bonus, acceleration of option or stock vesting periods, or performance-based compensation intended to serve as an incentive for named executive officers to acquire other companies or enter into a merger agreement, disclosure will now be required in the appropriate Summary Compensation Table column and in the other tables or narrative disclosure where the particular element of compensation is required to be disclosed.

218 Item 402(c)(2)(ix)(E).

219 Item 402(c)(2)(ix)(F). Because the amendments call for disclosure of the dollar value of any life insurance premiums, rather than only premiums with respect to term life insurance (as was required prior to these amendments), the requirement that had been previously specified in Item 402(b)(2)(v)(E)(1) and (2) to disclose the value of any remaining premiums with respect to circumstances where the named executive officer has an interest in the policy's cash surrender value is not retained in the amended rule.

220 Item 402(c)(2)(ix)(B).

- for any security of the company or its subsidiaries purchased from the company or its subsidiaries (through deferral of salary or bonus) at a discount from the market price of such security at the date of purchase, unless that discount is available generally either to all security holders or to all salaried employees of the company, the compensation cost, if any, computed in accordance with FAS 123R.[221]

An additional requirement to include the dollar value of any dividends or other earnings paid on stock or option awards when the dividends or earnings were not factored into the grant date fair value has been adopted for this column as discussed above.[222]

In response to commenters' concerns about double counting pension benefits,[223] we have not retained the aspect of proposed Instruction 2 to this column that would have required disclosure of pension benefits paid to the named executive officer during the period covered by the table.[224] As adopted, an instruction provides that benefits paid pursuant to defined benefit and actuarial plans are not reportable as All Other Compensation unless accelerated pursuant to a change in control.[225] Similarly, distributions of nonqualified deferred compensation are not reportable as All Other Compensation.

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221 Item 402(c)(2)(ix)(C). This requirement as adopted has been revised from the proposal to clarify that no amount of compensation is required to be disclosed if there is no compensation cost computed for the discounted securities purchase in accordance with FAS 123R. For example, under FAS 123R, if the discount is five percent or less, all qualified employees can participate in the offer and there are no option features, then there is no compensation cost to recognize for financial reporting purposes and thus no compensation is reported for this item in the All Other Compensation column.

222 Item 402(c)(2)(ix)(G).

223 See, e.g., letter from Cravath.

224 We have moved this disclosure requirement to the Pension Benefits Table, described in Section II.C.5.a. below.

225 Instruction 2 to Item 402(c)(2)(ix).

f. Captions and Table Layout

Before today's amendments, a portion of the table was labeled as "annual compensation" and another portion as "long term compensation." These captions created distinctions that may have been confusing to both users and preparers of the Summary Compensation Table. As proposed, the amendments we adopt today do not separately identify some columns as "annual" and other columns as "long term" compensation. Consistent with this change, as described above, we are merging the current Other Annual Compensation column into the new All Other Compensation column, and include current earnings information regarding non-equity incentive plan compensation in the column for that form of award.

In eliminating this distinction, we also revise the former definition of "long term incentive plan" to eliminate any distinction between a "long term" plan and one that may provide for periods shorter than one year. Like the captions, the former approach created distinctions that may have been confusing to users and preparers. As proposed and adopted, the amendments define an "incentive plan" as any plan providing compensation intended to serve as incentive for performance to occur over a specified period.[226] The related definition of "incentive plan award" as an award provided under an incentive plan is also adopted as proposed.[227]

Noting that companies formerly reported as "bonuses" awards that would be short-term incentive plan awards under this definition, commenters requested guidance as to what distinguishes items reportable as non-equity incentive plan compensation from

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[226] Item 402(a)(6)(iii).

[227] Id.

those reportable as bonuses under the amended rules.[228] An award would be considered "intended to serve as an incentive for performance to occur over a specified period" if the outcome with respect to the relevant performance target is substantially uncertain at the time the performance target is established and the target is communicated to the executive. Compensation pursuant to such a non-equity award would be reported in the Summary Compensation Table as non-equity incentive plan compensation and the grant of the award would be reported as a non-equity incentive plan award in the Grants of Plan-Based Awards Table.[229] In contrast, a cash award based on satisfaction of a performance target that was not pre-established and communicated, or the outcome of which is not substantially uncertain, would be reportable in the Summary Compensation Table as a bonus.

2. Supplemental Grants of Plan-Based Awards Table

Following the Summary Compensation Table, we proposed two supplemental tables to explain information in the Summary Compensation Table. The proposed tables were derived from two tables required under the rules prior to these amendments.

The first table we proposed to supplement the Summary Compensation Table would have included information regarding non-stock grants of incentive plan awards, stock-based incentive plan awards and awards of options, restricted stock and similar instruments under plans that are performance-based (and thus provide the opportunity for future compensation if conditions are satisfied).[230] The second table we proposed to

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228 See, e.g., letters from Hewitt; Mercer; NACCO Industries; and SCSGP.

229 This table is described in Section II.C.2. immediately below. Further, no longer reporting compensation pursuant to these awards as "bonus" in the Summary Compensation Table does not affect the determination of named executive officers because, as described in Section II.C.6.b. below, that determination is not limited to consideration of salary and bonus.

230 Proposed Item 402(d).

supplement the Summary Compensation Table would have shown the equity-based compensation awards granted in the last fiscal year that are not performance-based, such as stock, options or similar instruments where the payout or future value is tied to the company's stock price, and not to other performance criteria.[231]

Because much of the information for each proposed table is consistent, we have followed the recommendation of a commenter to simplify the disclosure format by combining the proposed disclosure in a single table.[232]

GRANTS OF PLAN-BASED AWARDS

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares of Stock or Units (#)	All Other Option Awards: Number of Securities Under-lying Options (#)	Exercise or Base Price of Option Awards ($/Sh)
		Thresh-old ($)	Target ($)	Maxi-mum ($)	Thresh-old (#)	Target (#)	Maxi-mum (#)			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)
PEO										
PFO										
A										
B										
C										

Disclosure in this table complements Summary Compensation Table disclosure of

231 Proposed Item 402(e), containing much of the information that was required prior to these amendments by the Option/SAR Grants Table (formerly specified in Item 402(c)).

232 See letter from Hewitt.

grant date fair value of stock awards and option awards by disclosing the number of shares of stock or units comprising or underlying the award. This supplemental table shows the terms of grants made during the current year, including estimated future payouts for both equity incentive plans and non-equity incentive plans, with separate disclosure for each grant.[233]

To simplify the presentation further, we have eliminated some of the proposed columns. Because the narrative section identifies the material terms of an award reported in this table as an example of a material factor to be described,[234] and thus will cover the same information, we have eliminated the proposed columns reporting vesting date, or performance or other period until vesting or payout. As a commenter noted, vesting information typically cannot be reported easily in a single line in a table.[235] Similarly, because the modifications we are making to the Outstanding Equity Awards at Fiscal Year-End Table require that table to report the expiration dates of options and similar awards,[236] we are eliminating the proposed expiration date column. Finally, the proposed column reporting the dollar amount of consideration paid for the award, if any, is not adopted, reflecting comments that this column would be used only rarely.[237] Instead, in those rare instances where consideration is paid for an award, this disclosure will be provided in a footnote to the appropriate column.[238]

As proposed, the Grants of All Other Equity Awards Table would have permitted

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233 Instruction 1 to Item 402(d).

234 Item 402(e)(1)(iii), described in Section II.C.3.a. immediately below.

235 See letter from ABA.

236 See Section II.C.4.a. below.

237 Proposed Item 402(d)(2)(v). See, e.g., letters from Frederic W. Cook & Co. and SCSGP.

238 Instruction 5 to Item 402(d).

aggregation of option grants with the same exercise or base price. We have not adopted such an instruction for this table, based on our belief that grant-by-grant disclosure is the most appropriate approach, particularly given our particular disclosure concerns regarding option grants. For incentive plan awards, threshold, target and maximum payout information should be provided, but if the award provides only for a single estimated payout, that amount should be reported as the target.[239] Where there is a tandem grant of two instruments, only one of which is granted under an incentive plan, only the instrument that is not granted under an incentive plan is reported in the table, with the tandem feature noted.[240] Because the rules as adopted require Summary Compensation Table disclosure of the incremental fair value, computed in accordance with FAS 123R, of options, stock appreciation rights and similar option-like instruments granted in connection with a repricing transaction, rather than the total fair value as we had proposed, grants of these instruments are not reported in this table.[241] Disclosure should be provided in the Compensation Discussion and Analysis and the narrative disclosures for the Summary Compensation Table and Grants of Plan-Based Awards, as appropriate, regarding awards granted in connection with repricing transactions.

As proposed and adopted, if the per-share exercise or base price of options, stock appreciation rights and similar option-like instruments is less than the market price of the underlying security on the grant date, a separate column must be added showing market price on the grant date.[242] Some commenters objected to our proposal to calculate grant

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239 Instruction 2 to Item 402(d).

240 Instruction 4 to Item 402(d).

241 See discussion at Section II.C.1.c.i. above.

242 Item 402(d)(2)(vii).

date market price for this purpose using the closing price per share of the underlying security on that date. These commenters stated that plans requiring awards to be granted with an exercise price equal to the underlying security's grant date fair market value may define "fair market value" based on a formula related to the average market price on the grant date or a range of days either before or after the grant date.[243] Our proposed departure from the rule prior to these amendments, which permitted use of such formulas even for securities traded on an established market,[244] was considered, and along with the requirement to disclose the grant date, reflects the significance of issues in awards of option grants.[245] Moreover, commenters expressed concern regarding the manipulation of option grant dates to achieve below-market exercise prices.[246] The rule as adopted uses the measure for grant date market price of the underlying security that we proposed, modified to specify that the grant date closing market price per share is the last sale price on the principal United States market for the security on the specified date.[247] Moreover, if the exercise or base price is not the grant date closing market price per share, we require a description of the methodology for determining the exercise or base price either by footnote to the table or in the accompanying narrative section.[248] Further reflecting the significance of grant date issues in awards of option grants and in response to

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243 See, e.g., letters from Cravath; Eli Lilly; and Sidley Austin LLP ("Sidley Austin").

244 This requirement had been set forth in Instruction 6 to Item 402(c) prior to today's amendments.

245 See the discussion of options disclosure in Section II.A., above.

246 See, e.g., letter from CFA Centre for Financial Market Integrity, dated May 30, 2006 ("CFA Centre 2").

247 Because the concept of closing market price is used in a number of provisions of Item 402, we are adopting a definition of the term closing market price in Item 402(a)(6)(v). A foreign company complying with this requirement may instead look to the principal foreign market in which the underlying securities trade.

248 Instruction 3 to Item 402(d).

comments,[249] we are also providing that if the date on which the compensation committee (or a committee of the board of directors performing a similar function or the full board of directors) takes action or is deemed to take action to grant equity-based awards is different from the date of grant, a column must be added to disclose the date of action.[250] For these purposes, the "date of grant" or "grant date" is the grant date determined for financial statement reporting purposes pursuant to FAS 123R.[251] Finally, in combining the proposed tables, we have adopted an instruction specifying that if a non-equity incentive plan award is denominated in units or other rights, then a separate, adjoining column would be required to disclose the units or other rights awarded.[252]

3. Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards Table

a. Narrative Description of Additional Material Factors

As we proposed, we are requiring narrative disclosure following the Summary Compensation Table and the Grants of Plan-Based Awards Table in order to give context to the tabular disclosure. A company will be required to provide a narrative description of any additional material factors necessary to an understanding of the information disclosed in the tables.[253] Unlike the Compensation Discussion and Analysis, which focuses on broader topics regarding the objectives and implementation of executive compensation policies, the narrative disclosures following the Summary Compensation Table and other tables focus on and provide specific context to the quantitative disclosure

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249 See, e.g., letter from CFA Centre 2.

250 Item 402(d)(2)(ii).

251 Item 402(a)(6)(iv).

252 Instruction 6 to Item 402(d).

253 Item 402(e)(1). The standard of materiality that applies in Item 402(e) is that of Basic v. Levinson, 485 U.S. 224 (1988) and TSC Industries v. Northway, 426 U.S. 438 (1976).

in the tables. For example, narrative disclosure following a table might explain material aspects of a plan that are not evident from the quantitative tabular disclosure and are not addressed in the Compensation Discussion and Analysis.

The material factors that require disclosure will vary depending on the facts and circumstances. As one example, such material factors might include descriptions of the material terms in the named executive officers' employment agreements as those descriptions might provide material information necessary to an understanding of the tabular disclosure. The narrative disclosure covers written or unwritten agreements or arrangements.[254] Requiring this disclosure in proximity to the Summary Compensation Table is intended to make the tabular disclosure more meaningful. Mere filing of employment agreements (or summaries of oral agreements) may not be adequate to disclose material factors depending on the circumstances. As stated in the Proposing Release, provisions regarding post-termination compensation need to be addressed in the narrative section only to the extent disclosure of such compensation is required in the Summary Compensation Table; otherwise these provisions will be disclosable as post-termination compensation.[255]

The factors that could be material include each repricing or other material modification of any outstanding option or other equity-based award during the last fiscal year. This disclosure addresses not only option repricings, but also other significant changes to the terms of equity-based awards.[256] As proposed, we are eliminating the

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[254] Item 402(e)(1)(i).

[255] Item 402(j), described in Section II.C.5.c.

[256] Item 402(e)(1)(ii).

former ten-year option repricing table.[257] In its place, the narrative disclosure following the Summary Compensation Table will describe, to the extent material and necessary to an understanding of the tabular disclosure, repricing, extension of exercise periods, change of vesting or forfeiture conditions, change or elimination of applicable performance criteria, change of the bases upon which returns are determined, or any other material modification.[258]

Narrative text accompanying the tables will also describe, to the extent material and necessary to an understanding of the tabular disclosure, award terms relating to disclosure provided in the Grants of Plan-Based Awards Table. This could include, for example, a general description of the formula or criteria to be applied in determining the amounts payable, the vesting schedule, a description of the performance-based conditions and any other material conditions applicable to the award, whether dividends or other amounts would be paid, the applicable rate and whether that rate is preferential.[259] As noted above and consistent with current disclosure requirements, however, companies will not be required to disclose any factor, criteria, or performance-related or other condition to payout or vesting of a particular award that involves confidential trade

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257 The ten-year option repricing table had been required by Item 402(i) prior to its elimination with these amendments. We believe that the narrative disclosure requirement will provide investors with material information regarding repricings and modifications and eliminate the arguably dated information contained in the former ten-year option repricing table.

258 As described in Section II.C.1.c.i. above, the tabular disclosure will report the incremental fair value of the modification for financial reporting purposes. However, narrative disclosure will not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or stock appreciation right exercise or base price, an antidilution provision, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or stock appreciation rights. Instruction 1 to Item 402(e).

259 Item 402(e)(1)(iii), which combines some information that had been required by Instruction 2 to Item 402(b)(2)(iv) with information that had been required by Instruction 1 to Item 402(e) as they were stated in the rule before these amendments.

secrets or confidential commercial or financial information, disclosure of which would result in competitive harm to the company.[260]

We proposed that this example also include material assumptions underlying the determination of the amount of increase in the actuarial value of defined benefit and actuarial plans. However, in light of the modifications we are adopting, we have concluded that the better place to discuss these assumptions is in the narrative section accompanying the Pension Benefits Table.[261]

Further, in response to commenters' concerns regarding the computation of total compensation and the expanded basis for determining the most highly compensated officers,[262] we specify as an additional example an explanation of the level of salary and bonus in proportion to total compensation.[263]

b. Request for Additional Comment on Compensation Disclosure for up to Three Additional Employees

As part of this narrative disclosure requirement, we had proposed an additional item that would have required disclosure for up to three employees who were not executive officers during the last completed fiscal year and whose total compensation for the last completed fiscal year was greater than that of any of the named executive officers.[264] We received extensive comment on this proposal. Some commenters

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260 We have adopted Instruction 2 to Item 402(e)(1), which specifically applies to the narrative disclosure of Item 402(e)(1) the same standard applicable to Compensation Discussion and Analysis for determining whether disclosure would result in competitive harm for the company. See Section II.B.2., above, for a discussion of this standard.

261 See Section II.C.5.a. below.

262 See Section II.C.1.a. above and Section II.C.6.b. below.

263 Item 402(e)(1)(iv).

264 Proposed Item 402(f)(2).

supported the proposal or suggested that it should go further.[265] Many commenters expressed concern that the benefits of this disclosure to investors would be negligible, yet compliance might require the outlay of considerable company resources.[266] Some commenters expressed concern that the proposed disclosure would raise privacy issues or negatively impact competition for employees.[267] While we continue to consider whether to adopt such a requirement as part of the executive compensation disclosure rules, we are requesting additional comment as to whether potential modifications would address the concerns that commenters have raised.

We note in particular that some commenters questioned the materiality of the information that would have been required by the proposal, given that the covered employees would not be in policy-making positions as executive officers.[268] After considering the issues raised by these commenters, we remain concerned about disclosure with respect to employees, particularly within very large companies, whether or not they are executive officers, whose total compensation for the last completed fiscal year was greater than that of one or more of the named executive officers. If any of these

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265 See, e.g., letters from Corporate Library; The Greenlining Institute; Institutional Investor Group; and SBAF.

266 See, e.g., letters from ABA; Chamber of Commerce; Eli Lilly; Leggett & Platt; N. Ludgus; and Mercer.

267 See, e.g., letters from ABA-JCEB; BRT; jointly, CBS Corporation, The Walt Disney Company, NBC Universal, News Corporation, and Viacom, Inc. ("Entertainment Industry Group"); Committee on Corporate Finance of Financial Executives International ("FEI"); Chamber of Commerce; Cleary; CNET Networks, Inc. ("CNET Networks"); Compass Bancshares; Compensia; Cravath; DreamWorks Animation SKG ("DreamWorks"); Eli Lilly; Emerson; Fenwick; The Financial Services Roundtable ("FSR"); Professor Joseph A. Grundfest, dated April 10, 2006 ("Grundfest"); ICI; Intel Corporation ("Intel"); Kellogg Company ("Kellogg"); Kennedy & Baris, LLP ("Kennedy"); Mercer; Peabody Energy; Pearl Meyer & Partners; Securities Industry Association ("SIA"); Sullivan; SCSGP; and WorldatWork.

268 See, e.g., letters from CalSTRS; Cleary; CNET Networks; Compass Bancshares; DreamWorks; Entertainment Industry Group; Fried, Frank, Harris, Shriver & Jacobson LLP ("Fried Frank"); FSR; Hewitt; ICI; Intel; Kellogg; Kennedy; Leggett & Platt; Peabody Energy; Pearl Meyer &

employees exert significant policy influence at the company, at a significant subsidiary of the company or at a principal business unit, division, or function or the company, then investors seeking a fuller understanding of a company's compensation program may believe that disclosure of these employees' total compensation is important information.[269] Knowing the compensation, and job positions within the organization, of these highly compensated policy-makers whose total compensation for the last fiscal year was greater than that of a named executive officer, should assist in placing in context and permit a better understanding of the compensation structure of the named executive officers and directors.

Our intention is to provide investors with information regarding the most highly compensated employees who exert significant policy influence by having responsibility for significant policy decisions. Responsibility for significant policy decisions could consist of, for example, the exercise of strategic, technical, editorial, creative, managerial, or similar responsibilities. Examples of employees who might not be executive officers but who might have responsibility for significant policy decisions could include the director of the news division of a major network; the principal creative leader of the entertainment function of a media conglomerate; or the head of a principal business unit developing a significant technological innovation. By contrast, we are convinced by commenters that a salesperson, entertainment personality, actor, singer, or professional

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Partners; SCSGP; SIA; Stradling Yocca Carlson & Rauth ("Stradling Yocca"); Top Five Data Services, Inc. ("Top Five Data"); Towers Perrin; and Walden.

269 The Commission expressed similar concerns in 1978, when it stated "a key employee or director of a subsidiary might be the highest-paid person in the entire corporate structure and have managerial responsibility for major aspects of the registrant's overall operations." 1978 Release. See n. 327 for a discussion of the term "executive officer." In light of some of the comments that we received, we have clarified that the definition of "executive officer" includes all individuals in a registrant policy-making role. See, e.g., letters from SCSGP and Cravath.

athlete who is highly compensated but who does not have responsibility for significant policy decisions would not be the type of employee about whom we would seek disclosure. Nor, as a general matter, would investment professionals (such as a trader, or a portfolio manager for an investment adviser who is responsible for one or more mutual funds or other clients) be deemed to have responsibility for significant policy decisions at the company, at a significant subsidiary or at a principal business unit, division or function simply as a result of performing the duties associated with those positions. On the other hand, an investment professional, such as a trader or portfolio manager, who does have broader duties within a firm (such as, for example, oversight of all equity funds for an investment adviser) may be considered to have responsibility for significant policy decisions.

We continue to consider whether it is appropriate to require some level of narrative disclosure so that shareholders will have information about these most highly compensated employees. This consideration includes the appropriate level of information about these employees and their compensation in light of their roles.

As to issues regarding privacy and competition for employees, to the extent that commenters objected that the disclosure could result in a competitor stealing a company's top "talent,"[270] we have tried to address these concerns by focusing the disclosure on

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[270] See, e.g., letter from Entertainment Industry Group. In addition, we note our intention is not to suggest that these additional employees, whether or not they are executive officers, are individuals whose compensation is required to be reported under the Exchange Act "by reason of such employee being among the 4 highest compensated officers for the taxable year," as stated in Internal Revenue Code Section 162(m)(3)(B) [26 U.S.C. 162(m)(3)(B)]. See letter from Cleary (expressing concern that the additional individuals not fall within the purview of Section 162(m) of the Internal Revenue Code).

persons who exert significant policy influence within the company or significant parts of the company.

Request for Comment

We request additional comment on the proposal to require compensation disclosure for up to three additional employees. In addition to general comment, we encourage commenters to address the following specific questions:

- Would the rule more appropriately require disclosure of the employees described above if it were structured in the following or similar manner:

  > For each of the company's three most highly compensated employees, whether or not they were executive officers during the last completed fiscal year, whose total compensation for the last completed fiscal year was greater than that of any of the named executive officers, disclose each such employee's total compensation for that year and describe the employee's job position, without naming the employee; provided, however, that employees with no responsibility for significant policy decisions within the company, a significant subsidiary of the company, or a principal business unit, division, or function of the company are not included when determining who are each of the three most highly compensated employees for the purposes of this requirement, and therefore no disclosure is required under this requirement for any employee with no responsibility for significant policy decisions within the company, a significant subsidiary of the company, or a principal business unit, division, or function of the company?

- Would it be appropriate to determine the highest paid employees in the same manner that named executive officers are determined, by calculating total compensation but excluding pension plan benefits and above-market or preferential earnings on nonqualified deferred compensation plans, and by comparing that amount to the same amount earned by the named executive officers (excluding the amount required to be disclosed for those named executive officers pursuant to paragraph (c)(2)(viii) of Item 402)? If so, should the total amount disclosed include these amounts as it does for named executive officers? Should the pension benefit and above-market earnings be separately disclosed in a footnote so investors can calculate the amounts used in determining highest paid employees?
- Would modifying the proposed rule to apply only to large accelerated filers[271] properly focus this disclosure obligation on companies that are more likely to have these additional highly compensated employees? Would that modification address concerns that the proposed rule would impose disproportionate compliance burdens by limiting the disclosure obligation to companies that are presumptively better able to track the covered employees? Would a different limitation as to applicability be appropriate?
- Is information regarding highly compensated employees, including those who are not executive officers, material to investors? In answering this question, commenters are encouraged to address the following additional questions:

[271] The term large accelerated filer is defined in Exchange Act Rule 12b-2 [17 CFR 240.12b-2].

- Would modifications limiting the disclosure to employees who make significant policy decisions within the company, a significant subsidiary of the company, or a principal business unit, division, or function of the company appropriately focus the disclosure on employees for whom compensation information is material to investors?
- Would the approach that we are considering provide investors with material information about how policy-making responsibilities are allocated within a company? Are the examples describing responsibility for significant policy decisions too broad or too narrow?
- Would the proposed rule, with the modifications described above, provide investors with material information necessary to understand the company's compensation policies and structure? How should we address those concerns?
- What is typically the role of the compensation committee in determining or approving the compensation of the additional employees if they are not executive officers? If the compensation committee does not oversee their compensation, is the additional employee compensation information material to investors? What types of decisions would investors make based on this information?

- Would the proposed rule, with the modifications described above, raise privacy issues or negatively impact competition for employees in a manner that would outweigh the materiality of the disclosure to investors?

- Should we require that the three additional employees be named? If not, what additional information should be required? Should more information be required regarding the employee's compensation or job position?
- Should we define "responsibility for significant policy decisions"? Should we use another test to describe those employees who exert a significant policy influence on the company? Do the examples provided above help identify and delimit the number of employees whose compensation would be subject to disclosure under this provision? What would help companies identify these employees?
- What additional work and costs are involved in collecting the information necessary to identify the three additional employees? What are the types of costs, and in what amounts? In what way can the proposal be further modified to mitigate the costs?
- In connection with the original proposal, we solicited comment on all aspects of the proposal, including this one. No commenter supplied cost estimates. We are now considering whether to limit this provision to only large accelerated filers. For some large accelerated filers, the number of employees potentially subject to this requirement may already be known or easy to identify. Other, more complex companies may need to establish systems to identify such employees. Every large accelerated filer would need to evaluate whether any employees exerted significant policy influence at the company, at a significant subsidiary or at a principal business unit, division or function and would have to track their compensation in order to comply with the proposed requirement. These monitoring costs may be new to some companies. We believe the cost of actually

disclosing the compensation would be incremental and minimal. The monitoring and information collection costs are likely to be greatest in the first year and significantly less in later years. We also assume that costs would largely be borne internally, although some companies may seek the advice of outside counsel in determining which employees meet the standard for disclosure. In that event, for purposes of seeking comment, we estimate that 1,700[272] companies will on average retain outside counsel for 8 hours in the first year and 2 hours in each of two succeeding years, at $400 per hour, for a total estimated average annual cost of approximately $3 million. Assuming all large accelerated filers spend 60 hours in the first year and 10 hours in each of the two succeeding years, with an average internal cost of $175 per hour, the total average annual burden of collecting and monitoring employee compensation would be approximately 45,000 hours, or approximately $8 million. The total average annual cost is therefore estimated to be $11 million. We invite comment on this estimate and its assumptions.

4. Exercises and Holdings of Previously Awarded Equity

The next section of the revised executive compensation disclosure provides investors with an understanding of the compensation in the form of equity that has previously been awarded and remains outstanding, and is unexercised or unvested. As proposed, this section also discloses amounts realized on this type of compensation during the most recent fiscal year when, for example, a named executive officer exercises an option or his or her stock award vests. We are adopting substantially as proposed two tables: one table shows the amounts of awards outstanding at fiscal year-end, and the

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[272] We estimate there are approximately 1,700 companies that are large accelerated filers. See Revisions to Accelerated Filer Definition and Accelerated Deadlines for Reporting Periodic

other shows the exercise or vesting of equity awards during the fiscal year.[273] In response to comment, we are requiring additional information regarding out-of-the-money awards.

a. Outstanding Equity Awards at Fiscal Year-End Table

As we noted in the Proposing Release, outstanding awards that have been granted but the ultimate outcomes of which have not yet been realized in effect represent potential amounts that the named executive officer might or might not realize, depending on the outcome for the measure or measures (for example, stock price or performance benchmarks) to which the award relates. We are adopting a table that will disclose information regarding outstanding awards, for example, under stock option (or stock appreciation rights) plans, restricted stock plans, incentive plans and similar plans and disclose the market-based values of the rights, shares or units in question as of the company's most recent fiscal year end.[274]

Reports, Release No. 33-8644 (Dec. 21, 2005) [70 FR 76626], at Section V.A.2.

[273] Some of this information had been required in the Aggregated Option/SAR Exercises in Last Fiscal Year and Fiscal Year-End Option/SAR Value Table, which was required under Item 402(d) prior to adoption of these amendments.

[274] Item 402(f). Under the rules prior to today's amendments, such disclosure was provided only for holdings of outstanding stock options and stock appreciation rights.

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

	Option Awards					Stock Awards			
Name (a)	Number of Securities Underlying Unexercised Options (#) Exercisable (b)	Number of Securities Underlying Unexercised Options (#) Unexercisable (c)	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#) (d)	Option Exercise Price ($) (e)	Option Expiration Date (f)	Number of Shares or Units of Stock That Have Not Vested (#) (g)	Market Value of Shares or Units of Stock That Have Not Vested ($) (h)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#) (i)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested ($) (j)
PEO									
PFO									
A									
B									
C									

As proposed, the table included a column reporting aggregate dollar amounts of in-the-money unexercised options.[275] Some commenters believed that this table should not include information on out-of-the-money options because they believed that these awards have no value to executives at the point they are out-of-the-money.[276] Several other commenters recommended disclosure of the number and key terms of out-of-the-money instruments, so investors can understand the potential compensation opportunity of these awards if the market price of the underlying shares increases.[277] We proposed to

[275] Proposed Item 402(g)(2)(iii).

[276] See, e.g., letters from Frederic W. Cook & Co.; N. Ludgus; and SCSGP.

[277] See, e.g., letters from Amalgamated; Brian Foley & Company, Inc. ("Brian Foley & Co."); Buck Consultants; CII; Hodak Value Advisors; IUE-CWA; and SBAF.

require expiration date information in footnote disclosure. We note that some commenters expressed concern that disclosure of expiration and vesting dates of the instruments would be lengthy.[278] However, because we agree with other commenters that information regarding out-of-the-money options is material to investors, we have revised the columns applicable to unexercised options, stock appreciation rights and similar instruments with option-like features to require disclosure of:

- the number of securities underlying unexercised instruments that are exercisable;
- the number of securities underlying unexercised instruments that are unexercisable;
- the exercise or base price; and
- the expiration date.

After evaluating the comments received, we believe disclosure of individual exercise prices and expiration dates is required to provide a full understanding of the potential compensation opportunity. In particular, with respect to out-of-the-money awards, this allows investors to see the amount the stock price must rise and the amount of time remaining for it to happen. Consequently, this disclosure is required for each instrument, rather than on the aggregate basis that was proposed.[279]

As suggested by another commenter, we also modify the table to clarify that these columns apply to options and similar awards that have been transferred other than for

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278 See, e.g., letters from Leggett & Platt; SCSGP; and Sidley Austin.

279 Multiple awards may be aggregated where the expiration date and the exercise and/or base price of the instruments is identical. A single award consisting of a combination of options, SARs and/or similar option-like instruments must be reported as separate awards with respect to each tranche with a different exercise and/or base price or expiration date. Instruction 4 to Item 402(f)(2). We have not adopted the proposed requirements to disclose whether an option that expired after fiscal year-end had been exercised, in response to comment that this would unnecessarily deviate from the standard of reporting last fiscal year information. See letter from ABA.

value.[280] The proposal reflected interpretations of the former rule that the transfer of an option or similar award by an executive does not negate the award's status as compensation that should be reported.[281] Because an award that a named executive officer transferred for value is not an award for which the outcome remains to be realized, the rules adopted today instead require disclosure in the Option Exercises and Stock Vested Table of the amounts realized upon transfer for value.[282]

In view of our approach in the Grants of Plan-Based Awards Table as adopted and the purposes of this table in showing all outstanding equity awards, we are adopting a column (column (d)) for reporting the number of securities underlying unexercised options awarded under equity incentive plans.[283] We have also revised the format of the table to more clearly delineate between the information regarding option awards and the information regarding stock awards.

The remaining disclosure, relating to numbers and market values of nonvested stock and equity incentive plan awards, is adopted on an aggregate basis, substantially as proposed. One commenter expressed the view that the table should not include unearned performance-based awards because it would be difficult to disclose a meaningful value before the performance conditions are satisfied.[284] Another commenter requested clarification of valuation of awards that are performance-based and nonvested, specifically whether value should be based on actual performance to date or on achieving

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280 Instruction 1 to Item 402(f)(2). See letter from ABA.

281 See Registration of Securities on Form S-8, Release No. 33-7646 (Feb. 25, 1999) [64 FR 11103], at Section III.D.

282 Item 402(g), described in Section II.C.4.b. immediately below.

283 Item 402(f)(2)(iv).

284 See letter from Sullivan.

target performance goals.[285] As adopted, an instruction provides that the number of shares reported in the appropriate columns for equity incentive plan awards (columns (d) and (i)) or the payout value reported in column (j) is based on achieving threshold performance goals, except that if the previous fiscal year's performance has exceeded the threshold, the disclosure shall be based on the next higher performance measure (target or maximum) that exceeds the previous fiscal year's performance. If the award provides only for a single estimated payout, that amount should be reported. If the target amount is not determinable, registrants must provide a representative amount based on the previous fiscal year's performance.[286] We have also adopted an instruction clarifying that stock or options under equity incentive plans are reported in columns (d) or (i) and (j), as appropriate, until the relevant performance condition has been satisfied. Once the relevant performance condition has been satisfied, if stock remains unvested or the option unexercised, the stock or options are reported in columns (b) or (c), or (g) and (h), as appropriate.[287]

b. Option Exercises and Stock Vested Table

We are adopting substantially as proposed a table that will show the amounts received upon exercise of options or similar instruments or the vesting of stock or similar instruments during the most recent fiscal year. This table will allow investors to have a picture of the amounts that a named executive officer realizes on equity compensation through its final stage.[288]

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285 See, e.g., letter from Hewitt.

286 Instruction 3 to Item 402(f).

287 Instruction 5 to Item 402(f).

288 This table is similar to a portion of the Aggregate Options/SAR Exercises in Last Fiscal Year and FY-End Options/SAR Values Table that was required prior to these amendments, except unlike

OPTION EXERCISES AND STOCK VESTED

	Option Awards		Stock Awards	
Name (a)	Number of Shares Acquired on Exercise (#) (b)	Value Realized on Exercise ($) (c)	Number of Shares Acquired on Vesting (#) (d)	Value Realized on Vesting ($) (e)
PEO				
PFO				
A				
B				
C				

We proposed that this table include the grant date fair value of these instruments that would have been disclosed in the Summary Compensation Table for the year in which they were awarded. We proposed this column to eliminate the possible impact of double disclosure by showing amounts previously disclosed. We have adopted the table without the grant date fair value column in response to commenters' concerns that this column would confuse investors and increase the potential for double counting.[289] As described in the preceding section, in response to comment that transfers of awards for value also are realization events, amounts realized upon such transfers must be included in columns

that table it also includes the vesting of restricted stock and similar instruments. Commentators have noted a need for comparable disclosure of restricted stock vesting.

[289] See, e.g., letters from Foley; SCSGP; and Stradling Yocca.

(c) and (e) of this table.[290] Finally, we have reformatted the columns to make the presentation of stock and option awards consistent with the presentation in other tables.

5. Post-Employment Compensation

As we proposed, we are making significant revisions to the disclosure requirements regarding post-employment compensation to provide a clearer picture of this potential future compensation. As we noted in the Proposing Release, executive retirement packages and other post-termination compensation may represent a significant commitment of corporate resources and a significant portion of overall compensation. First, we are replacing the former pension plan table, alternative plan disclosure and some of the other narrative descriptions with a table regarding defined benefit pension plans and enhanced narrative disclosure. We have revised the table from the table proposed. Second, we are adding a table and narrative disclosure that will disclose information regarding nonqualified defined contribution plans and other deferred compensation. We have adopted this table substantially as proposed. Finally, we are adopting revised requirements substantially as proposed regarding disclosure of compensation arrangements triggered upon termination and on changes in control.

a. Pension Benefits Table

We proposed significant revisions to the rules disclosing retirement benefits to require disclosure of the estimate of retirement benefits to be payable at normal retirement age and, if available, early retirement. Disclosure under the rules prior to today's amendments frequently did not provide investors useful information regarding

[290] Item 402(g)(2)(iii) and (v).

specific potential pension benefits relating to a particular named executive officer.[291] In particular, it may have been difficult to understand which amounts related to any particular named executive officer, obscuring the value of a significant component of compensation.

We therefore proposed a new table that would have required disclosure of the estimated retirement benefits payable at normal retirement age and, if available, early retirement, under defined benefit plans. Under the proposal, benefits would have been quantified based on the form of benefit currently elected by the named executive officer, such as joint and survivor annuity or single life annuity.

Some commenters objected that the proposed revisions would result in disclosure that would not be comparable and could be manipulated.[292] In particular, the calculation of benefits would depend on such factors as the form of benefit payment, the named executive officer's marital status, and the actuarial assumptions applied, which would vary from company to company and plan to plan. Explanations of the complicated methodologies involved could hinder transparency.

Some commenters suggested that the Commission prescribe standard assumptions for calculating annual benefits for disclosure purposes, such as a single life annuity and

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[291] The rules prior to today's amendments provided that, for defined benefit or actuarial plans, disclosure was required under Item 402(f) by way of a general table showing estimated annual benefits under the plan payable upon retirement (including amounts attributable to supplementary or excess pension award plans) for specified compensation levels and years of service. This table did not provide disclosure for any specific named executive officer. This requirement applied to plans under which benefits were determined primarily by final compensation (or average final compensation) and years of service, and included narrative disclosure. If named executive officers were subject to other plans under which benefits were not determined primarily by final compensation (or average final compensation), narrative disclosure had been required prior to these amendments of the benefit formula and estimated annual benefits payable to the officers upon retirement at normal retirement age.

[292] See, e.g., letters from BRT; Chadbourne & Parke LLP ("Chadbourne"); Cleary; and ABA-JCEB.

retirement at age 65, in order to facilitate comparability.[293] Other commenters suggested disclosure of the present value of the current accrued benefit computed as of the end of the company's last completed fiscal year,[294] achieving comparability by reporting the economic value of the benefit that the executive has accumulated through the plan.

Because the latter approach achieves comparability and transparency by disclosing a benefit that already has accrued, we view it as preferable to an approach that would "normalize" disclosure based on hypothetical annual benefit assumptions prescribed by the Commission that might bear no relationship to the assumptions that the company actually applies with respect to the plan. Furthermore, this approach will make clearer the relationship of this table to the Summary Compensation Table disclosure of increase in pension value. This approach will also lessen the burden on companies, since they are required to calculate the present value for the Summary Compensation Table. Accordingly, the table we adopt today requires disclosure of the actuarial present value of the named executive officer's accumulated benefit under the plan and the number of years of service credited to the named executive officer under the plan reported in the table, each computed as of the same pension plan measurement date for financial statement reporting purposes with respect to the audited financial statements for the company's last completed fiscal year.[295] This disclosure applies without regard to the particular form(s) of benefit payment available under the plan.

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293 See, e.g., letters from ABA and NACCO Industries.

294 See, e.g., letters from Buck Consultants; Frederic W. Cook & Co.; Professor Bebchuk, et al; and SBAF.

295 Item 402(h)(2)(iv). If the number of years of credited service for a plan differs from the named executive officer's number of actual years of service with the company, footnote quantification of the difference and any resulting benefit augmentation is required. Instruction 4 to Item 402(h)(2).

Whether or not the plan allows for a lump-sum payment, presentation of the present value of the accrued plan benefit provides investors an understanding of the cost of promised future benefits in present value terms.[296] Companies must use the same assumptions, such as interest rate assumptions, that they use to derive the amounts disclosed in conformity with generally accepted accounting principles, but would assume that retirement age is normal retirement age as defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age.[297] The estimates are to be based on current compensation, and as such, future levels of compensation need not be estimated for purposes of the calculation. The valuation method and all material assumptions applied will be described in the narrative section accompanying this table.[298] A separate row will be provided for each plan in which a named executive officer participates.[299] For purposes of allocating the current accrued benefit between tax qualified defined benefit plans and related supplemental plans, a company will apply the applicable Internal Revenue Code limitations in effect as of the pension plan measurement date.[300] At the suggestion of a commenter, we have simplified the name of the table.[301]

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296 Further, basing pension plan disclosure on the accumulated benefit is consistent with nonqualified deferred compensation plan disclosure, which, as described in Section II.C.5.b. immediately below, reports an aggregate account balance.

297 Instruction 2 to Item 402(h)(2). Of course, the benefits included in the plan document or the executive's contract itself is not an assumption.

298 Item 402(h)(3) and Instruction 2 to Item 402(h)(2). This requirement could be satisfied by reference to a discussion of those assumptions in the company's financial statements, footnotes to the financial statements, or Management's Discussion and Analysis. The sections so referenced would be deemed a part of the disclosure provided by this Item.

299 Instruction 1 to Item 402(h)(2).

300 Instruction 3 to Item 402(h).

301 See letter from ABA.

PENSION BENEFITS

Name (a)	Plan Name (b)	Number of Years Credited Service (#) (c)	Present Value of Accumulated Benefit ($) (d)	Payments During Last Fiscal Year ($) (e)
PEO				
PFO				
A				
B				
C				

We have moved the disclosure proposed to be included in the Summary Compensation Table of pension benefits paid to a named executive officer during the last completed fiscal year to the Pension Benefits Table so that pension benefits are disclosed only once in the Summary Compensation Table.[302] We remain of the view that disclosure of these payments would be material to investors, particularly where the named executive officer receives them while still employed by the company.[303]

The table will be followed by a narrative description of material factors necessary to an understanding of each plan disclosed in the table. Examples of such factors may include, in given cases, among other things:

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302 Item 402(h)(2)(v). See also Instruction 1 to Item 402(c)(2)(viii). We have included these amounts in this table rather than the Summary Compensation Table since the increase in the value of the pension benefit would have been previously disclosed in the Summary Compensation Table.

303 Item 402(a)(5) as amended provides that a column may be omitted if there is no compensation required to be reported in that column in any fiscal year covered by that table.

- the material terms and conditions of benefits available under the plan, including the plan's retirement benefit formula and eligibility standards, and early retirement arrangements;[304]
- the specific elements of compensation, such as salary and various forms of bonus, included in applying the benefit formula, identifying each such element;
- regarding participation in multiple plans, the different purposes for each plan; and
- company policies with regard to such matters as granting extra years of credited service.

b. Nonqualified Deferred Compensation Table

In order to provide a more complete picture of potential post-employment compensation, we are adopting substantially as proposed a new table to disclose contributions, earnings and balances under each defined contribution or other plan that provides for the deferral of compensation on a basis that is not tax-qualified. These plans may be a significant element of retirement and post-termination compensation. Prior to these amendments, the rules had elicited disclosure of the compensation when earned and only the above-market or preferential earnings on nonqualified deferred compensation.[305] The full value of those earnings and the accounts on which they are payable was not subject to disclosure, nor were investors informed regarding the rate at which these amounts, and the corresponding cost to the company, grow.[306]

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[304] For this purpose, "normal retirement age" means the normal retirement age defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age. "Early retirement age" means early retirement age as defined in the plan, or otherwise available to the executive under the plan. Item 402(h)(3)(i) and (ii).

[305] See Section II.C.1.d.i. above.

[306] See Lucian A. Bebchuk and Jesse M. Fried, Stealth Compensation via Retirement Benefits, 1 Berkeley Bus. L.J. 291, 314-316 (2004).

As noted above, we are requiring disclosure in the Summary Compensation Table only of the above-market or preferential portion of earnings on compensation that is deferred on a basis that is not tax-qualified. To provide investors with disclosure of the full amount of nonqualified deferred compensation accounts that the company is obligated to pay named executive officers, including the full amount of earnings for the last fiscal year, we are also requiring new tabular and narrative disclosure of nonqualified deferred compensation, as we proposed.[307]

NONQUALIFIED DEFERRED COMPENSATION

Name (a)	Executive Contributions in Last FY ($) (b)	Registrant Contributions in Last FY ($) (c)	Aggregate Earnings in Last FY ($) (d)	Aggregate Withdrawals/ Distributions ($) (e)	Aggregate Balance at Last FYE ($) (f)
PEO					
PFO					
A					
B					
C					

One commenter noted that the title proposed – Nonqualified Defined Contribution and Other Deferred Compensation Plans – suggested that tax qualified plans that provide for deferral of compensation, such as Section 401(k) plans, would be covered.[308] We have adopted the commenter's recommendation to modify the title to clarify that the table

[307] Item 402(i).

[308] See letter from Foley.

covers only deferred compensation that is not tax-qualified, and we have also shortened the title consistent with our amendments regarding the Pension Benefits Table.

As proposed and adopted, an instruction requires footnote quantification of the extent to which amounts in the contributions and earnings columns are reported as compensation in the year in question and other amounts reported in the table in the aggregate balance column were reported previously in the Summary Compensation Table for prior years.[309] This footnote provides information so that investors can avoid "double counting" of deferred amounts by clarifying the extent to which amounts payable as deferred compensation represent compensation previously reported, rather than additional currently earned compensation.[310]

The table will be followed by a narrative description of material factors necessary to an understanding of the disclosure in the table.[311] Examples of such factors may include, in given cases, among other things:

- the type(s) of compensation permitted to be deferred, and any limitations (by percentage of compensation or otherwise) on the extent to which deferral is permitted;
- the measures of calculating interest or other plan earnings (including whether such measure(s) are selected by the named executive officer or the company and the frequency and manner in which such selections may be changed), quantifying interest rates and other earnings measures applicable during the company's last fiscal year; and

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309 Instruction to Item 402(i)(2).

310 As described in Section II.C.1.b. above, the rules as adopted do not include the corresponding footnote that was proposed for the Summary Compensation Table.

- material terms with respect to payouts, withdrawals and other distributions.

Where plan earnings are calculated by reference to actual earnings of mutual funds or other securities, such as company stock, it is sufficient to identify the reference security and quantify its return. This disclosure may be aggregated to the extent the same measure applies to more than one named executive officer.

c. Other Potential Post-Employment Payments

We are adopting the significant revisions that we proposed to our requirements to describe termination or change in control provisions. The Commission has long recognized that "termination provisions are distinct from other plans in both intent and scope and, moreover, are of particular interest to shareholders."[312] Prior to today's amendments, disclosure did not in many cases capture material information regarding these plans and potential payments under them. We therefore proposed and are adopting disclosure of specific aspects of written or unwritten arrangements that provide for payments at, following, or in connection with the resignation, severance, retirement or other termination (including constructive termination) of a named executive officer, a change in his or her responsibilities,[313] or a change in control of the company.

Our amendments call for narrative disclosure of the following information regarding termination and change in control provisions:[314]

- the specific circumstances that would trigger payment(s) or the provision of other benefits (references to benefits include perquisites and health care benefits);

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311 Item 402(i)(3).

312 1983 Release, at Section III.E.

313 We confirm that this aspect of the disclosure requirement is not limited to a change in responsibilities in connection with a change in control.

314 Item 402(j).

- the estimated payments and benefits that would be provided in each covered circumstance, and whether they would or could be lump sum or annual, disclosing the duration and by whom they would be provided;[315]
- how the appropriate payment and benefit levels are determined under the various circumstances that would trigger payments or provision of benefits;[316]
- any material conditions or obligations applicable to the receipt of payments or benefits, including but not limited to non-compete, non-solicitation, non-disparagement or confidentiality covenants; and
- any other material factors regarding each such contract, agreement, plan or arrangement.[317]

The item contemplates disclosure of the duration of non-compete and similar agreements, and provisions regarding waiver of breach of these agreements, and disclosure of tax gross-up payments.

A company will be required to provide quantitative disclosure under these requirements even where uncertainties exist as to amounts payable under these plans and arrangements. We clarify that in the event uncertainties exist as to the provision of

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315 We have eliminated the $100,000 disclosure threshold that was specified in the rule prior to today's amendments. For post-termination perquisites, however, the same disclosure and itemization thresholds used for the amended Summary Compensation Table apply. See Section II.C.1.e.i. above. We have modified Item 402(j)(2) from the proposal in response to comments to clarify that the required description covers both annual and lump sum payments. See letter from ABA.

316 We have modified Item 402(j)(3) from the proposal to clarify the scope of the required disclosure. The proposal would have required the company to describe and explain the specific factors used to determine the appropriate payment and benefit levels under the various triggering circumstances. A commenter suggested that the proposed language was overly broad and ambiguous and could result in mere repetition of the pension payout formula and actuarial assumptions. See letter from ABA.

317 This would include, for example, disclosure of whether an executive simultaneously receives both severance and retirement benefits, a practice commonly known as a "double dip." See letter from WorldatWork.

payments and benefits or the amounts involved, the company is required to make a reasonable estimate (or a reasonable estimated range of amounts), and disclose material assumptions underlying such estimates or estimated ranges in its disclosure. In such event, the disclosure will be considered forward-looking information as appropriate that falls within the safe harbors for disclosure of such information.[318]

We have modified the requirement somewhat in response to comments that compliance with the proposal would involve multiple complex calculations and projections based on circumstantial and variable assumptions.[319] We adopt commenters' suggestions that the quantitative disclosure required be calculated applying the assumptions that:

- the triggering event took place on the last business day of the company's last completed fiscal year; and
- the price per share of the company's securities is the closing market price as of that date. [320]

We have also revised the rule to provide that if a triggering event has occurred for a named executive officer who was not serving as a named executive officer at the end of the last completed fiscal year, disclosure under this provision is required for that named executive officer only with respect to the actual triggering event that occurred.[321] These modifications will both facilitate company compliance and provide investors with disclosure that is more meaningful. We further clarify that health care benefits are

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318 See, e.g., Securities Act Section 27A and Exchange Act Section 21E.

319 See, e.g., letters from Cleary; Foley; HRPA; and Top Five Data.

320 Instruction 1 to Item 402(j). See, e.g., letters from Emerson; Foley; and Frederic W. Cook & Co.

321 Instruction 4 to Item 402(j). See letter from ABA.

included in this requirement, and quantifiable based on the assumptions used for financial reporting purposes under generally accepted accounting principles.[322]

We further clarify in response to comments that to the extent that the form and amount of any payment or benefit that would be provided in connection with any triggering event is fully disclosed in the Pension Benefits Table or the Nonqualified Deferred Compensation Table and the narrative disclosure related to those tables, reference may be made to that disclosure.[323] However, to the extent that the form or amount of any such payment or benefit would be increased, or its vesting or other provisions accelerated upon any triggering event, such increase or acceleration must be specifically disclosed in this section.[324] In addition, we have added an instruction that companies need not disclose payments or benefits under this requirement to the extent such payments or benefits do not discriminate in scope, terms or operation, in favor of a company's executive officers and are available generally to all salaried employees.[325]

6. Officers Covered

a. Named Executive Officers

As proposed, we are amending the disclosure rules so that the principal executive officer, the principal financial officer[326] and the three most highly compensated executive officers other than the principal executive officer and principal financial officer comprise

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322 Item 402(j)(1) and Instruction 2 to Item 402(j). These would be the assumptions applied under Financial Accounting Standards Board Statement of Financial Accounting Standards No. 106, Employer's Accounting for Postretirement Benefits Other Than Pensions (FAS 106). See, e.g., letters from Peabody Energy and WorldatWork.

323 See letter from Academy of Actuaries.

324 Instruction 3 to Item 402(j).

325 Instruction 5 to Item 402(j).

326 We are adopting the nomenclature used in Item 5.02 of Form 8-K, which refers to "principal executive officer" and "principal financial officer."

the named executive officers.[327] In addition, as was the case prior to these amendments, up to two additional individuals for whom disclosure would have been required but for the fact that they were no longer serving as executive officers at the end of the last completed fiscal year shall be included.

As we noted in the Proposing Release, we believe that compensation of the principal financial officer is important to shareholders because, along with the principal executive officer, the principal financial officer provides the certifications required with the company's periodic reports and has important responsibility for the fair presentation of the company's financial statements and other financial information.[328] Like the principal executive officer, disclosure about the principal financial officer will be required even if he or she was no longer serving in that capacity at the end of the last completed fiscal year.[329] As was the case for the chief executive officer prior to today's amendments, all persons who served as the company's principal executive officer or

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[327] Item 402(a)(3). As defined in Securities Act Rule 405 [17 CFR 230.405] and Exchange Act Rule 3b-7 [17 CFR 240.3b-7], "the term 'executive officer,' when used with reference to a registrant, means its president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function or any other person who performs similar policy-making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy-making functions for the registrant." Therefore, as was formerly the case, a named executive officer may be an executive officer of a subsidiary or an employee of a subsidiary who performs such policy-making functions for the registrant. We have clarified this point in the provision describing the determination of named executive officer. Instruction 2 to Item 402(a)(3).

[328] Exchange Act Rules 13a-14 and 15d-14.

[329] Paragraphs (a)(3)(i) and (a)(3)(ii) of Item 402 provide that all individuals who served as a principal executive officer and principal financial officer or in similar capacities during the last completed fiscal year must be considered named executive officers. Item 402(a)(4) specifies that if the principal executive officer or principal financial officer served in that capacity for only part of a fiscal year, information must be provided as to all of the individual's compensation for the full fiscal year. Item 402(a)(4) also specifies that if a named executive officer (other than the principal executive officer or principal financial officer) served as an executive officer of the company (whether or not in the same position) during any part of the fiscal year, then information is required as to all compensation of that individual for the full fiscal year.

principal financial officer during the last completed fiscal year are named executive officers.

We are not requiring compensation disclosure for all of the officers listed in Items 5.02(b) and (c) of Form 8-K.[330] Those Form 8-K Items were adopted to provide current disclosure in the event of an appointment, resignation, retirement or termination of the specified officers, based on the principle that changes in employment status of these particular officers are unquestionably or presumptively material. At the time when a decision is made regarding the employment status of a particular officer, it will not always be clear who will be the named executive officers for the current year. Given these factors, it is reasonable for the two groups not to be identical.

b. Identification of Most Highly Compensated Executive Officers; Dollar Threshold for Disclosure

In the rule prior to today's amendments, the determination of the most highly compensated executive officers was based solely on total annual salary and bonus for the last fiscal year, subject to a $100,000 disclosure threshold. We proposed to revise the dollar threshold for disclosure of named executive officers other than the principal executive officer and the principal financial officer to $100,000 of total compensation for the last fiscal year. Given the proliferation of various forms of compensation other than salary and bonus, we believe that total compensation would more accurately identify those officers who are, in fact, the most highly compensated.

Several commenters objected to using total compensation to identify named

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[330] These are the registrant's principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer or any person performing similar functions. As described in Section III.A. below, the rules we adopt today also amend Item 5.02 of Form 8-K.

executive officers.[331] In particular, commenters stated that this measure would minimize the importance of the compensation committee's compensation decisions for the most recent year and include significant elements beyond the committee's control, such as the increase in pension value and earnings on nonqualified deferred compensation. Some commenters recommended continuing to rely solely on salary and bonus, stating that these measures more accurately reflect the executives who are most highly valued in the company and permit greater year-to-year consistency.[332] Other commenters expressed concern that including episodic option awards would result in more frequent changes to the named executive officer roster.[333]

We are persuaded that it is appropriate to exclude from the named executive officer determination compensation elements that principally reflect executives' decisions to defer compensation and wealth accumulation in pension plans, or are unduly influenced by age or years of service. However, as we stated in the Proposing Release, basing identification of named executive officers solely on the compensation reportable in the salary and bonus categories may provide an incentive to re-characterize compensation. Further, limiting the determination to salary and bonus is not consistent with our decision to eliminate the distinction between "annual" and "long-term" compensation in the Summary Compensation Table.[334] We realize that this may result in more frequent changes to the officers designated as named executive officers, but believe that it will provide a clearer picture of compensation at a company. Accordingly, we

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331 See, e.g., letters from ACC; Emerson; Leggett & Platt; SCSGP; and Unitrin.

332 See, e.g., letters from Frederic W. Cook & Co. and Intel.

333 See, e.g., letter from Intel.

334 See Section II.C.1.f. above, discussing the effect of this change on compensation formerly reported as "bonus."

require the most highly compensated executive officers to be determined based on total compensation, reduced by the sum of the increase in pension values and nonqualified deferred compensation above-market or preferential earnings reported in column (h) of the Summary Compensation.[335]

Prior to these amendments, companies were permitted to exclude an executive officer (other than the chief executive officer) due to either an unusually large amount of cash compensation that was not part of a recurring arrangement and was unlikely to continue, or cash compensation relating to overseas assignments attributed predominantly to such assignments.[336] Because payments attributed to overseas assignments have the potential to skew the application of Item 402 disclosure away from executives whose compensation otherwise properly would be disclosed, we are retaining this basis for exclusion, as we proposed. However, we believe that other compensation that is "not recurring and unlikely to continue" should be considered compensation for disclosure purposes. There has been inconsistent interpretation of the "not recurring and unlikely to continue" standard, and it is susceptible to manipulation. We therefore are eliminating this basis for exclusion, as we proposed.[337]

7. Interplay of Items 402 and 404

We are amending Item 402 so that it requires disclosure of all transactions between the company and a third party where the primary purpose of the transaction is to furnish compensation to a named executive officer as proposed. Also as proposed, amended Item 402 will no longer exclude from its disclosure requirements information

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335 Instruction 1 to Item 402(a)(3).

336 This exclusion had been set forth in Instruction 3 to Item 402(a)(3) prior to these amendments.

337 Instruction 3 to Item 402(a)(3).

about compensatory transaction that had been disclosed under the related person transaction disclosure requirements of Item 404.[338] Further, instructions to amended Item 404 clarify what compensatory transactions with executive officers and directors need not be disclosed under Item 404.[339]

As noted in the Proposing Release, the result of these amendments may be that in some cases compensation information will be required to be disclosed under Item 402, while the related person transaction giving rise to that compensation is also disclosed under Item 404. We believe that the possibility of additional disclosure in the context of each of these respective items is preferable to the possibility that compensation is not properly and fully disclosed under Item 402.

8. Other Changes

Before today's amendments, a company was permitted to omit from Item 402 disclosure of "information regarding group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees."[340] Because relocation plans, even when available generally to all salaried employees, are susceptible to operation in a discriminatory manner that favors executive officers, this exclusion may have deprived investors of disclosure of significant compensatory benefits. For this reason, we are deleting relocation plans from this

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338 These relevant provisions were set forth in paragraphs (a)(2) and (a)(5) of Item 402 before today's amendments. Because paragraph (a)(5) of Item 402 as it had been stated prior to these amendments was otherwise redundant with paragraph (a)(2) of Item 402 as that provision had been stated, were are eliminating the language that had been set forth in paragraph (a)(5) in its entirety and making a conforming amendment to paragraph (a)(2) of Item 402.

339 See Instruction 5 to Item 404(a), discussed in Section V.A.3., below.

340 This language appeared in Item 402(a)(7)(ii) prior to today's amendments, which generally defined the term "plan."

exclusion, as we proposed. For the same reason, as we proposed, we are also deleting relocation plans from the exclusion from portfolio manager compensation in forms used by management investment companies to register under the Investment Company Act and offer securities under the Securities Act.[341] We also are revising the definition of "plan" so that it is more principles-based, as we proposed.[342] Finally, in order to simplify the language of the individual requirements, we have consolidated into one provision the definitions for the terms stock, option and equity as used in Item 402.[343]

9. Compensation of Directors

Director compensation has continued to evolve from simple compensation packages mostly involving cash compensation and attendance fees to more complex packages, which can also include equity-based compensation, incentive plans and other forms of compensation.[344] In light of this complexity, we proposed to require formatted tabular disclosure for director compensation, accompanied by narrative disclosure of additional material information. In doing so, we revisited an approach that the Commission proposed in 1995 but did not adopt at that time.[345]

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341 Amendment to Instruction 2 to Item 15(b) of Form N-1A; amendment to Instruction 2 to Item 21.2 of Form N-2; amendment to Instruction 2 to Item 22(b) of Form N-3.

342 Item 402(a)(6)(ii).

343 Item 402(a)(6)(i).

344 See, e.g., National Association of Corporate Directors and Pearl Meyer & Partners, 2003-2004 Director Compensation Survey (2004); National Association of Corporate Directors, Report of the NACD Blue Ribbon Commission On Director Compensation (2001); and Dennis C. Carey, et al, How Should Corporate Directors Be Compensated?, Investment Dealers' Digest Inc.—Special Issue: Boards and Directors (Jan. 1996).

345 1995 Release. The 1995 proposed amendment was coupled with a proposed amendment to permit companies to reduce the detailed executive compensation information provided in the proxy statement by instead furnishing that information in the Form 10-K. We did not act upon these proposed amendments.

Director compensation has continued to evolve since 1995 so that we are today adopting a Director Compensation Table, which resembles the revised Summary Compensation Table, but presents information only with respect to the company's last completed fiscal year. Consistent with the modifications to the Summary Compensation Table, this table moves pension and nonqualified deferred compensation plan disclosure from All Other Compensation to a separate column.[346] Because the same instructions as provided in the Summary Compensation Table govern analogous matters in the Director Compensation Table, our modifications to those instructions also apply to this table.

DIRECTOR COMPENSATION

Name (a)	Fees Earned or Paid in Cash ($) (b)	Stock Awards ($) (c)	Option Awards ($) (d)	Non-Equity Incentive Plan Compensation ($) (e)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (f)	All Other Compensation ($) (g)	Total ($) (h)
A							
B							
C							
D							
E							

[346] As noted in n. 303 above, Item 402(a)(5) provides that a column may be omitted if there is no compensation required to be reported in that column.

As proposed and adopted, director fees earned or paid in cash would be reported separately from fees paid in stock. The All Other Compensation column of the Director Compensation Table includes, but is not limited to:

- all perquisites and other personal benefits if the total is $10,000 or greater;
- all tax reimbursements;
- for any security of the company or its subsidiaries purchased from the company or its subsidiaries (through deferral of fees or otherwise) at a discount from the market price of such security at the date of purchase, unless the discount is generally available to all security holders or to all salaried employees of the company, the compensation cost, if any, computed in accordance with FAS 123R;
- amounts paid or accrued to any director pursuant to a plan or arrangement in connection with the resignation, retirement or any other termination of such director or a change in control of the company;
- annual company contributions to vested and unvested defined contribution plans;
- all consulting fees;
- awards under director legacy or charitable awards programs;[347] and
- the dollar value of any insurance premiums paid by, or on behalf of, the company for life insurance for the director's benefit.

[347] Under director legacy programs, also known as charitable award programs, registrants typically agree to make a future donation to one or more charitable institutions in the director's name, payable by the company upon a designated event such as death or retirement. The amount to be disclosed in the table shall be the annual cost of such promises and payments, with footnote disclosure of the total dollar amount and other material terms of each such program. Instruction 1 to Item 402(k)(2)(vii).

An additional requirement to include the dollar value of any dividends or other earnings paid in stock or option awards when the dividend or earnings were not factored into the grant date fair value has been adopted for this column as discussed above.

In addition to the disclosure specified in the columns of the table, we proposed to require, by footnote to the appropriate column, disclosure for each director of the outstanding equity awards at fiscal year end as would be required if the Outstanding Equity Awards at Fiscal Year-End table for named executive officers were required for directors. In response to a comment that this disclosure would be provided in the narrative accompanying the table, we have simplified the relevant instruction to require footnote disclosure only of the aggregate numbers of stock awards and option awards outstanding at fiscal year end.[348] As with the Summary Compensation Table, the new rules make clear that all compensation must be included in the table.[349] As is the case with the current director disclosure requirement, companies will not be required to include in the director disclosure any amounts of compensation paid to a named executive officer and disclosed in the Summary Compensation Table with footnote disclosure indicating what amounts reflected in that table are compensation for services as a director.[350] An instruction to the Director Compensation Table permits the grouping of multiple directors in a single row of the table if all of their elements and amounts of compensation are identical.[351]

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348 Instruction to Item 402(k)(2)(iii) and (iv). See letter from ABA.

349 The only exception is if all perquisites received by the director total less than $10,000, they do not need to be disclosed. Further, as described above for the Summary Compensation Table, disclosure of nonqualified deferred compensation earnings is limited to the above-market or preferential portion.

350 Instruction 3 to Item 402(c).

351 Instruction to Item 402(k)(2).

Following the table, narrative disclosure will describe any material factors necessary to an understanding of the table. Such factors may include, for example, a breakdown of types of fees.[352] In addition, as noted in Section II.A., disclosure regarding option timing or dating practices may be necessary under this narrative disclosure requirement when the recipients of the stock option grants are directors of the company. As we proposed, we are not requiring a supplemental Grants of Plan-Based Awards Table for directors.

D. Treatment of Specific Types of Issuers

1. Small Business Issuers

The Item 402 amendments continue to differentiate between small business issuers and other issuers, as we proposed. In adopting the amendments, we recognize that the executive compensation arrangements of small business issuers typically are less complex than those of other public companies.[353] We also recognize that satisfying disclosure requirements designed to capture more complicated compensation arrangements may impose new, unwarranted burdens on small business issuers.[354]

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[352] Item 402(k)(3).

[353] These amendments apply only to small business issuers, as defined by Item 10(a)(1) of Regulation S-B. The Commission's Advisory Committee on Smaller Public Companies has recommended that the Commission incorporate the scaled disclosure accommodations currently available to small business issuers under Regulation S-B into Regulation S-K and make them available to all microcap companies. Final Report of the Advisory Committee on Smaller Public Companies to the United States Securities and Exchange Commission (Apr. 23, 2006). Any future consideration of this recommendation would be the subject of a separate rulemaking.

[354] Prior to today's amendments, under both Item 402 of Regulation S-B and Item 402 of Regulation S-K, a small business issuer was not required to provide the Compensation Committee Report, the Performance Graph, the Compensation Committee Interlocks disclosure, the Ten-Year Option/SAR Repricings Table, and the Option Grant Table columns disclosing potential realizable value or grant date value. The rules prior to today's amendments also permitted small business issuers to exclude the Pension Plan Table.

Some commenters addressing the proposed amendments to Item 402 of Regulation S-B expressed the view that all companies whose shares are publicly traded should have to meet the same reporting and disclosure standards, regardless of their size, or urged that exemptions for smaller public companies be limited,[355] suggesting that they be required to file some form of a basic Compensation Discussion and Analysis.[356] We are not following these recommendations, because the executive compensation arrangements of small business issuers generally are so much less complex than those of other public companies that they do not warrant the more extensive disclosure requirements imposed on companies that are not small business issuers and related regulatory burdens that could be disproportionate for small business issuers.

Other commenters who supported the Commission's proposal to require less extensive disclosure for companies subject to Regulation S-B suggested that the Commission amend the definition of small business issuer to encompass a larger group of smaller public companies, such as by adopting the definition of "smaller public company" recommended by the Advisory Committee on Smaller Public Companies, and scale back the disclosure thresholds for all such smaller companies.[357] We are not following this recommendation at this time, but would instead defer consideration until we can fully consider all recommendations of the Advisory Committee.

As proposed and adopted, small business issuers will be required to provide, along with related narrative disclosure:

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355 See, e.g., letters from CII; CRPTF; IUE-CWA; SBAF; and WSIB.

356 See, e.g., letters from ISS and Institutional Investors Group.

357 See letters from America's Community Bankers ("ACB"); Independent Community Bankers of America ("ICBA"); and SCSGP.

- the Summary Compensation Table;[358]
- the Outstanding Equity Awards at Fiscal Year-End Table;[359] and
- the Director Compensation Table.[360]

Small business issuers will be required to provide information in the Summary Compensation Table only for the last two fiscal years. In addition, small business issuers will be required to provide information for fewer named executive officers, namely the principal executive officer and the two most highly compensated officers other than the principal executive officer.[361] In light of our decision to link the Summary Compensation Table pension plan disclosure to the disclosure in the Pension Benefits Table, which is not required for small business issuers, and in response to comment,[362] we have decided not to require that small business issuers include pension plan disclosure in the Summary Compensation Table. Narrative discussion of a number of items to the extent material replaces tabular or footnote disclosure, for example identification of other items in the All Other Compensation column and a description of post-employment payments and other benefits.[363] In light of our request for further comment on the proposed additional narrative disclosure requirement regarding up to three highly

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358 Items 402(b) and 402(c) of Regulation S-B. Consistent with the instructions to the narrative disclosure required by Item 402(e) of Regulation S-K, we have added an instruction to Item 402(c) of Regulation S-B so that disclosure is not required regarding any repricing that occurs through specified provisions. Instruction to Item 402(c) of Regulation S-B.

359 Item 402(d) of Regulation S-B.

360 Item 402(f) of Regulation S-B.

361 Item 402(a) of Regulation S-B. Item 402(c)(7) of Regulation S-B requires an identification to the extent material of any item included under All Other Compensation in the Summary Compensation Table. However, identification of an item will not be considered material if it does not exceed the greater of $25,000 or 10% of all items included in the specified category. All items of compensation are required to be included in the Summary Compensation Table without regard to whether such items are required to be identified.

362 See letter from ABA.

compensated employees so that it might apply only to large accelerated filers, we have not adopted this proposal for Item 402 of Regulation S-B. Small business issuers are not required to provide a Compensation Discussion and Analysis or the related Compensation Committee Report.[364]

2. Foreign Private Issuers

Prior to today's amendments, a foreign private issuer was deemed to comply with Item 402 of Regulation S-K if it provided the information required by Items 6.B. and 6.E.2. of Form 20-F, with more detailed information provided if otherwise made publicly available. We proposed to continue this treatment of these issuers and clarify that the treatment of foreign private issuers under Item 402 parallels that under Form 20-F. Commenters supported this approach, stating that it showed appropriate deference to a foreign private issuer's home country requirements.[365] We are adopting these requirements as proposed.[366]

3. Business Development Companies

As proposed, we are applying the same executive compensation disclosure requirements to business development companies that we are adopting for operating companies.[367] We received no comments on this proposal. Our amendments eliminate the inconsistency between Form 10-K, on the one hand, which requires business

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363 Items 402(c) and 402(e) of Regulation S-B.

364 We are also eliminating a provision of Item 402 of Regulation S-K that allows small business issuers using forms that call for Regulation S-K disclosure to exclude the disclosure required by certain paragraphs of that Item. This provision had been set forth in Item 402(a)(1)(i) of Regulation S-K prior to today's amendments.

365 See, e.g., letters from Federation of German Industries; DaimlerChrysler AG; and jointly, Allianz AG, Deutsche Bank AG and Siemens AG.

366 Item 402(a)(1).

development companies to furnish all of the information required by Item 402 of Regulation S-K, and the proxy rules and Form N-2, on the other, which require business development companies to provide some of the information from Item 402 and other information that applies to registered investment companies.

Under the amendments, the registration statements of business development companies will be required to include all of the disclosures required by Item 402 of Regulation S-K for all of the persons covered by Item 402.[368] This disclosure will also be required in the proxy and information statements of business development companies if action is to be taken with respect to the election of directors or with respect to the compensation arrangements and other matters enumerated in Items 8(b) through (d) of Schedule 14A.[369] Business development companies will also be required to make these disclosures in their annual reports on Form 10-K.[370]

As a result of these amendments, the persons covered by the compensation disclosure requirements will be changed. The compensation disclosure in the proxy and information statements and registration statements of business development companies will be required to cover the same officers as for operating companies, including the principal executive officer and principal financial officer, as well as the three most highly

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367 Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act [15 U.S.C. 80a-2(a)(48)].

368 New Item 18.14 of Form N-2. Under the amendments, business development companies will no longer be required to respond to Item 18.13 of Form N-2, and Item 18.13(c) of Form N-2 is being deleted. Items 18.14 and 18.15 of Form N-2 are being redesignated as Items 18.15 and 18.16, respectively. As a result of the redesignation of Item 18.15 of Form N-2, a change to the cross reference to this Item in Instruction 8(a) of Item 24 of the form is also being made.

369 Amendment to Item 8 of Schedule 14A. Under the amendments, business development companies will no longer be required to respond to Item 22(b)(13) of Schedule 14A, and Item 22(b)(13)(iii) of Schedule 14A is being deleted. Amendments to Item 22(b)(13) of Schedule 14A.

370 Item 11 of Form 10-K.

compensated executive officers that have total compensation exceeding $100,000,[371] instead of each of the three highest paid officers of the company that have aggregate compensation from the company for the most recently completed fiscal year in excess of $60,000. In addition, the registration statements of business development companies will no longer be required to disclose compensation of members of the advisory board or certain affiliated persons of the company.

Finally, under the amendments, the proxy and information statements and registration statements of business development companies will not be required to include compensation from the "fund complex." Previously, this information was required in some circumstances.[372]

E. Conforming Amendments

The Item 402 amendments necessitate conforming amendments to the Items of Regulations S-K and S-B and the proxy rules that cross reference amended paragraphs of Item 402. On this basis, we are amending:

- the Item 201(d) of Regulations S-K and S-B and proxy rule references to the Item 402 definition of "plan;"[373]
- the Item 601(b)(10) of Regulation S-K reference to the Item 402 treatment of foreign private issuers;[374] and

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371 See Section II.C.6., above.

372 See instructions 4 and 6 to Item 22(b)(13)(i) of Schedule 14A; and instructions 4 and 6 to Item 18.13(a) of Form N-2 (prior to today's amendments requiring certain entries in the compensation table in the proxy and information statements and registration statements of business development companies to include compensation from the fund complex).

373 Amendments to: Instruction 2 to paragraph (d) of Item 201 of Regulation S-B; Instruction 2 to paragraph (d) of Item 201 of Regulation S-K; Exchange Act Rules 14a-6(a)(4) and 14c-5(a)(4); and Instruction 1 to Item 10 of Schedule 14A.

374 Amendment to Item 601(b)(10)(iii)(C)(5).

- the proxy rule references to Item 402 retirement plan disclosure.[375]

III. Revisions to Form 8-K and the Periodic Report Exhibit Requirements

As part of our broader effort to revise our executive and director compensation disclosure requirements, we proposed revisions to Item 1.01 of Form 8-K. This item requires real-time disclosure about an Exchange Act reporting company's entry into a material definitive agreement outside of the ordinary course of the company's business, as well as any material amendment to such an agreement. Our staff's experience since Item 1.01 became effective in 2004 suggests that this item has elicited executive compensation disclosure regarding types of matters that do not appear always to be unquestionably or presumptively material, which is the standard we set for the expanded Form 8-K disclosure events.[376] We therefore proposed to revise Items 1.01 and 5.02 of Form 8-K to require real-time disclosure of employee compensation events that more clearly satisfy this standard. We are adopting the revisions substantially as proposed.

In addition to the amendments to Items 1.01 and 5.02 of Form 8-K, we proposed to revise General Instruction D of Form 8-K to permit companies in most cases to omit the Item 1.01 heading if multiple items including Item 1.01 are applicable, so long as all of the substantive disclosure required by Item 1.01 is included. We are adopting this provision as proposed.

A. Items 1.01 and 5.02 of Form 8-K

Item 1.01 of Form 8-K requires an Exchange Act reporting company to disclose,

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375 Amendments to Item 10(b)(1)(ii) and Instruction to Item 10(b)(1)(ii) of Schedule 14A.

376 We stated in Section I of Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date, Release No 33-8400 (Mar. 16, 2004) [69 FR 15594] (the "Form 8-K Adopting Release"): "The revisions that we adopt today will benefit markets by increasing the number of unquestionably or presumptively material events that must be disclosed currently."

within four business days, the company's entry into a material definitive agreement outside of its ordinary course of business, or any amendment of such agreement that is material to the company. When we initially proposed this item, several commenters stated that it would be difficult to determine, within the shortened Form 8-K filing period, whether a particular definitive agreement met the materiality threshold of Item 1.01, and whether the agreement was outside of the ordinary course of business.[377] Some of these commenters suggested that we apply to Item 1.01 the standards used in pre-existing Item 601(b)(10) of Regulation S-K, which governs the filing as exhibits to Commission reports of material contracts entered into outside the ordinary course, because these standards had been in place for many years and were familiar to reporting companies.[378]

In response to the concerns raised by these comments, we adopted Item 1.01 of Form 8-K so that it uses the standards of Item 601(b)(10) to determine the types of agreements that are material to a company and not in the ordinary course of business. Item 601(b)(10) of Regulation S-K requires a company to file, as an exhibit to Securities Act and Exchange Act filings, material contracts that are not made in the ordinary course of business and are to be performed in whole or part at or after the filing of the registration statement or report, or were entered into not more than two years before the filing. Item 601(b)(10)(iii) refers specifically to employment compensation arrangements and established a company's obligation to file the following as exhibits:

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377 See, e.g., letters on Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date, Release No. 33-8106 (June 17, 2002) [67 FR 42914] in File No. S7-22-02 from the Committee on Federal Regulation of Securities, Section of Business Law of the American Bar Association, dated September 12, 2002; Cleary, Gottlieb, Steen & Hamilton, dated August 26, 2002; Intel Corporation, dated August 26, 2002; Professor Joseph A. Grundfest, et al, dated October 3, 2002; Perkins Coie LLP, dated August 26, 2002; Shearman & Sterling, dated August 30, 2002; and Sullivan & Cromwell, dated August 26, 2002.

378 See, e.g., letter in File No. S7-22-02 from the Section of Business Law of the American Bar Association.

- any management contract or any compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any named executive officer (as defined by Item 402(a)(3) of Regulation S-K) participates;
- any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the company participates, unless immaterial in amount or significance; and
- any compensation plan, contract or arrangement adopted without the approval of security holders pursuant to which equity may be awarded, including, but not limited to, options, warrants or rights in which any employee (whether or not an executive officer of the company) participates unless immaterial in amount or significance.[379]

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[379] Item 601(b)(10)(iii) of Regulation S-K. We note the provision in Item 601(b)(10)(iii)(A) that carves out any plan, contract or arrangement in which named executive officers and directors do not participate that is "immaterial in amount or significance." In 1980, the Commission adopted amendments to Regulation S-K that consolidated all of the exhibit requirements of various disclosure forms into a single item in Regulation S-K. Amendments Regarding Exhibit Requirements, Release No. 33-6230 (Aug. 27, 1980) [45 FR 58822], at Section II.B. This item was a forerunner of the current Item 601. As part of that 1980 adopting release, the definition of material contract contained in the new item was also revised in an effort to reduce the number of remunerative plans or arrangements that must be filed. Not long after, though, the staff discovered that rather than reduce the number of exhibits filed, the provision actually had the opposite effect. The staff found that the revised definition of material contract "has resulted in registrants filing a large volume of varied remunerative contracts involving directors and executive officers, contracts which are not material and which would not have been filed under the previously existing 'material in amount or significance' standard." Technical Amendment Regarding Exhibit Requirement, Release No. 33-6287 (Feb. 6, 1981) [46 FR 11952], at Section I. Therefore, in February 1981, the Commission added "unless immaterial in amount or significance" to the definition of "material contracts" as applied to remunerative plans, contracts or arrangements participated in by executives who are not named executive officers. Id. We reiterate that this phrase was intended to indicate that whether plans, contracts or arrangements in which executive officers other than named executive officers participate are required to be disclosed under Item 601(b)(10) must be determined on the basis of materiality.

Therefore, entry into these types of contracts triggered the filing of a Form 8-K within four business days. Importantly, the requirement for directors and named executive officers does not include an exception for those that are "immaterial in amount or significance." The incorporation of the Item 601(b)(10) standards into Item 1.01 of Form 8-K has therefore significantly affected executive compensation disclosure practices. Prior to the Form 8-K amendments in 2004, it was customary for a company's annual proxy statement to be the primary vehicle for disclosure of executive and director compensation information. However, Item 1.01 of Form 8-K as originally adopted has resulted in executive compensation disclosures that are much more frequent and accelerated than those included in a company's proxy statement. In addition, particularly because of the terms of Item 601(b)(10), Item 1.01 of Form 8-K triggered compensation disclosure of the types of matters that, in some cases, appear to have fallen short of the "unquestionably or presumptively material" standard associated with the expanded Form 8-K disclosure items. Companies and their counsel have raised concerns that the expanded Form 8-K requirements have resulted in real-time disclosure of compensation events that should be disclosed, if at all, in a company's proxy statement for its annual meeting or as an exhibit to the company's next periodic report, such as the Form 10-Q or Form 10-K.

As we stated in the Proposing Release, we believe that much of the disclosure regarding employment compensation matters required in real-time under the Form 8-K requirements is viewed by investors as material. However, we also believe it is appropriate to restore a more balanced approach to this aspect of Form 8-K, an approach which is designed to elicit unquestionably or presumptively material information on a

real-time basis, but seeks to limit Form 8-K required disclosure of information below that threshold.

Accordingly, we are adopting amendments to Form 8-K that will uncouple Item 601(b)(10)(iii) of Regulation S-K from the current disclosure requirements of Form 8-K. As proposed, we are eliminating employment compensation arrangements from the scope of Item 1.01 altogether and expanding Item 5.02 of Form 8-K to cover only those compensatory arrangements with executive officers and directors that we believe are unquestionably or presumptively material. Commenters generally supported these proposed amendments.[380] We are adopting these amendments substantially as proposed.

1. Item 1.01- Entry into a Material Definitive Agreement

Specifically, we are deleting the last sentence of former Instruction 1 to Item 1.01 of Form 8-K, which references the portions of Item 601(b)(10) of Regulation S-K that specifically relate to management compensation and compensatory plans. In place of the deleted sentence, we are adding a sentence specifying that agreements involving the subject matter identified in Item 601(b)(10)(iii)(A) and (B) of Regulation S-K need not be disclosed under amended Item 1.01 of Form 8-K. This change also will apply to the disclosure of terminations of material definitive agreements under Item 1.02 of Form 8-K, which references the definition of "material definitive agreement" in Item 1.01 of Form 8-K.[381] Instead of being required to be disclosed based on the general requirements with regard to material definitive agreements in Item 1.01 and Item 1.02 of Form 8-K,

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380 See, e.g., letters from ABA; Chamber of Commerce; N. Ludgus; Committee on Securities Regulation of the Business Law Section of the New York State Bar Association; SCSGP; and Sullivan.

381 Item 1.02(b) states: "For purposes of this Item 1.02, the term material definitive agreement shall have the same meaning as set forth in Item 1.01(b)."

employment compensation arrangements will now be covered under Item 5.02 of Form 8-K, as amended.

2. Item 5.02 - Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

Item 5.02 generally requires disclosure within four business days of the appointment or departure of directors and specified officers. In particular, Item 5.02(b) has required disclosure if a company's principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or any person performing similar functions, retires, resigns or is terminated from that position and Item 5.02(c) has required disclosure if a company appoints a new principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or any person performing similar functions. Item 5.02 has also required disclosure if a director retires, resigns, is removed, or declines to stand for re-election.[382] Before adopting today's amendments, the required disclosure under Item 5.02 included a brief description of the material terms of any employment agreement between the company and the officer and a description of disagreements, if any.

As proposed, we are modifying Item 5.02 to capture generally the information already required under that item, as well as additional information regarding material employment compensation arrangements involving named executive officers that, prior to today's amendments, would be called for under Item 1.01.

With respect to the additional disclosure that we are requiring for named executive officers under amended Item 5.02, one commenter noted that because the

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[382] Items 5.02(a) and (b) of Form 8-K.

definition of "named executive officer" is determined with reference to a company's last completed fiscal year, greater clarity is needed to determine how the standard should be applied for current Form 8-K reporting throughout the year.[383] The commenter suggested that companies might find it difficult to identify their named executive officers for purposes of real-time disclosure under Item 5.02 during the period following the completion of their last fiscal year but prior to preparing their proxy statements or Forms 10-K in the new fiscal year. Accordingly, we are including a new Instruction to Item 5.02 that will clarify that for purposes of this Item the named executive officers are the persons for whom disclosure was required in the most recent filing with the Commission that required disclosure under Item 402(c) of Regulation S-K or Item 402(b) of Regulation S-B, as applicable.[384]

In general, our revisions to Form 8-K will both modify the overall requirements for disclosure of employment compensation arrangements on Form 8-K and locate all such disclosure under a single item. We are accomplishing this by taking the following steps:

- expanding the information regarding retirement, resignation or termination to include all persons falling within the definition of named executive officers for the company's previous fiscal year, whether or not included in the list specified in Item 5.02 prior to these amendments;[385]
- expanding the disclosure items covered under Item 5.02 beyond employment agreements to require a brief description of any material plan, contract or

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[383] See letter from ABA.

[384] Instruction 4 to Item 5.02.

arrangement to which a covered officer or director is a party or in which he or she participates that is entered into or materially amended in connection with any of the triggering events specified in Item 5.02(c) and (d), or any grant or award to any such covered person, or modification thereto, under any such plan, contract or arrangement in connection with any such event;[386]

- with respect to the principal executive officer, the principal financial officer, or persons falling within the definition of named executive officer for the company's previous fiscal year, expanding the disclosure items to include a brief description of any material new compensatory plan, contract or arrangement, or new grant or award thereunder (whether or not written), and any material amendment to any compensatory plan, contract or arrangement (or any modification to a grant or award thereunder), whether or not such occurrence is in connection with a triggering event specified in Item 5.02. Grants or awards or modifications thereto will not be required to be disclosed if they are consistent with the terms of previously disclosed plans or arrangements and they are disclosed the next time the company is required to provide new disclosure under Item 402 of Regulation S-K;[387] and
- adding a requirement for disclosure of salary or bonus for the most recent fiscal year that was not available at the latest practicable date in connection with

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385 Item 5.02(b) of Form 8-K will continue to cover the officers currently specified therein, whether or not named executive officers for the previous or current years, and all directors.

386 Items 5.02(c)(3) and (d)(5). Plans, contracts or arrangements (but not material amendments or grants or awards or modifications thereto) may be denoted by reference to the description in the company's most recent annual report on Form 10-K or proxy statement.

387 Item 5.02(e) and Instruction 2 to Item 5.02(e).

disclosure under Item 402 of Regulation S-K.[388] This disclosure will also require a new total compensation recalculation to reflect the new salary or bonus information.

In the case of each of these disclosure items for amended Item 5.02, we emphasize that we are requiring that a brief description of the specified matter be included. We have observed that in response to the requirements to disclose the entry into material definitive agreements under Item 1.01, some companies have included disclosure that resembles an updating of the disclosure required under former Item 402 of Regulation S-K. In the context of current disclosure under Form 8-K, we are seeking disclosure that informs investors of specified material events and developments. However, the information we are seeking does not require the information necessary to comply with Item 402.

In response to comments received,[389] we have revised Instruction 2 to new Item 5.02(e) from the text we proposed and created a new Item 5.02(f), as described above. The revised Instruction 2 to Item 5.02(e) that we are adopting: (i) changes or eliminates prior references to "original terms" and uses instead the phrase "previously disclosed terms," in order to minimize ambiguity; and (ii) clarifies that, for purposes of the Instruction, no distinction should be made between awards granted under cash or equity-based plans. New Item 5.02(f) responds to comments we received that our proposed Instruction 3 to 5.02(e) should be codified as a separate item because it called for

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388 Item 5.02(f). See Section II.C.1.b. above for a discussion of the reporting delay that exists under the current disclosure rules when bonus and salary are not determinable at the most recent practicable date.

389 See letter from ABA.

disclosure (determining salary or bonus amounts for a completed fiscal year) that otherwise may not be required under Item 5.02(e).[390]

B. Extension of Limited Safe Harbor under Section 10(b) and Rule 10b-5 to Item 5.02(e) of Form 8-K and Exclusion of Item 5.02(e) from Form S-3 Eligibility Requirements

We are extending the safe harbors regarding Section 10(b) and Rule 10b-5 and Form S-3 eligibility in the event that a company fails to timely file reports required by Item 5.02(e) of Form 8-K.

In March 2004, we adopted a limited safe harbor from liability under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder for failure to timely file reports required by Form 8-K Items 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a) and 6.03. Because we believed that these items may require management to make rapid materiality and similar judgments within the condensed timeframe required for filing of a Form 8-K, we established a safe harbor that applies until the filing due date of the company's quarterly or annual report for the period in question. We concluded that the risk of liability under these provisions for the failure to timely file was disproportionate to the benefit of real-time disclosure and therefore justified the need for a limited safe harbor of a fixed duration. For the same reasons, we believe that the safe harbor should also extend to Item 5.02(e) of Form 8-K. We therefore are amending Exchange Act Rules 13a-11(c) and 15d-11(c) accordingly.

In addition, a company forfeits its eligibility to use Form S-3 if it fails to timely file all reports required under Exchange Act Section 13(a) or 15(d) during the 12 month

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[390] See letter from ABA.

period prior to filing of the registration statement.[391] For the same reasons, when adopting the expanded Form 8-K rules in 2004, we revised the Form S-3 eligibility requirements so that a company would not lose its eligibility to use Form S-3 registration statements if it failed to timely file reports required by the Form 8-K items to which the Section 10(b) and Rule 10b-5 safe harbor applies.[392] In particular, the burden resulting from a company's sudden loss of eligibility to use Form S-3 could be a disproportionately large negative consequence of an untimely Form 8-K filing under one of the specified items.[393] We believe that this safe harbor should be extended to Item 5.02(e) of Form 8-K and, therefore, we are amending General Instruction I.A.3.(b) of Form S-3, which pertains to the eligibility requirements for use of Form S-3 to reflect this position.

C. General Instruction D to Form 8-K

We are adopting the revision to General Instruction D as proposed. Frequently, an event may trigger a Form 8-K filing under multiple items, particularly under both Item 1.01 and another item. General Instruction D to Form 8-K permits a company to file a single Form 8-K to satisfy one or more disclosure items, provided that the company identifies by item number and caption all applicable items being satisfied and provides all of the substantive disclosure required by each of the items. In order to promote prompt filings on Form 8-K and avoid potential non-compliance with Form 8-K due to inadvertent exclusions of captions, we are amending General Instruction D to permit companies to omit the Item 1.01 heading in a Form 8-K that also discloses any other item, so long as the substantive disclosure required by Item 1.01 is included in the Form

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391 General Instruction I.A.3 to Form S-3.

392 Form 8-K Adopting Release, at Section II.E.

393 Id.

8-K. This would not extend to allowing a company to omit any other caption if the Item 1.01 caption is included.

D. Foreign Private Issuers

We are amending the exhibit instructions to Form 20-F so that foreign private issuers will be required to file an employment or compensatory plan with management or directors (or portion of such plan) only when the foreign private issuer either is required to publicly file the plan (or portion of it) in its home country or if the foreign private issuer has otherwise publicly disclosed the plan.[394]

Under Item 6.B.1 of Form 20-F, a foreign private issuer must disclose the compensation of directors and management on an aggregate basis and, additionally, on an individual basis, unless individual disclosure is not required in the issuer's home country and is not otherwise publicly disclosed by the foreign private issuer. Under the exhibit instructions to Form 20-F prior to our amendments, management contracts or compensatory plans in which directors or members of management participate generally were required to be filed as exhibits, unless the foreign private issuer provided compensation information on an aggregate basis and not on an individual basis. Under those pre-amendment provisions, an issuer that provided any individualized compensation disclosure was required to file as an exhibit to Form 20-F management employment agreements that potentially relate to matters that have not otherwise been disclosed.

Our amendment of the exhibit instructions to Form 20-F[395] is intended to be consistent with the existing disclosure requirements under Form 20-F relating to

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[394] We are also making a similar revision to Item 601(b)(10)(iii)(C)(5) of Regulation S-K.

executive compensation matters for foreign private issuers. In the same way that executive compensation disclosure under Form 20-F largely mirrors the disclosure that a foreign private issuer makes under home country requirements or voluntarily, so too the public filing of management employment agreements as an exhibit to Form 20-F under our amendments will mirror the public availability of such agreements under home country requirements or otherwise. In addition, we believe that the amendments may encourage foreign private issuers to provide more compensation disclosure in their filings with the Commission by eliminating privacy concerns associated with filing an individual's employment agreement when such agreement is not required to be made public by a home country exchange or securities regulator. As foreign disclosure related to executive remuneration varies in different countries but continues to improve,[396] the revisions recognize that trend and provide for greater harmonization of international disclosure standards with respect to executive compensation in a manner consistent with other requirements of Form 20-F.

IV. Beneficial Ownership Disclosure

Item 403 requires disclosure of company voting securities beneficially owned by more than five percent holders,[397] and company equity securities beneficially owned by directors, director nominees and named executive officers.[398] These disclosure requirements provide investors with information regarding concentrated holdings of

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395 New Instruction 4(c)(v) to Exhibits to Form 20-F.

396 Many jurisdictions now require or encourage disclosure of executive compensation information. For example, enhanced disclosure of executive remuneration is included as part of the European Commission's 2003 Company Law Action Plan. See Guido Ferrarini and Niamh Moloney, Executive Remuneration in the EU: The Context for Reform, European Corporate Governance Institute, Law Working Paper N. 32/2005 (April 2005).

397 Item 403(a).

voting securities and management's equity stake in the company, including securities for which these holders have the right to acquire beneficial ownership within 60 days.[399] Item 403 also requires disclosure of arrangements known to the company that may result in a change in control of the company.[400]

As proposed, we are amending Item 403(b)[401] by adding a requirement for footnote disclosure of the number of shares pledged as security by named executive officers, directors and director nominees.[402] To the extent that shares beneficially owned by named executive officers, directors and director nominees are used as collateral, these shares may be subject to material risk or contingencies that do not apply to other shares beneficially owned by these persons. These circumstances have the potential to influence management's performance and decisions.[403] As a result, we believe that the existence of these securities pledges could be material to shareholders. Because significant shareholders who are not members of management are in a different relationship with other shareholders and have different obligations to them, the amendments do not require disclosure of their pledges pursuant to Item 403(a), other than pledges that may result in a

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398 Item 403(b).

399 As specified in Exchange Act Rule 13d-3(d)(1) [17 CFR 240.13d-3(d)(1)].

400 Item 403(c).

401 Item 403(b) of Regulation S-K and Item 403(b) of Regulation S-B are both amended in the same manner.

402 This was similar to a proposal the Commission made in 2002. See Form 8-K Disclosure of Certain Management Transactions, Release No. 33-8090 (Apr. 12, 2002) [67 FR 19914].

403 See, e.g., Marianne M. Jennings, The Disconnect Between and Among Legal Ethics, Business Ethics, Law, and Virtue: Learning Not to Make Ethics So Complex, 1 U. St. Thomas L.J. 995, 1010 (Spring 2004) (arguing that the extension of loans to the CEO of WorldCom, which were collateralized by WorldCom shares owned by the CEO, contributed to WorldCom's financial demise). Regarding commenters' views, contrast letters from Frederic W. Cook & Co.; PB-UCC; and SBAF with letters from FSR; NACCO Industries; Unitrin; and Compass Bancshares.

change of control currently required to be disclosed.[404] The amendments also specifically require disclosure of beneficial ownership of directors' qualifying shares, which was not required prior to these amendments, because we believe the beneficial ownership disclosure should include a complete tally of the securities beneficially owned by directors.

One commenter recommended that we expand this section to also require disclosure of hedging arrangements whereby the executive has altered his or her economic interest in the securities that he or she beneficially owns.[405] These transactions frequently involve the purchase or sale of a derivative security that the named executive officer would be required to report within two business days under Section 16(a) of the Exchange Act.[406] Because information concerning these transactions frequently would be available on a prompt basis in the Section 16(a) filings and companies would disclose their policies regarding these transactions in Compensation Discussion and Analysis,[407] we have not followed the commenter's recommendation.

V. Certain Relationships and Related Transactions Disclosure

As we explained in the Proposing Release, we believe that, in addition to disclosure regarding executive compensation, a materially complete picture of financial relationships with a company involves disclosure regarding related party transactions. Therefore, we are also adopting significant revisions to Item 404 of Regulation S-K, previously titled "Certain Relationships and Related Transactions." In 1982, various

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404 Item 403(c) of Regulation S-K. See also Items 6 and 7(3) of Schedule 13D [17 CFR 240.13d-101].

405 See letter from ABA.

406 15 U.S.C. 78p(a).

407 See Item 402(b)(2)(xiii) of Regulation S-K, discussed in Section II.B.1., above.

provisions that had been adopted in a piecemeal fashion and had been subject to frequent amendment were consolidated into Item 404 of Regulation S-K.[408] Today we are amending Item 404 of Regulation S-K and S-B to streamline and modernize this disclosure requirement, while making it more principles-based. Although the amendments significantly modify this disclosure requirement, its purpose - to elicit disclosure regarding transactions and relationships, including indebtedness, involving the company and related persons and the independence of directors and nominees for director and the interests of management - remains unchanged.

As discussed in greater detail below, the amendments have four parts:[409]

- Item 404(a) contains a general disclosure requirement for related person transactions, including those involving indebtedness.
- Item 404(b) requires disclosure regarding the company's policies and procedures for the review, approval or ratification of related person transactions.
- Item 404(c) requires disclosure regarding promoters and certain control persons of a company.[410]
- Item 407 consolidates corporate governance disclosure requirements.[411] Also, Item 407(a) requires disclosure regarding the independence of directors, including

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408 See the 1982 Release. For a discussion of these provisions, see also Disclosure of Certain Relationships and Transactions Involving Management, Release No. 33-6416 (July 9, 1982) [47 FR 31394], at Section II.

409 The discussion that follows focuses on changes to Regulation S-K, with Section V.E.1. explaining the modifications to Regulation S-B. References throughout the following discussion are to Items of Regulation S-K, unless otherwise indicated.

410 Prior to adoption of these amendments, disclosure regarding promoters was required under Item 404(d).

411 These matters previously were required to be disclosed pursuant to various provisions, including Item 7 of Schedule 14A and Items 306, 401(h), (i) and (j), 402(j) and 404(b). We are eliminating as proposed the requirement for disclosure regarding specific director and director nominee

whether each director and nominee for director of the company is independent, as well as a description by specific category or type of any transactions, relationships or arrangements not disclosed under paragraph (a) of Item 404 that were considered when determining whether each director and nominee for director is independent.

A. Transactions with Related Persons

We are adopting amendments to Item 404 to make the certain relationships and related transactions disclosure requirements clearer and easier to follow. The revisions retain the principles for disclosure of related person transactions that were previously specified in Item 404(a), but no longer include all of the instructions that served to delineate what transactions are reportable or excludable from disclosure based on bright lines that can depart from a more appropriate materiality analysis. Instead, Item 404(a) as amended consists of a general statement of the principle for disclosure, followed by specific disclosure requirements and instructions. The instructions to Item 404(a) explain the related persons covered by the Item, the scope of transactions covered by the Item, the method for computation of the amount involved in the transaction, special requirements regarding indebtedness, the interaction with Item 402, the materiality of certain interests, and the circumstances in which disclosure need not be provided.

Item 404(a) as adopted extends to disclosure of indebtedness, by consolidating the disclosure formerly required under Item 404(a) regarding transactions involving the company and related persons with the disclosure regarding indebtedness which had been separately required by Item 404(c) prior to these amendments. We have consolidated

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relationships that had been set forth in Item 404(b) prior to today's amendments, in favor of the disclosures regarding director independence required by Item 407(a).

these two provisions substantially as proposed in order to eliminate confusion regarding the circumstances in which each item applied and to streamline duplicative portions of Item 404.

1. Broad Principle for Disclosure

Item 404(a) as proposed and adopted articulates a broad principle for disclosure; it states that a company must provide disclosure regarding:

- any transaction since the beginning of the company's last fiscal year, or any currently proposed transaction;
- in which the company was or is to be a participant;
- in which the amount involved exceeds $120,000; and
- in which any related person had or will have a direct or indirect material interest.

As proposed, amended Item 404(a) no longer includes an instruction that is repetitive of the general materiality standard applicable to the Item.[412] By omitting this instruction, we do not intend to change the materiality standard applicable to Item 404(a). The materiality standard for disclosure embodied in Item 404(a) prior to these amendments is retained; a company must disclose based on whether the related person had or will have a direct or indirect material interest in the transaction. The materiality of any interest will continue to be determined on the basis of the significance of the information to investors in light of all the circumstances.[413] As was the case before adoption of amended Item 404(a), the relationship of the related persons to the

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[412] Prior to today's amendments, Instruction 1 to Item 404(a) had stated that "[t]he materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other and the amount involved in the transactions are among the factors to be considered in determining the significance of the information to investors."

transaction, and with each other, the importance of the interest to the person having the interest and the amount involved in the transaction are among the factors to be considered in determining the materiality of the information to investors.

We are also eliminating as proposed an instruction to Item 404(a) which had indicated that the dollar threshold is not a bright line materiality standard.[414] It remains true, however, that when the amount involved in a transaction exceeds the prescribed threshold ($120,000 under the amended rule we adopt today), a company should evaluate whether the related person has a direct or indirect material interest in the transaction to determine if disclosure is required. We eliminated the instruction because it was repetitive of the general materiality standard applicable to the Item. We believe that application of the materiality principles under the Item are more consistent with a principles-based approach and will lead to more appropriate disclosure outcomes than application of the instruction that was eliminated. By deleting this instruction, we do not intend to change the materiality standard applicable to Item 404(a). As was the case with Item 404(a) prior to adoption of these amendments, there may be situations where, although the instructions to Item 404(a) do not expressly provide that disclosure is not required, the interest of a related person in a particular transaction is not a direct or indirect material interest. In that case, information regarding such interest and transaction is not required to be disclosed under Item 404(a).

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413 See Basic v. Levinson and TSC Industries v. Northway.

414 Prior to today's amendments, Instruction 9 to Item 404(a) had stated that "There may be situations where, although these instructions do not expressly authorize nondisclosure, the interest of a person specified in paragraphs (a)(1) through (4) in a particular transaction or series of transactions is not a direct or indirect material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this paragraph."

In addition, as proposed the amendments:

- call for disclosure if a company is a "participant" in a transaction, rather than if it is "a party" to the transaction, as "participant" more accurately connotes the company's involvement;
- modify the $60,000 threshold for disclosure to $120,000 to adjust for inflation;
- include a defined term for "transaction" to provide that it includes a series of similar transactions and to make clear its broad scope; and
- include a defined term for "related persons."[415]

As was the case before these amendments, disclosure is required for three years in registration statements filed pursuant to the Securities Act or the Exchange Act.[416]

One commenter questioned whether changing the test of company involvement from being a "party" to a transaction to being a "participant" in a transaction is intended to be a substantive change.[417] The purpose of this change is to more accurately connote the company's involvement in a transaction by clarifying that being a "participant" encompasses situations where the company benefits from a transaction but is not technically a contractual "party" to the transaction.[418]

Commenters expressed diverse views on the appropriate disclosure threshold. While some commenters supported increasing the threshold for disclosure from $60,000

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415 The "related persons" covered by the amended Item are discussed below in Section V.A.1.b.

416 However, if the disclosure is being incorporated by reference into a registration statement on Form S-4, the additional two years of disclosure will not be required, as specified in Instruction 1 to Item 404.

417 See letter from Sullivan. See also letter from SCSGP.

418 For example, disclosure would be required if a company benefits from a transaction with a related person that the company has arranged and in which it participates, notwithstanding the fact that it is not a party to a contract.

to $120,000,[419] others recommended retaining the $60,000 threshold,[420] using a minimal dollar threshold,[421] not including any de minimis dollar threshold,[422] or increasing the threshold even further through use of a sliding scale.[423] We believe that a fixed dollar amount for the disclosure threshold will provide the most certainty as to the size of transactions that must be tracked for disclosure purposes under Item 404,[424] and that increasing the dollar amount of the threshold based on inflation is appropriate given the amount of time that has elapsed since it was last set nearly twenty-five years ago.

Finally, the rule changes include as proposed a technical modification. Prior to today's amendments, Item 404(a) stated that disclosure was required regarding situations involving "the registrant or any of its subsidiaries." Because companies must include subsidiaries in making materiality determinations in all circumstances, the reference to "subsidiaries" is superfluous, and we have therefore eliminated it. This modification does not change the scope of disclosure required under the Item.[425]

a. Indebtedness

Section 402 of the Sarbanes-Oxley Act prohibits most personal loans by a

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419 See, e.g., letters from BRT and Sullivan.

420 See, e.g., letters from Amalgamated and CalSTRS.

421 See letter from Teamsters (recommending a $250 disclosure threshold).

422 See, e.g., letters from CII and ISS.

423 See letter from SCSGP recommending a disclosure threshold for companies that are not small business issuers of the greater of $120,000 or a percentage (which it believes could be as low as two percent) of consolidated gross revenues of the recipient for certain types of transactions.

424 The disclosure threshold in amended Item 404(a) of Regulation S-B is the lesser of $120,000 or one percent of the average of the small business issuer's total assets at year-end for the last three completed fiscal years because we believe that transactions that are below $120,000 can be significant for small business issuers given their relative size.

425 For the same reason, we have eliminated as proposed the references to "subsidiaries" in the "compensation committee interlocks and insider participation in compensation decisions" disclosure requirement adopted in Item 407(e)(4). This revision does not change the scope of disclosure required under the rule.

company to its officers and directors.[426] This development raises the issue of whether disclosure of indebtedness of the sort required under our rules prior to the amendments should be maintained. We believe that the approach to disclosure of indebtedness involving related persons that we adopt today is appropriate because of the scope of the direct and indirect interests covered by our disclosure requirements, because related persons include persons not covered by the prohibitions, and because there are certain exceptions to the prohibitions. We have, however, eliminated the distinction between indebtedness and other types of related person transactions.

As a result of integrating what had been required to be disclosed under paragraph (c) of Item 404 into paragraph (a) of Item 404, the rule proposals would have changed the situations in which indebtedness disclosure is necessary by requiring disclosure of indebtedness transactions with regard to all related persons covered by the related person transaction disclosure requirement, including significant shareholders.[427] Some commenters questioned whether disclosure of indebtedness of significant shareholders would be useful to investors and whether companies would have access to the information necessary to provide this disclosure.[428] In response to these comments, the amendments do not require disclosure of indebtedness transactions of significant shareholders (or their immediate family members).[429] Another result of integrating the

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426 Codified in Section 13(k) of the Exchange Act [15 U.S.C. 78m(k)].

427 Prior to today's amendments, the related person transaction disclosure requirement in Item 404(a) covered significant shareholders, while the indebtedness disclosure requirement in Item 404(c) did not. The significant shareholders covered by Item 404(a) as adopted will continue to be any security holder who is known to the company to beneficially own more than five percent of any class of the company's voting securities. See Instruction 1.b.i. to Item 404(a).

428 See, e.g., letter from Sullivan. See also, letter from SCSGP.

429 See Instruction 4.b. to Item 404(a). Disclosure would be required, however, if the significant shareholder (or such shareholder's immediate family member) was also a related person specified

disclosure requirements that had been specified in paragraph (c) of Item 404 into paragraph (a) of Item 404, is that the rule changes set a $120,000 threshold and require disclosure if there is a direct or indirect material interest in an indebtedness transaction, while prior to these amendments Item 404(c) required disclosure of all indebtedness exceeding $60,000.[430] For example, under amended Item 404(a) disclosure is required if an executive officer had a material indirect interest in an indebtedness transaction (exceeding $120,000) between the company and another entity due to that executive officer's ownership interest in the other entity. Disclosure of material indirect interests of related persons in transactions involving the company will be required by Item 404(a) as amended, just as it was prior to adoption of these amendments. We believe that disclosure requirements for indebtedness and for other related person transactions should be congruent. In particular, we believe that loans by companies other than financial institutions should be treated like any other related person transactions; however, as discussed below,[431] we address certain ordinary course loans by financial institutions in an instruction to Item 404(a).

b. Definitions

We have defined the terms "transaction," "related person" and "amount involved" substantially as proposed in order to streamline Item 404(a) and to clarify the broad scope of financial transactions and relationships covered by the rule.

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in Instruction 1.a. to Item 404(a), for example, if the significant shareholder was also an executive officer.

430 Prior to these amendments, Item 404(c) also had required disclosure of some specific indirect interests of directors, nominees for director, and executive officers of the company in indebtedness through corporations, organizations, trusts, and estates. Disclosure of these specific interests had been required by subparagraphs (c)(4) and (c)(5) of Item 404. Under the amendments, these subparagraphs have been eliminated as duplicative and the need for disclosure in these situations will be determined using a materiality analysis under the principle for disclosure in Item 404(a).

The term "transaction" has a broad scope in Item 404(a).[432] This term is not to be interpreted narrowly, but rather broadly includes, but is not limited to, any financial transaction, arrangement or relationship or any series of similar transactions, arrangements or relationships. The definition of "transaction" also specifically notes that the term includes indebtedness and guarantees of indebtedness.

The definition of "related person" identifies the persons covered, and clarifies the time periods during which they are covered. The term "related person"[433] means any person who was in any of the following categories at any time during the specified period for which disclosure under paragraph (a) of Item 404 is required:

- any director or executive officer of the company and his or her immediate family members; and
- if disclosure were provided in a proxy or information statement relating to the election of directors, any nominee for director and the immediate family members of any nominee for director.

In addition, a security holder known to the company to beneficially own more than five percent of any class of the company's voting securities or any immediate family member of any such person, when a transaction in which such security holder or family member had a direct or indirect material interest occurred or existed, is also a related person.

The definition of "related person" that we have adopted will require disclosure of related person transactions involving the company and a person (other than a significant shareholder or immediate family member of such shareholder) that occurred during the

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431 See Section V.A.3. below.

432 Instruction 2 to Item 404(a).

433 Instruction 1 to Item 404(a).

last fiscal year, if the person was a "related person" during any part of that year.[434] A person who had a position or relationship giving rise to the person being a "related person" during only part of the last fiscal year may have had a material interest in a transaction with the company during that year. While prior to these amendments Item 404(a) did not indicate whether disclosure was required for the transaction in this situation, the history of Item 404 suggests that disclosure was required if the requisite relationship existed at the time of the transaction, even if the person was no longer a related person at the end of the year.[435] We believe that, because of the potential for abuse and the close proximity in time between the transaction and the person's status as a "related person," it is appropriate to require disclosure for transactions in which the person had a material interest occurring at any time during the fiscal year. For example, it is possible that a material interest of a person in a transaction during this timeframe could influence the person's performance of his or her duties.

We believe that transactions with persons who have been or who will become significant shareholders (or their immediate family members), but are not at the time of the transaction, raise different considerations and are harder to track, and thus we are excluding them as proposed. Disclosure will be required, however, regarding a

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434 As proposed, the principle for disclosure that we have adopted only applies to nominees for director if disclosure is being provided in a proxy or information statement involving the election of directors. Also, as proposed, ongoing disclosure is not required regarding nominees for director who were not elected (unless a nominee has been nominated again for director).

435 This position, which had been included in the proxy rule provisions that were the precursor to Item 404, was deleted from those provisions in 1967 as duplicative of a note that applied to all of the disclosure required in Schedule 14A (including the related party disclosure requirement in Schedule 14A). Adoption of Amendments to Proxy Rules and Information Rules, Release No. 34-8206 (Dec. 14, 1967) [32 FR 20960], at "Schedule 14A - Item7(f)." Before today's amendments, Note C to Schedule 14A provided that "[i]nformation need not be included for any portion of the period during which such person did not hold any such position or relationship, provided a statement to that effect is made." We have amended Note C to Schedule 14A as proposed so that it will no longer apply to disclosure of related person transactions.

transaction that begins before a significant shareholder becomes a significant shareholder, and continues (for example, through the on-going receipt of payments) on or after the time that the person becomes a significant shareholder.

We are adopting the definition of "immediate family member" as proposed. Under Item 404(a), the term "immediate family member" means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and any person (other than a tenant or employee) sharing the household of any director, nominee for director, executive officer, or significant shareholder of the company. The amended definition differs from the former definition in that it includes stepchildren, stepparents, and any person (other than a tenant or employee) sharing the household of a director, nominee for director, executive officer, or significant shareholder of the company.[436]

The amended definition of "amount involved" is adopted as proposed.[437] The definition incorporates two concepts that were included in Item 404 prior to these amendments regarding how to determine the "amount involved" in transactions, and clarifies that the amounts reported must be in dollars even if the amount was set or expensed in a different currency. As adopted, the term "amount involved" means the dollar value of the transaction, or series of similar transactions, and includes:

- in the case of any lease or other transaction providing for periodic payments or installments, the aggregate amount of all periodic payments or installments due on or after the beginning of the company's last fiscal year, including any required or

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[436] The persons included in these additions to the definition are also included in the definition of "family member" in General Instruction A.1.(a)(5) to Securities Act Form S-8.

[437] Instruction 3 to Item 404(a).

optional payments due during or at the conclusion of the lease or other transaction providing for periodic payments or installments;[438] and

- in the case of indebtedness, the largest aggregate amount of all indebtedness outstanding at any time since the beginning of the company's last fiscal year and all amounts of interest payable on it during the last fiscal year.[439]

2. Disclosure Requirements

Subparagraphs of Item 404(a) as adopted provide the disclosure requirements for related person transactions. The company will be required to describe the transaction, including:

- the person's name and relationship to the company;
- the person's interest in the transaction with the company, including the related person's position or relationship with, or ownership in, a firm, corporation, or other entity that is a party to or has an interest in the transaction; and
- the approximate dollar value of the amount involved in the transaction and of the related person's interest in the transaction.[440]

Companies will also be required to disclose any other information regarding the transaction or the related person in the context of the transaction that is material to investors in light of the circumstances of the particular transaction.

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438 Prior to today's amendments, Instruction 3 to Item 404(a) had provided guidance regarding computing the amount involved in lease or other agreements providing for periodic payments or installments.

439 Prior to today's amendments, the basis for determining the amount involved in indebtedness transactions had been set forth in Item 404(c).

440 Because of the manner in which the amount involved in the transaction is calculated for indebtedness, as discussed above, disclosure with respect to indebtedness will include the largest aggregate amount of principal outstanding during the period for which disclosure is provided, as well as the amount of principal and interest paid during the period for which disclosure is

As was the case prior to adoption of these amendments, the dollar value of the related person's interest in the transaction will be computed without regard to the amount of the profit or loss involved in the transaction.[441] One commenter pointed out that the proposals expanded the application of this provision to also cover the computation of the "amount involved" when the provision was moved from an instruction into the body of Item 404(a).[442] In streamlining Item 404(a), we did not intend to change the scope of the prior instruction. Therefore, the final rule clarifies the context in which profit or loss is not to be considered.

Consistent with the principles-based approach that we are applying to related person transaction disclosure, we are eliminating an instruction that, in the case of a related person transaction involving a purchase or sale of assets by or to the company otherwise than in the ordinary course of business, called for specific disclosure of the cost of the assets to the purchaser, and if acquired within two years of the transaction, the cost of the assets to the seller and related information about the price of the assets. We note, however, that if such information is material under the revised standards of Item 404(a), because, for example, the recent purchase price to the related person is materially less than the sale price to the company, or the sale price to the related person is materially more than the recent purchase price to the company, disclosure of such prior purchase price and related information about the prices could be required.

Prior to adoption of today's amendments, disclosure was required under Item 404(c) regarding amounts possibly owed to the company under Section 16(b) of the

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provided, the aggregate amount of principal outstanding as of the latest practicable date, and the rate or amount of interest payable on the indebtedness. Item 404(a)(5).

441 Item 404(a)(4).

Exchange Act.[443] We believe that the purpose of related person transaction disclosure differs from the purpose of Section 16(b), and one commenter expressed support for eliminating this requirement.[444] Accordingly, the rule amendments eliminate this former Section 16(b)-related disclosure requirement.

3. Exceptions

Some categories of transactions do not fall within the principle for disclosure and therefore Item 404(a) as amended includes disclosure exceptions that we believe are consistent with our principles-based approach.[445] The first category of transactions involves compensation. Disclosure of compensation to an executive officer will not be required if:

- the compensation is reported pursuant to Item 402 of Regulation S-K; or
- the executive officer is not an immediate family member and such compensation would have been reported under Item 402 as compensation earned for services to the company if the executive officer was a named executive officer, and such compensation had been approved, or recommended to the board of directors of the company for approval, by the compensation committee of the board of directors (or group of independent directors performing a similar function) of the company.[446]

As proposed, this disclosure exception would have required compensation committee approval of an executive officer's compensation if that executive officer's compensation

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442 See letter from Sullivan.

443 This requirement had been set forth in Instruction 4 to Item 404(c) prior to these amendments.

444 See letter from SCSGP.

445 Instructions 4, 5, 6 and 7 to Item 404(a).

was not reported under Item 402. However, one commenter noted that in accordance with listing standards, compensation committees may only need to recommend to the board of directors, rather than approve, the compensation of executive officers (other than the chief executive officer).[447] We believe that it is appropriate for this disclosure exception to apply a standard that is consistent with the listing standards and we have thus modified this exception from the proposal accordingly. Finally, as proposed disclosure of compensation to a director will not be required if the compensation is reported pursuant to the director compensation disclosure requirement in Item 402(k).[448]

As we explained in the Proposing Release, since the disclosure either would be reported under Item 402, or would not be required under Item 402, we do not believe that these particular compensation transactions fall within our Item 404 disclosure principle, or they will have already been disclosed. Transactions involving compensation that do not fall within these exceptions, such as compensation of immediate family members, are within the scope of the principle for disclosure in amended Item 404(a).[449] These exceptions thus clarify the limited situations in which disclosure of compensation to related persons is not required under Item 404.

The second category of transactions involves three types of situations that we believe do not raise the potential issues underlying our principle for disclosure. First, in the case of transactions involving indebtedness, as proposed we have adopted

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446 Instruction 5.a. to Item 404(a).

447 See letter from NYCBA.

448 Instruction 5.b. to Item 404(a).

449 One commenter believed that the proposals would have eliminated disclosure of related person transactions involving the employment of immediate family members. See letter from CRPTF. Item 404(a), as amended, continues to require disclosure of these types of related person

amendments so that the following items of indebtedness may be excluded from the calculation of the amount of indebtedness and need not be disclosed because they do not have the potential to impact the parties as do the transactions for which disclosure is required: amounts due from the related person for purchases of goods and services subject to usual trade terms, for ordinary business travel and expense payments and for other transactions in the ordinary course of business.[450] Also, in the case of a transaction involving indebtedness, the amendments provide, as proposed, that if the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T[451] and the loans are not disclosed as nonaccrual, past due, restructured or potential problems,[452] disclosure under paragraph (a) of Item 404 may consist of a statement, if correct, that the loans to such persons satisfied the following conditions:

- they were made in the ordinary course of business;
- they were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable loans with persons not related to the lender; and
- they did not involve more than the normal risk of collectibility or present other unfavorable features.[453]

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transactions when the threshold for disclosure has been met and the immediate family member has or will have a direct or indirect material interest.

450 Instruction 4.a. to Item 404(a), which is based on Instruction 2 to Item 404(c) as it was stated prior to today's amendments.

451 12 CFR Part 220.

452 See Item III.C.1. and 2. of Industry Guide 3, Statistical Disclosure by Bank Holding Companies [17 CFR 229.802(c)].

453 Instruction 4.c. to Item 404(a).

This exception is based on the exception that was included in Instruction 3 to Item 404(c) prior to these amendments, and has been modified as proposed to be more consistent with the prohibition of the Sarbanes-Oxley Act on personal loans to officers and directors.[454]

Second, we are adopting as proposed an instruction indicating that a person who has a position or relationship with a firm, corporation, or other entity that engages in a transaction with the company shall not be deemed to have an indirect material interest within the meaning of paragraph (a) of Item 404 if:

- the interest arises only: (i) from the person's position as a director of another corporation or organization that is a party to the transaction; or (ii) from the direct or indirect ownership by such person and all other related persons, in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or (iii) from both such position and ownership; or
- the interest arises only from the person's position as a limited partner in a partnership in which the person and all other related persons, have an interest of less than ten percent, and the person is not a general partner of and does not have another position in the partnership.[455]

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454 Specifically, the language that was in Instruction 3 to paragraph (c) of Item 404 prior to these amendments has been modified to replace the reference "comparable transactions with other persons" with the phrase "comparable loans with persons not related to the lender."

455 Instruction 6 to Item 404(a). This amendment is based on the language that was in parts A and B of Instruction 8 to Item 404(a) prior to these amendments. This amendment omits the portion of that instruction (Instruction 8.C.) regarding interests arising solely from holding an equity or a creditor interest in a person other than the company that is a party to the transaction, when the transaction is not material to the other person. This exception may have resulted in inappropriate non-disclosure of transactions without regard to whether they were material to the company. In addition, we are eliminating the language that had been set forth in Instruction 6 to Item 404(a) prior to these amendments, which had covered a subset of transactions now covered by Instruction 6, as amended, and therefore was duplicative.

Finally, disclosure will not be required under paragraph (a) of Item 404 in three other types of circumstances. First, disclosure will not be required under paragraph (a) of Item 404 as to any transaction where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority.[456] We had proposed to eliminate this exception because we considered such bright-line presumptions as inconsistent with our principles-based approach to the rule. We are persuaded, however, by a commenter who indicated that the prior exception embodied a conclusion that the terms of these types of transactions would likely not be influenced by the related persons and therefore should be excluded as not material.[457] As a result, the instruction is retained in the rule as adopted.

Second, disclosure need not be provided under paragraph (a) of Item 404 if the transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services.[458] We had proposed to eliminate this exception. We are persuaded by commenters' concerns that eliminating this exception may be detrimental to financial institutions and may not result in additional meaningful disclosure.[459] Accordingly, we are retaining this exception.

Third, we are adopting an exception indicating that disclosure need not be provided pursuant to paragraph (a) of Item 404 if the interest of the related person arises solely from the ownership of a class of equity securities of the company and all holders of

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[456] Instruction 7.a. to Item 404(a).

[457] Letter from SCSGP.

[458] Instruction 7.b. to Item 404(a).

[459] See, e.g., letters from American Bankers Association ("American Bankers"); Compass Bancshares; and Whitney Holding Corporation ("Whitney Holding").

that class of equity securities of the company received the same benefit on a pro rata basis.[460] Commenters expressed concern that our proposal to eliminate the former exception[461] would require disclosure if a related person receives over $120,000 in dividends on company stock in a year, even though those dividends are paid on the same terms as for all other stockholders.[462] We are persuaded by the commenters that related person transaction disclosure is not necessary for transactions where a related person receives pro rata dividends or returns on the ownership of equity securities, and therefore we have adopted an instruction to provide an exception from disclosure in these limited circumstances.[463]

Some commenters requested that we create a new exception for transactions undertaken in the ordinary course of business of the company and conducted on the same terms that the company offers generally in transactions with persons who are not related persons.[464] Former Item 404(a) did not include such an "ordinary course of business" disclosure exception, and we are not persuaded that it should be expanded to include one. In this regard, we note that transactions which should properly be disclosed under Item 404(a) might be excluded under an ordinary course of business exception, such as employment of immediate family members of officers and directors. However, we note

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460 Instruction 7.c. to Item 404(a).

461 Before the adoption of these amendments, Instruction 7.C. to Item 404(a) provided that no information was required under Item 404(a) for transactions where the interest of the related person arose solely from the ownership of securities of the company and such person received no extra or special benefit not shared on a pro rata basis.

462 See, e.g., letters from SCSGP and Sullivan.

463 The instruction as adopted differs from the language of Instruction 7.C. prior to these amendments in that it is limited to ownership of a class of equity securities rather than securities generally and focuses on benefits being provided pro rata to the holders of that class rather than the absence of certain extra or special benefits.

464 See, e.g., letters from SCSGP and Sullivan.

that whether a transaction which was not material to the company or the other entity involved and which was undertaken in the ordinary course of business of the company and on the same terms that the company offers generally in transactions with persons who are not related persons, are factors that could be taken into consideration when performing the materiality analysis for determining whether disclosure is required under the principle for disclosure.

B. Procedures for Approval of Related Person Transactions

We are adopting a new requirement for disclosure of the policies and procedures established by the company and its board of directors regarding related person transactions substantially as proposed. State corporate law and increasingly robust corporate governance practices support or provide for such procedures in connection with transactions involving conflicts of interest.[465] We believe that this type of information may be material to investors, and our amendments therefore require disclosure of policies and procedures regarding related person transactions under paragraph (b) of Item 404, as amended.

Specifically, the amendments require a description of the company's policies and procedures for the review, approval or ratification of transactions with related persons that are reportable under paragraph (a) of Item 404. The description must include the material features of these policies and procedures that are necessary to understand them. While the material features of such policies and procedures will vary depending on the particular circumstances, examples of such features may include, in given cases, among other things:

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[465] Del. Code Ann. tit. 8, §144 (2004). See also NYSE, Inc. Listed Company Manual Section 307.00 and NASD Manual, Marketplace Rules 4350(h) and 4360(i).

- the types of transactions that are covered by such policies and procedures, and the standards to be applied pursuant to such policies and procedures;
- the persons or groups of persons on the board of directors or otherwise who are responsible for applying such policies and procedures; and
- whether such policies and procedures are in writing and, if not, how such policies and procedures are evidenced.

Item 404(b) requires identification of any transactions required to be reported under paragraph (a) of Item 404 where the company's policies and procedures do not require review, approval or ratification or where such policies and procedures have not been followed.

One commenter expressed concern that it is not reasonable or customary for a company's related person transaction policy to extend to transactions occurring before an individual becomes affiliated with a company.[466] In response, we have added an instruction indicating that disclosure need not be provided pursuant to paragraph (b) of Item 404 regarding any transaction that occurred at a time before the related person had the relationship that would trigger disclosure under Item 404(a), if the transaction did not continue after the related person had that relationship.[467]

C. Promoters and Control Persons

As proposed and adopted, the amendments require a company to provide

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466 See letter from NYCBA.

467 See Instruction to Item 404(b). For example, disclosure would not be required under Item 404(b) in a company's Form 10-K for the fiscal year ended December 31, 2005 of a transaction that occurred in March 2005 between the company and an immediate family member of a person who later became a director of the company in August 2005. However, disclosure would be required under Item 404(a) in this circumstance. This Instruction to Item 404(b) does not apply to transactions of significant shareholders of the company, because Item 404(a) does not require

disclosure regarding the identity of promoters and its transactions with those promoters if the company had a promoter at any time during the last five fiscal years.[468] The disclosure will be required in Securities Act registration statements on Form S-1 or on Form SB-2 and Exchange Act Form 10 or Form 10-SB. The disclosure includes:

- the names of the promoters;
- the nature and amount of anything of value received by each promoter from the company and the nature and amount of any consideration received by the company; and
- additional information regarding any assets acquired by the company from a promoter.

The amendments are consistent with the previous disclosure requirements regarding promoters. However, prior to these amendments this disclosure was not required if the company had been organized more than five years ago, even if the company otherwise had a promoter within the last five years. Our staff's experience in reviewing registration statements, especially of smaller companies, suggests that the more appropriate five-year test for which the disclosure should be provided relates to the period of time during which the company had a promoter, as our revision provides, rather than the date of organization of the company.[469] We are also requiring the same disclosure that is required for promoters for any person who acquired control, or is part of

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disclosure of transactions with significant shareholders that are completed before they become significant shareholders.

468 Item 404(c).

469 We also adopt as proposed similar revisions to the disclosure requirement referencing promoters in Item 401(g)(1) of Regulation S-K. In addition, as proposed our revisions add Form SB-2 to the list of registration statement forms in Item 404 for which promoter disclosure is required. While this revision updates the registration statement forms listed in Item 404, it does not change the promoter disclosure requirement of Form SB-2.

a group that acquired control, of an issuer that is a shell company.[470] We are revising the title of this item to include the term control persons in order to clarify the scope of the disclosure requirement.

D. Corporate Governance Disclosure

We are consolidating our disclosure requirements regarding director independence and related corporate governance disclosure requirements under a single disclosure item and updating such disclosure requirements regarding director independence to reflect our current requirements and current listing standards.[471] Prior to these amendments, Item 404(b) had required disclosure of specific business relationships between a director or nominee for director and the company that could bear on the ability of directors and nominees for director to exercise independent judgment in the performance of their duties. We proposed to eliminate the disclosure requirement that was stated under paragraph (b) of Item 404 in favor of more direct disclosure about the determination of the independence of directors and nominees for director, including information supplementing the amended related person transaction disclosure that would permit qualitative assessment of those independence determinations. While one

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470 Item 404(c)(2). The term "group" has the same meaning as in Exchange Act Rule 13d-5(b)(1) [17 CFR 240.13d-5(b)(1)], that is, any two or more persons that agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer. The term "shell company" is defined in Securities Act Rule 405 and Exchange Act Rule 12b-2.

471 Item 407 of Regulations S-K and S-B. As adopted, Item 407 consolidates corporate governance disclosure requirements located in several places under our rules and the principal markets' listing standards, including in particular requirements that had been specified in Items 306, 401(h), (i) and (j), 402(j) and 404(b) of Regulation S-K and Item 7 of Schedule 14A under the Exchange Act prior to these amendments. We are not making any changes to the substance of the requirements under Item 306, Item 401(h), (i) or (j), or Item 402(j) as part of this consolidation. However, as proposed, Item 407 reorders some provisions that were specified in Item 306 and reflects the relevant Public Company Accounting Oversight Board rules. See PCAOB Rulemaking: Public Company Accounting Oversight Board; Order Approving Proposed Technical Amendments to Interim Standards Rules, Release No. 34-49624 (Apr. 28, 2004) [69 FR 24199]; and Order Regarding Section 101(d) of the Sarbanes-Oxley Act of 2002, Release No. 33-8223 (Apr. 25, 2003) [68 FR 2336].

commenter suggested that we retain a revised version of paragraph (b) to Item 404 as it was stated prior to these amendments,[472] we continue to believe that disclosure focused on the determinations made regarding director independence is the appropriate approach. The comprehensive director independence disclosure requirement that we are adopting today recognizes the significant development of independence requirements since the disclosure requirements in former paragraph (b) of Item 404 were originally adopted. As directed by the Sarbanes-Oxley Act of 2002, we adopted a rule requiring national securities exchanges and national securities associations to adopt listing standards requiring independent audit committees meeting the standards of our rule.[473] Further, in 2003 and 2004, we approved amendments to additional listing standards, including those of the New York Stock Exchange and Nasdaq,[474] that imposed specific additional

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472 Letter from Fenwick.

473 See Section 10A(m) of the Exchange Act [15 U.S.C. 78j-1(m)]; Exchange Act Rule 10A-3 [17 CFR 240.10A-3]; and Standards Relating to Listed Company Audit Committees, Release No. 33-8220 (Apr. 9, 2003) (the "Audit Committee Release") [68 FR 18788].

474 NASD and NYSE Listing Standards Release. The other exchanges have also adopted corporate governance listing standards. See Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Relating to Enhanced Corporate Governance Requirements Applicable to Listed Companies, Release No. 34-48863 (Dec. 1, 2003) [68 FR 68432]; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Corporate Governance, Release No. 34-49881 (June 17, 2004) [69 FR 35408]; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Governance of Issuers on the Exchange, Release No. 34-49911 (June 24, 2004) [69 FR 39989]; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. to Amend Chapter XXVII, Section 10 of the Rules of the Board of Governors by Adding Requirements Concerning Corporate Governance Standards of Exchange-Listed Companies, Release No. 34-49955 (July 1, 2004) [69 FR 41555]; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Incorporated, Relating to Enhanced Corporate Governance Requirements for Listed Companies, Release No. 34-49995 (July 9, 2004) [69 FR 42476]; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by National Stock Exchange Relating to Corporate Governance, Release No. 34-49998 (July 9, 2004) [69 FR 42788]; and Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. to Amend the Corporate Governance Requirements for PCX Listed Companies, Release No. 34-50677 (Nov. 16, 2004) [69 FR 68205].

independence standards for boards of directors, and the compensation and nominating committees or persons performing similar functions. Each listed company (unless exempt) determines whether its directors and committee members are independent based on definitions that it adopts which, at a minimum, are required to comply with the listing standards applicable to the company.

The amendments we are adopting today, substantially as proposed, include a disclosure requirement to identify the independent directors of the company (and, in the case of disclosure in proxy or information statements relating to the election of directors, nominees for director) under the definition for determining board independence applicable to it.[475] The amendments also require disclosure of any members of the compensation, nominating and audit committees that the company has not identified as independent under the definition of independence for that board committee applicable to it.[476]

More specifically, if the company is an issuer[477] with securities listed, or for which it has applied for listing, on a national securities exchange[478] or in an automated

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The Commission has previously received a rulemaking petition submitted by the AFL/CIO, which requested the Commission to amend Items 401 and 404 of Regulation S-K to require disclosure about transactions with non-profit organizations (letter dated Dec. 12, 2001 from Richard Trumka, Secretary-Treasurer, AFL/CIO, File No. 4-499, available at www.sec.gov/rules/petitions/petn4-499.pdf) and a rulemaking petition submitted by the Council of Institutional Investors, which requested amendments to Item 401 of Regulation S-K to require disclosure of certain transactions between directors, executive officers and nominees (letter dated Oct. 1, 1997, as amended Oct. 19, 1998, from Sarah A.B. Teslik, Executive Director, Council of Institutional Investors, File No. 4-404). We believe these requests have in large part been addressed by revised listing standards instituted by the exchanges, so that we are not now taking additional action under these petitions.

475 Item 407(a).

476 Id. If the company does not have a separately designated compensation, nominating or audit committee or committee performing similar functions, it must provide this disclosure regarding independence under committee independence standards with respect to all members of the board of directors.

477 Under the amendments, "listed issuer" has the same meaning as in Exchange Act Rule 10A-3.

inter-dealer quotation system of a national securities association[479] which has requirements that a majority of the board of directors be independent, Item 407(a) requires disclosure of those directors and director nominees that the company identifies as independent (and committee members not identified as independent), using the definition for independence for directors (and for committee members) that it uses for determining compliance with the applicable listing standards. If the company is not a listed issuer, we are requiring disclosure of those directors and director nominees that the company identifies as independent (and committee members not identified as independent) using the definition for independence for directors (and for committee members) of a national securities exchange or a national securities association, specified by the company. The company will be required to apply the same definition consistently to all directors and also to use the independence standards of the same national securities exchange or national securities association for purposes of determining the independence of members of the compensation, nominating and audit committees.[480]

One commenter pointed out the rule proposals did not make clear what disclosure would be required for listed issuers that relied upon an exemption from independence

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478 Under the amendments, "national securities exchange" means a national securities exchange registered pursuant to Section 6(a) of Exchange Act [15 U.S.C. 78f(a)].

479 Under the amendments, "inter-dealer quotation system" means an automated inter-dealer quotation system of a national securities association registered pursuant to Section 15A(a) of the Exchange Act [15 U.S.C. 78o-3(a)], and a "national securities association" means a national securities association registered pursuant to Section 15A(a) of the Exchange Act [15 U.S.C. 78o-3(a)] that has been approved by the Commission (as that definition may be modified or supplemented). Inter-dealer quotation systems such as the OTC Bulletin Board, the Pink Sheets and the Yellow Sheets, which do not maintain or impose listing standards and do not have listing agreements or arrangements with the issuers whose securities are quoted through them, are not within this definition. See Section II.F.1. in the Audit Committee Release.

480 Similar disclosure had been required pursuant to Item 7(d)(2)(ii) and Item 7(d)(3)(iv) of Schedule 14A prior to these amendments. As part of our consolidation of these provisions into new Item 407, we adopt revised language for these provisions that reflects the general approach discussed above with regard to disclosure of director independence for board and committee purposes.

requirements, most notably a "controlled company" exemption.[481] To clarify the disclosure required in this situation, we added a requirement to the amendments that if the company is a listed issuer whose securities are listed on a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, and also has exemptions to those requirements (for board or committee member independence) upon which the company relied, the company must disclose the exemption relied upon and explain the basis for its conclusion that such exemption is applicable.[482] Similar disclosure is required for those companies that are not listed issuers but would qualify for an exemption under the listing standards selected. In addition, this instruction clarifies that small business issuers listed on exchanges where at least half of the members of the board of directors, rather than a majority, are required to be independent must comply with the disclosure requirements specified in Item 407(a).[483]

The amendments require as proposed that an issuer which has adopted definitions of independence for directors and committee members must disclose whether those definitions are posted on the company's Web site, and if they are not include the definitions as an appendix to the company's proxy or information statement at least once every three years or if the policies have been materially amended since the beginning of the company's last fiscal year.[484] Further, if the policies are not on the company's Web

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481 Letter from NYCBA.

482 Instruction 1 to Item 407(a).

483 See Section 121.B.(2)(c) of the American Stock Exchange Company Guide; paragraph (g) of Chapter XXVII, Listed Securities, Section 10, Corporate Governance, of the Rules of the Board of Governors of the Boston Stock Exchange; and Rule 19(a)(1) of Article XXVIII, Listed Securities, of the Chicago Stock Exchange Rules.

484 Item 407(a)(2).

site, or included as an appendix to the company's proxy or information statement, the company must disclose in which of the prior fiscal years the policies were included in the company's proxy or information statement.

In addition, the amendments require, for each director or director nominee identified as independent, a description, by specific category or type, of any transactions, relationships or arrangements not disclosed pursuant to paragraph (a) of Item 404 that were considered by the board of directors of the company in determining that the applicable independence standards were met. Under our proposals, disclosure of the specific details of each such transaction, relationship or arrangement would have been required. Several commenters objected to providing this disclosure, given the potential for extensive detail about these types of transactions, relationships or arrangements, and some suggested instead providing disclosure by category or type of transaction.[485] In response to the commenters, we have revised the disclosure requirement to permit transactions, relationships or arrangements of each director or director nominee to be described by the specific category or type. Consistent with the rule proposals, the amended rule requires that the disclosure be made on a director by director basis, with separate disclosure of categories or types of transactions, relationships or arrangements for each director and director nominee. We have also adopted an instruction indicating that the description of the category or type must be sufficiently detailed so that the nature of the transactions, relationships or arrangements is readily apparent.[486]

As proposed, this independence disclosure is required for any person who served as a director of the company during any part of the year for which disclosure must be

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[485] See, e.g., letters from Chamber of Commerce; FSR; and Sidley Austin.

provided,[487] even if the person no longer serves as director at the time of filing the registration statement or report or, if the information is in a proxy statement, if the director's term of office as a director will not continue after the meeting. In this regard, we believe that the independence status of a director is material while the person is serving as director, and not just as a matter of reelection.[488]

We also amend the disclosure requirements regarding the audit committee and nominating committee applicable prior to these amendments in order to eliminate duplicative committee member independence disclosure and to update the required audit committee charter disclosure requirements for consistency with the more recently adopted nominating committee charter disclosure requirements.[489] As a result, as proposed the audit committee charter will no longer be required to be delivered to security holders if it is posted on the company's Web site.[490] We also are moving the disclosure required by Section 407 of the Sarbanes-Oxley Act regarding audit committee financial experts to Item 407, although as proposed we are not making any substantive changes to that requirement.[491]

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486 Instruction 3 to Item 407(a).

487 Instruction 2 to Item 407(a) has been revised to clarify this requirement. As proposed, disclosure under these amendments will not be required for persons no longer serving as a director in registration statements under the Securities Act or the Exchange Act filed at a time when the company is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d). As proposed, disclosure will not be required of anyone who was a director only during the time period before the company made its initial public offering if he or she was no longer a director at the time of the offering.

488 For this reason, we are not incorporating the concept previously found in Instruction 4 to Item 404(b) into Item 407(a) as adopted.

489 However, we are not revising the provision that the Audit Committee Report is furnished and not filed.

490 Item 407(d)(1) and Instruction 2 to Item 407.

491 Item 407(d)(5).

The amendments require new disclosures regarding the compensation committee that are similar to the disclosures required regarding audit and nominating committees of the board of directors.[492] The company must state whether the compensation committee has a charter, and if it does make the charter available through its Web site or proxy materials in one of the ways that the audit and nominating committee charters may be made available. As proposed, the company will be required to describe its processes and procedures for the consideration and determination of executive and director compensation including:

- the scope of authority of the compensation committee (or persons performing the equivalent functions);
- the extent to which the compensation committee (or persons performing the equivalent functions) may delegate any authority to other persons, specifying what authority may be so delegated and to whom;
- any role of executive officers in determining or recommending the amount or form of executive and director compensation; and
- any role of compensation consultants in determining or recommending the amount or form of executive and director compensation, identifying such consultants, stating whether such consultants are engaged directly by the compensation committee (or persons performing the equivalent functions) or any other person, describing the nature and scope of their assignment, and the material elements of the instructions or directions given to the consultants with respect to the performance of their duties under the engagement.

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[492] These compensation committee disclosure requirements are included in Item 407(e).

Several commenters viewed this item as redundant with the Compensation Discussion and Analysis required under Item 402, and suggested that they be combined.[493] While this item and the Compensation Discussion and Analysis both involve the determination of executive officer compensation, they have different focuses. Item 407(e) focuses on the company's corporate governance structure that is in place for considering and determining executive and director compensation – such as the scope of authority of the compensation committee and others in making these determinations, as well as the resources utilized by the committee. In contrast, the Compensation Discussion and Analysis focuses on material information about the compensation policies and objectives of the company and seeks to put the quantitative disclosure about named executive officer compensation into perspective. We believe it is appropriate to discuss each of these matters separately and, accordingly, we have not combined them.

As for the required disclosure regarding compensation consultants, some commenters objected to the proposed requirements,[494] while other commenters suggested expanding the requirement to include, among other things, a discussion of the work performed by the compensation consultant for the company or others.[495] In addition, some commenters suggested deleting the requirement in proposed Item 407(e) that companies identify any executive officer of the company that the compensation consultants contacted in carrying out their assignment.[496] We continue to believe that the

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493 See, e.g., letters from J. Brill 1; Hewitt; Mercer; Pearl Meyer & Partners; and SCSGP.

494 See, e.g., letters from Buck Consultants; Chamber of Commerce; Hewitt; Pearl Meyer & Partners; Mercer; and Steven Hall & Partners.

495 See, e.g., letters from Brian Foley & Co.; 3C-Compensation Consulting Consortium; BCIMC; CFA Centre 1; Governance for Owners; Michelle Leder; James McFadden; Institutional Investor Group; SBAF; and Theodore Schlissel.

496 See, e.g., letters from Compensia; FedEx Corporation; Hewitt; and Mercer.

involvement of compensation consultants and their interaction with the compensation committee is material information that should be required. However, we are persuaded that disclosure regarding any executive officers of the company that the compensation consultants contacted in carrying out their assignment is not necessary. Therefore, we are adopting the compensation consultant disclosure requirement in Item 407(e) as proposed, except for the required disclosure regarding contacts with executive officers, which has not been adopted.[497]

Further, the amendments consolidate into this compensation committee disclosure requirement the disclosure requirements regarding compensation committee interlocks and insider participation in compensation decisions, as proposed.[498]

Finally, for registrants other than registered investment companies, the amendments eliminate an existing proxy disclosure requirement regarding directors who have resigned or declined to stand for re-election[499] which is no longer necessary since it has been superseded by a disclosure requirement in Form 8-K.[500] For registered investment companies, which do not file current reports on Form 8-K, the requirement has been moved to Item 22(b) of Schedule 14A.[501] Also as proposed, the amendments combine various proxy disclosure requirements regarding board meetings and

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497 Under the rules as adopted, disclosure would also not be required under this Item if an employee of a consulting firm met with company management to work on matters not involving compensation. See letter from Hewitt.

498 Prior to these amendments, disclosure regarding compensation committee interlocks and insider participation in compensation decisions was required by Item 402(j).

499 Prior to these amendments, this disclosure was required by Item 7(g) of Schedule 14A.

500 Item 5.02(a) of Form 8-K.

501 Item 22(b)(17) of Schedule 14A.

committees into one location.[502] In addition, we are adopting as proposed two instructions to Item 407 to combine repetitive provisions, one relating to independence disclosure, and the other relating to board committee charters.[503]

E. Treatment of Specific Types of Issuers

1. Small Business Issuers

We are adopting amendments to Item 404 of Regulation S-B substantially as proposed. Amended Item 404 of Regulation S-B is substantially similar to amended Item 404 of Regulation S-K, except for the following two matters:

- paragraph (b) of Item 404 of Regulation S-K relating to policies and procedures for reviewing related person transactions is not included in Regulation S-B, and
- Regulation S-B provides for a disclosure threshold of the lesser of $120,000 or one percent of the average of the small business issuer's total assets at year-end for the last three completed fiscal years,[504] to require disclosure for small business issuers that may have material related person transactions even though smaller than the absolute dollar amount of $120,000.

Both amended items consist of disclosure requirements regarding related person transactions and promoters. These provisions of Item 404 of Regulation S-B are substantially identical to those of Item 404 of Regulation S-K, except for certain changes

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502 Item 407(b) includes disclosure requirements previously specified in paragraphs (d)(1), (f), and (h)(3) of Item 7 of Schedule 14A.

503 Instructions 1 and 2 to Item 407. Instruction 2 also includes as proposed a requirement that the charter be provided if it is materially amended.

504 We are revising Item 404(a) of Regulation S-B from the proposal to clarify that the determination of a small business issuer's total assets for purposes of this Item shall be made as of the issuer's fiscal year-end for its last three completed fiscal years.

conforming amended Item 404 of Regulation S-B to former Item 404 of Regulation S-B. These changes consist of the following:

- retaining in amended Item 404 of Regulation S-B an instruction in former Item 404 of Regulation S-B regarding underwriting discounts and commissions;[505] and
- not including an instruction in amended Item 404 of Regulation S-B regarding the treatment of foreign private issuers that is included in amended Item 404 of Regulation S-K.[506]

The two year time period for disclosure embodied in Item 404 of Regulation S-B prior to these amendments was retained in the principle for disclosure in proposed Item 404(a) of Regulation S-B. Amended Item 404(a) of Regulation S-B continues to require two years of disclosure, but does so by including an instruction to Item 404(a) of Regulation S-B[507] requiring a second year of disclosure, rather than by including the two year time period in the principle for disclosure in Item 404(a) of Regulation S-B as was proposed. This change from the proposal clarifies that for purposes of applying the definition of "related person" to determine whether disclosure is required of a transaction that occurred prior to a person having the relationship that resulted in the person becoming a related person, a one year time period should be used rather than a two year time period.[508] This change from the proposal also results in the structure of Item 404(a) of Regulation S-B more closely resembling the structure of Item 404(a) of Regulation S-K, particularly in

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505 Instruction 8 to Item 404(a) of Regulation S-B.

506 This is consistent with the requirements of Regulation S-B prior to these amendments.

507 Instruction 9 to Item 404(a) of Regulation S-B.

508 For example, if an employee had a material interest in a transaction with the small business issuer which occurred in February 2005 and then became an executive officer in July 2005, disclosure would be required in the small business issuer's Form 10-KSB for the fiscal year ended December

situations where Item 404(a) of Regulation S-K applies to time periods longer than one year.

In addition, amended Item 404 of Regulation S-B retains a paragraph requiring disclosure of a list of all parents of the small business issuer showing the basis of control and as to each parent, the percentage of voting securities owned or other basis of control by the small business issuer's immediate parent, if any.[509]

One conforming change that we are not making to Regulation S-B, however, concerns the calculation of a related person's interest in a given transaction. Prior to today's amendments, Item 404(a) of Regulation S-B differed from Item 404(a) of Regulation S-K with respect to, among other things, the calculation of the dollar value of a person's interest in a related person transaction. Prior to these amendments, Instruction 4 to Item 404(a) of Regulation S-K had specifically provided that the amount of such interest was to be computed without regard to the amount of profit or loss involved in the transaction. In contrast, Item 404(a) of Regulation S-B contained no such instruction prior to these amendments. We are adopting amendments as proposed so that the method of calculation of a related person's interest in a transaction will be the same for both Regulation S-B and Regulation S-K. We believe that differences, if any, between the types of transactions that small business issuers may engage in with related persons as compared to transactions of larger issuers would not warrant a different approach for calculating a related person's interest in a transaction.

31, 2005. However, if the transaction had occurred in February 2004, disclosure would not be required in the small business issuer's 2005 Form 10-KSB.

[509] Item 404(b) of Regulation S-B.

As proposed, new Item 407 of Regulation S-K is substantially identical to new Item 407 of Regulation S-B,[510] except that it would not require disclosure regarding compensation committee interlocks and insider participation in compensation decisions or the Compensation Committee Report, since Regulation S-B did not require disclosure of this information prior to adoption of these amendments.

2. Foreign Private Issuers

Before today's amendments, a foreign private issuer would be deemed to comply with Item 404 of Regulation S-K if it provided the information required by Item 7.B. of Form 20-F. The amendments retain this approach, but require that if more detailed information is otherwise made publicly available or required to be disclosed by the issuer's home jurisdiction or a market in which its securities are listed or traded, that same information must also be disclosed pursuant to Item 404.[511]

3. Registered Investment Companies

We are revising Items 7 and 22(b) of Schedule 14A, substantially as proposed, to reflect the reorganization that we have undertaken with respect to operating companies. Under the amendments, information that was required to be provided by registered investment companies under Item 7 prior to the amendments is instead required by Item 22(b).[512] The requirements of Item 7 that prior to the amendments applied to registered investment companies regarding the nominating and audit committees, board meetings,

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510 The requirements that were specified in paragraphs (e), (f), and (g) of Item 401 of Regulation S-B prior to these amendments are now specified in paragraphs (d)(5), (d)(4) and (c)(3), respectively, of Item 407 of Regulation S-B.

511 Instruction 2 to Item 404 of Regulation S-K.

512 Amendments to Item 7(e) of Schedule 14A. Business development companies will furnish the information required by Item 7 of Schedule 14A, in addition to the information required by Items 8 and 22(b) of Schedule 14A. See amendments to Items 7, 8, and 22(b) of Schedule 14A.

the nominating process, and shareholder communications generally will be included in Item 22(b) by cross-references to the appropriate paragraphs of new Item 407 of Regulation S-K.[513] The substance of these requirements has not been altered. In addition, the revisions to Item 22(b) directly incorporate disclosures relating to the independence of members of nominating and audit committees that are similar to those contained in new Item 407(a) of Regulation S-K and contained in Item 7 prior to the amendments.[514] We are also adding instructions that are similar to new Instruction 1 to Item 407(a).[515]

As proposed, we are also raising from $60,000 to $120,000 the threshold for disclosure of certain interests, transactions, and relationships of each director or nominee for election as director who is not or would not be an "interested person" of an investment company within the meaning of Section 2(a)(19) of the Investment Company

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513 Amendments to Items 22(b)(15)(i) and (ii)(A) and 22(b)(16)(i) of Schedule 14A. Amended Item 22(b)(15)(i) requires the information required by new Items 407(b)(1) and (2) and (f), corresponding to the information that registered investment companies have been required to provide pursuant to Items 7(f) and 7(h) prior to today's amendments. Amended Item 22(b)(15)(ii)(A) requires the information required by new Items 407(c)(1) and (2), corresponding to the information that registered investment companies have been required to provide pursuant to Items 7(d)(2)(i) and 7(d)(2)(ii) (other than the nominating committee independence disclosures required prior to today's amendments by Item 7(d)(2)(ii)(C)). Amended Item 22(b)(16)(i) requires closed-end investment companies to provide the information required by new Items 407(d)(1) through (3), corresponding to the information that closed-end investment companies have been required to provide prior to today's amendments pursuant to Item 7(d)(3) (other than the audit committee independence disclosures required prior to today's amendments by Items 7(d)(3)(iv)(A)(1) and (B)).

514 Amendments to Items 22(b)(15)(ii)(B) and (16)(ii) of Schedule 14A. Amended Item 22(b)(15)(ii)(B) requires disclosure about the independence of nominating committee members that is similar to those required by Item 7(d)(2)(ii)(C) prior to today's amendments and amended Item 22(b)(16)(ii) requires disclosure about the independence of audit committee members that is similar to those required by Items 7(d)(3)(iv)(A)(1) and (B) prior to today's amendments.

515 Instruction to Item 22(b)(15)(ii)(B) of Schedule 14A; Instruction to Item 22(b)(16)(ii) of Schedule 14A.

Act.[516] This disclosure is required in investment company proxy and information statements and registration statements. The increase in the disclosure threshold corresponds to the increase in the disclosure threshold for amended Item 404 from $60,000 to $120,000.

F. Conforming Amendments

The changes to Item 404 necessitate conforming amendments to other rules that refer specifically to Item 404.

1. Regulation Blackout Trading Restriction

We are adopting, as proposed, conforming changes to Regulation Blackout Trading Restriction,[517] also known as Regulation BTR, which we originally adopted to clarify the scope and operation of Section 306(a)[518] of the Sarbanes-Oxley Act of 2002 and to prevent evasion of the statutory trading restriction.[519] Rule 100 of Regulation BTR defines terms used in Section 306(a) and Regulation BTR, including the term "acquired in connection with service or employment as a director or executive officer."[520] Under this definition as originally adopted, one of the specified methods by which a

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516 Amendments to Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A; amendments to Items 12(b)(6), 12(b)(7), and 12(b)(8) of Form N-1A; amendments to Items 18.9, 18.10, and 18.11 of Form N-2; amendments to Items 20(h), 20(i), and 20(j) of Form N-3.

517 17 CFR 245.100-104.

518 15 U.S.C. 7244(a), entitled "Prohibition of Insider Trading During Pension Fund Blackout Periods."

519 Insider Trades During Pension Fund Blackout Periods, Release No. 34-47225 (Jan. 22, 2003) [68 FR 4337]. Section 306(a) makes it unlawful for any director or executive officer of an issuer of any equity security (other than an exempted security), directly or indirectly, to purchase, sell, or otherwise acquire or transfer any equity security of the issuer (other than an exempted security) during any pension plan blackout period with respect to such equity security, if the director or executive officer acquires the equity security in connection with his or her service or employment as a director or executive officer. This provision equalizes the treatment of corporate executives and rank-and-file employees with respect to their ability to engage in transactions involving issuer equity securities during a pension plan blackout period if the securities were acquired in connection with their service to, or employment with, the issuer.

520 This term is defined in Rule 100(a) of Regulation BTR.

director or executive officer directly or indirectly acquires equity securities in connection with such service is an acquisition "at a time when he or she was a director or executive officer, as a result of any transaction or business relationship described in paragraph (a) or (b) of Item 404 of Regulation S-K."[521] To conform this provision of Regulation BTR to the Item 404 amendments, we are amending Rule 100(a)(2) so that it references only transactions described in paragraph (a) of Item 404, as we proposed.

2. Rule 16b-3 Non-Employee Director Definition

We also are adopting conforming amendments to the definition of Non-Employee Director in Exchange Act Rule 16b-3.[522] Section 16(b) provides an issuer (or shareholders suing on its behalf) the right to recover from an officer, director, or ten percent shareholder profits realized from a purchase and sale of issuer equity securities within a period of less than six months. However, Rule 16b-3 exempts transactions between issuers of securities and their officers and directors if specified conditions are met. In particular, acquisitions from and dispositions to the issuer are exempt if the transaction is approved in advance by the issuer's board of directors, or board committee composed solely of two or more Non-Employee Directors.[523]

Before adoption of these amendments, the definition of "Non-Employee Director," among other things, limited these directors to those who:

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521 Rule 100(a)(2) of Regulation BTR.

522 Exchange Act Rule 16b-3(b)(3)(ii), which defines a Non-Employee Director of a closed-end investment company as "a director who is not an 'interested person' of the issuer, as that term is defined in Section 2(a)(19) of the Investment Company Act of 1940," is not amended.

523 Exchange Act Rules 16b-3(d)(1) and 16b-3(e).

- do not directly or indirectly receive compensation from the issuer, its parent or subsidiary for consulting or other non-director services, except for an amount that does not exceed the Item 404(a) dollar disclosure threshold;
- do not possess an interest in any other transaction for which Item 404(a) disclosure would be required; and
- are not engaged in a business relationship required to be disclosed under Item 404(b).

As described above, the Item 404 amendments substantially revise or rescind the Item 404 provisions on which the Non-Employee Director definition was based. To minimize potential disruptions and because no problems were brought to our attention regarding any aspect of the definition as it was stated before adoption of these amendments, we proposed a conforming amendment that would delete the provision referring to business relationships subject to disclosure under Item 404(b) as it was stated prior to today's amendments, without otherwise revising the text of the rule.

In the interest of providing certainty regarding Non-Employee Director status and to recognize corporate governance changes since the definition was adopted, one commenter suggested basing the definition instead on whether a director meets the independence standards under the rules of the principal national securities exchange where the company's securities are traded.[524] If the company has no securities traded on an exchange, the commenter suggested relying on the director's eligibility to serve on the issuer's audit committee under Exchange Act Section 10A(m) and Exchange Act Rule

[524] See letter from Sullivan.

10A-3.[525] We are not following the suggested approach. As we stated in the Proposing Release, the standards for an exemption from Section 16(b) liability should be readily determinable by reference to the exemptive rule, and not variable depending upon where the issuer's securities are listed.[526] Further, basing the Non-Employee Director definition on eligibility to serve on the issuer's audit committee could burden the audit committee with a compensation committee function.

As proposed and adopted, the Non-Employee Director definition continues to permit consulting and similar arrangements subject to limits measured by reference to the revised Item 404(a) disclosure requirements. Because the disclosure threshold of Item 404(a) is raised from $60,000 to $120,000, however, the effect in some cases may be to permit previously ineligible directors to be Non-Employee Directors. In other cases, where revised Item 404(a) may require disclosure of director indebtedness and disclosure of business relationships not subject to disclosure under former Item 404(b), some formerly eligible directors may become ineligible.

In response to concerns of commenters about the potential difficulty of making a determination,[527] we have revised the rule as it was proposed to include an additional note to Rule 16b-3.[528] The Non-Employee Director definition contemplates that the director must satisfy the definition's tests at the time he or she votes to approve a transaction. For purposes of determining a director's status under those tests that are based on Item 404(a), a company may rely on the disclosure provided under Item 404 of

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525 15 U.S.C. 78j-1(m) and 17 CFR 240.10A-3.

526 Proposing Release at n. 309.

527 See, e.g., letter from SCSGP.

528 Note 4 to Rule 16b-3.

Regulation S-K for the issuer's most recent fiscal year contained in the most recent filing in which Item 404 disclosure is presented.[529] Where a transaction disclosed in that filing was terminated before the director's proposed service as a Non-Employee Director, that transaction will not bar such service. The issuer must believe in good faith that any current or contemplated transaction in which the director participates will not require Item 404(a) disclosure, based on information readily available to the issuer and the director at the time such director proposes to act as a Non-Employee Director. At such time as the issuer believes in good faith, based on readily available information, that a current (or contemplated) transaction with a director will require Item 404(a) disclosure in a future filing, the director no longer is eligible to serve as a Non-Employee Director. However, this determination does not result in retroactive loss of a Rule 16b-3 exemption for a transaction previously approved by the director while serving as a Non-Employee director consistent with the note. In making determinations under the note, an issuer may rely on information it obtains from the director, for example pursuant to a response to an inquiry.

3. Other Conforming Amendments

The changes to Item 404, along with the consolidation of provisions into Item 407, necessitate conforming amendments to various forms and schedules under the Securities Act and the Exchange Act. The amendments modify:

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[529] As under Rule 16b-3 prior to these amendments, each test referring to Item 404 is measured by reference to Regulation S-K, even if the disclosure requirements applicable to the company are governed by Regulation S-B.

- forms that prior to these amendments required disclosure of the information required by Item 404 to instead require disclosure of the information required by amended Item 404 and new Item 407(a);[530]
- some forms that prior to these amendments required disclosure of the information required by Item 404(a) or by Items 404(a) and (c), to instead require disclosure of the information required by Items 404(a) and (b) as amended, or amended Item 404(a), as appropriate;[531]
- a form that prior to these amendments cross-referenced an instruction in Item 404 which we are eliminating to instead include the text of this instruction;[532]
- Item 7 of Schedule 14A, to require disclosure of the information required by new Item 407(a) rather than the disclosure that was required prior to these amendments by Item 404(b), to eliminate paragraphs (d)-(h) of Item 7 that were duplicative of new Item 407 and replace them with a requirement to disclose information specified by corresponding paragraphs of new Item 407;
- forms that prior to these amendments required disclosure of the information required by Item 402 to instead require disclosure of the information required by

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530 See amendments to Item 15 of Form SB-2, Item 11(n) of Form S-1, Item 18(a)(7)(iii) and Item 19(a)(7)(iii) of Form S-4, Item 23 of Form S-11, Item 7 of Form 10, Item 13 of Form 10-K, Item 7 of Form 10-SB and Item 12 of Form 10-KSB. The amendments to Forms SB-2, 10-SB and 10-KSB require disclosure of the information required by amended Item 404 and new Item 407(a) of Regulation S-B.

531 See amendment to Item 7(b) of Schedule 14A, which refers to amended Items 404(a) and (b), and Item 22(b)(11) and the Instruction to Item 22(b)(11) of Schedule 14A, and Item 5.02(c)(2) of Form 8-K, which refer to amended Item 404(a). The amendments to Form 8-K that reference Regulation S-B require disclosure of the information required by amended Item 404(a) of Regulation S-B.

532 See amendments to Item 23 of Form S-11.

amended Item 402 and new Item 407(e)(4), and, in the case of proxy statements and annual reports on Form 10-K, new Item 407(e)(5);[533]

- some forms that prior to these amendments required disclosure of the information required by Item 401 to instead require disclosure of the information required by Item 401 as amended and paragraphs (c)(3), (d)(4) and/or (d)(5) of new Item 407, as appropriate;[534]
- forms that prior to these amendments required disclosure of the information required by Item 401(j), to instead require disclosure of the information required by new Item 407(c)(3);[535] and
- Item 10 of Form N-CSR to include a cross reference to new Item 407(c)(2)(iv) of Regulation S-K and new Item 22(b)(15) of Schedule 14A, in lieu of the former reference to Item 7(d)(2)(ii)(G) of Schedule 14A.

In addition, conforming amendments have been made to a provision in Regulation AB, which prior to these amendments required disclosure of the information required by Items 401, 402 and 404, so that instead it will require disclosure of the information required by

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533 See amendments to Item 8 of Schedule 14A, Item 11(l) of Form S-1, General Instruction I.B.4.(c) of Form S-3, Items 18(a)(7)(ii) and 19(a)(7)(ii) of Form S-4, Item 22 of Form S-11, Item 6 of Form 10 and Item 11 of Form 10-K.

534 See amendments to General Instruction I.B.4.(c) of Form S-3, and Item 10 of Form 10-K, which refer to Item 401 and paragraphs (c)(3), (d)(4) and (d)(5) of new Item 407, and Item 7(b) of Schedule 14A, which refers to Item 401 and paragraphs (d)(4) and (d)(5) of new Item 407. The amendments to Form 10-KSB require disclosure of the information required by amended Item 401 and new Item 407(c)(3), (d)(4) and (d)(5) of Regulation S-B. We are not making any changes to the reference to Item 401 in Note G to Form 10-K, however, because the portion of Item 401 applicable in Note G (certain disclosure regarding executive officers) does not include the part of Item 401 that we are combining into new Item 407.

535 See amendments to Item 5 in Part II of Form 10-Q, and Item 5 in Part II of Form 10-QSB. The amendments to Item 5 in Part II of Form 10-QSB require disclosure of the information required by new Item 407(c)(3) of Regulation S-B.

amended Items 401, 402, 404 and paragraphs (a), (c)(3), (d)(4), (d)(5) and (e)(4) of new Item 407.[536]

VI. Plain English Disclosure

We are adopting as proposed a requirement that most of the disclosure called for by amended Items 402, 403, 404 and 407 be provided in plain English. This plain English requirement will apply when information responding to these items is included (whether directly or through incorporation by reference) in reports required to be filed under Exchange Act Sections 13(a) or 15(d). Commenters were generally supportive of the plain English requirement,[537] and some commenters suggested extending the plain English requirements to the proxy statement as a whole and to other Commission filings.[538]

In 1998, we adopted rule changes requiring issuers preparing prospectuses to write the cover page, summary and risk factors section of prospectuses in plain English and apply plain English principles to other portions of the prospectus.[539] These rules transformed the landscape of public offering disclosure and made prospectuses more accessible to investors. We believe that plain English principles should apply to the disclosure requirements that we are adopting, so disclosure provided in response to those requirements is easier to read and understand. Clearer, more concise presentation of

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536 See amendments to Item 1107(e) of Regulation AB.

537 See, e.g., letters from SCSGP; jointly, Angela Chappa, Annie Gabel and Michelle Prater; SBAF; and Standard Life.

538 See, e.g., letters from SCSGP; Foley; and Mercer.

539 Plain English Disclosure, Release No. 33-7497 (Jan. 28, 1998) [63 FR 6369] (adopting revisions to Securities Act Rule 421 [17 CFR 230.421]). We have also required that risk factor disclosure included in annual reports and Summary Term Sheets in business combination filings be in plain English. See Item 1A. to Form 10-K and Item 1001 of Regulation M-A [17 CFR 229.1001], respectively.

executive and director compensation, related person transactions, beneficial ownership and corporate governance matters can facilitate more informed investing and voting decisions in the face of complex information about these important areas.

We are adding Exchange Act Rules 13a-20 and 15d-20 to require that companies prepare their executive and director compensation, related person transaction, beneficial ownership and corporate governance disclosures included in Exchange Act reports using plain English, including the following principles:

- present information in clear, concise sections, paragraphs and sentences;
- use short sentences;
- use definite, concrete, everyday words;
- use the active voice;
- avoid multiple negatives;
- use descriptive headings and subheadings;
- use a tabular presentation or bullet lists for complex material, wherever possible;
- avoid legal jargon and highly technical business and other terminology;
- avoid frequent reliance on glossaries or defined terms as the primary means of explaining information;
- define terms in the glossary or other section of the document only if the meaning is unclear from the context;
- use a glossary only if it facilitates understanding of the disclosure; and
- in designing the presentation of the information, include pictures, logos, charts, graphs, schedules, tables or other design elements so long as the design is not misleading and the required information is clear, understandable, consistent with

applicable disclosure requirements and any other included information, drawn to scale and not misleading.

The new rule also provides additional guidance on drafting the disclosure that would comply with plain English principles, including guidance as to the following practices that companies should avoid:

- legalistic or overly complex presentations that make the substance of the disclosure difficult to understand;
- vague "boilerplate" explanations that are overly generic;
- complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and
- disclosure repeated in different sections of the document that increases the size of the document but does not enhance the quality of the information.

Under the new rules, if disclosures about executive compensation, beneficial ownership, related person transaction or corporate governance matters are incorporated by reference into an Exchange Act report from a company's proxy or information statement, the disclosure is required to be in plain English in the proxy or information statement.[540] The plain English rules are part of the disclosure rules applicable to filings required under Sections 13(a) and 15(d) of the Exchange Act. We believe that these plain English requirements are best administered by the Commission under these rules, and therefore we are not at this time extending plain English requirements to the entire proxy statement or to other Commission filings.

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[540] See, e.g., General Instruction G(3) to Form 10-K and General Instruction E.3. to Form 10-KSB (specifying information that may be incorporated by reference from a proxy or information statement in an annual report on Form 10-K or 10-KSB).

We believe that several areas where commenters requested that information be required in a specific format, such as tables, are best addressed by application of our plain English principles. The plain English rules adopted today specifically provide that, in designing the presentation of the information, companies may include tables or other design elements, so long as the design is not misleading and the required information is clear, understandable, consistent with applicable disclosure requirements, consistent with any other included information, and not misleading.[541] In response to our request for comment, several commenters recommended using a separate supplemental table, rather than footnotes, to identify the components of All Other Compensation, including individual perquisites, reported in the Summary Compensation Table.[542] While we have not mandated such a separate table, we encourage companies to use additional tables wherever tabular presentation facilitates clearer, more concise disclosure. Several commenters also requested that we specifically permit tabular disclosure of the required potential post-employment payments disclosure.[543] Because of the difficulty of prescribing a single format that would cover all circumstances, the rule as proposed and adopted does not mandate tabular disclosure. However, consistent with the plain English principles that we adopt today, we encourage companies to develop their own tables to report post-termination compensation if such tabular presentation facilitates clearer, more concise disclosure. Similarly, while we do not require tabular presentation of the narrative disclosure following the director compensation table, such as a breakdown of

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541 Of course, the tables required under the rules we adopt today must be included and cannot be modified except as specifically allowed for in the rules. See Item 402(a)(5) of Regulation S-K and Item 402(a)(4) of Regulation S-B.

542 See, e.g., letters from Amalgamated; CFA Centre 1; CII; IUE-CWA; Mercer; and SBAF.

543 See, e.g., letters from Buck Consultants; Frederic W. Cook & Co.; HRPA; ISS; Mercer; and The Value Alliance and Corporate Governance Alliance.

director fees, consistent with the plain English rules we adopt today, we encourage tabular presentation where it facilitates an understanding of the disclosure. Companies should also consider ways in which design elements such as tables can facilitate the presentation of the related person transaction disclosure and corporate governance disclosures.

VII. Transition

A number of commenters recommended that we adopt the rules by September or October 2006 in order for companies to have sufficient time to implement them for the 2007 proxy season.[544] One commenter expressed concern on how the transition would apply to Securities Act registration statements.[545] In keeping with these comments, we believe we have adopted the new rules and amendments in sufficient time for compliance in the 2007 proxy season. Therefore, the compliance dates are as follows:

- for Forms 8-K, compliance is required for triggering events that occur 60 days or more after publication in the Federal Register;
- for Forms 10-K and 10-KSB, compliance is required for fiscal years ending on or after December 15, 2006;
- for proxy and information statements covering registrants other than registered investment companies, compliance is required for any proxy or information statements filed on or after December 15, 2006 that are required to include Item 402 and 404 disclosure for fiscal years ending on or after December 15, 2006;

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544 See, e.g., letters from ABA; ACC; Brian Foley & Co.; Jesse Brill, Chair of CompensationStandards.com and Chair of the National Association of Stock Plan Professionals, dated April 28, 2006; Buck Consultants; Foley; Frederic W. Cook & Co.; Fried Frank; Mercer; and Sullivan.

545 See letter from BDO Seidman.

- for Securities Act registration statements covering registrants other than registered investment companies and Exchange Act registration statements (including pre-effective and post-effective amendments, as applicable), compliance is required for registration statements that are filed with the Commission on or after December 15, 2006 that are required to include Item 402 and 404 disclosure for fiscal years ending on or after December 15, 2006;
- for initial registration statements and post-effective amendments that are annual updates to effective registration statements that are filed on Forms N-1A, N-2 and N-3 (except those filed by business development companies), compliance is required for registration statements and post-effective amendments that are filed with the Commission on or after December 15, 2006; and
- for proxy and information statements covering registered investment companies, compliance is required for any new proxy or information statement filed on or after December 15, 2006.[546]

Commenters expressed some confusion concerning the periods for which disclosure under the new rules and amendments will be required during the transition from the former rules. As we noted in the Proposing Release, companies will not be required to "restate" compensation or related person transaction disclosure for fiscal years for which they previously were required to apply our rules prior to the effective date of today's amendments. This means, for example, that only the most recent fiscal

[546] The amendments to the cross-references in Item 10 of Form N-CSR will appear in the Form concurrent with the effective date of the amendments to our proxy rules, and will be effective for a particular registrant's Forms N-CSR that are filed after the filing of any proxy statement that includes a response to new Item 407(c)(2)(iv) of Regulation S-K (as required by new Item 22(b)(15) of Schedule 14A). The substance of the information required by the Item has not been changed.

year will be required to be reflected in the revised Summary Compensation Table when the new rules and amendments applicable to the Summary Compensation Table become effective, and therefore the information for years prior to the most recent fiscal year will not have to be presented at all. For the subsequent year's Summary Compensation Table, companies will be required to present only the most recent two fiscal years in the Summary Compensation Table, and for the next and all subsequent years will be required to present all three fiscal years in the Summary Compensation Table.[547] As another example, if a calendar year-end company files its initial public offering on Form S-1 in November, the initial filing will contain compensation disclosure regarding 2005 following the prior rules. If the registration statement does not become effective until after the Item 402 disclosure must be updated, then an amendment will have to be filed that includes the 2006 compensation information that complies with the rules we adopt today. The Summary Compensation Table, however, will only contain the information for 2006 and will not need to contain the information restated from 2005.

This transition approach will result in phased-in implementation of the amended Summary Compensation Table and amended Item 404(a) disclosure over a three-year period for Regulation S-K companies, and a two-year period for Regulation S-B companies. During this phase-in period, companies will not be required to present prior years' compensation disclosure or Item 404(a) disclosure under the former rules.

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[547] The other amended executive and director compensation disclosure requirements which relate to the last completed fiscal year will not be affected by this transition approach. The Summary Compensation Table will be treated differently because, as amended, it requires disclosure of compensation to the named executive officers for the last three fiscal years.

VIII. Paperwork Reduction Act

A. Background

The new rules and amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[548] We published a notice requesting comment on the collection of information requirements in the Proposing Release, and we submitted these requirements to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act.[549] The titles for the collection of information are:[550]

(1) "Regulation S-B" (OMB Control No. 3235-0417);

(2) "Regulation S-K" (OMB Control No. 3235-0071);

(3) "Form SB-2" (OMB Control No. 3235-0418);

(4) "Form S-1" (OMB Control No. 3235-0065);

(5) "Form S-4" (OMB Control Number 3235-0324);

(6) "Form S-11" (OMB Control Number 3235-0067);

(7) "Regulation 14A and Schedule 14A" (OMB Control Number 3235-0059);

(8) "Regulation 14C and Schedule 14C" (OMB Control Number 3235-0057);

(9) "Form 10" (OMB Control No. 3235-0064);

(10) "Form 10-SB" (OMB Control No. 3235-0419);

(11) "Form 10-K" (OMB Control No. 3235-0063);

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548 44 U.S.C. 3501 et seq.

549 44 U.S.C. 3507(d) and 5 CFR 1320.11.

550 The paperwork burden from Regulations S-K and S-B is imposed through the forms that are subject to the requirements in those Regulations and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience we estimate the burdens imposed by each of Regulations S-K and S-B to be a total of one hour.

(12) "Form 10-KSB" (OMB Control No. 3235-0420);

(13) "Form 8-K" (OMB Control No. 3235-0060); and

(14) "Form N-2" (OMB Control No. 3235-0026).

We adopted all of the existing regulations and forms pursuant to the Securities Act and the Exchange Act. In addition, we adopted Form N-2 pursuant to the Investment Company Act. These regulations and forms set forth the disclosure requirements for annual[551] and current reports, registration statements, proxy statements and information statements that are prepared by issuers to provide investors with the information they need to make informed investment decisions in registered offerings and in secondary market transactions, as well as informed voting decisions in the case of proxy statements.

Our amendments to the forms and regulations are intended to:

- provide investors with a clearer and more complete picture of compensation awarded to, earned by or paid to principal executive officers, principal financial officers, the highest paid executive officers other than the principal executive officer and principal financial officer, and directors;
- provide investors with better information about key financial relationships among companies and their executive officers, directors, significant shareholders and their respective immediate family members;
- include more complete information about independence regarding members of the board of directors and board committees;
- reorganize and modify the type of executive and director compensation information that must be disclosed in current reports; and

[551] The pertinent annual reports are those on Form 10-K or 10-KSB.

- require most of the disclosure required under these amendments to be provided in plain English.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The information collection requirements related to annual and current reports, registration statements, proxy statements and information statements are mandatory. However, the information collection requirements relating exclusively to proxy and information statements will only apply to issuers subject to the proxy rules. There is no mandatory retention period for the information disclosed, and the information disclosed will be made publicly available on the EDGAR filing system.

B. Summary of Information Collections

The amendments will increase existing disclosure burdens for annual reports on Form 10-K[552] and registration statements on Forms 10, S-1, S-4 and S-11 by requiring:

- an expanded and reorganized Summary Compensation Table, which will require expanded disclosure of a "total compensation" amount, and information necessary for computing the total amount of compensation, such as the grant date fair value

[552] The amended disclosure requirements regarding executive and director compensation, beneficial ownership, related person transactions and parts of the amended corporate governance disclosure requirements are in Form 10-K, Schedule 14A and Schedule 14C. Form 10-K permits the incorporation by reference of information in Schedule 14A or 14C to satisfy the disclosure requirements of Form 10-K. The analysis that follows assumes that companies would either provide the required disclosure in a Form 10-K only, if the company is not subject to the proxy rules, or would incorporate the required disclosure into the Form 10-K by reference to the proxy or information statement if the company is subject to the proxy rules. This approach takes into account the burden from the amended disclosure requirements that are included in both the Form 10-K and in Schedule 14A or Schedule 14C.

of equity-based awards computed in accordance with FAS 123R, and the aggregate annual change in the actuarial present value of the named executive officers' accumulated benefit under defined benefit and actuarial pension plans;

- disclosure at lower thresholds of information regarding perquisites and other personal benefits;
- a more focused presentation of compensation plan awards in a Grants of Plan-Based Awards Table, which builds upon former tabular disclosures regarding long term incentive plans and awards of option and stock appreciation rights to supplement the information required to be included in the amended Summary Compensation Table;
- expanded disclosure regarding holdings and exercises by named executive officers of previously awarded stock, options and similar instruments (with disclosure regarding outstanding option awards required on an award-by-award basis), including disclosure of option exercise prices and expiration dates, as well as the amounts (both the number of shares and the value) realized upon the exercise of options and the vesting of stock;
- improved narrative disclosure accompanying data presented in the executive compensation tables and a new Compensation Discussion and Analysis section to explain material elements of compensation of named executive officers;
- with regard to Form 10-K, a short Compensation Committee Report regarding the compensation committee's review and discussion with management of the Compensation Discussion and Analysis, and the compensation committee's recommendation to the board of directors concerning the disclosure of the

Compensation Discussion and Analysis in the Form 10-K or proxy or information statement;

- new tables and narrative disclosure regarding retirement plans and nonqualified defined contribution and other deferred compensation plans;
- expanded disclosure regarding post-employment payments other than pursuant to retirement and deferred compensation plans;
- a new table and improved narrative disclosure for director compensation to replace the more general disclosure requirements in place prior to these amendments;
- disclosure regarding additional related persons by expanding the definition of "immediate family member" under an amended related person transaction disclosure requirement;
- new disclosure regarding a company's policies and procedures for the review, approval or ratification of transactions with related persons;
- new disclosure regarding corporate governance matters such as the independence of directors; and
- additional disclosure regarding pledges of securities by officers and directors and directors' qualifying shares.

At the same time, the amendments will decrease existing disclosure burdens for annual reports on Form 10-K and registration statements on Forms 10, S-1, S-4 and S-11 by:

- eliminating tabular presentation regarding projected stock option values under alternative stock appreciation scenarios;

- eliminating a generalized tabular presentation regarding defined benefit plans, which will offset in part the increased burdens regarding pension plan disclosure; and
- eliminating a disclosure requirement regarding specific director relationships that could affect independence.

In addition, the amendments may increase or decrease existing disclosure burdens, or not affect them at all, for annual reports on Form 10-K and registration statements on Forms 10, S-1, S-4 and S-11, depending on a company's particular circumstances, by:

- eliminating the requirement to include in proxy or information statements a compensation committee report on the repricing of options and stock appreciation rights and a table reporting on the repricing of options and stock appreciation rights over the past ten years, in favor of a narrative discussion of repricings, if any occurred in the last fiscal year, which will be required to be included or incorporated by reference (as applicable) in annual reports and registration statements;
- increasing the dollar value threshold for determining if related person transaction disclosure is required from $60,000 to $120,000;
- narrowing the scope of an instruction that provides bright line tests for determining whether transactions with related persons are required to be disclosed in particular circumstances; and
- requiring disclosure about reliance on an exemption from requirements for director independence when such an exemption is available.

Specifically with respect to proxy and information statements, the amendments will impose a new disclosure requirement regarding the company's processes and procedures for the consideration and determination of executive and director compensation with respect to the compensation committee or persons performing the equivalent functions, and disclosure regarding the availability of the compensation committee's charter (if it has one), either as an appendix to the proxy or information statement at least once every three fiscal years or on the company's Web site. These amendments will not require a compensation committee to establish or maintain a charter. The amended disclosure that will be required regarding compensation committees is similar to what is currently required for audit committees and nominating committees. The amendments will decrease disclosure requirements for proxy and information statements by eliminating a disclosure requirement regarding the resignation of directors and a compensation committee report on the repricing of options and stock appreciation rights. The amendments require the Compensation Discussion and Analysis disclosure in the annual report on Form 10-K and in proxy or information statements to be accompanied by a short Compensation Committee Report regarding the compensation committee's review and discussion with management of the Compensation Discussion and Analysis, and the compensation committee's recommendation to the board of directors with regard to the disclosure of the Compensation Discussion and Analysis. This new Compensation Committee Report, along with the Compensation Discussion and Analysis, is required instead of the Board Compensation Committee Report on Executive Compensation that was previously required to be furnished with proxy and information statements prior to these amendments. The extent to which eliminating the former

requirements to provide the Board Compensation Committee Report on Executive Compensation and a compensation committee report on the repricing of options and stock appreciation rights reduces burdens for proxy and information statements will be offset to a substantial extent, as discussed above, by the periodic reporting and proxy or information statement requirements for Compensation Discussion and Analysis, the new Compensation Committee Report and a narrative disclosure requirement regarding repricings and other modifications of outstanding awards. The Compensation Discussion and Analysis and narrative disclosure requirement regarding repricings and other modifications will be required to be included or incorporated by reference in annual reports and registration statements, while the Compensation Committee Report will only be required to be included or incorporated by reference from the proxy or information statement in the annual report on Form 10-K. We estimate that, on balance, the changes that are specific to proxy or information statements will result in some incremental burdens on proxy or information statement collections of information, as described in more detail below.

The amendments will increase existing disclosure burdens for annual reports on Form 10-KSB[553] and registration statements on Forms 10-SB and SB-2 filed by small business issuers by requiring:

- an expanded and reorganized Summary Compensation Table, which will require expanded disclosure of a "total compensation" amount, and information necessary for computing the total amount of compensation, such as the grant date fair value of equity-based awards computed in accordance with FAS 123R;

[553] The same analysis as discussed above with regard to the relationship of Form 10-K to the disclosure required in proxy or information statements is also applied to Form 10-KSB.

- disclosure at lower dollar thresholds for information regarding perquisites and other personal benefits;
- expanded disclosure regarding holdings by named executive officers of previously awarded stock, options and similar instruments (with disclosure regarding outstanding option awards required on an award-by-award basis), including disclosure of option exercise prices and expiration dates.
- a new table for director compensation, to replace narrative disclosure requirements that existed prior to these amendments;
- a narrative description of retirement plans;
- disclosure regarding additional related persons under the amended related person transaction disclosure requirement;
- new and reorganized disclosure regarding corporate governance matters such as the independence of directors and members of the nominating, compensation and audit committees of the board of directors; and
- additional disclosure regarding pledges of securities by officers and directors, and director qualifying shares.

At the same time, the amendments will decrease existing disclosure burdens for annual reports on Form 10-KSB and registration statements on Forms 10-SB and SB-2 filed by small business issuers by:

- reducing by two the number of named executive officers for the purposes of executive compensation disclosure, to include only the principal executive officer and the two most highly compensated executive officers other than the principal executive officer;

- reducing the required information in the Summary Compensation Table from three years to two years of data;
- eliminating tabular disclosure of grants of options and stock appreciation rights in the last fiscal year;
- eliminating tabular disclosure regarding exercises of options and stock appreciation rights; and
- eliminating tabular disclosure regarding long term incentive plan awards in the last fiscal year.

In addition, the amendments may increase or decrease, or not affect, existing disclosure burdens for annual reports on Form 10-KSB or registration statements on Forms 10-SB and SB-2 filed by small business issuers depending on the small business issuer's particular circumstances, by:

- eliminating the requirement to include a compensation committee report on the repricing of options and stock appreciation rights, in favor of a narrative discussion of repricings, if any occurred in the last fiscal year, which will be required to be included or incorporated by reference (as applicable) in annual reports and registration statements;
- changing the dollar value threshold used for determining if related person transaction disclosure is required from $60,000 to the lesser of $120,000 or one percent of the average of the small business issuer's total assets at year-end for the last three completed fiscal years; and

- narrowing the scope of an instruction that provides bright line tests for determining whether transactions with related persons are required to be disclosed in particular circumstances.

The amendments may increase or decrease existing disclosure burdens, or not affect them at all, depending on the particular circumstances, for Forms N-1A, N-2, and N-3 by increasing to $120,000 the former $60,000 threshold in such forms for disclosure of certain interests, transactions, and relationships of disinterested directors, although as discussed below we do not believe the increase in the disclosure threshold will significantly impact the hours of company personnel time and cost of outside professionals in responding to these items. The amendments will increase the existing disclosure burdens for Form N-2 by requiring business development companies to provide additional disclosure regarding compensation. However, the amendments will decrease the existing disclosure burden by no longer requiring compensation disclosure with respect to certain affiliated persons and the advisory board of business development companies and by no longer requiring business development companies to disclose certain compensation from the fund complex.

The amendments will decrease the Form 8-K disclosure burdens, by focusing the Form 8-K disclosure requirement on more presumptively material employment agreements, plans or arrangements of the narrower group of named executive officers, which should reduce the number of current reports on Form 8-K filed each year relating to executive and director compensation matters.

We do not believe that our amendments regarding exhibit filing requirements for Form 20-F and our treatment of foreign private issuers under the revised rules will impose any incremental increase or decrease in the disclosure burden for these issuers.

C. Summary of Comment Letters and Revisions to Proposals

We requested comment on the Paperwork Reduction Act analysis contained in the Proposing Release. We did not receive comments on our Paperwork Reduction Act estimates;[554] however, a number of commenters expressed concerns that costs associated with the proposals were understated. Commenters also raised concerns with costs and burdens associated with particular aspects of the proposals.

One commenter indicated that the Commission needs to take into consideration that the disclosure is more detailed and lengthy, and realistically will require more preparation time by more people; historically, the individuals involved in the process outside a company have been attorneys and accountants who are preparing or reviewing the documents, but compensation consultants and their advisors and special counsel to the directors would be introduced into the process; and the cost analysis does not reflect additional director time that will be required to read the lengthy new disclosure.[555] The commenter also expressed the view that smaller to mid-size issuers will be negatively affected disproportionately more than larger public companies, as disclosure requirements increase and greater reliance on external support is thus necessitated.

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554 One commenter noted our aggregate burden estimates in commenting that the "administrative costs" noted in the Proposing Release did not account for the need to overcome compliance risks "where concern for satisfying new rules is multiplied by the potential legal risks associated with sufficiency and completeness under a regime of CEO and CFO certification." Letter from Hodak Value Advisors.

555 See letter from Chamber of Commerce.

Other commenters stated their belief that the Commission underestimated the cost of the proposed disclosure requirements.[556] One of these commenters cited the limited availability of information from existing information systems and requested that the Commission afford an adequate transition period to accommodate the proposed changes,[557] while another commenter suggested that the proposal would notably impose a reporting and administrative burden that would add to the already substantial reporting obligations imposed by the Sarbanes-Oxley Act of 2002 and related rules.[558] Another commenter noted that companies will likely incur considerable costs in preparing the first proxy statement under the revised rules, even if, as was proposed, they do not have to "restate" compensation for prior years.[559]

Other commenters noted that specific aspects of the proposals would result in significant costs or burdens, including:

- Compensation Discussion and Analysis generally, as well as the status of this disclosure as filed rather than furnished;[560]
- disclosure of the increase in actuarial value of pension plans in the Summary Compensation Table and its inclusion in the determination of named executive officer status;[561]

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556 See, e.g., letters from Computer Sciences; HRPA; N. Ludgus; and Kathy B. Wheby.

557 See letter from Computer Sciences.

558 See letter from HRPA.

559 See letter from Sullivan.

560 See, e.g., letters from Hodak Value Advisors and Chamber of Commerce.

561 See, e.g., letters from E&Y and KPMG.

- lowering the disclosure threshold for perquisites and other personal benefits to $10,000, and changing the threshold for separate identification and quantification;[562]
- footnote disclosure to the Outstanding Equity Awards at Year-End Table regarding expiration and vesting dates;[563]
- plan-by-plan disclosure of pension benefits;[564]
- numerical estimates of termination or change in control payments;[565]
- amendments to the related person transaction disclosure requirement;[566]
- disclosure of director relationships (other than those disclosed under the related person transaction disclosure requirement) considered by the board of directors when making independence determinations;[567] and
- disclosure regarding the use of compensation consultants by the compensation committee[568] as well as the contacts between compensation consultants and executive officers of the company.[569]

Some commenters also noted their belief that costs and burdens arising from the proposals would disproportionately affect small business issuers and smaller public companies.[570]

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562 See, e.g., letters from Hodak Value Advisors; ACC; Eli Lilly; and NACCO Industries.

563 See, e.g., letters from ABA; Leggett & Platt; SCSGP; and Sidley Austin.

564 See, e.g., letters from ABA; Hewitt; HRPA; and Towers Perrin.

565 See, e.g., letters from Sullivan; Kellogg; SCSGP; and Chamber of Commerce.

566 See, e.g., letters from American Bankers; Whitney Holding; SCSGP; and FSR.

567 See, e.g., letters from BRT; Chadbourne; Chamber of Commerce; FSR; Intel; SCSGP; Sidley Austin; and Sullivan.

568 See, e.g., letters from Chamber of Commerce and Compensia.

569 See, e.g., letters from Mercer and Compensia.

We have made substantive modifications to the proposals that address, in part, the concerns expressed by commenters about costs. Some of the changes in the final rules include:

- treating Compensation Discussion and Analysis as filed (and not furnished), but requiring a separate Compensation Committee Report over the names of compensation committee members as a means of emphasizing the committee's involvement in the disclosure and providing additional information to which the principal executive officer and principal financial officer may look to in completing their certifications;
- requiring disclosure of the actuarial present value of the named executive officers' accumulated benefits under defined benefit and actuarial pension plans in the Pension Benefits Table, which under the final rules will include the actuarial present value of accumulated benefits computed by utilizing assumptions used for financial reporting purposes under generally accepted accounting principles (rather than requiring disclosure of an estimate of the annual benefit payable upon retirement as proposed), and requiring in the Summary Compensation Table the aggregate annual change in that value, so that the Summary Compensation Table data will directly relate to the data presented in the Pension Benefits Table;
- specifying that companies compute estimates of compensation under post-termination arrangements applying the assumptions that the triggering event occurred on the last day of the company's last completed fiscal year and the price per share of the company's securities is the closing market price on that day;

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[570] See, e.g., letters from ABA; ACB; ICBA; and SCSGP.

- specifying that companies must exclude the amounts for the aggregate annual change in the actuarial present value of accumulated benefits under defined benefit and actuarial pension plans and the above-market or preferential earnings on nonqualified deferred compensation when determining which executive officers are named executive officers for the purposes of disclosure in the compensation tables;
- including some instructions to the related person disclosure requirement that were proposed to be eliminated, so that some bright line standards for non-disclosure, as modified, continue to apply with respect to specific transactions;
- requiring disclosure of director relationships (other than any transactions, relationships or arrangements disclosed under the related person transaction disclosure requirement) considered by the board of directors when making independence determinations by specific category or type, rather than by individual transactions, relationships or arrangements as proposed; and
- not requiring that companies identify the executive officers that compensation consultants have contacted as proposed.

Further, the final rules applicable to small business issuers are adopted substantially as proposed, providing for significantly less detailed disclosure regarding executive compensation for these companies as compared to the disclosure required for larger issuers.

We made other modifications to the proposals in response to issues raised by commenters that could, depending on the particular circumstances, increase costs relative to the costs estimated for the proposals. In this regard, the final rules:

- require expanded disclosure about option grants and outstanding options, including disclosure of the date the compensation committee or full board took action or was deemed to take action to grant an award if that date is different from the grant date, a description of the methodology for determining the exercise price of options if the exercise price is not determined based on the closing market price on the date of grant, and the amount of securities underlying unexercised options, the exercise prices and the option expiration dates for each outstanding option (rather than on an aggregate basis as proposed);
- require disclosure of the Performance Graph (which would have been eliminated under the proposals) in annual reports to security holders that precede or accompany a proxy or information statement relating to an annual meeting at which directors are to be elected; and
- require disclosure about reliance on an exemption from requirements for director independence when such an exemption is available.

D. Revisions to Paperwork Reduction Act Burden Estimates

As discussed above, in consideration of commenters' concerns that the costs associated with the disclosure requirements were understated in the Proposing Release, we are revising our Paperwork Reduction Act burden estimates that were originally submitted to the Office of Management and Budget. In revising our estimates, we have considered the comments identifying increased costs and burdens in the proposals, as well as the revisions that we have made in the final rules as compared to the proposals in response to some of the commenters' concerns.

The discussion that follows focuses on the incremental change in burden estimates resulting from the amendments adopted today. The pre-existing burden estimates to which these incremental changes will be added reflect the current aggregate burden assigned to each information collection, which already include the estimated burden of complying with the executive compensation, related person transaction and corporate governance disclosure requirements in place before adoption of these amendments. The burden estimates (expressed as total burden hours per form) prior to adding the additional burdens imposed by the amended executive compensation, related person transaction and corporate governance rules are as follows: 2,202 hours for Form 10-K; 1,646 hours for Form 10-KSB; 156 hours for Form 10; 133 hours for Form 10-SB; 593 hours for Form SB-2; 1,102 hours for Form S-1; 4,048 hours for Form S-4; 1,892 hours for Form S-11; 271.4 hours for Form N-2;[571] 5 hours for Form 8-K; 84.5 hours for Schedule 14A; and 84 hours for Schedule 14C. The estimated incremental burden arising from today's amendments for each of these forms has been estimated with reference to each of these pre-existing burden estimates.

For purposes of the Paperwork Reduction Act, we now estimate that the annual incremental increase in the paperwork burden for companies to comply with our collection of information requirements to be approximately 783,284 hours of in-house company personnel time and to be approximately $133,883,300 for the services of outside professionals.[572] These estimates include the additional time and the cost of

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571 The pre-existing estimate for Form N-2 represents the internal hour burden per response. In addition there is a pre-existing external cost estimate for Form N-2 of $12,766 per response.

572 For administrative convenience, the presentation of the totals related to the paperwork burden hours have been rounded to the nearest whole number and the cost totals have been rounded to the nearest hundred.

collecting information, preparing and reviewing disclosure, filing documents and retaining records over our existing burden estimate for preparing executive compensation, related person transaction and corporate governance disclosures. Our methodologies for deriving these revised estimates are discussed below.

Our revised estimates represent the average burden for all issuers, both large and small.[573] As described below, we expect that the burdens and costs could be greater for larger issuers and lower for smaller issuers under the rules as adopted. For Exchange Act annual reports on Forms 10-K or 10-KSB, current reports on Form 8-K, proxy statements and information statements, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the issuer at an average cost of $400 per hour.[574] For Securities Act registration statements on Forms SB-2, S-1, S-4, S-11, or N-2 and Exchange Act registration statements on Forms 10 or 10-SB, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden is carried by outside professionals retained by the issuer at an average cost of $400 per hour.[575] The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

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573 Our estimates are based on annual responses on Form 10-K of 8,602 and annual responses on Form 10-KSB of 3,504. Our estimates of the number of annual responses to the collections of information are based on the number of filings made in the period from October 1, 2004 through September 30, 2005.

574 At the proposing stage, we used an estimated hourly rate of $300.00 to determine the estimated cost to public companies of executive compensation and related disclosure prepared or reviewed by outside counsel. We recently have increased this hourly rate estimate to $400.00 per hour after consulting with several private law firms. The cost estimates in this release are based on the $400.00 hourly rate.

575 As mentioned above, we do not believe that the amendments increasing to $120,000 the current $60,000 threshold in Forms N-1A, N-2, and N-3 for disclosure of certain interests, transactions, and relationships of disinterested directors will significantly impact the hours of company personnel time and cost of outside professionals in responding to these items.

1. Securities Act Registration Statements, Exchange Act Registration Statements, Exchange Act Annual Reports, Proxy Statements and Information Statements

For the purposes of the Paperwork Reduction Act, we estimate that, over a three year period,[576] the annual incremental disclosure burden imposed by the amendments will average 95 hours per Form 10-K; 50 hours per Form 10-KSB; 85 hours per Form 10; 45 hours per Forms 10-SB and SB-2; 74 hours per Form S-1; 17 hours per Form S-4; 85 hours per Form S-11; 3 hours per Schedules 14A and 14C; and 5 hours per Form N-2.[577] While the amendments to Item 22(b) of Schedule 14A and increasing to $120,000 the former $60,000 threshold in Forms N-1A, N-2, and N-3 for disclosure of certain interests, transactions, and relationships of disinterested directors may increase or decrease existing disclosure burdens, or not affect them at all, depending on the particular circumstances, we estimate that, as discussed below, the amendments will not impose an annual incremental disclosure burden.

These estimates were based on the following assumptions:

- The hours of company personnel time and outside professional time required to prepare the disclosure regarding executive and director compensation under amended Item 402 of Regulation S-K will be greater in light of the expansion and reorganization of the amended disclosure requirements relative to the disclosure requirements on these topics in place prior to adoption of these amendments, in particular the requirements regarding Compensation Discussion and Analysis,

576 We calculated an annual average over a three year period because OMB approval of Paperwork Reduction Act submissions covers a three year period. Embedded in the three year period is the recognition that the costs in the initial year of compliance are likely to be higher than in later years.

expanded disclosures concerning options and other equity-based awards and new disclosure requirements regarding pension benefits, non-qualified deferred compensation, other potential post-employment payments and director compensation.

- Companies filing annual reports on Form 10-K that will be required to include disclosure under Item 402 of Regulation S-K, as we are amending it, and Item 407(e)(4) of Regulation S-K (regarding compensation committee interlocks and insider participation), will experience greater costs in responding to these disclosure requirements in the first year of compliance with them, and, to a lesser extent, in the second and third years, as systems and processes are implemented to obtain the relevant data and disclosure controls and procedures with respect to new or expanded disclosure requirements are implemented, with lower incremental costs expected in subsequent years.
- The hours of company personnel time and outside professional time required to prepare the disclosure regarding related person transactions under amended Item 404, director independence under new Item 407(a) and compensation committee functions under paragraphs (e)(1) through (e)(3) of Item 407 of both Regulation S-K and Regulation S-B, will be greater as compared to the burden that was imposed in complying with the related party transaction disclosure requirements and disclosure about the board of directors required by Item 404 of Regulations S-K and S-B and Item 7 of Schedule 14A prior to these amendments. The new

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[577] In the Proposing Release, we estimated that the proposed revisions would average 67 hours per Form 10-K; 35 hours per Form 10-KSB; 60 hours per Form 10; 30 hours per Forms 10-SB and SB-2; 60 hours per Forms S-1, S-4 and S-11; and 1.675 hours per Form N-2.

Compensation Committee Report that is required in the Form 10-K (and is not required for small business issuers, because they are not required to include Compensation Discussion and Analysis) will increase the burdens. Other amendments to be made by moving disclosure requirements relating to corporate governance to new Item 407 of Regulations S-K and S-B will not change the substance of the disclosure requirements and will therefore not increase burdens, particularly for proxy or information statements where much of the disclosure about these topics is currently required.

- For Form 10-K, we estimate that it would take issuers 170 additional hours to prepare the amended disclosure in year one, 80 hours in year two and 35 hours in year three and thereafter, which results in an average of 95 hours over the three year period to comply with the amended disclosure requirements. This estimate takes into account that the burden will be incurred by either including the required disclosure in the report directly or incorporating by reference from a proxy or information statement. This estimated incremental burden is based on a consideration of the extent to which the amendments will increase, decrease or not affect the burden imposed by the requirements in place prior to these amendments, as described in Section VIII.B., above. The incremental burden represents the estimate of the average burden across the range of companies that file annual reports on Form 10-K, recognizing that larger companies with more complex executive and director compensation arrangements, more related person transactions and more involved corporate governance structures may require more time to comply with the amended disclosure requirements, while smaller issuers

with potentially less complex circumstances are likely to require less time to comply with the amended requirements.

- For proxy statements on Schedule 14A and information statements on Schedule 14C, we estimate that it would take companies 6 additional hours to prepare the additional corporate governance and other compensation committee disclosures required only in the proxy or information statement in year one, and 2 hours in year two and 2 hours in year three and thereafter, which results in an average of approximately 3 hours over the three year period.[578] As with the estimates for Form 10-K, this estimated incremental burden is based on a consideration of the extent to which the amendments will increase, decrease or not affect the burden imposed by the requirements in place prior to these amendments, as described in Section VIII.B., above. The incremental burden represents the estimate of the average burden across the range of companies that file proxy statements on Schedule 14A and information statements on Schedule 14C, taking into account that larger companies may require more time to comply with the amended disclosure requirements, while smaller companies (including small business issuers) with potentially less complex circumstances may require less additional time to comply with the amended requirements.
- Companies filing registration statements on Forms 10, S-1, S-4 and S-11 that are not already filing periodic reports pursuant to Exchange Act Sections 13(a) or

[578] Similarly, the hours of company personnel time and outside professional time required to prepare the disclosure required by the amended conforming revisions to Item 22(b) relating to the independence of members of nominating and audit committees of investment companies will be approximately the same as for compliance with the requirements regarding disclosure of the independence of nominating and audit committee members of investment companies that were required by Item 7 of Schedule 14A prior to today's amendments.

15(d) will in many cases not have been required to comply with the amended disclosure requirements prior to filing such registration statements, and will therefore take an estimated 85 additional hours on average to comply with the changes in the disclosure requirements. For Forms S-1 and S-4, which permit incorporation of information by reference to disclosure provided in Exchange Act reports, we have estimated a lower average incremental number of burden hours in order to recognize that the incremental burden arising from the amendments is already factored into the estimated average incremental burden for Forms 10-K and 10-KSB.[579] These estimated incremental burdens are based on a consideration of the extent to which the amendments will increase, decrease or not affect the burden imposed by the requirements in place prior to these amendments, as described in Section VIII.B., above. The additional time required by these companies to obtain the relevant data and to compile the required executive compensation information is offset to some extent by the fact that only one year of executive compensation information will generally be required for presentation in the Summary Compensation Table, as compared to three years for issuers already subject to Exchange Act reporting requirements. By contrast, information regarding related person transactions, as was the case prior to the amendments, is generally required for three years in Securities Act and Exchange

[579] For Form S-1, we estimate an average incremental burden of 74 hours, based on an estimate that 459 out of the 528 registration statements that we estimate will be filed on Form S-1 will not include the disclosure contemplated by these rule changes through incorporation by reference to a Form 10-K or Form 10-KSB (459 filings times 85 hours = 39,015 hours, which when divided by the 528 total annual filings results in approximately 74 hours per Form S-1). For Form S-4, we estimate an average incremental burden of 17 hours, based on an estimate that 123 out of the 619 registration statements that we estimate will be filed on Form S-4 will not include the disclosure contemplated by these rule changes through incorporation by reference to a Form 10-K or Form

Act registration statements, so that any additional burden associated with obtaining data and compiling the related person transaction disclosure under the amended requirements would be with respect to this three year period.

- Small business issuers filing annual reports on Form 10-KSB will be subject to lower incremental costs than other issuers as a result of the amendments, given the reduced disclosure required by Item 402 of Regulation S-B relative to Item 402 of Regulation S-K, as described above. As with companies filing annual reports on Form 10-K, we expect that small business issuers will experience greater costs in responding to the amended disclosure requirements in the first year of compliance with them, as systems are implemented to obtain the relevant data and disclosure controls and procedures with respect to new or expanded disclosure requirements are implemented, with lower incremental costs in subsequent years.
- For Form 10-KSB, we estimate that it would take issuers an estimated 100 additional hours on average to prepare their disclosure under the amended requirements in year one, 35 additional hours in year two and 15 additional hours in year three and thereafter, which results in an average of 50 additional hours over the three year period. This estimate assumes that the burden would be incurred by either including the amended disclosure in the report directly or incorporating by reference from a proxy or information statement. This estimated incremental burden is based on a consideration of the extent to which the amendments will increase, decrease or not affect the burden imposed by the

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10-KSB (123 filings times 85 hours = 10,455 hours, which when divided by the 619 total annual filings results in approximately 17 hours per Form S-4).

requirements in place prior to these amendments, as described in Section VIII.B., above. The incremental burden represents the estimate of the average burden across the range of companies that file annual reports on Form 10-KSB, recognizing that small business issuers with more complex executive and director compensation arrangements, more related person transactions and more involved corporate governance structures may require more time to comply with the amended disclosure requirements, while other small business issuers with potentially less complex circumstances, particularly the smallest companies in this group, are likely to require less time to comply with the amended requirements.

- Small business issuers filing registration statements on Forms 10-SB and SB-2, including those small business issuers that are not already filing periodic reports pursuant to Exchange Act Sections 13(a) or 15(d) and thus will not have been required to comply with the amended disclosure requirements prior to filing such registration statements, will take an estimated 45 additional hours on average to comply with the changes in the disclosure requirements. The additional time required by these registrants to obtain the relevant data and to compile the required information is offset to some extent by the fact that only one year of compensation information will generally be required for presentation in the Summary Compensation Table, as compared to two years for small business issuers already subject to Exchange Act reporting requirements.
- Based on our experience with the requirement we adopted in 1998 for issuers to write certain sections of prospectuses in plain English, drafting documents in plain English will result in an initial increase in time and cost burdens in the first

year of implementation, and to a lesser extent, the second year, with those time or cost burdens decreasing in the year following implementation of the new rules. To the extent that companies incorporate required information by reference to proxy or information statements, the amended plain English requirements would apply to disclosure in those filings; however, the incremental burden of preparing plain English disclosure is factored into the burden estimates for Forms 10-K and 10-KSB. The plain English rule amendments will not affect the substance of the required disclosure, and companies that have filed registration statements under the Securities Act are already familiar with the requirements.

- The amendments to increase to $120,000 the former $60,000 threshold for disclosure of certain interests, transactions, and relationships of disinterested directors in Forms N-1A, N-2, and N-3 and in proxy and information statements may increase or decrease existing disclosure burdens, or not affect them at all, depending on the particular circumstances. Because these forms are already required to disclose these interests, transactions, and relationships in amounts exceeding $60,000, we do not believe the increase in the disclosure threshold will significantly impact the hours of company personnel time and cost of outside professionals in responding to these items, and we estimate these amendments will neither increase nor decrease the annual paperwork burden.
- Business development companies filing Form N-2 will be required to include Item 402 of Regulation S-K, as we are amending it, and will experience higher costs in responding to these disclosure requirements in the first year of complying with them, and, to a lesser extent, in the second year, as systems are implemented

to obtain the relevant data and compliance efforts with respect to new or expanded disclosure requirements are implemented, with lower incremental costs expected in subsequent years.[580]

Tables 1 and 2 below illustrate the incremental annual compliance burden in the collection of information in hours and cost for Exchange Act periodic reports for companies other than registered investment companies, proxy statements, information statements, Securities Act registration statements and Exchange Act registration statements.

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580 For Form N-2, we estimate that it will take business development companies 150 additional hours to prepare the amended disclosure in year one, 75 hours in year two and 30 hours in year three and thereafter, which results in an average of 85 hours for each business development company to comply with the amended compensation disclosures that would be required on Form N-2. We estimate an average annual incremental disclosure burden of 5 hours per Form N-2, based on 85 hours per Form N-2 filing by business development companies times 27 filings on Form N-2 by business development companies (representing all Form N-2 and N-2/A filings by business development companies during the year ended December 31, 2005) (85 hours times 27 Form N-2 filings (including amendments) = 2,295 hours), divided by 462 total annual filings on Form N-2 (representing all Form N-2 and N-2/A filings during the year ended December 31, 2005) (2,295 hours divided by 462 filings on Form N-2 (including amendments) = approximately 5 hours per Form N-2 (including amendments)).

We note that in the Proposing Release, we estimated 935 total annual filings on Form N-2 and N-2/A, but this higher number double counted certain filings that were made under both the Securities Act and the Investment Company Act. Our revised estimate is 462 annual filings.

Table 1: Calculation of Incremental Paperwork Reduction Act Burden Estimates for Exchange Act Periodic Reports, Proxy Statements and Information Statements

Form	Annual Responses	Incremental Hours/Form	Incremental Burden	75% Issuer	25% Professional	$400 Professional Cost
	(A)	(B)	(C)=(A)*(B)	(D)=(C)*0.75	(E)=(C)*0.25	(F)=(E)*$400
10-K[581]	8,602	95	817,190	612,892.50	204,297.50	$81,719,000
10-KSB	3,504	50	175,200	131,400.00	43,800.00	$17,520,000
DEF 14A	7,250	3	21,750	16,312.50	5,437.50	$2,175,000
DEF 14C	681	3	2,043	1,532.25	510.75	$204,300
Total			1,016,183	762,137.25	254,045.75	$101,618,300

Table 2: Calculation of Incremental Paperwork Reduction Act Burden Estimates for Securities Act Registration Statements and Exchange Act Registration Statements

Form	Annual Responses	Incremental Hours/Form	Incremental Burden	25% Issuer	75% Professional	$400 Professional Cost
	(A)	(B)	(C)=(A)*(B)	(D)=(C)*0.25	(E)=(C)*0.75	(F)=(E)*$400
10	72	85	6,120	1,530.00	4,590.00	$1,836,000
10-SB	166	45	7,470	1,867.50	5,602.50	$2,241,000
SB-2	885	45	39,825	9,956.25	29,868.75	$11,947,500
S-1	528	74	39,072	9,768.00	29,304.00	$11,721,600
S-4	619	17	10,523	2,630.75	7,892.25	$3,156,900
S-11	60	85	5,100	1,275.00	3,825.00	$1,530,000
N-2	462	5	2,310	577.50	1,732.50	$693,000
Total			110,420	27,605.00	82,815.00	$33,126,000

2. Exchange Act Current Reports

For purposes of the Paperwork Reduction Act, we estimate that the amendments affecting the collection of information requirements related to current reports on Form 8-K will reduce the annual paperwork burden by approximately 6,458 hours of company personnel time and by a cost of approximately $861,000 for the services of outside professionals. This estimate reflects the reduction in the number of filings that could result from our amendments.[582] These estimates were based on the following assumptions:

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581 The burden estimates for Form 10-K and 10-KSB assume that the amended requirements are satisfied by either including information directly in the annual reports or incorporating the information by reference from the proxy statement or information statement in Schedule 14A or Schedule 14C, respectively. As described above, we now estimate that the changes to executive compensation and corporate governance disclosure requirements applicable only in proxy or information statements (and thus not in Securities Act registration statements or Exchange Act reports or registration statements) will impose an incremental burden.

582 The amendments do not change the exhibit filing requirements under Item 601(b)(10) of Regulations S-K and S-B, therefore companies may be required to file compensatory plans, contracts or arrangements as exhibits to filings even if current reporting on Form 8-K is no longer required for the entry into or amendment of those plans, contracts or arrangements.

- the number of annual responses for Form 8-K is estimated to be 110,416.[583] Based on a study of current reports on Form 8-K filed in September 2005, we estimate that approximately 22,083 current reports filed on Forms 8-K would be filed annually pursuant to Item 1.01 of Form 8-K;
- based on a review of Item 1.01 of Form 8-K filings made in September 2005, we estimate that 6,625 of the 22,083 current reports on Form 8-K that would be filed annually under Item 1.01 would relate to executive or director compensation matters; and
- based on a review of Item 1.01 of Form 8-K filings made in September 2005, we estimate that 1,722 fewer current reports on Form 8-K would be filed annually as a result of more focused current reporting of executive officer and director compensation transactions under new Item 5.02(e) of Form 8-K.[584]

IX. Cost-Benefit Analysis

A. Background

We are adopting amendments to our rules governing disclosure of executive and director compensation, related person transactions, director independence and other corporate governance matters and security ownership of officers and directors. The revisions to the executive and director compensation disclosure rules are intended to provide investors with a clearer and more complete picture of compensation to principal

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583 This is based on the number of responses made in the period from October 1, 2004 through September 30, 2005.

584 For Form 8-K, the current burden estimate is 5 hours per filing. We estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the issuer at an average cost of $400 per hour. The computation of the reduction in burden is thus based on 1,722 fewer current reports on Form 8-K filed with a per filing burden of 3.75 hours carried by the company and 1.25 hours at a cost of $400 per hour (or $500 per filing).

executive officers, principal financial officers, the highest paid executive officers and directors. We are also amending our rules relating to current reports on Form 8-K to require real-time disclosure of only executive and director compensation events that are unquestionably or presumptively material, thereby reducing the number of filings for events relating to executive officers other than named executive officers and those officers specified in Item 5.02. We are amending our closely related rules requiring disclosure regarding the extent to which executive officers, directors, significant shareholders and other related persons participate in financial transactions and relationships with the issuer. We are amending our beneficial ownership disclosure requirement to require disclosure regarding pledges of securities by management and directors' qualifying shares. Finally, we are requiring that most of the disclosure that will be called for by the amendments be provided in plain English, so that investors can more easily understand this information when it is required to be included in Exchange Act reports or is incorporated by reference from proxy or information statements. While we believe that these amendments will result in significant benefits, we also recognize that the amendments to the disclosure requirements will impose additional costs. We have considered the costs and benefits in adopting these amendments.

B. Summary of Amendments

In light of the complexity of, and variations in, compensation programs, the sometimes inflexible and highly formatted nature of former Item 402 of Regulations S-K and S-B has resulted, in some cases, in disclosure that does not clearly inform investors as to all elements of compensation. The changes to Item 402 apply a broader approach that eliminates some tables, simplifies or refocuses other tables, reflects total

compensation in the Summary Compensation Table, and reorganizes the compensation tables to group together compensation elements that have similar functions so that the quantitative disclosure is both more informative and more easily understood. This improved quantitative disclosure will be complemented by enhanced narrative disclosure clearly and comprehensively describing the context in which compensation is paid and received. In particular, the narrative disclosure requirements will provide transparency regarding company compensation policies and procedures, and is designed to be sufficiently flexible to operate effectively as new forms of compensation continue to evolve.

We have also taken into account the relative burden of providing disclosure by smaller companies that file information pursuant to Regulation S-B (as opposed to Regulation S-K). Under the amendments, the scope and presentation of information in Item 402 of Regulation S-B will differ in a number of significant ways from Item 402 of Regulation S-K. Item 402 of Regulation S-B will:

- limit the named executive officers for whom disclosure is required to a smaller group, consisting of the principal executive officer and the two other highest paid executive officers;[585]
- require a revised Summary Compensation Table to disclose compensation information for the small business issuer's two most recent fiscal years, and to

[585] Prior to these amendments, Item 402(a)(2) of Regulation S-B required compensation disclosure for all individuals serving as the small business issuer's chief executive officer and the small business issuer's four highest paid executive officers other than the chief executive officer.

require that narrative disclosure accompany the Summary Compensation Table;[586]

- provide a higher threshold for separate identification of categories of "All Other Compensation" in the Summary Compensation Table;
- require a new Outstanding Equity Awards at Fiscal Year-End Table that includes expanded disclosure regarding holdings of previously awarded stock, options and similar instruments, which includes the value of stock and other similar incentive plan awards that have not vested, as well as information regarding options on an award-by-award basis;
- require additional narrative disclosure addressing the material terms of defined benefit and defined contribution plans and other post-termination compensation arrangements; and
- require a new Director Compensation Table.

Item 402 of Regulation S-B will not include the following disclosures that will be required by amended Item 402 of Regulation S-K:

- Compensation Discussion and Analysis or a Compensation Committee Report;
- information regarding two additional executive officers;
- a third fiscal year of Summary Compensation Table disclosure;
- the supplementary Grants of Plan-Based Awards Table, the Option Exercises and Stock Vested Table, the Pension Benefits Table, the Nonqualified Deferred

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586 Prior to these amendments, Item 402(b)(1) of Regulation S-B required disclosure in the Summary Compensation Table of compensation of the named executive officers for each of the last three fiscal years, and narrative disclosure was not required to accompany the Summary Compensation Table. Under the amendments adopted today, new narrative disclosure will address some elements of compensation previously required to be disclosed in tables.

Compensation Table, and the separate Potential Payments Upon Termination or Change-in-Control narrative section, while providing a general requirement to discuss the material terms of retirement plans and the material terms of contracts providing for payment upon a termination or change in control.

In addition, the application of Item 1.01 of Form 8-K to compensatory arrangements has raised concerns that real-time disclosure may be required for executive compensation events that are not unquestionably or presumptively material, and that are more appropriately disclosed, if at all, in the company's proxy statement for its annual meeting of shareholders. The amendments to Items 1.01 and 5.02 of Form 8-K focus real-time disclosure on compensation arrangements with executives and directors that we believe are unquestionably or presumptively material, and eliminate the obligation to file Form 8-K with respect to other compensatory arrangements.

Further, the amendments streamline and modernize Item 404 of Regulation S-K, while making it more principles-based. For example, indebtedness of related persons is limited by the Sarbanes-Oxley Act, and the disclosure requirement regarding indebtedness of related persons has been combined into the requirement regarding other transactions with related persons. This consolidated disclosure requirement applies to an expanded group of related persons through amendments to the definition of the term "immediate family member." While the pre-existing principles for disclosure have been retained, the amendments increase the threshold for disclosure from $60,000 to $120,000 and eliminate or narrow the scope of certain instructions delineating what transactions are reportable or excludable. The disclosure requirements in Item 404 regarding transactions with promoters have been slightly expanded in the amendments to apply when a

company had a promoter over the past five years, as well as to require analogous disclosure regarding transactions with control persons of a shell company.

With respect to registered investment companies and business development companies, amendments to Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A and to Forms N-1A, N-2, and N-3 similarly increase to $120,000 the former $60,000 threshold for disclosure of certain interests, transactions, and relationships of each director (and, in the case of Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A, each nominee for election as director) who is not or would not be an "interested person" of the fund within the meaning of Section 2(a)(19) of the Investment Company Act (and their immediate family members). In addition, amended Form N-2 requires business development companies to include the compensation disclosure required by Item 402 of Regulation S-K, as amended.

The amendments also replace the disclosure requirement for certain business relationships of directors that had been required by Item 404(b) of Regulation S-K prior to these amendments, which focused on relationships relevant to director independence, with requirements for director independence disclosure in new Item 407 discussed below. Under the amendments, some of the disclosure that had been required under the certain business relationship disclosure requirement may be required by the consolidated disclosure requirement regarding transactions and relationships with related persons in Item 404(a) of Regulation S-K. Item 404(b) of Regulation S-K as amended requires disclosure regarding the company's policies for the review, approval or ratification of transactions with related persons.

We are adopting similar amendments to Item 404 of Regulation S-B, which will result in a more detailed related person transaction disclosure requirement than had existed in Item 404 of Regulation S-B prior to these amendments. However, unlike Item 404 of Regulation S-K, Item 404 of Regulation S-B as amended does not require disclosure regarding the company's policies for the review, approval or ratification of transactions with related persons. We are retaining the requirement that transactions occurring within the last two years must be disclosed under Item 404 of Regulation S-B, whereas Item 404 of Regulation S-K requires disclosure for the last fiscal year, unless the information is included in a Securities Act or Exchange Act registration statement, where information as to the last three fiscal years is required.

We are adopting a new disclosure requirement in Item 407 of Regulations S-K and S-B that consolidates disclosures previously required in several places throughout our rules addressing director independence, board committee functions and other related corporate governance matters. This new Item, which requires new disclosure regarding independence of members of the board of directors and board committees, is intended to enhance disclosures regarding independence required by corporate governance listing standards of national securities exchanges and automated inter-dealer quotation systems of a national securities association.[587] Item 407 of Regulations S-K and S-B also includes a new disclosure requirement regarding the compensation committee's processes and procedures for the consideration and determination of executive and director compensation, and disclosure regarding the availability of the compensation committee's charter (if it has one), either as an appendix to the proxy or information statement at least

[587] We are also adopting conforming revisions to Item 22(b) relating to the independence of members of nominating and audit committees of investment companies.

once every three fiscal years or on the company's Web site. The amendments to Item 407 of Regulation S-K require a short Compensation Committee Report regarding the compensation committee's review and discussion with management of the Compensation Discussion and Analysis, and the compensation committee's recommendation to the Board with regard to the disclosure of the Compensation Discussion and Analysis. This new Compensation Committee Report, along with the Compensation Discussion and Analysis, is required instead of the Board Compensation Committee Report on Executive Compensation that was previously required by Item 402 of Regulation S-K prior to today's amendments.

To the extent that shares beneficially owned by named executive officers, directors and director nominees are used as collateral for loans, these shares are subject to risks or contingencies that do not apply to other shares beneficially owned by these persons. These circumstances have the potential to influence management's performance and decisions. As a result, we believe that the existence of these securities pledges could be material to shareholders and should be disclosed. We therefore are amending Item 403 of Regulations S-K and S-B to require this disclosure as well as disclosure regarding directors' beneficial ownership of qualifying shares.

We are requiring that most of the information that is required by these amendments be provided in plain English in Exchange Act reports or in proxy or information statements incorporated by reference into those reports. The plain English requirements will make these documents easier to understand.

The amendments to Item 402 of Regulation S-K, Items 402 and 404 of Regulation S-B, and Form 8-K will affect all companies reporting under Sections 13(a) and 15(d) of

the Exchange Act, other than registered investment companies. The amendments to Item 404 of Regulation S-K will affect all companies reporting under Sections 13(a) and 15(d) of the Exchange Act, other than registered investment companies, and all companies, including registered investment companies, filing proxy or information statements with respect to the election of directors. The changes to Items 402 and 404 of Regulation S-K and Regulation S-B will also affect additional companies filing Securities Act and Exchange Act registration statements. The changes to Item 22(b) of Schedule 14A will affect business development companies and registered investment companies filing proxy statements with respect to the election of directors. The changes to Form N-1A will affect open-end investment companies registering with the Commission on Form N-1A. The changes to Form N-2 will affect closed-end investment companies (including business development companies) registering with the Commission on Form N-2. The changes to Form N-3 will affect separate accounts, organized as management investment companies and offering variable annuities, registering with the Commission on Form N-3.

C. Benefits

As discussed, the overall goal of the executive and director compensation amendments is to provide investors with clearer, better organized and more complete disclosure regarding the mix, size and incentive components of executive and director compensation. This goal is accomplished by eliminating some tables and other disclosures that we believe may no longer be useful to investors, revising other tables so that they are more informative, and requiring new disclosure for retirement plans and similar benefits, nonqualified deferred compensation, post-termination benefits and

director compensation. The amendments require enhanced narrative disclosure, in the form of a Compensation Discussion and Analysis section and narrative disclosure accompanying the tables, to explain the significant factors underlying the compensation decisions reflected in the tabular data. The amendments also require companies to report the total amount of compensation for named executive officers and directors, and provide important context to the disclosure of total compensation.

Improved disclosure under the amendments of executive and director compensation, such as equity-based compensation, non-equity incentive plan compensation, and retirement and other post-employment compensation, combined with the ability of investors to track the elements of compensation and the relative weights of those elements over time (and the reasons why companies allocate compensation in the manner that they do), will better enable investors to make comparisons both within and across companies. A presentation facilitating the comparability of different elements of compensation in different companies should make it easier for investors to analyze both the manner of compensation across companies and the quality of compensation disclosure across companies. Disclosure of total compensation will benefit investors by reducing the need to make individual computations in order to assess the size of current compensation. Further, improved executive and director compensation disclosure will enhance investors' understanding of this use of corporate resources and the actions of boards of directors and compensation committees in making decisions in this area.[588] Particularly with respect to the proxy statement for the annual meeting at which directors

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[588] For a discussion of the debate concerning board of directors and managerial decision-making in the area of executive compensation, see, e.g., Steven M. Bainbridge, Executive Compensation: Who Decides?, 83 Tex. L. Rev. 1615 (2005).

are elected, this improved disclosure will provide better information to shareholders for purposes of evaluating the actions of the board of directors in fulfilling its responsibilities to the company and its shareholders.

With respect to the new Compensation Committee Report regarding the compensation committee's review and discussion with management of the Compensation Discussion and Analysis, and the compensation committee's recommendation to the board of directors with regard to disclosure of the Compensation Discussion and Analysis, we believe that benefits will be derived from the attention of the compensation committee to the disclosure provided in Compensation Discussion and Analysis. Further, the principal executive officer and principal financial officer can look to the Compensation Committee Report when providing their certifications. Finally, the Board Compensation Committee Report on Executive Compensation has been eliminated in favor of company disclosure in the form of the Compensation Discussion and Analysis, which will provide investors with enhanced disclosure about the objectives and implementation of executive compensation programs.

We believe that the extent to which increased transparency and completeness in executive and director compensation disclosure will result in broader benefits depends at least in part on the extent to which current executive and director compensation practices are aligned with the interests of investors as reflected in their investment and voting decisions. Any changes to a company that might occur, including changes in corporate governance, changes in control, changes in the employment of particular executives or other changes could depend to some extent on the degree to which improved

transparency in executive and director compensation will affect investors' decision-making with respect to that company.

Disclosure under these new regulations will provide substantial benefit to investors in terms of the accuracy, transparency, completeness and accessibility of executive compensation and related person transaction disclosure. Improved transparency in executive and director compensation under these amendments could have other benefits in terms of the allocative efficiency of affected corporations with regard to the use of resources for executive compensation relative to other corporate needs, as well as improvements in efficiency of managerial labor markets. Benefits such as these depend on the extent to which the amendments, including requirements to disclose a total amount of compensation and more detail regarding compensation policies, alter existing and future policies or practices in these areas. We emphasize that we are not seeking to foster any particular policy or practice. Our objective is to increase transparency to enable decision-makers to make more informed decisions, which could result in different policies or practices or an increase in investor confidence in existing policies or practices.

Enhanced disclosure of outstanding option awards on an award-by-award basis, and additional disclosure regarding other equity-based awards, will further benefit investors by making it easier to evaluate the components of equity compensation for each named executive officer and the valuations of those equity awards provided by companies in the Summary Compensation Table.

The amendments to Form 8-K will facilitate shareholder and investor access to real-time disclosure of public companies' significant personnel and compensation decisions by focusing this disclosure only on what we believe are the most important

compensatory arrangements with executive officers and directors. This information will be filed pursuant to Item 5.02 of Form 8-K. To find this information, shareholders and investors no longer will need to examine multiple Item 1.01 disclosures relating to other actions. Companies will also be relieved of obligations to quickly report arguably less important compensation information on Form 8-K.

The amendments to Item 404 will provide investors with more complete disclosure of related person transactions and director independence, and new disclosure regarding a company's policies and procedures for the review, approval or ratification of relationships with related persons. These amendments will enhance investors' understanding of how corporate resources are used in related person transactions, and provide improved information to shareholders for purposes of better evaluating the actions of the board of directors and executive officers in fulfilling their responsibilities to the company and its shareholders.

In addition, by combining similar provisions of former Item 404 into a single combined disclosure requirement, the amendments will reduce confusion that may have occurred regarding the disclosure required when more than one of the provisions of Item 404 applied to a particular transaction or relationship before these amendments. Improved corporate governance disclosure in new Item 407 will provide investors with better organized and more complete information regarding the independence of members of the board of directors.

The amendments to Item 403 of Regulation S-K and Regulation S-B will provide investors with disclosure of pledges of the securities beneficially owned by management and directors and full disclosure of beneficial ownership by directors, including directors'

qualifying shares. This information will contribute to investor understanding of the economic incentives for executives and directors of public companies.

Changes to Items 22(b)(7), 22(b)(8) and 22(b)(9) of Schedule 14A and to Forms N-1A, N-2, and N-3 may increase or decrease existing disclosure burdens imposed on investment companies, or not affect them at all, depending on the particular circumstances, by increasing the threshold for disclosure of certain interests, transactions, and relationships of each director (and, in the case of Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A, each nominee for election as director) who is not or would not be an "interested person" of the fund within the meaning of Section 2(a)(19) of the Investment Company Act (and their immediate family members).

The amendments to the executive and director compensation, related person transaction, beneficial ownership and corporate governance disclosure requirements will in many respects make these requirements clearer for companies and their advisors, which could have the benefit of improving overall compliance with these provisions, including those provisions where disclosure requirements have not changed substantively.

Finally, presentation in plain English will facilitate investor understanding of most of the matters contemplated by our amendments.

D. Costs

In our view, the amendments to the executive officer and director compensation, related person transaction and corporate governance disclosure requirements will increase the costs of complying with the Commission's rules. We further believe that the costs related to preparing required disclosure in plain English will be short-term costs arising

mainly in the first two years of implementation.[589]

We believe that compliance with these amendments will, on balance, be more costly for companies than compliance with the former disclosure requirements, with the highest incremental annual costs occurring principally in the first two years as companies and their advisors determine how best to compile and report information in response to new or expanded disclosure requirements.

The improved quantitative and textual disclosure regarding executive and director compensation that we are adopting will incrementally increase costs for companies in several ways as a result of the following new or expanded requirements. First, we are requiring that companies provide a Compensation Discussion and Analysis involving a discussion and analysis of material factors underlying compensation decisions reflected in the tabular presentations.[590] To respond to commenters' concerns that it is appropriate for the compensation committee to continue to focus on the executive compensation disclosure process as well as concerns with certifications, we are adopting a new

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589 The new plain English requirements will require both the rewriting of existing disclosures in plain English, as well as drafting new disclosures in plain English, such as Compensation Discussion and Analysis.

590 The Compensation Discussion and Analysis, unlike the Board Compensation Committee Report on Executive Compensation that was required prior to the adoption of these amendments, but like all of the rest of the current compensation disclosure, is considered filed and as such will be part of the documents for which certifications apply. The new Compensation Committee Report will be furnished rather than filed. The release adopting our certification requirements discussed the costs and benefits of the requirements as follows:

> The new certification requirement may lead to some additional costs for issuers. The new rules require an issuer's principal executive and financial officers to review the issuer's periodic reports and to make the required certification. To the extent that corporate officers would need to spend additional time thinking critically about the overall context of their company's disclosure, issuers would incur costs (although investors would benefit from improved disclosure). The certification requirement creates a new legal obligation for an issuer's principal executive and financial officers, but does not change the standard of legal liability . . . Conversely, the new rules are likely to provide significant benefits by ensuring that information about an issuer's business and financial condition is adequately reviewed by the issuer's principal executive and financial officers.

Compensation Committee Report regarding the compensation committee's review and discussion with management of the Compensation Discussion and Analysis, and the compensation committee's recommendation to the board of directors with regard to the disclosure of the Compensation Discussion and Analysis. To the extent that members of the compensation committee would need to spend additional time and resources reviewing the executive and director compensation disclosures and potentially retaining experts and advisors to assist them in that review,[591] this requirement will result in additional costs to issuers.

In addition to the Compensation Discussion and Analysis section, we are requiring narrative disclosure to accompany tabular presentations so that the data included in the tables may be understood in context. We are also expanding disclosure regarding compensation-related equity-based and other plan-based holdings, as well as retirement and similar plans. Finally, we are adopting a Director Compensation Table that will require more detailed information regarding director compensation than was specified in the narrative disclosure requirement that existed prior to today's amendments. Each of these revisions seeks to elicit clearer and more complete information than was required under the requirements in place before adoption of these amendments. We have also decided to retain the Performance Graph in light of commenters' overwhelming support for this disclosure requirement, but we are moving it to new paragraph (e) of Item 201 of Regulation S-K and requiring that it will be furnished

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Certification Release, at Section VII.

591 While our rules do not require the retention of consultants or other advisers, to the extent that companies do retain compensation consultants or other professionals we understand that they would generally charge per-hour rates comparable to those rates charged by outside counsel, which we have estimated for the purposes of our Paperwork Reduction Act analysis are approximately $400 per hour.

in the annual report to security holders rather than the proxy or information statement. Since we originally proposed to delete the Performance Graph altogether, its retention requires us to consider the costs incurred by issuers to continue to comply with this requirement; however, the substance of what is required with regard to the Performance Graph will not change substantially from what was required prior to the adoption of these amendments.

While the Summary Compensation Table as amended will require reporting of the grant date fair value of equity-based awards, we do not believe that this change will increase costs for companies, because the computation of the grant date fair values of stock, options and similar instruments already is required for financial statement purposes as a result of the implementation of FAS 123R. Companies may incur additional costs, however, in determining the year to year incremental changes in the actuarial present value of the named executive officers' accumulated benefit under defined benefit and actuarial pension plans for the purposes of reporting such compensation in the Summary Compensation Table. In an effort to reduce costs in response to commenters' suggestions, we have revised the requirement to specify that in computing the amount to be disclosed under the amendments, companies must use the same assumptions (other than the normal retirement age) that they use for financial reporting purposes under generally accepted accounting principles. Another change which may help to make the calculation less costly is our revision to the proposal that the incremental change in the actuarial present value of the named executive officers' accumulated benefit under defined benefit and actuarial pension plans required in the Summary Compensation Table directly correspond to the disclosure required in the Pension Benefits Table. Therefore, a

second and different calculation of pension benefits is not being adopted as proposed. Costs may also arise from the reporting of other compensation in the All Other Compensation Column of the Summary Compensation Table. We do not believe that the addition of a "Total" column to the Summary Compensation Table in and of itself will increase costs, because former disclosure requirements already mandated the disclosure of all compensation, and the mechanical process of adding up disclosure amounts should not be significant.

Companies will incur additional costs associated with disclosing the number and key terms of out-of-the-money instruments in the Outstanding Equity Awards at Fiscal Year-End Table. As adopted, this table will require companies to disclose, on an award-by-award basis, the number of underlying securities, the exercise or base price and the expiration date with respect to each award of unexercised options, stock appreciation rights and similar instruments with option-like features. Given the detailed information required, the disclosure generated may be lengthy, but commenters indicated that this information is meaningful to them.[592] Instead of disclosure on an aggregate basis, as was proposed and as was required for some outstanding option awards before adoption of these amendments, the disclosure of individual awards will enable investors to understand the extent and magnitude to which an executive's previously awarded options provide the potential to generate upside growth in the value of these holdings.[593] We have attempted to minimize the cost of this rule as amended by requiring that companies

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592 Several commenters recommended expanded disclosure of the number and key terms of out-of-the-money instruments. See n. 277. Other commenters suggested award-by-award disclosure for options. See letters from Hodak Value Advisors and The Rock Center for Corporate Governance.

593 See, e.g., letters from Brian Foley & Co.; Buck Consultants; and Grundfest.

list only the key terms of the securities, as opposed to computing the weighted average of exercise prices or some other calculation necessary for the purposes of aggregation.

Additional costs may also be incurred in preparing and presenting required disclosures regarding retirement benefits, deferred compensation and post-termination or change in control payments, to the extent that information regarding these matters is not currently collected in a way that would facilitate disclosure under the amendments. However, these costs will likely be mitigated to some extent for the following reasons:

- as noted above, the calculation of the actuarial value of pension benefits required in the Pension Benefits Table and the Summary Compensation Table will be standardized to a significant extent by requiring companies to use many of the same assumptions for purposes of these calculations as they use for financial reporting purposes under generally accepted accounting principles;
- the Pension Benefits Table will not require different calculations from those called for in the Summary Compensation Table and will not require the disclosure of estimated retirement benefits payable upon early retirement, as proposed; and
- we have adopted commenters' suggestions that the quantitative disclosure required for post-termination agreements in new Item 402(j) of Regulation S-K be calculated by applying standard assumptions as to the share price of the company's securities and the date of the event triggering termination.

In addition, because the determination of named executive officers will be based on total compensation rather than salary and bonus, some companies will incur higher costs tracking the compensation paid to all executive officers in order to determine which are the most highly compensated. At the same time, however, companies will not be

required to track the incremental change in the value of pension benefits or the amount of above-market or preferential earnings on nonqualified deferred compensation for purposes of identifying named executive officers, as they would have under the proposed requirements.

Under the amendments regarding Form 8-K, disclosure regarding executive and director arrangements and other plans that are no longer required to be reported within four days under Item 1.01 of Form 8-K will be required to be disclosed by way of the exhibit filing requirements on at least a quarterly basis. To the extent that a reduction in timeliness of this information will reduce its value to investors, the amendments may impose costs on investors other than those associated with transitioning to the new threshold.

We believe that there will be some increase in the cost of complying with the related person transaction disclosure requirement and corporate governance disclosures. The amendments may increase the cost of complying with the related person transaction disclosure requirement by eliminating or reducing the scope of certain instructions and by expanding the group of related persons covered to include additional "immediate family members." We did not adopt, as proposed, a requirement for disclosure of indebtedness transactions with significant shareholders. Similarly, with respect to registered investment companies and business development companies, amendments to Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A and to Forms N-1A, N-2, and N-3 will increase to $120,000 the former $60,000 threshold for disclosure of certain interests, transactions, and relationships of each director (and, in the case of Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A, each nominee for election as director) who is not

or would not be an "interested person" of the fund within the meaning of Section 2(a)(19) of the Investment Company Act (and their immediate family members). Since these forms already require such disclosure using the $60,000 threshold, we do not believe the amendments would impose additional costs.

Amended Item 404(b) of Regulation S-K introduces new costs by imposing new disclosure requirements on companies regarding their policies for review, approval or ratification of related person transactions. In order to comply with disclosure requirements regarding policies for the review, approval or ratification of related person transactions, we understand that companies will incur costs of collecting the type of information that will be required to be disclosed. These costs will be higher to the extent companies do not already collect this information, either pursuant to their corporate governance policies or through directors' and officers' questionnaires. The new rules do not require companies to create new policies or processes for review, approval or ratification of relationships with related persons. However, to the extent that companies do create new policies or processes that require the collection of different or additional information, they may incur incremental costs.

The amended disclosures regarding director independence are similar to disclosure requirements under the proxy rules regarding the independence of directors who are members of the company's audit and nominating committees. Thus, for companies that are subject to the proxy rules, the task of complying with the disclosure requirement regarding director independence can be performed by the same person or group of persons already responsible for compliance with the rules requiring disclosure about the independence of nominating and audit committee members. Because the rules

prior to these amendments already required companies subject to the proxy rules to collect and disclose information about the independence of directors who serve on the audit and nominating committees, this amended disclosure should not impose significant new costs for the collection of information by companies that are subject to the proxy rules. The new disclosure requirement regarding director and committee member independence may require disclosure of additional categories or types of director relationships. Additional costs may be incurred in seeking this information. However, such costs are limited by the extent to which companies already identify and track the relationships that may be required to be disclosed for the purposes of complying with pre-existing disclosure requirements or corporate governance listing standards. Finally, additional costs may be incurred by companies complying with Item 407(a) when companies rely on an exemption from independence standards, as we are requiring disclosure regarding reliance on any such exemption, including the basis for the conclusion that the exemption is available.

We believe that, overall, the costs noted above which are associated with the amended disclosure requirements for related person transactions and director independence will be offset to some extent by cost decreases associated with narrowing the scope of other disclosure requirements under the amendments, such as the disclosure that was required about director relationships under Item 404(b) of Regulation S-K before today's amendments. In this regard, we believe that companies will generally be required to provide an amount of information that is comparable to what had been required by our rules before the amendments. However, under the amendments the information

regarding these matters will be presented in a manner that recognizes recent changes, such as the imposition of corporate governance listing standards at the major markets.

Moreover, our amendments to the related person transaction and director independence disclosure requirements differ in certain respects from the proposals, which may lessen the expected compliance costs. In response to commenters' concerns, we are retaining certain exceptions to the related person transaction disclosure requirements that existed under the rules prior to these amendments, and we are not requiring disclosure of indebtedness transactions with significant shareholders (or their immediate family members). For the amended disclosures under new Item 407(a), any additional compliance costs associated with requiring companies to disclose the transactions, relationships and arrangements considered by the board of directors in determining the independence of directors or director nominees is mitigated to some extent because the amendments require only the disclosure of the specific type or category of transactions considered by the board of directors that are not otherwise disclosed under the related person transaction disclosure requirement of Item 404(a). In contrast, under the rule proposals, disclosure of the specific details of each such transaction, relationship or arrangement would have been required. Furthermore, in response to several commenters, we have eliminated the proposed requirement under new Item 407(e) to identify any executive officer within the company that a compensation consultant contacted in carrying out its assignment. The overall effect of these modifications to Items 404(a) and 407 as they were proposed will be to reduce the number and type of transactions or contacts for which disclosure will be required under the new rules and lessen the aggregate burden imposed on companies to comply with the new rules. We recognize, as

suggested by commenters, that additional costs may be incurred in preparing the additional disclosures required regarding the compensation committee process, including disclosure regarding the use of compensation consultants, as well as in the compensation committee's involvement with the Compensation Discussion and Analysis through the Compensation Committee Report.

Our plain English amendments require that companies use a clear writing style to present the information about executive and director compensation, related person transactions, beneficial ownership and some corporate governance matters that are required to be disclosed in Exchange Act reports such as annual reports on Forms 10-K or 10-KSB. We believe the amended rules will result in a short-term increase in costs for companies as they rewrite the information required to be included in annual reports or incorporated by reference from proxy or information statements, but few additional costs after the first year or two of implementation, as companies become familiar with the organizational, language, and document structure changes necessary to comply with these amendments. Additional costs, if any, should be one-time or otherwise short-term.

We believe that there would be little, if any, increase in the cost of complying with the beneficial ownership rule amendments. A company will be required to disclose named executive officer, director and director nominee pledges of securities, and directors' full beneficial ownership of equity securities, including directors' qualifying shares. The company can inquire as to this information in questionnaires it already circulates to the company's officers and directors.

For purposes of the Paperwork Reduction Act, we have estimated the annual incremental increase in the paperwork burden for companies to comply with our

collection of information requirements to be approximately 783,284 hours of in-house company personnel time and to be approximately $133,883,300 for the services of outside professionals. As noted in the Paperwork Reduction Act section, we have revised these estimates both in response to comments about the proposed estimates and in light of the changes we have made from the proposal.[594] These costs are based on our estimates that the annual incremental disclosure burden imposed by the revisions that we adopt today will average 95 hours per Form 10-K; 50 hours per Form 10-KSB; 3 hours per Schedule 14A and Schedule 14C; 85 hours per Form 10; 45 hours per Forms 10-SB and SB-2; 74 hours per Form S-1; 17 hours per Form S-4; 85 hours per Form S-11; and 5 hours per Form N-2. We estimate that the amendments to Item 22(b) of Schedule 14A and increasing to $120,000 the former $60,000 threshold for disclosure of certain interests, transactions, and relationships of each director in Forms N-1A, N-2, and N-3 will not impose an annual incremental disclosure burden. These estimated costs include an estimated reduction in costs attributable to current reports on Form 8-K of approximately 6,458 hours of company personnel time and by a cost of approximately $861,000 for the services of outside professionals, based on an estimate that 1,722 fewer current reports on Form 8-K will be filed because of more focused current reporting of compensation transactions. Based on these estimates solely computed for the purposes of the Paperwork Reduction Act and assuming that the cost of in-house company personnel time is $175, the total estimated incremental costs of the amendments is approximately $270,958,000. These estimates of incremental costs, which were prepared for the purposes of the Paperwork Reduction Act, are limited to hours and costs associated with

[594] See Section VIII. above.

collecting information, preparing disclosure, filing forms, and retaining records imposed by the applicable forms, and were based in part with reference to the pre-existing burden estimates for each of the forms.

X. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Exchange Act Section 23(a)(2)[595] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Securities Act Section 2(b),[596] Exchange Act Section 3(f)[597] and Investment Company Act Section 2(c)[598] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

We have also discussed other impacts of the amendments in our Cost-Benefit, Paperwork Reduction Act and Final Regulatory Flexibility Act Analyses. The amendments to Regulations S-K and S-B, to Items 8 and 22(b) of Schedule 14A, and to Forms N-1A, N-2, and N-3 are intended to improve the completeness and clarity of executive compensation and related person transactions disclosure available to investors and the financial markets. These amendments will enhance investors' understanding of how corporate resources are used, and enable shareholders to better evaluate the actions

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[595] 15 U.S.C. 78w(a)(2).

[596] 15 U.S.C. 77b(b).

[597] 15 U.S.C. 78c(f).

[598] 15 U.S.C. 80a-2(c).

of the board of directors in fulfilling their responsibilities, as well as the incentives for executive officers.

The amendments to Form 8-K are intended to facilitate the ability of investors and shareholders to access real-time disclosure of public companies' executive compensation events that are unquestionably or presumptively material by requiring this disclosure only for compensatory agreements with specified executive officers. To find this information, shareholders and investors no longer need to examine multiple Form 8-K disclosures relating to other executive officers or other material non-ordinary course definitive agreements.

The amendments to expand and consolidate into one item the director independence and related corporate governance disclosure requirements in new Item 407 of Regulation S-K will improve the understanding of shareholders and investors about the composition and functions of the board of directors and board committees. Amendments to beneficial ownership reporting requiring disclosure of pledged securities and director qualifying shares are intended to improve the disclosure regarding security holdings of directors and executive officers.

The requirement that most of the information called for in these amendments be written in plain English is intended to make Exchange Act reports and proxy or information statements incorporated by reference in those reports easier to understand. Thus, the amended rules will enhance the reporting requirements in place before adoption of these amendments by providing more effective material disclosure to investors in a timely manner. We anticipate that these amendments will improve investors' ability to make informed investment and voting decisions and, therefore, may lead to increased

efficiency and competitiveness of the U.S. capital markets. As discussed more fully in our Cost-Benefit Analysis, improved transparency in disclosure under these amendments could have other benefits in terms of the allocative efficiency of affected corporations with regard to the use of resources for executive compensation relative to other corporate needs, as well as improvements in efficiency of managerial labor markets.

Some commenters were concerned as to whether including examples in the principles-based Compensation Discussion and Analysis disclosure item would in some way cause companies and compensation committees to feel obligated to conform their compensation decision-making processes to those examples. As we discussed in Section II.B.1., we emphasize that application of a particular example must be tailored to the company. We believe using a disclosure concept along with illustrative examples strikes an appropriate balance to effectively elicit meaningful disclosure applicable to the company. Companies must assess the materiality to investors of the information that is identified by the examples in light of the particular situation of the company.

We recognize that increased time and resources will need to be devoted by companies and their officers, directors and advisors to prepare the revised disclosures required by these amendments. As discussed in more detail above, we have made substantive modifications to the proposals to address, in part, cost and burden concerns raised by some commenters.[599] We have also revisited and increased our burden estimates for Paperwork Reduction Act purposes. Ultimately, the impact of additional resources being used by companies to prepare the new disclosures will be borne by the

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[599] For example, we have attempted to reduce the burden on quantifying post-employment compensation. See Section II.C.5. In addition, several of our other modifications to the proposals were made to address some commenter concerns over the possible perception of "double-

companies' shareholders. Based on the extensive comment we received from investors supporting our proposals, strong evidence suggests that shareholders are willing to bear these costs.[600]

Because only companies subject to the reporting requirements of Sections 13 and 15 of the Exchange Act, and companies filing registration statements under the Securities Act and Exchange Act, will be required to make the amended disclosures required by Items 402, 404 and 407, competitors not in those categories could gain an informational advantage. However, with respect to executive compensation, as under Item 402 before adoption of these amendments, a company will not be required to disclose target levels with respect to specific quantitative or qualitative performance-related factors, or any other factors or criteria involving confidential trade secrets and commercial or financial information, the disclosure of which would result in competitive harm to the company. Notwithstanding this exception for competitively sensitive information, competitors could potentially gain additional insight into the executive compensation policies of companies through disclosure required in Compensation Discussion and Analysis and in other portions of the required disclosure. Further, the availability of more broad-based compensation disclosure may provide additional information to be used by competitors in recruiting executive talent, although much of this information is already available from compensation consultants and other sources.

We have considered any impact the amendments may have on smaller as opposed to larger public companies, including the ability of smaller companies to absorb the costs

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counting" of compensation elements, which should also help to improve the utility of the compensation disclosures to investors.

600 See, e.g., letters from CalPERS; CalSTRS; D. Cayot; CII; CRPTF; C. Green; ICI; Institutional Investors Group; M. McPherson; A. Silverstein; and M. von Euler.

of the amendments and whether any resulting disproportionate impact might affect the competitiveness of smaller issuers or their capital formation decisions. Further, as discussed in our Final Regulatory Flexibility Act Analysis, we have considered alternatives to minimize any significant adverse impact on smaller companies, including adopting different and less restrictive reporting requirements for small business issuers under Regulation S-B, particularly given that small business issuer compensation structures are likely to be less complex than those of larger issuers. We believe the changes that are reflected in the amendments to Regulation S-B will balance the information needs of investors in smaller companies with the burdens imposed on such companies by the disclosure requirements.

We do not expect that the incremental effect of the amendments overall will have a material effect on competition. We expect that the amended reporting requirements will enhance the efficiency of capital formation. Investors have stated that they believe that the improved transparency and completeness of executive compensation information resulting from these amendments will help them make more informed investment and voting decisions.[601] Investors are likely to be more confident allocating capital to firms in which compensation practices are well-aligned with the investors' interests when investors possess more information regarding executive compensation. Improved transparency thus may encourage investors to commit their capital and thereby facilitate issuers' access to capital.

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[601] See, e.g., letters from CII; CFA Centre 1; ICI; and ISS.

XI. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to revisions to the rules and forms under the Securities Act and Exchange Act that seek to improve the clarity and completeness of companies' disclosure of the compensation earned by the principal executive officer, principal financial officer,[602] other highly paid executive officers and all members of the board of directors, and of related person transactions. These changes include amending the executive and director compensation disclosure requirements, modifying our rules so that only elements of compensation that are unquestionably or presumptively material to investors must be disclosed in current reports on Form 8-K, streamlining and modernizing disclosure requirements regarding related person transactions, adding disclosure regarding pledges of securities beneficially owned by executive officers and directors and regarding directors' qualifying shares, consolidating corporate governance disclosure requirements and expanding disclosure regarding the independence of the board of directors, as well as requiring that most of the disclosure required by the amended rules be provided in plain English.

A. Need for the Rules and Amendments

On January 27, 2006, we issued proposals to change the rules requiring disclosure of executive and director compensation, related person transactions, director independence and other corporate governance matters, and security ownership of officers and directors.

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[602] The principal financial officer is not specified as a named executive officer in Item 402 of Regulation S-B.

We are adopting amendments that establish a broader-based approach to eliciting executive and director compensation disclosure, while retaining comparability. In addition, we are adopting amendments to Form 8-K in order to focus current disclosure on compensation-related events that are unquestionably or presumptively material to investors. Given the close relationship between executive and director compensation and other financial transactions and relationships involving companies and their directors, executive officers, significant shareholders and respective immediate family members, we are also adopting amendments to streamline and modernize the related person transaction disclosure requirements, while also making the requirements more principles-based and expanding the requirements to elicit disclosure about policies and procedures for the review, approval or ratification of related person transactions.[603] With respect to disclosure about director independence, we are replacing requirements for disclosure about specific relationships that can affect director independence with a narrative explanation of the independence status of directors under a company's independence policies for the majority of the board and for the nominating, audit and compensation committees. We are also consolidating these and other requirements regarding director independence, board committees and other corporate governance matters in a new disclosure item. In addition, we are adopting corresponding changes to items in our registration forms and proxy and information statements filed by registered investment companies and business development companies that impose requirements to disclose certain interests, transactions, and relationships of each director or nominee for election as director who is not or would not be an "interested person" of the fund within the

[603] Item 404 of Regulation S-B as adopted does not require disclosure about policies and procedures for the review, approval or ratification of related person transactions.

meaning of Section 2(a)(19) of the Investment Company Act (and their immediate family members). Further, we are adopting amendments to require disclosure of the number of shares pledged by named executive officers, directors and director nominees, given that these shares are subject to risks and contingencies that do not apply to other shares beneficially owned by these persons. Finally, in order to emphasize that most of these amended requirements must be presented in a manner that is clear, concise and understandable for investors, we are adopting rules requiring that the disclosure regarding executive and director compensation, beneficial ownership, related person transactions and most corporate governance matters be provided in plain English when included in Exchange Act reports.

B. Significant Issues Raised by Public Comment

In the Proposing Release, we requested comment on any aspect of the Initial Regulatory Flexibility Act Analysis, including the number of small entities that would be affected by the proposals, and both the qualitative and quantitative nature of the impact. Several commenters noted that costs and burdens arising from the proposals would have disproportionately affected small business issuers and smaller public companies that are not small business issuers but did not provide any specific comments on the Initial Regulatory Flexibility Act Analysis.[604] As summarized in Section XI.D. below and discussed in greater detail in previous sections, we have taken these comments into account in adopting different requirements for small business issuers.

C. Small Entities Subject to the Rules and Amendments

The amendments will affect small entities, the securities of which are registered

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[604] See, e.g., letters from ABA; ACB; ICBA; and SCSGP.

under Section 12 of the Exchange Act or that are required to file reports under Section 15(d) of the Exchange Act. The amendments also will affect small entities that file, or have filed, a registration statement that has not yet become effective under the Securities Act or the Exchange Act and that has not been withdrawn. Securities Act Rule 157[605] and Exchange Act Rule 0-10(a)[606] define an issuer to be a "small business" or "small organization" for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. These are the types of entities that we refer to as small entities in this section. We believe that the amendments will affect small entities that are operating companies. We estimate that there are approximately 2,500 issuers, other than investment companies, that may be considered small entities. An investment company is considered to be a "small business" if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[607] We believe that the amendments will affect small entities that are investment companies. We estimate that there are approximately 240 investment companies that may be considered small entities.

D. Reporting, Recordkeeping and Other Compliance Requirements

We note that small business issuers,[608] which is a broader category of issuers than small entities, in certain circumstances may provide the executive and director

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605 17 CFR 230.157.

606 17 CFR 240.0-10(a).

607 17 CFR 270.0-10(a).

608 Item 10 of Regulation S-B (17 CFR 228.10) defines a small business issuer as a registrant that has revenues of less than $25 million, is a U.S. or Canadian issuer, is not an investment company, and has a public float of less than $25 million. Also, if it is a majority owned subsidiary, the parent corporation also must be a small business issuer.

compensation, relationships with related persons and promoters, beneficial ownership and corporate governance disclosure specified, respectively, in Items 402, 403, 404 and 407 of Regulation S-B, rather than the corresponding disclosure specified in Items 402, 403, 404 and 407 of Regulation S-K.

The amendments to Item 402 of Regulation S-K expand some former disclosure requirements, and consolidate or eliminate others. The amendments to Item 402 of Regulation S-B will require less extensive disclosure for small business issuers than will be required for companies complying with Item 402 of Regulation S-K as amended. Under the amendments, the scope and presentation of information in Item 402 of Regulation S-B will differ in a number of significant ways from Item 402 of Regulation S-K. Item 402 of Regulation S-B will:

- limit the named executive officers for whom disclosure will be required to a smaller group, consisting of the principal executive officer and the two other highest paid executive officers;
- require that the Summary Compensation Table disclose the two most recent fiscal years and that narrative disclosure accompany the Summary Compensation Table;
- provide a higher threshold for separate identification of categories of "All Other Compensation" in the Summary Compensation Table;
- require the Outstanding Equity Awards at Fiscal Year-End Table;
- require additional narrative disclosure addressing the material terms of defined benefit and defined contribution plans and other post-termination compensation arrangements; and
- require the Director Compensation Table.

New Item 402 of Regulation S-B does not include the following disclosures that are required by new Item 402 of Regulation S-K:

- Compensation Discussion and Analysis or a Compensation Committee Report;
- information regarding two additional executive officers;
- the third fiscal year of Summary Compensation Table disclosure; and
- the supplementary Grants of Plan-Based Awards Table, the Option Exercises and Stock Vested Table, the Pension Benefits Table, and the Nonqualified Deferred Compensation Table and the separate Potential Payments Upon Termination or Change-in-Control narrative section, while providing a general requirement to discuss the material terms of retirement plans and the material terms of contracts providing for payment upon a termination or change in control.

As a result, the amendments to Item 402 of Regulation S-B will not result in the same level of incremental increase in costs or burdens as will the requirements of amendments to Item 402 of Regulation S-K.

The amendments to Item 404 of Regulations S-K and S-B will decrease the related person transaction disclosure requirement that companies, including small entities, must comply with in some respects and expand it in other respects. The amendments to Item 404 of Regulation S-B will potentially decrease the scope of the related person transaction disclosure requirement by changing the $60,000 threshold for disclosure of related person transactions to the lesser of $120,000 or one percent of the average of the small business issuers' total assets at year-end for the last three completed fiscal years.[609] At the same time, the amendments to Item 404 of Regulation S-B will

[609] Amended Item 404(a) of Regulation S-K only includes $120,000 as the threshold.

increase the scope of the related person transaction disclosure requirement by expanding the group of related persons covered to include additional "immediate family members." In addition, the amendments may decrease or increase the scope of the related person transaction disclosure requirement by eliminating or reducing the scope of instructions that provide bright line tests for whether related person transaction disclosure is required.

Unlike the amendments to Item 404 of Regulation S-K, the amendments to Item 404 of Regulation S-B will not impose an additional disclosure requirement for small business issuers, including small entities, regarding their policies and procedures for the review, approval or ratification of relationships with related persons. The amendments to Item 404 of Regulation S-B and new Item 407 of Regulation S-B require, depending upon the particular circumstances of a company, more or less disclosure by changing the disclosure requirement regarding director independence.[610] Unlike the amendments to Item 407 of Regulation S-K, the amendments to Item 407 of Regulation S-B do not require a Compensation Committee Report regarding the compensation committee's review and discussion with management of the Compensation Discussion and Analysis, and the compensation committee's recommendation to the board of directors with regard to the disclosure of the Compensation Discussion and Analysis, because Item 402 of Regulation S-B does not require Compensation Discussion and Analysis disclosure.

Similar to amended Item 404(a) of Regulation S-K, amendments to Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A and to Forms N-1A, N-2, and N-3 decrease the scope of the requirement imposed on registered investment companies and business development companies to disclose certain interests, transactions, and

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[610] As was the case prior to these amendments, compensation committee interlocks disclosure is required by Regulation S-K but is not required under Regulation S-B.

relationships of each director (and, in the case of Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A, each nominee for election as director) who is not or would not be an "interested person" of the fund within the meaning of Section 2(a)(19) of the Investment Company Act (and their immediate family members) by increasing to $120,000 the former $60,000 threshold for disclosure of such interests, transactions, and relationships.

The amendments to Item 403 of Regulations S-K and S-B require footnote disclosure to the beneficial ownership table of the number of shares pledged by named executive officers, directors and director nominees and disclosure of directors' qualifying shares. This imposes an additional disclosure requirement on companies, including small entities.

The new plain English rules applicable to Exchange Act reports and proxy or information statements incorporated by reference into Exchange Act reports will not affect the substance of disclosures that companies must make. The new plain English rules will also not impose any new recordkeeping requirements or require reporting of additional information. Other changes to our rules will decrease the scope of the disclosure requirements for Form 8-K, and thereby result in a reduction in the number of current reports on Form 8-K filed each year.

Overall, the amendments are expected to result in increased costs to all subject companies, large or small, as follows:

- incremental increase in costs is expected with changes to executive and director compensation disclosure requirements;
- incremental increase in costs is expected from the amendments to the related person transaction rules and corporate governance disclosures; and

- decreased costs are expected as a result of the revisions to Form 8-K.

Because the current proxy rules require a subject registrant to collect and disclose information about the independence of its directors who serve on the audit or nominating committee of its board, the amended disclosure should not impose on companies subject to the proxy rules significant new costs for the collection of information regarding the independence of directors. Thus, the task of complying with the expanded director independence disclosure in new Item 407 of Regulations S-K and S-B could be performed by the same person or group of persons responsible for compliance under the former rules at a minimal incremental cost. Additional costs will likely be incurred to provide additional disclosure regarding compensation committee processes.

Our plain English amendments require that companies use a clear writing style to present the information about executive and director compensation, related person transactions, beneficial ownership and some corporate governance matters that are required to be disclosed in Exchange Act reports such as annual reports on Forms 10-K or 10-KSB. We believe the new rules will result in a short-term increase in costs for companies as they rewrite the information required to be included in annual reports or incorporated by reference from proxy or information statements, but few additional costs after the first year or two of implementation, as companies become familiar with the organizational, language, and document structure changes necessary to comply with these amendments. Additional costs, if any, should be one-time or otherwise short-term.

For purposes of the Paperwork Reduction Act, we estimate that with respect to Form 10-KSB, it will take issuers 100 additional hours to prepare the revised disclosure in year one, 35 additional hours in year two, and 15 additional hours in year three and

thereafter, which results in an average of 50 additional hours over the three year period. The same estimates apply to preparation of information in the proxy or information statement that is then incorporated by reference into the Form 10-KSB. With regard to persons other than small business issuers who will file a Form 10-K, we estimate for purposes of the Paperwork Reduction Act that it will take issuers 170 additional hours to prepare the revised disclosure in year one, 80 additional hours in year two, and 35 additional hours in year three and thereafter, which results in an average of 95 hours over the three year period. If we assume that a small entity complies with the disclosure provisions of Regulation S-B rather than Regulation S-K and 75% of the burden will be performed by the company internally at a cost of $175 per hour and 25% of the burden will be carried by outside professionals retained by the company at a cost of $400 per hour, the average annual cost to comply with the amended disclosure requirements in periodic reports and/or proxy or information statements will be approximately $11,563. The extent to which an additional average compliance cost of approximately $11,563 per small entity over a three year period constitutes a significant economic impact for small entities will depend on the relative revenues, costs and allocation of resources toward compliance with the Commission's rules for small entities both individually and as a group.

For purposes of the Paperwork Reduction Act, we estimate that with respect to Form N-2, it will take business development companies 150 additional hours to prepare the revised disclosure in year one, 75 hours in year two and 30 hours in year three and thereafter, which results in an average of 85 hours for each business development company to comply with the revised compensation disclosures that will be required on

Form N-2. If we assume that 25% of the burden will be borne internally at a cost of $175 per hour and 75% of the burden will be carried by outside professionals retained by the company at a cost of $400 per hour, the average annual cost for business development companies to comply with the revised disclosure requirements on Form N-2 will be approximately $29,219. The extent to which an additional average compliance cost of approximately $29,219 per small entity over a three year period constitutes a significant economic impact for small entities will depend on the relative assets, income, operating expenses and the allocation of resources toward compliance with the Commission's rules for small entities both individually and as a group.

E. Agency Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

1. establishing different compliance or reporting requirements which take into account the resources available to smaller entities;
2. the clarification, consolidation or simplification of disclosure for small entities;
3. use of performance standards rather than design standards; and
4. exempting smaller entities from coverage of the disclosure requirements, or any part thereof.

With regard to Alternative 1, we have adopted different compliance or reporting requirements for small entities. We nevertheless believe improving the clarity and

completeness of disclosure regarding executive and director compensation and related person transactions requires a high degree of comparability between all issuers. Regarding Alternative 2, the amendments clarify, consolidate and simplify the requirements for all public companies, and some especially for small entities. Regarding Alternative 3, we believe that design rather than performance standards are appropriate, because design standards for small entities are necessary to promote the goal of relatively uniform presentation of comparable information for the benefit of investors. Finally, although we are exempting some information required of larger issuers, a wholesale exemption for small entities is not appropriate because the amendments are designed to make uniform the application of the disclosure and other requirements that we are adopting.

We have used design rather than performance standards in connection with the amendments for two reasons. First, based on our past experience, we believe the disclosure provided in response to the amended requirements will be more useful to investors if there are specific informational requirements. The mandated disclosures we are adopting are intended to result in more focused and comprehensive disclosure. Second, the specific disclosure requirements in the amendments will promote more consistent disclosure among public companies, because they provide greater certainty as to the scope of required disclosure.

XII. Statutory Authority and Text of the Amendments

We are adopting new rules and amendments pursuant to Sections 3(b), 6, 7, 10, and 19(a) of the Securities Act, as amended, Sections 10(b), 12, 13, 14, 15(d), 16 and 23(a) of the Exchange Act, as amended, Sections 8, 20(a), 24(a), 30 and 38 of the

Investment Company Act of 1940, as amended, and Sections 3(a) and 306(a) of the Sarbanes-Oxley Act of 2002.

List of Subjects

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229, 232, 239, 240, 245 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations, is amended as follows:

PART 228 – INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350.

* * * * *

2. Amend §228.201 by revising Instruction 2 to paragraph (d) to read as follows:

§228.201 (Item 201) Market for common equity and related stockholder matters.

* * * * *

Instructions to paragraph (d).

1. * * *

2. For purposes of this paragraph, an "individual compensation arrangement" includes, but is not limited to, the following: a written compensation contract within the meaning of "employee benefit plan" under §230.405 of this chapter and a plan (whether or not set forth in any formal document) applicable to one person as provided under Item 402(a)(5)(ii) of Regulation S-B (§228.402(a)(5)(ii)).

* * * * *

3. Remove and reserve §228.306.

4. Amend §228.401 by removing paragraphs (e), (f) and (g).

5. Revise §228.402 to read as follows:

§228.402 (Item 402) Executive compensation.

(a) General.

(1) All compensation covered. This Item requires clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (a)(2) of this Item, and directors covered by paragraph (f) of this Item, by any person for all services rendered in all capacities to the small business issuer and its subsidiaries, unless otherwise specifically excluded from disclosure in this Item. All such compensation shall be reported pursuant to this Item, even if also called for by another requirement, including transactions between the small business issuer and a third party where a purpose of the transaction is to furnish compensation to any such named executive officer or director. No amount reported as compensation for one fiscal year need be reported in

the same manner as compensation for a subsequent fiscal year; amounts reported as compensation for one fiscal year may be required to be reported in a different manner pursuant to this Item.

(2) Persons covered. Disclosure shall be provided pursuant to this Item for each of the following (the "named executive officers"):

(i) All individuals serving as the small business issuer's principal executive officer or acting in a similar capacity during the last completed fiscal year ("PEO"), regardless of compensation level;

(ii) The small business issuer's two most highly compensated executive officers other than the PEO who were serving as executive officers at the end of the last completed fiscal year; and

(iii) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (a)(2)(ii) of this Item but for the fact that the individual was not serving as an executive officer of the small business issuer at the end of the last completed fiscal year.

Instructions to Item 402(a)(2).

1. Determination of most highly compensated executive officers. The determination as to which executive officers are most highly compensated shall be made by reference to total compensation for the last completed fiscal year (as required to be disclosed pursuant to paragraph (b)(2)(x) of this Item) reduced by the amount required to be disclosed pursuant to paragraph (b)(2)(viii) of this Item, provided, however, that no disclosure need be provided for any executive officer, other than the PEO, whose total compensation, as so reduced, does not exceed $100,000.

2. Inclusion of executive officer of subsidiary. It may be appropriate for a small business issuer to include as named executive officers one or more executive officers or other employees of subsidiaries in the disclosure required by this Item. See Rule 3b-7 under the Exchange Act (17 CFR 240.3b-7).

3. Exclusion of executive officer due to overseas compensation. It may be appropriate in limited circumstances for a small business issuer not to include in the disclosure required by this Item an individual, other than its PEO, who is one of the small business issuer's most highly compensated executive officers due to the payment of amounts of cash compensation relating to overseas assignments attributed predominantly to such assignments.

(3) Information for full fiscal year. If the PEO served in that capacity during any part of a fiscal year with respect to which information is required, information should be provided as to all of his or her compensation for the full fiscal year. If a named executive officer (other than the PEO) served as an executive officer of the small business issuer (whether or not in the same position) during any part of the fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(4) Omission of table or column. A table or column may be omitted if there has been no compensation awarded to, earned by, or paid to any of the named executive officers or directors required to be reported in that table or column in any fiscal year covered by that table.

(5) Definitions. For purposes of this Item:

(i) The term stock means instruments such as common stock, restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or any similar instruments that do not have option-like features, and the term option means instruments such as stock options, stock appreciation rights and similar instruments with option-like features. The term stock appreciation rights ("SARs") refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the small business issuer or a named executive officer. The term equity is used to refer generally to stock and/or options.

(ii) The term plan includes, but is not limited to, the following: Any plan, contract, authorization or arrangement, whether or not set forth in any formal document, pursuant to which cash, securities, similar instruments, or any other property may be received. A plan may be applicable to one person. Small business issuers may omit information regarding group life, health, hospitalization, or medical reimbursement plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the small business issuer and that are available generally to all salaried employees.

(iii) The term incentive plan means any plan providing compensation intended to serve as incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the small business issuer or an affiliate, the small business issuer's stock price, or any other performance measure. An equity incentive plan is an incentive plan or portion of an incentive plan under which awards are granted that fall within the scope of Financial Accounting

Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), Share-Based Payment, as modified or supplemented ("FAS 123R"). A non-equity incentive plan is an incentive plan or portion of an incentive plan that is not an equity incentive plan. The term incentive plan award means an award provided under an incentive plan.

(iv) The terms date of grant or grant date refer to the grant date determined for financial statement reporting purposes pursuant to FAS 123R.

(v) Closing market price is defined as the price at which the small business issuer's security was last sold in the principal United States market for such security as of the date for which the closing market price is determined.

(b) Summary compensation table.

(1) General. Provide the information specified in paragraph (b)(2) of this Item, concerning the compensation of the named executive officers for each of the small business issuer's last two completed fiscal years, in a Summary Compensation Table in the tabular format specified below.

SUMMARY COMPENSATION TABLE

Name and Principal Position (a)	Year (b)	Salary ($) (c)	Bonus ($) (d)	Stock Awards ($) (e)	Option Awards ($) (f)	Non-Equity Incentive Plan Compen-sation ($) (g)	Nonquali-fied Deferred Compensa-tion Earnings ($) (h)	All Other Compen-sation ($) (i)	Total ($) (j)
PEO	_____ _____								
A	_____ _____								
B	_____ _____								

(2) The Table shall include:

(i) The name and principal position of the named executive officer (column (a));

(ii) The fiscal year covered (column (b));

(iii) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (c));

(iv) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d));

Instructions to Item 402(b)(2)(iii) and (iv).

1. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, a footnote shall be included disclosing that the amount of salary or bonus is not calculable through the latest practicable date and providing the

date that the amount of salary or bonus is expected to be determined, and such amount must then be disclosed in a filing under Item 5.02(f) of Form 8-K (17 CFR 249.308).

2. Small business issuers need not include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer pursuant to a small business issuer's program under which stock, equity-based or other forms of non-cash compensation may be received by a named executive officer instead of a portion of annual compensation earned in a covered fiscal year. However, the receipt of any such form of non-cash compensation instead of salary or bonus earned for a covered fiscal year must be disclosed in the appropriate column of the Summary Compensation Table corresponding to that fiscal year (e.g., stock awards (column (e)); option awards (column (f)); all other compensation (column (i))), or, if made pursuant to a non-equity incentive plan and therefore not reportable in the Summary Compensation Table when granted, a footnote must be added to the salary or bonus column so disclosing and referring to the narrative disclosure to the Summary Compensation Table (required by paragraph (c) of this Item) where the material terms of the award are reported.

(v) For awards of stock, the aggregate grant date fair value computed in accordance with FAS 123R (column (e));

(vi) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FAS 123R (column (f));

Instructions to Item 402(b)(2)(v) and (vi).

1. For awards reported in columns (e) and (f), include a footnote disclosing all assumptions made in the valuation by reference to a discussion of those assumptions in the small business issuer's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

2. If at any time during the last completed fiscal year, the small business issuer has adjusted or amended the exercise price of options or SARs previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), or otherwise has materially modified such awards, the small business issuer shall include, as awards required to be reported in column (f), the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R, with respect to that repriced or modified award.

(vii) The dollar value of all earnings for services performed during the fiscal year pursuant to awards under non-equity incentive plans as defined in paragraph (a)(5)(iii) of this Item, and all earnings on any outstanding awards (column (g));

Instructions to Item 402(b)(2)(vii).

1. If the relevant performance measure is satisfied during the fiscal year (including for a single year in a plan with a multi-year performance measure), the earnings are reportable for that fiscal year, even if not payable until a later date, and are not reportable again in the fiscal year when amounts are paid to the named executive officer.

2. All earnings on non-equity incentive plan compensation must be identified and quantified in a footnote to column (g), whether the earnings were paid during the fiscal year, payable during the period but deferred at the election of the named executive officer, or payable by their terms at a later date.

(viii) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans (column (h));

Instruction to Item 402(b)(2)(viii).

Interest on deferred compensation is above-market only if the rate of interest exceeds 120% of the applicable federal long-term rate, with compounding (as prescribed under section 1274(d) of the Internal Revenue Code, (26 U.S.C. 1274(d))) at the rate that corresponds most closely to the rate under the small business issuer's plan at the time the interest rate or formula is set. In the event of a discretionary reset of the interest rate, the requisite calculation must be made on the basis of the interest rate at the time of such reset, rather than when originally established. Only the above-market portion of the interest must be included. If the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate. Dividends (and dividend equivalents) on deferred compensation denominated in the small business issuer's stock ("deferred stock") are preferential only if earned at a rate higher than dividends on the small business issuer's common stock. Only the preferential portion of the dividends or equivalents must be included. Footnote or narrative disclosure may be

provided explaining the small business issuer's criteria for determining any portion considered to be above-market.

(ix) All other compensation for the covered fiscal year that the small business issuer could not properly report in any other column of the Summary Compensation Table (column (i)). Each compensation item that is not properly reportable in columns (c) - (h), regardless of the amount of the compensation item, must be included in column (i). Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the small business issuer or its subsidiaries purchased from the small business issuer or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the small business issuer, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(1) Any termination, including without limitation through retirement, resignation, severance or constructive termination (including a change in responsibilities) of such executive officer's employment with the small business issuer and its subsidiaries; or

(2) A change in control of the small business issuer;

(E) Small business issuer contributions or other allocations to vested and unvested defined contribution plans;

(F) The dollar value of any insurance premiums paid by, or on behalf of, the small business issuer during the covered fiscal year with respect to life insurance for the benefit of a named executive officer; and

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in columns (e) or (f); and

Instructions to Item 402(b)(2)(ix).

1. Non-equity incentive plan awards and earnings and earnings on stock or options, except as specified in paragraph (b)(2)(ix)(G) of this Item, are required to be reported elsewhere as provided in this Item and are not reportable as All Other Compensation in column (i).

2. Benefits paid pursuant to defined benefit and actuarial plans are not reportable as All Other Compensation in column (i) unless accelerated pursuant to a change in control; information concerning these plans is reportable pursuant to paragraph (e)(1) of this Item.

3. Reimbursements of taxes owed with respect to perquisites or other personal benefits must be included in the columns as tax reimbursements (paragraph (b)(2)(ix)(B) of this Item) even if the associated perquisites or other personal benefits are not required to be included because the aggregate amount of such compensation is less than $10,000.

4. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the small business issuer.

5. For purposes of paragraph (b)(2)(ix)(D) of this Item, an accrued amount is an amount for which payment has become due.

(x) The dollar value of total compensation for the covered fiscal year (column (j)). With respect to each named executive officer, disclose the sum of all amounts reported in columns (c) through (i).

Instructions to Item 402(b).

1. Information with respect to the fiscal year prior to the last completed fiscal year will not be required if the small business issuer was not a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) at any time during that year, except that the small business issuer will be required to provide information for any such year if that information previously was required to be provided in response to a Commission filing requirement.

2. All compensation values reported in the Summary Compensation Table must be reported in dollars and rounded to the nearest dollar. Reported compensation values must be reported numerically, providing a single numerical value for each grid in the table. Where compensation was paid to or received by a named executive officer in a different currency, a footnote must be provided to identify that currency and describe the rate and methodology used to convert the payment amounts to dollars.

3. If a named executive officer is also a director who receives compensation for his or her services as a director, reflect that compensation in the Summary Compensation Table and provide a footnote identifying and itemizing such compensation and amounts. Use the categories in the Director Compensation Table required pursuant to paragraph (f) of this Item.

4. Any amounts deferred, whether pursuant to a plan established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), or otherwise, shall be included in the appropriate column for the fiscal year in which earned.

(c) Narrative disclosure to summary compensation table. Provide a narrative description of any material factors necessary to an understanding of the information disclosed in the Table required by paragraph (b) of this Item. Examples of such factors may include, in given cases, among other things:

(1) The material terms of each named executive officer's employment agreement or arrangement, whether written or unwritten;

(2) If at any time during the last fiscal year, any outstanding option or other equity-based award was repriced or otherwise materially modified (such as by extension of exercise periods, the change of vesting or forfeiture conditions, the change or elimination of applicable performance criteria, or the change of the bases upon which returns are determined), a description of each such repricing or other material modification;

(3) The waiver or modification of any specified performance target, goal or condition to payout with respect to any amount included in non-stock incentive plan compensation or payouts reported in column (g) to the Summary Compensation Table required by paragraph (b) of this Item, stating whether the waiver or modification applied to one or more specified named executive officers or to all compensation subject to the target, goal or condition;

(4) The material terms of each grant, including but not limited to the date of exercisability, any conditions to exercisability, any tandem feature, any reload feature,

any tax-reimbursement feature, and any provision that could cause the exercise price to be lowered;

(5) The material terms of any non-equity incentive plan award made to a named executive officer during the last completed fiscal year, including a general description of the formula or criteria to be applied in determining the amounts payable and vesting schedule;

(6) The method of calculating earnings on nonqualified deferred compensation plans including nonqualified defined contribution plans; and

(7) An identification to the extent material of any item included under All Other Compensation (column (i)) in the Summary Compensation Table. Identification of an item shall not be considered material if it does not exceed the greater of $25,000 or 10% of all items included in the specified category in question set forth in paragraph (b)(2)(ix) of this Item. All items of compensation are required to be included in the Summary Compensation Table without regard to whether such items are required to be identified.

Instruction to Item 402(c).

The disclosure required by paragraph (c)(2) of this Item would not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

(d) Outstanding equity awards at fiscal year-end table. (1) Provide the information specified in paragraph (d)(2) of this Item, concerning unexercised options; stock that has not vested; and equity incentive plan awards for each named executive

officer outstanding as of the end of the small business issuer's last completed fiscal year in the following tabular format:

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

	Option Awards					Stock Awards			
Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#)	Option Exercise Price ($)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested ($)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
A									
B									

(2) The Table shall include:

(i) The name of the named executive officer (column (a));

(ii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are exercisable and that are not reported in column (d) (column (b));

(iii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are unexercisable and that are not reported in column (d) (column (c));

(iv) On an award-by-award basis, the total number of shares underlying unexercised options awarded under any equity incentive plan that have not been earned (column (d));

(v) For each instrument reported in columns (b), (c) and (d), as applicable, the exercise or base price (column (e));

(vi) For each instrument reported in columns (b), (c) and (d), as applicable, the expiration date (column (f));

(vii) The total number of shares of stock that have not vested and that are not reported in column (i) (column (g));

(viii) The aggregate market value of shares of stock that have not vested and that are not reported in column (j) (column (h));

(ix) The total number of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned, and, if applicable the number of shares underlying any such unit or right (column (i)); and

(x) The aggregate market or payout value of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned (column (j)).

Instructions to Item 402(d)(2).

1. Identify by footnote any award that has been transferred other than for value, disclosing the nature of the transfer.

2. The vesting dates of options, shares of stock and equity incentive plan awards held at fiscal-year end must be disclosed by footnote to the applicable column where the outstanding award is reported.

3. Compute the market value of stock reported in column (h) and equity incentive plan awards of stock reported in column (j) by multiplying the closing market price of the small business issuer's stock at the end of the last completed fiscal year by the number of shares or units of stock or the amount of equity incentive plan awards, respectively. The number of shares or units reported in column (d) or (i), and the payout value reported in column (j), shall be based on achieving threshold performance goals, except that if the previous fiscal year's performance has exceeded the threshold, the disclosure shall be based on the next higher performance measure (target or maximum) that exceeds the previous fiscal year's performance. If the award provides only for a single estimated payout, that amount should be reported. If the target amount is not determinable, small business issuers must provide a representative amount based on the previous fiscal year's performance.

4. Multiple awards may be aggregated where the expiration date and the exercise and/or base price of the instruments is identical. A single award consisting of a combination of options, SARs and/or similar option-like instruments shall be reported as separate awards with respect to each tranche with a different exercise and/or base price or expiration date.

5. Options or stock awarded under an equity incentive plan are reported in columns (d) or (i) and (j), respectively, until the relevant performance condition has been satisfied. Once the relevant performance condition has been satisfied, even if the option or stock award is subject to forfeiture conditions, options are reported in column (b) or (c), as appropriate, until they are exercised or expire, or stock is reported in columns (g) and (h) until it vests.

(e) Additional narrative disclosure. Provide a narrative description of the following to the extent material:

(1) The material terms of each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans, supplemental executive retirement plans, tax-qualified defined contribution plans and nonqualified defined contribution plans.

(2) The material terms of each contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) to a named executive officer at, following, or in connection with the resignation, retirement or other termination of a named executive officer, or a change in control of the small business issuer or a change in the named executive officer's responsibilities following a change in control, with respect to each named executive officer.

(f) Compensation of directors.

(1) Provide the information specified in paragraph (f)(2) of this Item, concerning the compensation of the directors for the small business issuer's last completed fiscal year, in the following tabular format:

DIRECTOR COMPENSATION

Name (a)	Fees Earned or Paid in Cash ($) (b)	Stock Awards ($) (c)	Option Awards ($) (d)	Non-Equity Incentive Plan Compensation ($) (e)	Nonqualified Deferred Compensation Earnings ($) (f)	All Other Compensation ($) (g)	Total ($) (h)
A							
B							
C							
D							
E							

(2) The Table shall include:

(i) The name of each director unless such director is also a named executive officer under paragraph (a) of this Item and his or her compensation for service as a director is fully reflected in the Summary Compensation Table pursuant to paragraph (b) of this Item and otherwise as required pursuant to paragraphs (c) through (e) of this Item (column (a));

(ii) The aggregate dollar amount of all fees earned or paid in cash for services as a director, including annual retainer fees, committee and/or chairmanship fees, and meeting fees (column (b));

(iii) For awards of stock, the aggregate grant date fair value computed in accordance with FAS 123R (column (c));

(iv) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FAS 123R (column (d));

Instruction to Item 402(f)(2)(iii) and (iv).

For each director, disclose by footnote to the appropriate column, the aggregate number of stock awards and the aggregate number of option awards outstanding at fiscal year end.

(v) The dollar value of all earnings for services performed during the fiscal year pursuant to non-equity incentive plans as defined in paragraph (a)(5)(iii) of this Item, and all earnings on any outstanding awards (column (e));

(vi) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans (column (f));

(vii) All other compensation for the covered fiscal year that the small business issuer could not properly report in any other column of the Director Compensation Table (column (g)). Each compensation item that is not properly reportable in columns (b) – (f), regardless of the amount of the compensation item, must be included in column (g) and must be identified and quantified in a footnote if it is deemed material in accordance with paragraph (c)(7) of this Item. Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the small business issuer or its subsidiaries purchased from the small business issuer or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the small business issuer, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any director pursuant to a plan or arrangement in connection with:

(1) The resignation, retirement or any other termination of such director; or

(2) A change in control of the small business issuer;

(E) Small business issuer contributions or other allocations to vested and unvested defined contribution plans;

(F) Consulting fees earned from, or paid or payable by the small business issuer and/or its subsidiaries (including joint ventures);

(G) The annual costs of payments and promises of payments pursuant to director legacy programs and similar charitable award programs;

(H) The dollar value of any insurance premiums paid by, or on behalf of, the small business issuer during the covered fiscal year with respect to life insurance for the benefit of a director; and

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (c) or (d); and

Instruction to Item 402(f)(2)(vii).

Programs in which small business issuers agree to make donations to one or more charitable institutions in a director's name, payable by the small business issuer currently or upon a designated event, such as the retirement or death of the director, are charitable awards programs or director legacy programs for purposes of the disclosure required by paragraph (f)(2)(vii)(G) of this Item. Provide footnote disclosure of the total dollar amount payable under the program and other material terms of each such program for which tabular disclosure is provided.

(viii) The dollar value of total compensation for the covered fiscal year (column (h)). With respect to each director, disclose the sum of all amounts reported in columns (b) through (g).

Instruction to Item 402(f)(2).

Two or more directors may be grouped in a single row in the Table if all elements of their compensation are identical. The names of the directors for whom disclosure is presented on a group basis should be clear from the Table.

(3) Narrative to director compensation table.

Provide a narrative description of any material factors necessary to an understanding of the director compensation disclosed in this Table. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) A description of standard compensation arrangements (such as fees for retainer, committee service, service as chairman of the board or a committee, and meeting attendance); and

(ii) Whether any director has a different compensation arrangement, identifying that director and describing the terms of that arrangement.

Instruction to Item 402(f).

In addition to the Instruction to paragraph (f)(2)(vii) of this Item, the following apply equally to paragraph (f) of this Item: Instructions 2 and 4 to paragraph (b) of this Item; the Instructions to paragraphs (b)(2)(iii) and (iv) of this Item; the Instructions to paragraphs (b)(2)(v) and (vi) of this Item; the Instructions to paragraph (b)(2)(vii) of this Item; the Instruction to paragraph (b)(2)(viii) of this Item; the Instructions to paragraph (b)(2)(ix) of this Item; and paragraph (c)(7) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (f) of this Item that correspond to analogous disclosures provided for in paragraph (b) of this Item to which they refer.

6. Amend §228.403 by revising paragraph (b) to read as follows:

§228.403 (Item 403) Security ownership of certain beneficial owners and management.

* * * * *

(b) Security ownership of management. Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the small business issuer or any of its parents or subsidiaries, including directors' qualifying shares, beneficially owned by all directors and nominees, naming them, each of the named executive officers as defined in Item 402(a)(2) (§228.402(a)(2)), and directors and executive officers of the small business issuer as a group, without naming them. Show in column (3) the total number of shares beneficially

owned and in column (4) the percent of the class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares that are pledged as security and the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in §240.13d-3(d)(1) of this chapter.

(1) Title of Class	(2) Name of Beneficial Owner	(3) Amount and Nature of Beneficial Ownership	(4) Percent of Class

* * * * *

7. Revise §228.404 to read as follows:

§228.404 (Item 404) Transactions with related persons, promoters and certain control persons.

(a) Transactions with related persons. Describe any transaction, since the beginning of the small business issuer's last fiscal year, or any currently proposed transaction, in which the small business issuer was or is to be a participant and the amount involved exceeds the lesser of $120,000 or one percent of the average of the small business issuer's total assets at year-end for the last three completed fiscal years, and in which any related person had or will have a direct or indirect material interest. Disclose the following information regarding the transaction:

(1) The name of the related person and the basis on which the person is a related person.

(2) The related person's interest in the transaction with the small business issuer, including the related person's position(s) or relationship(s) with, or ownership in, a firm, corporation, or other entity that is a party to, or has an interest in, the transaction.

(3) The approximate dollar value of the amount involved in the transaction.

(4) The approximate dollar value of the amount of the related person's interest in the transaction, which shall be computed without regard to the amount of profit or loss.

(5) In the case of indebtedness, disclosure of the amount involved in the transaction shall include the largest aggregate amount of principal outstanding during the period for which disclosure is provided, the amount thereof outstanding as of the latest practicable date, the amount of principal paid during the periods for which disclosure is provided, the amount of interest paid during the period for which disclosure is provided, and the rate or amount of interest payable on the indebtedness.

(6) Any other information regarding the transaction or the related person in the context of the transaction that is material to investors in light of the circumstances of the particular transaction.

Instructions to Item 404(a).

1. For the purposes of paragraph (a) of this Item, the term related person means:

a. Any person who was in any of the following categories at any time during the specified period for which disclosure under paragraph (a) of this Item is required:

i. Any director or executive officer of the small business issuer;

ii. Any nominee for director, when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director; or

iii. Any immediate family member of a director or executive officer of the small business issuer, or of any nominee for director when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director, which means any child, stepchild, parent,

stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of such director, executive officer or nominee for director, and any person (other than a tenant or employee) sharing the household of such director, executive officer or nominee for director; and

b. Any person who was in any of the following categories when a transaction in which such person had a direct or indirect material interest occurred or existed:

i. A security holder covered by Item 403(a) (§228.403(a)); or

ii. Any immediate family member of any such security holder, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of such security holder, and any person (other than a tenant or employee) sharing the household of such security holder.

2. For purposes of paragraph (a) of this Item, a transaction includes, but is not limited to, any financial transaction, arrangement or relationship (including any indebtedness or guarantee of indebtedness) or any series of similar transactions, arrangements or relationships.

3. The amount involved in the transaction shall be computed by determining the dollar value of the amount involved in the transaction in question, which shall include:

a. In the case of any lease or other transaction providing for periodic payments or installments, the aggregate amount of all periodic payments or installments due on or after the beginning of the small business issuer's last fiscal year, including any required or optional payments due during or at the conclusion of the lease or other transaction providing for periodic payments or installments; and

b. In the case of indebtedness, the largest aggregate amount of all indebtedness outstanding at any time since the beginning of the small business issuer's last fiscal year and all amounts of interest payable on it during the last fiscal year.

4. In the case of a transaction involving indebtedness:

a. The following items of indebtedness may be excluded from the calculation of the amount of indebtedness and need not be disclosed: amounts due from the related person for purchases of goods and services subject to usual trade terms, for ordinary business travel and expense payments and for other transactions in the ordinary course of business;

b. Disclosure need not be provided of any indebtedness transaction for the related persons specified in Instruction 1.b. to paragraph (a) of this Item; and

c. If the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T (12 CFR part 220) and the loans are not disclosed as nonaccrual, past due, restructured or potential problems (see Item III.C.1. and 2. of Industry Guide 3, Statistical Disclosure by Bank Holding Companies (17 CFR 229.802(c))), disclosure under paragraph (a) of this Item may consist of a statement, if such is the case, that the loans to such persons:

i. Were made in the ordinary course of business;

ii. Were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable loans with persons not related to the lender; and

iii. Did not involve more than the normal risk of collectibility or present other unfavorable features.

5.a. Disclosure of an employment relationship or transaction involving an executive officer and any related compensation solely resulting from that employment relationship or transaction need not be provided pursuant to paragraph (a) of this Item if:

i. The compensation arising from the relationship or transaction is reported pursuant to Item 402 (§228.402); or

ii. The executive officer is not an immediate family member (as specified in Instruction 1 to paragraph (a) of this Item) and such compensation would have been reported under Item 402 (§228.402) as compensation earned for services to the small business issuer if the executive officer was a named executive officer as that term is defined in Item 402(a)(2) (§228.402(a)(2)), and such compensation had been approved, or recommended to the board of directors of the small business issuer for approval, by the compensation committee of the board of directors (or group of independent directors performing a similar function) of the small business issuer.

b. Disclosure of compensation to a director need not be provided pursuant to paragraph (a) of this Item if the compensation is reported pursuant to Item 402(f) (§228.402(f)).

6. A person who has a position or relationship with a firm, corporation, or other entity that engages in a transaction with the small business issuer shall not be deemed to have an indirect material interest within the meaning of paragraph (a) of this Item where:

a. The interest arises only:

i. From such person's position as a director of another corporation or organization that is a party to the transaction; or

ii. From the direct or indirect ownership by such person and all other persons specified in Instruction 1 to paragraph (a) of this Item, in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or

iii. From both such position and ownership; or

b. The interest arises only from such person's position as a limited partner in a partnership in which the person and all other persons specified in Instruction 1 to paragraph (a) of this Item, have an interest of less than ten percent, and the person is not a general partner of and does not hold another position in the partnership.

7. Disclosure need not be provided pursuant to paragraph (a) of this Item if:

a. The transaction is one where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

b. The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services; or

c. The interest of the related person arises solely from the ownership of a class of equity securities of the small business issuer and all holders of that class of equity securities of the small business issuer received the same benefit on a pro rata basis.

8. Include information for any material underwriting discounts and commissions upon the sale of securities by the small business issuer where any of the specified persons was or is to be a principal underwriter or is a controlling person or member of a firm that was or is to be a principal underwriter.

9. Information shall be given for the period specified in paragraph (a) of this Item and, in addition, for the fiscal year preceding the small business issuer's last fiscal year.

(b) Parents. List all parents of the small business issuer showing the basis of control and as to each parent, the percentage of voting securities owned or other basis of control by its immediate parent, if any.

(c) Promoters and control persons.

(1) Small business issuers that had a promoter at any time during the past five fiscal years shall:

(i) State the names of the promoter(s), the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter, directly or indirectly, from the small business issuer and the nature and amount of any assets, services or other consideration therefore received or to be received by the small business issuer; and

(ii) As to any assets acquired or to be acquired by the small business issuer from a promoter, state the amount at which the assets were acquired or are to be acquired and the principle followed or to be followed in determining such amount, and identify the persons making the determination and their relationship, if any, with the small business issuer or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the small business issuer, also state the cost thereof to the promoter.

(2) Small business issuers shall provide the disclosure required by paragraphs (c)(1)(i) and (c)(1)(ii) of this Item as to any person who acquired control of a small business issuer that is a shell company, or any person that is part of a group, consisting of

two or more persons that agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of a small business issuer, that acquired control of a small business issuer that is a shell company. For purposes of this Item, shell company has the same meaning as in Rule 405 under the Securities Act (17 CFR 230.405) and Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2).

8. Add §228.407 to read as follows:

§228.407 (Item 407) Corporate governance.

(a) Director independence. Identify each director and, when the disclosure called for by this paragraph is being presented in a proxy or information statement relating to the election of directors, each nominee for director, that is independent under the independence standards applicable to the small business issuer under paragraph (a)(1) of this Item. In addition, if such independence standards contain independence requirements for committees of the board of directors, identify each director that is a member of the compensation, nominating or audit committee that is not independent under such committee independence standards. If the small business issuer does not have a separately designated audit, nominating or compensation committee or committee performing similar functions, the small business issuer must provide the disclosure of directors that are not independent with respect to all members of the board of directors applying such committee independence standards.

(1) In determining whether or not the director or nominee for director is independent for the purposes of paragraph (a) of this Item, the small business issuer shall use the applicable definition of independence, as follows:

(i) If the small business issuer is a listed issuer whose securities are listed on a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, the small business issuer's definition of independence that it uses for determining if a majority of the board of directors is independent in compliance with the listing standards applicable to the small business issuer. When determining whether the members of a committee of the board of directors are independent, the small business issuer's definition of independence that it uses for determining if the members of that specific committee are independent in compliance with the independence standards applicable for the members of the specific committee in the listing standards of the national securities exchange or inter-dealer quotation system that the small business issuer uses for determining if a majority of the board of directors are independent. If the small business issuer does not have independence standards for a committee, the independence standards for that specific committee in the listing standards of the national securities exchange or inter-dealer quotation system that the small business issuer uses for determining if a majority of the board of directors are independent.

(ii) If the small business issuer is not a listed issuer, a definition of independence of a national securities exchange or of an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, and state which definition is used. Whatever such definition the small business issuer chooses, it must use the same definition with respect to all directors and nominees for director. When determining whether the members of a specific committee of the board of directors are independent, if the national securities exchange or national securities association whose

standards are used has independence standards for the members of a specific committee, use those committee specific standards.

(iii) If the information called for by paragraph (a) of this Item is being presented in a registration statement on Form S-1 (§239.11 of this chapter) or Form SB-2 (§239.10 of this chapter) under the Securities Act or on a Form 10 (§249.210 of this chapter) or Form 10-SB (§249.210b of this chapter) under the Exchange Act where the small business issuer has applied for listing with a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, the definition of independence that the small business issuer uses for determining if a majority of the board of directors is independent, and the definition of independence that the small business issuer uses for determining if members of the specific committee of the board of directors are independent, that is in compliance with the independence listing standards of the national securities exchange or inter-dealer quotation system on which it has applied for listing, or if the small business issuer has not adopted such definitions, the independence standards for determining if the majority of the board of directors is independent and if members of the committee of the board of directors are independent of that national securities exchange or inter-dealer quotation system.

(2) If the small business issuer uses its own definitions for determining whether its directors and nominees for director, and members of specific committees of the board of directors, are independent, disclose whether these definitions are available to security holders on the small business issuer's Web site. If so, provide the small business issuer's Web site address. If not, include a copy of these policies in an appendix to the small

business issuer's proxy statement or information statement that is provided to security holders at least once every three fiscal years or if the policies have been materially amended since the beginning of the small business issuer's last fiscal year. If a current copy of the policies is not available to security holders on the small business issuer's Web site, and is not included as an appendix to the small business issuer's proxy statement or information statement, identify the most recent fiscal year in which the policies were so included in satisfaction of this requirement.

(3) For each director and nominee for director that is identified as independent, describe, by specific category or type, any transactions, relationships or arrangements not disclosed pursuant to Item 404(a) (§228.404(a)) that were considered by the board of directors under the applicable independence definitions in determining that the director is independent.

Instructions to Item 407(a).

1. If the small business issuer is a listed issuer whose securities are listed on a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, and also has exemptions to those requirements (for independence of a majority of the board of directors or committee member independence) upon which the small business issuer relied, disclose the exemption relied upon and explain the basis for the small business issuer's conclusion that such exemption is applicable. The same disclosure should be provided if the small business issuer is not a listed issuer and the national securities exchange or inter-dealer quotation system selected by the small business issuer has exemptions that are applicable to the small business issuer. Any national securities

exchange or inter-dealer quotation system which has requirements that at least 50 percent of the members of a small business issuer's board of directors must be independent shall be considered a national securities exchange or inter-dealer quotation system which has requirements that a majority of the board of directors be independent for the purposes of the disclosure required by paragraph (a) of this Item.

2. Small business issuers shall provide the disclosure required by paragraph (a) of this Item for any person who served as a director during any part of the last completed fiscal year, except that no information called for by paragraph (a) of this Item need be given in a registration statement filed at a time when the small business issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a), or 78o(d)) respecting any director who is no longer a director at the time of effectiveness of the registration statement.

3. The description of the specific categories or types of transactions, relationships or arrangements required by paragraph (a)(3) of this Item must be provided in such detail as is necessary to fully describe the nature of the transactions, relationships or arrangements.

(b) Board meetings and committees; annual meeting attendance.

(1) State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of:

(i) The total number of meetings of the board of directors (held during the period for which he has been a director); and

(ii) The total number of meetings held by all committees of the board on which he served (during the periods that he served).

(2) Describe the small business issuer's policy, if any, with regard to board members' attendance at annual meetings of security holders and state the number of board members who attended the prior year's annual meeting.

Instruction to Item 407(b)(2).

In lieu of providing the information required by paragraph (b)(2) of this Item in the proxy statement, the small business issuer may instead provide the small business issuer's Web site address where such information appears.

(3) State whether or not the small business issuer has standing audit, nominating and compensation committees of the board of directors, or committees performing similar functions. If the small business issuer has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by each such committee. Such disclosure need not be provided to the extent it is duplicative of disclosure provided in accordance with paragraph (c), (d) or (e) of this Item.

(c) Nominating committee. (1) If the small business issuer does not have a standing nominating committee or committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the small business issuer not to have such a committee and identify each director who participates in the consideration of director nominees.

(2) Provide the following information regarding the small business issuer's director nomination process:

(i) State whether or not the nominating committee has a charter. If the nominating committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the nominating committee charter;

(ii) If the nominating committee has a policy with regard to the consideration of any director candidates recommended by security holders, provide a description of the material elements of that policy, which shall include, but need not be limited to, a statement as to whether the committee will consider director candidates recommended by security holders;

(iii) If the nominating committee does not have a policy with regard to the consideration of any director candidates recommended by security holders, state that fact and state the basis for the view of the board of directors that it is appropriate for the small business issuer not to have such a policy;

(iv) If the nominating committee will consider candidates recommended by security holders, describe the procedures to be followed by security holders in submitting such recommendations;

(v) Describe any specific minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the small business issuer's board of directors, and describe any specific qualities or skills that the nominating committee believes are necessary for one or more of the small business issuer's directors to possess;

(vi) Describe the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any

differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder;

(vii) With regard to each nominee approved by the nominating committee for inclusion on the small business issuer's proxy card (other than nominees who are executive officers or who are directors standing for re-election), state which one or more of the following categories of persons or entities recommended that nominee: security holder, non-management director, chief executive officer, other executive officer, third-party search firm, or other specified source;

(viii) If the small business issuer pays a fee to any third party or parties to identify or evaluate or assist in identifying or evaluating potential nominees, disclose the function performed by each such third party; and

(ix) If the small business issuer's nominating committee received, by a date not later than the 120th calendar day before the date of the small business issuer's proxy statement released to security holders in connection with the previous year's annual meeting, a recommended nominee from a security holder that beneficially owned more than 5% of the small business issuer's voting common stock for at least one year as of the date the recommendation was made, or from a group of security holders that beneficially owned, in the aggregate, more than 5% of the small business issuer's voting common stock, with each of the securities used to calculate that ownership held for at least one year as of the date the recommendation was made, identify the candidate and the security holder or security holder group that recommended the candidate and disclose whether the nominating committee chose to nominate the candidate, provided, however, that no such

identification or disclosure is required without the written consent of both the security holder or security holder group and the candidate to be so identified.

Instructions to Item 407(c)(2)(ix).

1. For purposes of paragraph (c)(2)(ix) of this Item, the percentage of securities held by a nominating security holder may be determined using information set forth in the small business issuer's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Commission pursuant to the Exchange Act, unless the party relying on such report knows or has reason to believe that the information contained therein is inaccurate.

2. For purposes of the small business issuer's obligation to provide the disclosure specified in paragraph (c)(2)(ix) of this Item, where the date of the annual meeting has been changed by more than 30 days from the date of the previous year's meeting, the obligation under that Item will arise where the small business issuer receives the security holder recommendation a reasonable time before the small business issuer begins to print and mail its proxy materials.

3. For purposes of paragraph (c)(2)(ix) of this Item, the percentage of securities held by a recommending security holder, as well as the holding period of those securities, may be determined by the small business issuer if the security holder is the registered holder of the securities. If the security holder is not the registered owner of the securities, he or she can submit one of the following to the small business issuer to evidence the required ownership percentage and holding period:

a. A written statement from the "record" holder of the securities (usually a broker or bank) verifying that, at the time the security holder made the recommendation, he or she had held the required securities for at least one year; or

b. If the security holder has filed a Schedule 13D (§240.13d-101 of this chapter), Schedule 13G (§240.13d-102 of this chapter), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter), and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting ownership of the securities as of or before the date of the recommendation, a copy of the schedule and/or form, and any subsequent amendments reporting a change in ownership level, as well as a written statement that the security holder continuously held the securities for the one-year period as of the date of the recommendation.

4. For purposes of the small business issuer's obligation to provide the disclosure specified in paragraph (c)(2)(ix) of this Item, the security holder or group must have provided to the small business issuer, at the time of the recommendation, the written consent of all parties to be identified and, where the security holder or group members are not registered holders, proof that the security holder or group satisfied the required ownership percentage and holding period as of the date of the recommendation.

Instruction to Item 407(c)(2).

For purposes of paragraph (c)(2) of this Item, the term nominating committee refers not only to nominating committees and committees performing similar functions, but also to groups of directors fulfilling the role of a nominating committee, including the entire board of directors.

(3) Describe any material changes to the procedures by which security holders may recommend nominees to the small business issuer's board of directors, where those changes were implemented after the small business issuer last provided disclosure in response to the requirements of paragraph (c)(2)(iv) of this Item, or paragraph (c)(3) of this Item.

Instructions to Item 407(c)(3).

1. The disclosure required in paragraph (c)(3) of this Item need only be provided in a small business issuer's quarterly or annual reports.

2. For purposes of paragraph (c)(3) of this Item, adoption of procedures by which security holders may recommend nominees to the small business issuer's board of directors, where the small business issuer's most recent disclosure in response to the requirements of paragraph (c)(2)(iv) of this Item, or paragraph (c)(3) of this Item, indicated that the small business issuer did not have in place such procedures, will constitute a material change.

(d) Audit committee.

(1) State whether or not the audit committee has a charter. If the audit committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the audit committee charter.

(2) If a listed issuer's board of directors determines, in accordance with the listing standards applicable to the issuer, to appoint a director to the audit committee who is not independent (apart from the requirements in §240.10A-3 of this chapter), including as a result of exceptional or limited or similar circumstances, disclose the nature of the

relationship that makes that individual not independent and the reasons for the board of directors' determination.

(3)(i) The audit committee must state whether:

(A) The audit committee has reviewed and discussed the audited financial statements with management;

(B) The audit committee has discussed with the independent auditors the matters required to be discussed by the statement on Auditing Standards No. 61, as amended (AICPA, Professional Standards, Vol. 1, AU section 380), as adopted by the Public Company Accounting Oversight Board in Rule 3200T;

(C) The audit committee has received the written disclosures and the letter from the independent accountants required by Independence Standards Board Standard No. 1 (Independence Standards Board Standard No. 1, Independence Discussions with Audit Committees), as adopted by the Public Company Accounting Oversight Board in Rule 3600T, and has discussed with the independent accountant the independent accountant's independence; and

(D) Based on the review and discussions referred to in paragraphs (d)(3)(i)(A) through (d)(3)(i)(C) of this Item, the audit committee recommended to the board of directors that the audited financial statements be included in the company's annual report on Form 10-KSB (17 CFR 249.310b) for the last fiscal year for filing with the Commission.

(ii) The name of each member of the company's audit committee (or, in the absence of an audit committee, the board committee performing equivalent functions or

the entire board of directors) must appear below the disclosure required by paragraph (d)(3)(i) of this Item.

(4)(i) If the small business issuer meets the following requirements, provide the disclosure in paragraph (d)(4)(ii) of this Item:

(A) The small business issuer is a listed issuer, as defined in §240.10A-3 of this chapter;

(B) The small business issuer is filing either an annual report on Form 10-KSB (17 CFR 249.310b), or a proxy statement or information statement pursuant to the Exchange Act (15 U.S.C. 78a et seq.) if action is to be taken with respect to the election of directors; and

(C) The small business issuer is neither:

(1) A subsidiary of another listed issuer that is relying on the exemption in §240.10A-3(c)(2) of this chapter; nor

(2) Relying on any of the exemptions in §240.10A-3(c)(4) through (c)(7) of this chapter.

(ii)(A) State whether or not the small business issuer has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)), or a committee performing similar functions. If the small business issuer has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the small business issuer's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(B) If applicable, provide the disclosure required by §240.10A-3(d) of this chapter regarding an exemption from the listing standards for audit committees.

(5) Audit committee financial expert.

(i)(A) Disclose that the small business issuer's board of directors has determined that the small business issuer either:

(1) Has at least one audit committee financial expert serving on its audit committee; or

(2) Does not have an audit committee financial expert serving on its audit committee.

(B) If the small business issuer provides the disclosure required by paragraph (d)(5)(i)(A)(1) of this Item, it must disclose the name of the audit committee financial expert and whether that person is independent, as independence for audit committee members is defined in the listing standards applicable to the listed issuer.

(C) If the small business issuer provides the disclosure required by paragraph (d)(5)(i)(A)(2) of this Item, it must explain why it does not have an audit committee financial expert.

Instruction to Item 407(d)(5)(i).

If the small business issuer's board of directors has determined that the small business issuer has more than one audit committee financial expert serving on its audit committee, the small business issuer may, but is not required to, disclose the names of those additional persons. A small business issuer choosing to identify such persons must indicate whether they are independent pursuant to paragraph (d)(5)(i)(B) of this Item.

(ii) For purposes of this Item, an audit committee financial expert means a person who has the following attributes:

(A) An understanding of generally accepted accounting principles and financial statements;

(B) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

(C) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the small business issuer's financial statements, or experience actively supervising one or more persons engaged in such activities;

(D) An understanding of internal control over financial reporting; and

(E) An understanding of audit committee functions.

(iii) A person shall have acquired such attributes through:

(A) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(B) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(C) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(D) Other relevant experience.

(iv) Safe harbor.

(A) A person who is determined to be an audit committee financial expert will not be deemed an expert for any purpose, including without limitation for purposes of section 11 of the Securities Act (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item 407.

(B) The designation or identification of a person as an audit committee financial expert pursuant to this Item 407 does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(C) The designation or identification of a person as an audit committee financial expert pursuant to this Item does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

Instructions to Item 407(d)(5).

1. The disclosure under paragraph (d)(5) of this Item is required only in a small business issuer's annual report. The small business issuer need not provide the disclosure required by paragraph (d)(5) of this Item in a proxy or information statement unless that small business issuer is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to General Instruction E(3) to Form 10-KSB (17 CFR 249.310b).

2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (d)(5)(iii)(D) of this Item, the small business issuer

shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures required under Item 401(a)(4) (§228.401(a)(4)).

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of paragraph (d)(5) of this Item, the term board of directors means the supervisory or non-management board. Also, in the case of a foreign private issuer, the term generally accepted accounting principles in paragraph (d)(5)(ii)(A) of this Item means the body of generally accepted accounting principles used by that issuer in its primary financial statements filed with the Commission.

4. Following the effective date of the first registration statement filed under the Securities Act (15 U.S.C. 77a et seq.) or Exchange Act (15 U.S.C. 78a et seq.) by a small business issuer, the small business issuer or successor issuer need not make the disclosures required by this Item in its first annual report filed pursuant to section 13(a) or 15(d) (15 U.S.C. 78m(a) or 78o(d)) of the Exchange Act after effectiveness.

Instructions to Item 407(d).

1. The information required by paragraphs (d)(1) - (3) of this Item shall not be deemed to be "soliciting material," or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a-1 through 240.14b-2 or 240.14c-1 through 240.14c-101), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the small business issuer specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act. Such information will not be deemed to be incorporated by reference into

any filing under the Securities Act or the Exchange Act, except to the extent that the small business issuer specifically incorporates it by reference.

2. The disclosure required by paragraphs (d)(1) - (3) of this Item need only be provided one time during any fiscal year.

3. The disclosure required by paragraph (d)(3) of this Item need not be provided in any filings other than a small business issuer's proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting).

(e) Compensation committee.

(1) If the small business issuer does not have a standing compensation committee or committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the small business issuer not to have such a committee and identify each director who participates in the consideration of executive officer and director compensation.

(2) State whether or not the compensation committee has a charter. If the compensation committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the compensation committee charter.

(3) Provide a narrative description of the small business issuer's processes and procedures for the consideration and determination of executive and director compensation, including:

(i) (A) The scope of authority of the compensation committee (or persons performing the equivalent functions); and

(B) The extent to which the compensation committee (or persons performing the equivalent functions) may delegate any authority described in paragraph (e)(3)(i)(A) of this Item to other persons, specifying what authority may be so delegated and to whom;

(ii) Any role of executive officers in determining or recommending the amount or form of executive and director compensation; and

(iii) Any role of compensation consultants in determining or recommending the amount or form of executive and director compensation, identifying such consultants, stating whether such consultants are engaged directly by the compensation committee (or persons performing the equivalent functions) or any other person, describing the nature and scope of their assignment, and the material elements of the instructions or directions given to the consultants with respect to the performance of their duties under the engagement.

(f) Shareholder communications.

(1) State whether or not the small business issuer's board of directors provides a process for security holders to send communications to the board of directors and, if the small business issuer does not have such a process for security holders to send communications to the board of directors, state the basis for the view of the board of directors that it is appropriate for the small business issuer not to have such a process.

(2) If the small business issuer has a process for security holders to send communications to the board of directors:

(i) Describe the manner in which security holders can send communications to the board and, if applicable, to specified individual directors; and

(ii) If all security holder communications are not sent directly to board members, describe the small business issuer's process for determining which communications will be relayed to board members.

Instructions to Item 407(f).

1. In lieu of providing the information required by paragraph (f)(2) of this Item in the proxy statement, the small business issuer may instead provide the small business issuer's Web site address where such information appears.

2. For purposes of the disclosure required by paragraph (f)(2)(ii) of this Item, a small business issuer's process for collecting and organizing security holder communications, as well as similar or related activities, need not be disclosed provided that the small business issuer's process is approved by a majority of the independent directors.

3. For purposes of this paragraph, communications from an officer or director of the small business issuer will not be viewed as "security holder communications." Communications from an employee or agent of the small business issuer will be viewed as "security holder communications" for purposes of this paragraph only if those communications are made solely in such employee's or agent's capacity as a security holder.

4. For purposes of this paragraph, security holder proposals submitted pursuant to §240.14a-8 of this chapter, and communications made in connection with such proposals, will not be viewed as "security holder communications."

Instructions to Item 407.

1. For purposes of this Item:

a. Listed issuer means a listed issuer as defined in §240.10A-3 of this chapter;

b. National securities exchange means a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a));

c. Inter-dealer quotation system means an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o-3(a)); and

d. National securities association means a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o-3(a)) that has been approved by the Commission (as that definition may be modified or supplemented).

2. With respect to paragraphs (c)(2)(i), (d)(1) and (e)(2) of this Item, disclose whether a current copy of the applicable committee charter is available to security holders on the small business issuer's Web site, and if so, provide the small business issuer's Web site address. If a current copy of the charter is not available to security holders on the small business issuer's Web site, include a copy of the charter in an appendix to the small business issuer's proxy or information statement that is provided to security holders at least once every three fiscal years, or if the charter has been materially amended since the beginning of the small business issuer's last fiscal year. If a current copy of the charter is not available to security holders on the small business issuer's Web site, and is not included as an appendix to the small business issuer's proxy or information statement, identify in which of the prior fiscal years the charter was so included in satisfaction of this requirement.

PART 229 – STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975 – REGULATION S-K

9. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll, 78mm, 79e, 79j, 79n, 79t, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

10. Amend §229.201 by revising Instruction 2 to paragraph (d) and adding paragraph (e) before the Instructions to Item 201 to read as follows:

§229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.

* * * * *

Instructions to paragraph (d).

1. * * *

2. For purposes of this paragraph, an "individual compensation arrangement" includes, but is not limited to, the following: a written compensation contract within the meaning of "employee benefit plan" under §230.405 of this chapter and a plan (whether or not set forth in any formal document) applicable to one person as provided under Item 402(a)(6)(ii) of Regulation S-K (§229.402(a)(6)(ii)).

* * * * *

(e) Performance graph. (1) Provide a line graph comparing the yearly percentage change in the registrant's cumulative total shareholder return on a class of

common stock registered under section 12 of the Exchange Act (as measured by dividing (i) the sum of (A) the cumulative amount of dividends for the measurement period, assuming dividend reinvestment, and (B) the difference between the registrant's share price at the end and the beginning of the measurement period; by (ii) the share price at the beginning of the measurement period) with:

(i) The cumulative total return of a broad equity market index assuming reinvestment of dividends, that includes companies whose equity securities are traded on the same exchange or are of comparable market capitalization; provided, however, that if the registrant is a company within the Standard & Poor's 500 Stock Index, the registrant must use that index; and

(ii) The cumulative total return, assuming reinvestment of dividends, of:

(A) A published industry or line-of-business index;

(B) Peer issuer(s) selected in good faith. If the registrant does not select its peer issuer(s) on an industry or line-of-business basis, the registrant shall disclose the basis for its selection; or

(C) Issuer(s) with similar market capitalization(s), but only if the registrant does not use a published industry or line-of-business index and does not believe it can reasonably identify a peer group. If the registrant uses this alternative, the graph shall be accompanied by a statement of the reasons for this selection.

(2) For purposes of paragraph (e)(1) of this Item, the term "measurement period" shall be the period beginning at the "measurement point" established by the market close on the last trading day before the beginning of the registrant's fifth preceding fiscal year, through and including the end of the registrant's last completed fiscal year. If the class of

securities has been registered under section 12 of the Exchange Act (15 U.S.C. 78l) for a shorter period of time, the period covered by the comparison may correspond to that time period.

(3) For purposes of paragraph (e)(1)(ii)(A) of this Item, the term "published industry or line-of-business index" means any index that is prepared by a party other than the registrant or an affiliate and is accessible to the registrant's security holders; provided, however, that registrants may use an index prepared by the registrant or affiliate if such index is widely recognized and used.

(4) If the registrant selects a different index from an index used for the immediately preceding fiscal year, explain the reason(s) for this change and also compare the registrant's total return with that of both the newly selected index and the index used in the immediately preceding fiscal year.

Instructions to Item 201(e):

1. In preparing the required graphic comparisons, the registrant should:

a. Use, to the extent feasible, comparable methods of presentation and assumptions for the total return calculations required by paragraph (e)(1) of this Item; provided, however, that if the registrant constructs its own peer group index under paragraph (e)(1)(ii)(B), the same methodology must be used in calculating both the registrant's total return and that on the peer group index; and

b. Assume the reinvestment of dividends into additional shares of the same class of equity securities at the frequency with which dividends are paid on such securities during the applicable fiscal year.

2. In constructing the graph:

a. The closing price at the measurement point must be converted into a fixed investment, stated in dollars, in the registrant's stock (or in the stocks represented by a given index) with cumulative returns for each subsequent fiscal year measured as a change from that investment; and

b. Each fiscal year should be plotted with points showing the cumulative total return as of that point. The value of the investment as of each point plotted on a given return line is the number of shares held at that point multiplied by the then-prevailing share price.

3. The registrant is required to present information for the registrant's last five fiscal years, and may choose to graph a longer period; but the measurement point, however, shall remain the same.

4. Registrants may include comparisons using performance measures in addition to total return, such as return on average common shareholders' equity.

5. If the registrant uses a peer issuer(s) comparison or comparison with issuer(s) with similar market capitalizations, the identity of those issuers must be disclosed and the returns of each component issuer of the group must be weighted according to the respective issuer's stock market capitalization at the beginning of each period for which a return is indicated.

6. A registrant that qualifies as a "small business issuer," as defined by Item 10(a)(1) of Regulation S-B (17 CFR 228.10(a)(1)) is not required to provide the information required by paragraph (e) of this Item.

7. The information required by paragraph (e) of this Item need not be provided in any filings other than an annual report to security holders required by Exchange Act Rule

14a-3 (17 CFR 240.14a-3) or Exchange Act Rule 14c-3 (17 CFR 240.14c-3) that precedes or accompanies a registrant's proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

8. The information required by paragraph (e) of this Item shall not be deemed to be "soliciting material" or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a-1 – 240.14a-104 or 240.14c-1 – 240.14c-101), other than as provided in this item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the registrant specifically requests that such information be treated as soliciting material or specifically incorporates it by reference into a filing under the Securities Act or the Exchange Act.

* * * * *

11. Remove and reserve §229.306.

12. Amend §229.401 by removing paragraphs (h), (i) and (j) and by revising paragraph (g)(1) to read as follows:

§229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

(g) Promoters and control persons. (1) Registrants, which have not been subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) for the twelve months immediately prior to the filing of the registration statement, report, or statement to which this Item is applicable, and which had a promoter

at any time during the past five fiscal years, shall describe with respect to any promoter, any of the events enumerated in paragraphs (f)(1) through (f)(6) of this Item that occurred during the past five years and that are material to a voting or investment decision.

* * * * *

13. Revise §229.402 to read as follows:

§229.402 (Item 402) Executive compensation.

(a) General.

(1) Treatment of foreign private issuers. A foreign private issuer will be deemed to comply with this Item if it provides the information required by Items 6.B and 6.E.2 of Form 20-F (17 CFR 249.220f), with more detailed information provided if otherwise made publicly available or required to be disclosed by the issuer's home jurisdiction or a market in which its securities are listed or traded.

(2) All compensation covered. This Item requires clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (a)(3) of this Item, and directors covered by paragraph (k) of this Item, by any person for all services rendered in all capacities to the registrant and its subsidiaries, unless otherwise specifically excluded from disclosure in this Item. All such compensation shall be reported pursuant to this Item, even if also called for by another requirement, including transactions between the registrant and a third party where a purpose of the transaction is to furnish compensation to any such named executive officer or director. No amount reported as compensation for one fiscal year need be reported in the same manner as

compensation for a subsequent fiscal year; amounts reported as compensation for one fiscal year may be required to be reported in a different manner pursuant to this Item.

(3) Persons covered. Disclosure shall be provided pursuant to this Item for each of the following (the "named executive officers"):

(i) All individuals serving as the registrant's principal executive officer or acting in a similar capacity during the last completed fiscal year ("PEO"), regardless of compensation level;

(ii) All individuals serving as the registrant's principal financial officer or acting in a similar capacity during the last completed fiscal year ("PFO"), regardless of compensation level;

(iii) The registrant's three most highly compensated executive officers other than the PEO and PFO who were serving as executive officers at the end of the last completed fiscal year; and

(iv) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (a)(3)(iii) of this Item but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year.

Instructions to Item 402(a)(3).

1. Determination of most highly compensated executive officers. The determination as to which executive officers are most highly compensated shall be made by reference to total compensation for the last completed fiscal year (as required to be disclosed pursuant to paragraph (c)(2)(x) of this Item) reduced by the amount required to be disclosed pursuant to paragraph (c)(2)(viii) of this Item, provided, however, that no

disclosure need be provided for any executive officer, other than the PEO and PFO, whose total compensation, as so reduced, does not exceed $100,000.

2. Inclusion of executive officer of subsidiary. It may be appropriate for a registrant to include as named executive officers one or more executive officers or other employees of subsidiaries in the disclosure required by this Item. See Rule 3b-7 under the Exchange Act (17 CFR 240.3b-7).

3. Exclusion of executive officer due to overseas compensation. It may be appropriate in limited circumstances for a registrant not to include in the disclosure required by this Item an individual, other than its PEO or PFO, who is one of the registrant's most highly compensated executive officers due to the payment of amounts of cash compensation relating to overseas assignments attributed predominantly to such assignments.

(4) Information for full fiscal year. If the PEO or PFO served in that capacity during any part of a fiscal year with respect to which information is required, information should be provided as to all of his or her compensation for the full fiscal year. If a named executive officer (other than the PEO or PFO) served as an executive officer of the registrant (whether or not in the same position) during any part of the fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(5) Omission of table or column. A table or column may be omitted if there has been no compensation awarded to, earned by, or paid to any of the named executive officers or directors required to be reported in that table or column in any fiscal year covered by that table.

(6) Definitions. For purposes of this Item:

(i) The term stock means instruments such as common stock, restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or any similar instruments that do not have option-like features, and the term option means instruments such as stock options, stock appreciation rights and similar instruments with option-like features. The term stock appreciation rights ("SARs") refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the registrant or a named executive officer. The term equity is used to refer generally to stock and/or options.

(ii) The term plan includes, but is not limited to, the following: Any plan, contract, authorization or arrangement, whether or not set forth in any formal document, pursuant to which cash, securities, similar instruments, or any other property may be received. A plan may be applicable to one person. Registrants may omit information regarding group life, health, hospitalization, or medical reimbursement plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees.

(iii) The term incentive plan means any plan providing compensation intended to serve as incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the registrant or an affiliate, the registrant's stock price, or any other performance measure. An equity incentive plan is an incentive plan or portion of an incentive plan under which awards are granted that fall within the scope of Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), Share-Based Payment, as

modified or supplemented ("FAS 123R"). A non-equity incentive plan is an incentive plan or portion of an incentive plan that is not an equity incentive plan. The term incentive plan award means an award provided under an incentive plan.

(iv) The terms date of grant or grant date refer to the grant date determined for financial statement reporting purposes pursuant to FAS 123R.

(v) Closing market price is defined as the price at which the registrant's security was last sold in the principal United States market for such security as of the date for which the closing market price is determined.

(b) Compensation discussion and analysis.

(1) Discuss the compensation awarded to, earned by, or paid to the named executive officers. The discussion shall explain all material elements of the registrant's compensation of the named executive officers. The discussion shall describe the following:

(i) The objectives of the registrant's compensation programs;

(ii) What the compensation program is designed to reward;

(iii) Each element of compensation;

(iv) Why the registrant chooses to pay each element;

(v) How the registrant determines the amount (and, where applicable, the formula) for each element to pay; and

(vi) How each compensation element and the registrant's decisions regarding that element fit into the registrant's overall compensation objectives and affect decisions regarding other elements.

(2) While the material information to be disclosed under Compensation Discussion and Analysis will vary depending upon the facts and circumstances, examples of such information may include, in a given case, among other things, the following:

(i) The policies for allocating between long-term and currently paid out compensation;

(ii) The policies for allocating between cash and non-cash compensation, and among different forms of non-cash compensation;

(iii) For long-term compensation, the basis for allocating compensation to each different form of award (such as relationship of the award to the achievement of the registrant's long-term goals, management's exposure to downside equity performance risk, correlation between cost to registrant and expected benefits to the registrant);

(iv) How the determination is made as to when awards are granted, including awards of equity-based compensation such as options;

(v) What specific items of corporate performance are taken into account in setting compensation policies and making compensation decisions;

(vi) How specific forms of compensation are structured and implemented to reflect these items of the registrant's performance, including whether discretion can be or has been exercised (either to award compensation absent attainment of the relevant performance goal(s) or to reduce or increase the size of any award or payout), identifying any particular exercise of discretion, and stating whether it applied to one or more specified named executive officers or to all compensation subject to the relevant performance goal(s);

(vii) How specific forms of compensation are structured and implemented to reflect the named executive officer's individual performance and/or individual contribution to these items of the registrant's performance, describing the elements of individual performance and/or contribution that are taken into account;

(viii) Registrant policies and decisions regarding the adjustment or recovery of awards or payments if the relevant registrant performance measures upon which they are based are restated or otherwise adjusted in a manner that would reduce the size of an award or payment;

(ix) The factors considered in decisions to increase or decrease compensation materially;

(x) How compensation or amounts realizable from prior compensation are considered in setting other elements of compensation (e.g., how gains from prior option or stock awards are considered in setting retirement benefits);

(xi) With respect to any contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) at, following, or in connection with any termination or change-in-control, the basis for selecting particular events as triggering payment (e.g., the rationale for providing a single trigger for payment in the event of a change-in-control);

(xii) The impact of the accounting and tax treatments of the particular form of compensation;

(xiii) The registrant's equity or other security ownership requirements or guidelines (specifying applicable amounts and forms of ownership), and any registrant policies regarding hedging the economic risk of such ownership;

(xiv) Whether the registrant engaged in any benchmarking of total compensation, or any material element of compensation, identifying the benchmark and, if applicable, its components (including component companies); and

(xv) The role of executive officers in determining executive compensation.

Instructions to Item 402(b).

1. The purpose of the Compensation Discussion and Analysis is to provide to investors material information that is necessary to an understanding of the registrant's compensation policies and decisions regarding the named executive officers.

2. The Compensation Discussion and Analysis should be of the information contained in the tables and otherwise disclosed pursuant to this Item. The Compensation Discussion and Analysis should also cover actions regarding executive compensation that were taken after the registrant's last fiscal year's end. Actions that should be addressed might include, as examples only, the adoption or implementation of new or modified programs and policies or specific decisions that were made or steps that were taken that could affect a fair understanding of the named executive officer's compensation for the last fiscal year. Moreover, in some situations it may be necessary to discuss prior years in order to give context to the disclosure provided.

3. The Compensation Discussion and Analysis should focus on the material principles underlying the registrant's executive compensation policies and decisions and the most important factors relevant to analysis of those policies and decisions. The Compensation Discussion and Analysis shall reflect the individual circumstances of the registrant and shall avoid boilerplate language and repetition of the more detailed information set forth in the tables and narrative disclosures that follow.

4. Registrants are not required to disclose target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm for the registrant. The standard to use when determining whether disclosure would cause competitive harm for the registrant is the same standard that would apply when a registrant requests confidential treatment of confidential trade secrets or confidential commercial or financial information pursuant to Securities Act Rule 406 (17 CFR 230.406) and Exchange Act Rule 24b-2 (17 CFR 240.24b-2), each of which incorporates the criteria for non-disclosure when relying upon Exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and Rule 80(b)(4) (17 CFR 200.80(b)(4)) thereunder. A registrant is not required to seek confidential treatment under the procedures in Securities Act Rule 406 and Exchange Act Rule 24b-2 if it determines that the disclosure would cause competitive harm in reliance on this instruction; however, in that case, the registrant must discuss how difficult it will be for the executive or how likely it will be for the registrant to achieve the undisclosed target levels or other factors.

5. Disclosure of target levels that are non-GAAP financial measures will not be subject to Regulation G (17 CFR 244.100 - 102) and Item 10(e) (§229.10(e)); however, disclosure must be provided as to how the number is calculated from the registrant's audited financial statements.

(c) Summary compensation table.

(1) General. Provide the information specified in paragraph (c)(2) of this Item, concerning the compensation of the named executive officers for each of the registrant's last three completed fiscal years, in a Summary Compensation Table in the tabular format specified below.

SUMMARY COMPENSATION TABLE

Name and Principal Position (a)	Year (b)	Salary ($) (c)	Bonus ($) (d)	Stock Awards ($) (e)	Option Awards ($) (f)	Non-Equity Incentive Plan Compen-sation ($) (g)	Change in Pension Value and Nonquali-fied Deferred Compensa-tion Earnings ($) (h)	All Other Compen-sation ($) (i)	Total ($) (j)
PEO	_____ _____ _____								
PFO	_____ _____ _____								
A	_____ _____ _____								
B	_____ _____ _____								
C	_____ _____ _____								

(2) The Table shall include:

(i) The name and principal position of the named executive officer (column (a));

(ii) The fiscal year covered (column (b));

(iii) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (c));

(iv) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d));

Instructions to Item 402(c)(2)(iii) and (iv).

1. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, a footnote shall be included disclosing that the amount of salary or bonus is not calculable through the latest practicable date and providing the date that the amount of salary or bonus is expected to be determined, and such amount must then be disclosed in a filing under Item 5.02(f) of Form 8-K (17 CFR 249.308).

2. Registrants need not include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer pursuant to a registrant's program under which stock, equity-based or other forms of non-cash compensation may be received by a named executive officer instead of a portion of annual compensation earned in a covered fiscal year. However, the receipt of any such form of non-cash compensation instead of salary or bonus earned for a covered fiscal year must be disclosed in the appropriate column of the Summary Compensation Table corresponding to that fiscal year (e.g., stock awards (column (e)); option awards (column (f)); all other compensation (column (i))), or, if made pursuant to a non-equity incentive plan and therefore not reportable in the Summary Compensation

Table when granted, a footnote must be added to the salary or bonus column so disclosing and referring to the Grants of Plan-Based Awards Table (required by paragraph (d) of this Item) where the award is reported.

(v) For awards of stock, the aggregate grant date fair value computed in accordance with FAS 123R (column (e));

(vi) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FAS 123R (column (f));

Instructions to Item 402(c)(2)(v) and (vi).

1. For awards reported in columns (e) and (f), include a footnote disclosing all assumptions made in the valuation by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

2. If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise price of options or SARs previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), or otherwise has materially modified such awards, the registrant shall include, as awards required to be reported in column (f), the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R, with respect to that repriced or modified award.

(vii) The dollar value of all earnings for services performed during the fiscal year pursuant to awards under non-equity incentive plans as defined in paragraph (a)(6)(iii) of this Item, and all earnings on any outstanding awards (column (g));

Instructions to Item 402(c)(2)(vii).

1. If the relevant performance measure is satisfied during the fiscal year (including for a single year in a plan with a multi-year performance measure), the earnings are reportable for that fiscal year, even if not payable until a later date, and are not reportable again in the fiscal year when amounts are paid to the named executive officer.

2. All earnings on non-equity incentive plan compensation must be identified and quantified in a footnote to column (g), whether the earnings were paid during the fiscal year, payable during the period but deferred at the election of the named executive officer, or payable by their terms at a later date.

(viii) The sum of the amounts specified in paragraphs (c)(2)(viii)(A) and (B) of this Item (column (h)) as follows:

(A) The aggregate change in the actuarial present value of the named executive officer's accumulated benefit under all defined benefit and actuarial pension plans (including supplemental plans) from the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the prior completed fiscal year to the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the covered fiscal year; and

(B) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans;

Instructions to Item 402(c)(2)(viii).

1. The disclosure required pursuant to paragraph (c)(2)(viii)(A) of this Item applies to each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans and supplemental executive retirement plans, but excluding tax-qualified defined contribution plans and nonqualified defined contribution plans. For purposes of this disclosure, the registrant should use the same amounts required to be disclosed pursuant to paragraph (h)(2)(iv) of this Item for the covered fiscal year and the amounts that were or would have been required to be reported for the executive officer pursuant to paragraph (h)(2)(iv) of this Item for the prior completed fiscal year.

2. Regarding paragraph (c)(2)(viii)(B) of this Item, interest on deferred compensation is above-market only if the rate of interest exceeds 120% of the applicable federal long-term rate, with compounding (as prescribed under section 1274(d) of the Internal Revenue Code, (26 U.S.C. 1274(d))) at the rate that corresponds most closely to the rate under the registrant's plan at the time the interest rate or formula is set. In the event of a discretionary reset of the interest rate, the requisite calculation must be made on the basis of the interest rate at the time of such reset, rather than when originally established. Only the above-market portion of the interest must be included. If the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all

conditions to receiving interest at the highest rate. Dividends (and dividend equivalents) on deferred compensation denominated in the registrant's stock ("deferred stock") are preferential only if earned at a rate higher than dividends on the registrant's common stock. Only the preferential portion of the dividends or equivalents must be included. Footnote or narrative disclosure may be provided explaining the registrant's criteria for determining any portion considered to be above-market.

3. The registrant shall identify and quantify by footnote the separate amounts attributable to each of paragraphs (c)(2)(viii)(A) and (B) of this Item. Where such amount pursuant to paragraph (c)(2)(viii)(A) is negative, it should be disclosed by footnote but should not be reflected in the sum reported in column (h).

(ix) All other compensation for the covered fiscal year that the registrant could not properly report in any other column of the Summary Compensation Table (column (i)). Each compensation item that is not properly reportable in columns (c) - (h), regardless of the amount of the compensation item, must be included in column (i). Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the registrant or its subsidiaries purchased from the registrant or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that

discount is available generally, either to all security holders or to all salaried employees of the registrant, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(1) Any termination, including without limitation through retirement, resignation, severance or constructive termination (including a change in responsibilities) of such executive officer's employment with the registrant and its subsidiaries; or

(2) A change in control of the registrant;

(E) Registrant contributions or other allocations to vested and unvested defined contribution plans;

(F) The dollar value of any insurance premiums paid by, or on behalf of, the registrant during the covered fiscal year with respect to life insurance for the benefit of a named executive officer; and

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in columns (e) or (f); and

Instructions to Item 402(c)(2)(ix).

1. Non-equity incentive plan awards and earnings and earnings on stock and options, except as specified in paragraph (c)(2)(ix)(G) of this Item, are required to be reported elsewhere as provided in this Item and are not reportable as All Other Compensation in column (i).

2. Benefits paid pursuant to defined benefit and actuarial plans are not reportable as All Other Compensation in column (i) unless accelerated pursuant to a change in

control; information concerning these plans is reportable pursuant to paragraphs (c)(2)(viii)(A) and (h) of this Item.

3. Any item reported for a named executive officer pursuant to paragraph (c)(2)(ix) of this Item that is not a perquisite or personal benefit and whose value exceeds $10,000 must be identified and quantified in a footnote to column (i). This requirement applies only to compensation for the last fiscal year. All items of compensation are required to be included in the Summary Compensation Table without regard to whether such items are required to be identified other than as specifically noted in this Item.

4. Perquisites and personal benefits may be excluded as long as the total value of all perquisites and personal benefits for a named executive officer is less than $10,000. If the total value of all perquisites and personal benefits is $10,000 or more for any named executive officer, then each perquisite or personal benefit, regardless of its amount, must be identified by type. If perquisites and personal benefits are required to be reported for a named executive officer pursuant to this rule, then each perquisite or personal benefit that exceeds the greater of $25,000 or 10% of the total amount of perquisites and personal benefits for that officer must be quantified and disclosed in a footnote. The requirements for identification and quantification apply only to compensation for the last fiscal year. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the registrant. With respect to the perquisite or other personal benefit for which footnote quantification is required, the registrant shall describe in the footnote its methodology for computing the aggregate incremental cost. Reimbursements of taxes owed with respect to perquisites or other personal benefits must be included in column (i) and are subject to separate quantification and identification as tax reimbursements

(paragraph (c)(2)(ix)(B) of this Item) even if the associated perquisites or other personal benefits are not required to be included because the total amount of all perquisites or personal benefits for an individual named executive officer is less than $10,000 or are required to be identified but are not required to be separately quantified.

5. For purposes of paragraph (c)(2)(ix)(D) of this Item, an accrued amount is an amount for which payment has become due.

(x) The dollar value of total compensation for the covered fiscal year (column (j)). With respect to each named executive officer, disclose the sum of all amounts reported in columns (c) through (i).

Instructions to Item 402(c).

1. Information with respect to fiscal years prior to the last completed fiscal year will not be required if the registrant was not a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) at any time during that year, except that the registrant will be required to provide information for any such year if that information previously was required to be provided in response to a Commission filing requirement.

2. All compensation values reported in the Summary Compensation Table must be reported in dollars and rounded to the nearest dollar. Reported compensation values must be reported numerically, providing a single numerical value for each grid in the table. Where compensation was paid to or received by a named executive officer in a different currency, a footnote must be provided to identify that currency and describe the rate and methodology used to convert the payment amounts to dollars.

3. If a named executive officer is also a director who receives compensation for his or her services as a director, reflect that compensation in the Summary Compensation Table and provide a footnote identifying and itemizing such compensation and amounts. Use the categories in the Director Compensation Table required pursuant to paragraph (k) of this Item.

4. Any amounts deferred, whether pursuant to a plan established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), or otherwise, shall be included in the appropriate column for the fiscal year in which earned.

(d) Grants of plan-based awards table. (1) Provide the information specified in paragraph (d)(2) of this Item, concerning each grant of an award made to a named executive officer in the last completed fiscal year under any plan, including awards that subsequently have been transferred, in the following tabular format:

GRANTS OF PLAN-BASED AWARDS

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares of Stock or Units (#)	All Other Option Awards: Number of Securities Under-lying Options (#)	Exercise or Base Price of Option Awards ($/Sh)
		Thresh-old ($)	Target ($)	Maxi-mum ($)	Thresh-old (#)	Target (#)	Maxi-mum (#)			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)
PEO										
PFO										
A										
B										
C										

(2) The Table shall include:

(i) The name of the named executive officer (column (a));

(ii) The grant date for equity-based awards reported in the table (column (b)). If such grant date is different than the date on which the compensation committee (or a committee of the board of directors performing a similar function or the full board of directors) takes action or is deemed to take action to grant such awards, a separate, adjoining column shall be added between columns (b) and (c) showing such date;

(iii) The dollar value of the estimated future payout upon satisfaction of the conditions in question under non-equity incentive plan awards granted in the fiscal year, or the applicable range of estimated payouts denominated in dollars (threshold, target and maximum amount) (columns (c) through (e)).

(iv) The number of shares of stock, or the number of shares underlying options to be paid out or vested upon satisfaction of the conditions in question under equity incentive plan awards granted in the fiscal year, or the applicable range of estimated payouts denominated in the number of shares of stock, or the number of shares underlying options under the award (threshold, target and maximum amount) (columns (f) through (h)).

(v) The number of shares of stock granted in the fiscal year that are not required to be disclosed in columns (f) through (h) (column (i));

(vi) The number of securities underlying options granted in the fiscal year that are not required to be disclosed in columns (f) through (h) (column (j)); and

(vii) The per-share exercise or base price of the options granted in the fiscal year (column (k)). If such exercise or base price is less than the closing market price of the underlying security on the date of the grant, a separate, adjoining column showing the closing market price on the date of the grant shall be added after column (k).

Instructions to Item 402(d).

1. Disclosure on a separate line shall be provided in the Table for each grant of an award made to a named executive officer during the fiscal year. If grants of awards were made to a named executive officer during the fiscal year under more than one plan, identify the particular plan under which each such grant was made.

2. For grants of incentive plan awards, provide the information called for by columns (c), (d) and (e), or (f), (g) and (h), as applicable. For columns (c) and (f), threshold refers to the minimum amount payable for a certain level of performance under the plan. For columns (d) and (g), target refers to the amount payable if the specified

performance target(s) are reached. For columns (e) and (h), maximum refers to the maximum payout possible under the plan. If the award provides only for a single estimated payout, that amount must be reported as the target in columns (d) and (g). In columns (d) and (g), registrants must provide a representative amount based on the previous fiscal year's performance if the target amount is not determinable.

3. In determining if the exercise or base price of an option is less than the closing market price of the underlying security on the date of the grant, the registrant may use either the closing market price as specified in paragraph (a)(6)(v) of this Item, or if no market exists, any other formula prescribed for the security. Whenever the exercise or base price reported in column (k) is not the closing market price, describe the methodology for determining the exercise or base price either by a footnote or accompanying textual narrative.

4. A tandem grant of two instruments, only one of which is granted under an incentive plan, such as an option granted in tandem with a performance share, need be reported only in column (i) or (j), as applicable. For example, an option granted in tandem with a performance share would be reported only as an option grant in column (j), with the tandem feature noted either by a footnote or accompanying textual narrative.

5. Disclose the dollar amount of consideration, if any, paid by the executive officer for the award in a footnote to the appropriate column.

6. If non-equity incentive plan awards are denominated in units or other rights, a separate, adjoining column between columns (b) and (c) shall be added quantifying the units or other rights awarded.

(e) Narrative disclosure to summary compensation table and grants of plan-based awards table.

(1) Provide a narrative description of any material factors necessary to an understanding of the information disclosed in the tables required by paragraphs (c) and (d) of this Item. Examples of such factors may include, in given cases, among other things:

(i) The material terms of each named executive officer's employment agreement or arrangement, whether written or unwritten;

(ii) If at any time during the last fiscal year, any outstanding option or other equity-based award was repriced or otherwise materially modified (such as by extension of exercise periods, the change of vesting or forfeiture conditions, the change or elimination of applicable performance criteria, or the change of the bases upon which returns are determined), a description of each such repricing or other material modification;

(iii) The material terms of any award reported in response to paragraph (d) of this Item, including a general description of the formula or criteria to be applied in determining the amounts payable, and the vesting schedule. For example, state where applicable that dividends will be paid on stock, and if so, the applicable dividend rate and whether that rate is preferential. Describe any performance-based conditions, and any other material conditions, that are applicable to the award. For purposes of the Table required by paragraph (d) of this Item and the narrative disclosure required by paragraph (e) of this Item, performance-based conditions include both performance conditions and market conditions, as those terms are defined in FAS 123R; and

(iv) An explanation of the amount of salary and bonus in proportion to total compensation.

Instructions to Item 402(e)(1).

1. The disclosure required by paragraph (e)(1)(ii) of this Item would not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

2. Instructions 4 and 5 to Item 402(b) apply regarding disclosure pursuant to paragraph (e)(1) of target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm for the registrant.

(2) Reserved.

(f) Outstanding equity awards at fiscal year-end table. (1) Provide the information specified in paragraph (f)(2) of this Item, concerning unexercised options; stock that has not vested; and equity incentive plan awards for each named executive officer outstanding as of the end of the registrant's last completed fiscal year in the following tabular format:

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

	Option Awards					Stock Awards			
Name (a)	Number of Securities Underlying Unexercised Options (#) Exercisable (b)	Number of Securities Underlying Unexercised Options (#) Unexercisable (c)	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#) (d)	Option Exercise Price ($) (e)	Option Expiration Date (f)	Number of Shares or Units of Stock That Have Not Vested (#) (g)	Market Value of Shares or Units of Stock That Have Not Vested ($) (h)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#) (i)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested ($) (j)
PEO									
PFO									
A									
B									
C									

(2) The Table shall include:

(i) The name of the named executive officer (column (a));

(ii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are exercisable and that are not reported in column (d) (column (b));

(iii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are unexercisable and that are not reported in column (d) (column (c));

(iv) On an award-by-award basis, the total number of shares underlying unexercised options awarded under any equity incentive plan that have not been earned (column (d));

(v) For each instrument reported in columns (b), (c) and (d), as applicable, the exercise or base price (column (e));

(vi) For each instrument reported in columns (b), (c) and (d), as applicable, the expiration date (column (f));

(vii) The total number of shares of stock that have not vested and that are not reported in column (i) (column (g));

(viii) The aggregate market value of shares of stock that have not vested and that are not reported in column (j) (column (h));

(ix) The total number of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned, and, if applicable the number of shares underlying any such unit or right (column (i)); and

(x) The aggregate market or payout value of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned (column (j)).

Instructions to Item 402(f)(2).

1. Identify by footnote any award that has been transferred other than for value, disclosing the nature of the transfer.

2. The vesting dates of options, shares of stock and equity incentive plan awards held at fiscal-year end must be disclosed by footnote to the applicable column where the outstanding award is reported.

3. Compute the market value of stock reported in column (h) and equity incentive plan awards of stock reported in column (j) by multiplying the closing market price of the registrant's stock at the end of the last completed fiscal year by the number of shares or units of stock or the amount of equity incentive plan awards, respectively. The number of shares or units reported in columns (d) or (i), and the payout value reported in column (j), shall be based on achieving threshold performance goals, except that if the previous fiscal year's performance has exceeded the threshold, the disclosure shall be based on the next higher performance measure (target or maximum) that exceeds the previous fiscal year's performance. If the award provides only for a single estimated payout, that amount should be reported. If the target amount is not determinable, registrants must provide a representative amount based on the previous fiscal year's performance.

4. Multiple awards may be aggregated where the expiration date and the exercise and/or base price of the instruments is identical. A single award consisting of a combination of options, SARs and/or similar option-like instruments shall be reported as separate awards with respect to each tranche with a different exercise and/or base price or expiration date.

5. Options or stock awarded under an equity incentive plan are reported in columns (d) or (i) and (j), respectively, until the relevant performance condition has been satisfied. Once the relevant performance condition has been satisfied, even if the option or stock award is subject to forfeiture conditions, options are reported in column (b) or (c), as appropriate, until they are exercised or expire, or stock is reported in columns (g) and (h) until it vests.

(g) Option exercises and stock vested table. (1) Provide the information specified in paragraph (g)(2) of this Item, concerning each exercise of stock options, SARs and similar instruments, and each vesting of stock, including restricted stock, restricted stock units and similar instruments, during the last completed fiscal year for each of the named executive officers on an aggregated basis in the following tabular format:

OPTION EXERCISES AND STOCK VESTED

	Option Awards		Stock Awards	
Name (a)	Number of Shares Acquired on Exercise (#) (b)	Value Realized on Exercise ($) (c)	Number of Shares Acquired on Vesting (#) (d)	Value Realized on Vesting ($) (e)
PEO				
PFO				
A				
B				
C				

(2) The Table shall include:

(i) The name of the executive officer (column (a));

(ii) The number of securities for which the options were exercised (column (b));

(iii) The aggregate dollar value realized upon exercise of options, or upon the transfer of an award for value (column (c));

(iv) The number of shares of stock that have vested (column (d)); and

(v) The aggregate dollar value realized upon vesting of stock, or upon the transfer of an award for value (column (e)).

Instruction to Item 402(g)(2).

Report in column (c) the aggregate dollar amount realized by the named executive officer upon exercise of the options or upon the transfer of such instruments for value. Compute the dollar amount realized upon exercise by determining the difference between the market price of the underlying securities at exercise and the exercise or base price of the options. Do not include the value of any related payment or other consideration provided (or to be provided) by the registrant to or on behalf of a named executive officer, whether in payment of the exercise price or related taxes. (Any such payment or other consideration provided by the registrant is required to be disclosed in accordance with paragraph (c)(2)(ix) of this Item.) Report in column (e) the aggregate dollar amount realized by the named executive officer upon the vesting of stock or the transfer of such instruments for value. Compute the aggregate dollar amount realized upon vesting by multiplying the number of shares of stock or units by the market value of the underlying shares on the vesting date. For any amount realized upon exercise or vesting for which receipt has been deferred, provide a footnote quantifying the amount and disclosing the terms of the deferral.

(h) Pension benefits.

(1) Provide the information specified in paragraph (h)(2) of this Item with respect to each plan that provides for payments or other benefits at, following, or in connection with retirement, in the following tabular format:

PENSION BENEFITS

Name (a)	Plan Name (b)	Number of Years Credited Service (#) (c)	Present Value of Accumulated Benefit ($) (d)	Payments During Last Fiscal Year ($) (e)
PEO				
PFO				
A				
B				
C				

(2) The Table shall include:

(i) The name of the executive officer (column (a));

(ii) The name of the plan (column (b));

(iii) The number of years of service credited to the named executive officer under the plan, computed as of the same pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the last completed fiscal year (column (c));

(iv) The actuarial present value of the named executive officer's accumulated benefit under the plan, computed as of the same pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the last completed fiscal year (column (d)); and

(v) The dollar amount of any payments and benefits paid to the named executive officer during the registrant's last completed fiscal year (column (e)).

Instructions to Item 402(h)(2).

1. The disclosure required pursuant to this Table applies to each plan that provides for specified retirement payments and benefits, or payments and benefits that will be provided primarily following retirement, including but not limited to tax-qualified defined benefit plans and supplemental executive retirement plans, but excluding tax-qualified defined contribution plans and nonqualified defined contribution plans. Provide a separate row for each such plan in which the named executive officer participates.

2. For purposes of the amount(s) reported in column (d), the registrant must use the same assumptions used for financial reporting purposes under generally accepted accounting principles, except that retirement age shall be assumed to be the normal retirement age as defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age. The registrant must disclose in the accompanying textual narrative the valuation method and all material assumptions applied in quantifying the present value of the current accrued benefit. A benefit specified in the plan document or the executive's contract itself is not an assumption. Registrants may satisfy all or part of this disclosure by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

3. For purposes of allocating the current accrued benefit between tax qualified defined benefit plans and related supplemental plans, apply the limitations applicable to

tax qualified defined benefit plans established by the Internal Revenue Code and the regulations thereunder that applied as of the pension plan measurement date.

4. If a named executive officer's number of years of credited service with respect to any plan is different from the named executive officer's number of actual years of service with the registrant, provide footnote disclosure quantifying the difference and any resulting benefit augmentation.

(3) Provide a succinct narrative description of any material factors necessary to an understanding of each plan covered by the tabular disclosure required by this paragraph. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) The material terms and conditions of payments and benefits available under the plan, including the plan's normal retirement payment and benefit formula and eligibility standards, and the effect of the form of benefit elected on the amount of annual benefits. For this purpose, normal retirement means retirement at the normal retirement age as defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age;

(ii) If any named executive officer is currently eligible for early retirement under any plan, identify that named executive officer and the plan, and describe the plan's early retirement payment and benefit formula and eligibility standards. For this purpose, early retirement means retirement at the early retirement age as defined in the plan, or otherwise available to the executive under the plan;

(iii) The specific elements of compensation (e.g., salary, bonus, etc.) included in applying the payment and benefit formula, identifying each such element;

(iv) With respect to named executive officers' participation in multiple plans, the different purposes for each plan; and

(v) Registrant policies with regard to such matters as granting extra years of credited service.

(i) Nonqualified defined contribution and other nonqualified deferred compensation plans.

(1) Provide the information specified in paragraph (i)(2) of this Item with respect to each defined contribution or other plan that provides for the deferral of compensation on a basis that is not tax-qualified in the following tabular format:

NONQUALIFIED DEFERRED COMPENSATION

Name (a)	Executive Contributions in Last FY ($) (b)	Registrant Contributions in Last FY ($) (c)	Aggregate Earnings in Last FY ($) (d)	Aggregate Withdrawals/ Distributions ($) (e)	Aggregate Balance at Last FYE ($) (f)
PEO					
PFO					
A					
B					
C					

(2) The Table shall include:

(i) The name of the executive officer (column (a));

(ii) The dollar amount of aggregate executive contributions during the registrant's last fiscal year (column (b));

(iii) The dollar amount of aggregate registrant contributions during the registrant's last fiscal year (column (c));

(iv) The dollar amount of aggregate interest or other earnings accrued during the registrant's last fiscal year (column (d));

(v) The aggregate dollar amount of all withdrawals by and distributions to the executive during the registrant's last fiscal year (column (e)); and

(vi) The dollar amount of total balance of the executive's account as of the end of the registrant's last fiscal year (column (f)).

Instruction to Item 402(i)(2).

Provide a footnote quantifying the extent to which amounts reported in the contributions and earnings columns are reported as compensation in the last completed fiscal year in the registrant's Summary Compensation Table and amounts reported in the aggregate balance at last fiscal year end (column (f)) previously were reported as compensation to the named executive officer in the registrant's Summary Compensation Table for previous years.

(3) Provide a succinct narrative description of any material factors necessary to an understanding of each plan covered by tabular disclosure required by this paragraph. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) The type(s) of compensation permitted to be deferred, and any limitations (by percentage of compensation or otherwise) on the extent to which deferral is permitted;

(ii) The measures for calculating interest or other plan earnings (including whether such measure(s) are selected by the executive or the registrant and the frequency

and manner in which selections may be changed), quantifying interest rates and other earnings measures applicable during the registrant's last fiscal year; and

(iii) Material terms with respect to payouts, withdrawals and other distributions.

(j) Potential payments upon termination or change-in-control. Regarding each contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) to a named executive officer at, following, or in connection with any termination, including without limitation resignation, severance, retirement or a constructive termination of a named executive officer, or a change in control of the registrant or a change in the named executive officer's responsibilities, with respect to each named executive officer:

(1) Describe and explain the specific circumstances that would trigger payment(s) or the provision of other benefits, including perquisites and health care benefits;

(2) Describe and quantify the estimated payments and benefits that would be provided in each covered circumstance, whether they would or could be lump sum, or annual, disclosing the duration, and by whom they would be provided;

(3) Describe and explain how the appropriate payment and benefit levels are determined under the various circumstances that trigger payments or provision of benefits;

(4) Describe and explain any material conditions or obligations applicable to the receipt of payments or benefits, including but not limited to non-compete, non-solicitation, non-disparagement or confidentiality agreements, including the duration of such agreements and provisions regarding waiver of breach of such agreements; and

(5) Describe any other material factors regarding each such contract, agreement, plan or arrangement.

Instructions to Item 402(j).

1. The registrant must provide quantitative disclosure under these requirements, applying the assumptions that the triggering event took place on the last business day of the registrant's last completed fiscal year, and the price per share of the registrant's securities is the closing market price as of that date. In the event that uncertainties exist as to the provision of payments and benefits or the amounts involved, the registrant is required to make a reasonable estimate (or a reasonable estimated range of amounts) applicable to the payment or benefit and disclose material assumptions underlying such estimates or estimated ranges in its disclosure. In such event, the disclosure would require forward-looking information as appropriate.

2. Perquisites and other personal benefits or property may be excluded only if the aggregate amount of such compensation will be less than $10,000. Individual perquisites and personal benefits shall be identified and quantified as required by Instruction 4 to paragraph (c)(2)(ix) of this Item. For purposes of quantifying health care benefits, the registrant must use the assumptions used for financial reporting purposes under generally accepted accounting principles.

3. To the extent that the form and amount of any payment or benefit that would be provided in connection with any triggering event is fully disclosed pursuant to paragraph (h) or (i) of this Item, reference may be made to that disclosure. However, to the extent that the form or amount of any such payment or benefit would be enhanced or

its vesting or other provisions accelerated in connection with any triggering event, such enhancement or acceleration must be disclosed pursuant to this paragraph.

4. Where a triggering event has actually occurred for a named executive officer and that individual was not serving as a named executive officer of the registrant at the end of the last completed fiscal year, the disclosure required by this paragraph for that named executive officer shall apply only to that triggering event.

5. The registrant need not provide information with respect to contracts, agreements, plans or arrangements to the extent they do not discriminate in scope, terms or operation, in favor of executive officers of the registrant and that are available generally to all salaried employees.

(k) Compensation of directors.

(1) Provide the information specified in paragraph (k)(2) of this Item, concerning the compensation of the directors for the registrant's last completed fiscal year, in the following tabular format:

DIRECTOR COMPENSATION

Name (a)	Fees Earned or Paid in Cash ($) (b)	Stock Awards ($) (c)	Option Awards ($) (d)	Non-Equity Incentive Plan Compensation ($) (e)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (f)	All Other Compensation ($) (g)	Total ($) (h)
A							
B							
C							
D							
E							

(2) The Table shall include:

(i) The name of each director unless such director is also a named executive officer under paragraph (a) of this Item and his or her compensation for service as a director is fully reflected in the Summary Compensation Table pursuant to paragraph (c) of this Item and otherwise as required pursuant to paragraphs (d) through (j) of this Item (column (a));

(ii) The aggregate dollar amount of all fees earned or paid in cash for services as a director, including annual retainer fees, committee and/or chairmanship fees, and meeting fees (column (b));

(iii) For awards of stock, the aggregate grant date fair value computed in accordance with FAS 123R (column (c));

(iv) For awards of stock options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FAS 123R (column (d));

Instruction to Item 402(k)(2)(iii) and (iv).

For each director, disclose by footnote to the appropriate column, the aggregate number of stock awards and the aggregate number of option awards outstanding at fiscal year end.

(v) The dollar value of all earnings for services performed during the fiscal year pursuant to non-equity incentive plans as defined in paragraph (a)(6)(iii) of this Item, and all earnings on any outstanding awards (column (e));

(vi) The sum of the amounts specified in paragraphs (k)(2)(vi)(A) and (B) of this Item (column (f)) as follows:

(A) The aggregate change in the actuarial present value of the director's accumulated benefit under all defined benefit and actuarial pension plans (including supplemental plans) from the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the prior completed fiscal year to the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the covered fiscal year; and

(B) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans;

(vii) All other compensation for the covered fiscal year that the registrant could not properly report in any other column of the Director Compensation Table (column (g)). Each compensation item that is not properly reportable in columns (b) - (f), regardless of the amount of the compensation item, must be included in column (g). Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the registrant or its subsidiaries purchased from the registrant or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the registrant, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any director pursuant to a plan or arrangement in connection with:

(1) The resignation, retirement or any other termination of such director; or

(2) A change in control of the registrant;

(E) Registrant contributions or other allocations to vested and unvested defined contribution plans;

(F) Consulting fees earned from, or paid or payable by the registrant and/or its subsidiaries (including joint ventures);

(G) The annual costs of payments and promises of payments pursuant to director legacy programs and similar charitable award programs;

(H) The dollar value of any insurance premiums paid by, or on behalf of, the registrant during the covered fiscal year with respect to life insurance for the benefit of a director; and

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (c) or (d); and

Instructions to Item 402(k)(2)(vii).

1. Programs in which registrants agree to make donations to one or more charitable institutions in a director's name, payable by the registrant currently or upon a designated event, such as the retirement or death of the director, are charitable awards programs or director legacy programs for purposes of the disclosure required by paragraph (k)(2)(vii)(G) of this Item. Provide footnote disclosure of the total dollar amount payable under the program and other material terms of each such program for which tabular disclosure is provided.

2. Any item reported for a director pursuant to paragraph (k)(2)(vii) of this Item that is not a perquisite or personal benefit and whose value exceeds $10,000 must be identified and quantified in a footnote to column (g). All items of compensation are required to be included in the Director Compensation Table without regard to whether such items are required to be identified other than as specifically noted in this Item.

3. Perquisites and personal benefits may be excluded as long as the total value of all perquisites and personal benefits for a director is less than $10,000. If the total value

of all perquisites and personal benefits is $10,000 or more for any director, then each perquisite or personal benefit, regardless of its amount, must be identified by type. If perquisites and personal benefits are required to be reported for a director pursuant to this rule, then each perquisite or personal benefit that exceeds the greater of $25,000 or 10% of the total amount of perquisites and personal benefits for that director must be quantified and disclosed in a footnote. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the registrant. With respect to the perquisite or other personal benefit for which footnote quantification is required, the registrant shall describe in the footnote its methodology for computing the aggregate incremental cost. Reimbursements of taxes owed with respect to perquisites or other personal benefits must be included in column (g) and are subject to separate quantification and identification as tax reimbursements (paragraph (k)(2)(vii)(B) of this Item) even if the associated perquisites or other personal benefits are not required to be included because the total amount of all perquisites or personal benefits for an individual director is less than $10,000 or are required to be identified but are not required to be separately quantified.

(viii) The dollar value of total compensation for the covered fiscal year (column (h)). With respect to each director, disclose the sum of all amounts reported in columns (b) through (g).

Instruction to Item 402(k)(2).

Two or more directors may be grouped in a single row in the Table if all elements of their compensation are identical. The names of the directors for whom disclosure is presented on a group basis should be clear from the Table.

(3) Narrative to director compensation table.

Provide a narrative description of any material factors necessary to an understanding of the director compensation disclosed in this Table. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) A description of standard compensation arrangements (such as fees for retainer, committee service, service as chairman of the board or a committee, and meeting attendance); and

(ii) Whether any director has a different compensation arrangement, identifying that director and describing the terms of that arrangement.

Instruction to Item 402(k).

In addition to the Instructions to paragraph (k)(2)(vii) of this Item, the following apply equally to paragraph (k) of this Item: Instructions 2 and 4 to paragraph (c) of this Item; Instructions to paragraphs (c)(2)(iii) and (iv) of this Item; Instructions to paragraphs (c)(2)(v) and (vi) of this Item; Instructions to paragraph (c)(2)(vii) of this Item; and Instructions to paragraph (c)(2)(viii) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (k) of this Item that correspond to analogous disclosures provided for in paragraph (c) of this Item to which they refer.

Instruction to Item 402. Specify the applicable fiscal year in the title to each table required under this Item which calls for disclosure as of or for a completed fiscal year.

14. Amend §229.403 by revising paragraph (b) to read as follows:

§229.403 (Item 403) Security ownership of certain beneficial owners and management.

* * * * *

(b) Security ownership of management. Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries, including directors' qualifying shares, beneficially owned by all directors and nominees, naming them, each of the named executive officers as defined in Item 402(a)(3) (§229.402(a)(3)), and directors and executive officers of the registrant as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of the class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares that are pledged as security and the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in §240.13d-3(d)(1) of this chapter.

(1) Title of Class	(2) Name of Beneficial Owner	(3) Amount and Nature of Beneficial Ownership	(4) Percent of Class

* * * * *

15. Revise §229.404 to read as follows:

§229.404 (Item 404) Transactions with related persons, promoters and certain control persons.

(a) Transactions with related persons. Describe any transaction, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, in which the registrant was or is to be a participant and the amount involved exceeds

$120,000, and in which any related person had or will have a direct or indirect material interest. Disclose the following information regarding the transaction:

(1) The name of the related person and the basis on which the person is a related person.

(2) The related person's interest in the transaction with the registrant, including the related person's position(s) or relationship(s) with, or ownership in, a firm, corporation, or other entity that is a party to, or has an interest in, the transaction.

(3) The approximate dollar value of the amount involved in the transaction.

(4) The approximate dollar value of the amount of the related person's interest in the transaction, which shall be computed without regard to the amount of profit or loss.

(5) In the case of indebtedness, disclosure of the amount involved in the transaction shall include the largest aggregate amount of principal outstanding during the period for which disclosure is provided, the amount thereof outstanding as of the latest practicable date, the amount of principal paid during the periods for which disclosure is provided, the amount of interest paid during the period for which disclosure is provided, and the rate or amount of interest payable on the indebtedness.

(6) Any other information regarding the transaction or the related person in the context of the transaction that is material to investors in light of the circumstances of the particular transaction.

Instructions to Item 404(a).

1. For the purposes of paragraph (a) of this Item, the term related person means:

a. Any person who was in any of the following categories at any time during the specified period for which disclosure under paragraph (a) of this Item is required:

i. Any director or executive officer of the registrant;

ii. Any nominee for director, when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director; or

iii. Any immediate family member of a director or executive officer of the registrant, or of any nominee for director when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of such director, executive officer or nominee for director, and any person (other than a tenant or employee) sharing the household of such director, executive officer or nominee for director; and

b. Any person who was in any of the following categories when a transaction in which such person had a direct or indirect material interest occurred or existed:

i. A security holder covered by Item 403(a) (§229.403(a)); or

ii. Any immediate family member of any such security holder, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of such security holder, and any person (other than a tenant or employee) sharing the household of such security holder.

2. For purposes of paragraph (a) of this Item, a <u>transaction</u> includes, but is not limited to, any financial transaction, arrangement or relationship (including any indebtedness or guarantee of indebtedness) or any series of similar transactions, arrangements or relationships.

3. The amount involved in the transaction shall be computed by determining the dollar value of the amount involved in the transaction in question, which shall include:

a. In the case of any lease or other transaction providing for periodic payments or installments, the aggregate amount of all periodic payments or installments due on or after the beginning of the registrant's last fiscal year, including any required or optional payments due during or at the conclusion of the lease or other transaction providing for periodic payments or installments; and

b. In the case of indebtedness, the largest aggregate amount of all indebtedness outstanding at any time since the beginning of the registrant's last fiscal year and all amounts of interest payable on it during the last fiscal year.

4. In the case of a transaction involving indebtedness:

a. The following items of indebtedness may be excluded from the calculation of the amount of indebtedness and need not be disclosed: amounts due from the related person for purchases of goods and services subject to usual trade terms, for ordinary business travel and expense payments and for other transactions in the ordinary course of business;

b. Disclosure need not be provided of any indebtedness transaction for the related persons specified in Instruction 1.b. to paragraph (a) of this Item; and

c. If the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T (12 CFR part 220) and the loans are not disclosed as nonaccrual, past due, restructured or potential problems (see Item III.C.1. and 2. of Industry Guide 3, Statistical Disclosure by Bank Holding Companies (17 CFR

229.802(c))), disclosure under paragraph (a) of this Item may consist of a statement, if such is the case, that the loans to such persons:

i. Were made in the ordinary course of business;

ii. Were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable loans with persons not related to the lender; and

iii. Did not involve more than the normal risk of collectibility or present other unfavorable features.

5.a. Disclosure of an employment relationship or transaction involving an executive officer and any related compensation solely resulting from that employment relationship or transaction need not be provided pursuant to paragraph (a) of this Item if:

i. The compensation arising from the relationship or transaction is reported pursuant to Item 402 (§229.402); or

ii. The executive officer is not an immediate family member (as specified in Instruction 1 to paragraph (a) of this Item) and such compensation would have been reported under Item 402 (§229.402) as compensation earned for services to the registrant if the executive officer was a named executive officer as that term is defined in Item 402(a)(3) (§229.402(a)(3)), and such compensation had been approved, or recommended to the board of directors of the registrant for approval, by the compensation committee of the board of directors (or group of independent directors performing a similar function) of the registrant.

b. Disclosure of compensation to a director need not be provided pursuant to paragraph (a) of this Item if the compensation is reported pursuant to Item 402(k) (§229.402(k)).

6. A person who has a position or relationship with a firm, corporation, or other entity that engages in a transaction with the registrant shall not be deemed to have an indirect material interest within the meaning of paragraph (a) of this Item where:

a. The interest arises only:

i. From such person's position as a director of another corporation or organization that is a party to the transaction; or

ii. From the direct or indirect ownership by such person and all other persons specified in Instruction 1 to paragraph (a) of this Item, in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or

iii. From both such position and ownership; or

b. The interest arises only from such person's position as a limited partner in a partnership in which the person and all other persons specified in Instruction 1 to paragraph (a) of this Item, have an interest of less than ten percent, and the person is not a general partner of and does not hold another position in the partnership.

7. Disclosure need not be provided pursuant to paragraph (a) of this Item if:

a. The transaction is one where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

b. The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services; or

c. The interest of the related person arises solely from the ownership of a class of equity securities of the registrant and all holders of that class of equity securities of the registrant received the same benefit on a pro rata basis.

(b) Review, approval or ratification of transactions with related persons.

(1) Describe the registrant's policies and procedures for the review, approval, or ratification of any transaction required to be reported under paragraph (a) of this Item. While the material features of such policies and procedures will vary depending on the particular circumstances, examples of such features may include, in given cases, among other things:

(i) The types of transactions that are covered by such policies and procedures;

(ii) The standards to be applied pursuant to such policies and procedures;

(iii) The persons or groups of persons on the board of directors or otherwise who are responsible for applying such policies and procedures; and

(iv) A statement of whether such policies and procedures are in writing and, if not, how such policies and procedures are evidenced.

(2) Identify any transaction required to be reported under paragraph (a) of this Item since the beginning of the registrant's last fiscal year where such policies and procedures did not require review, approval or ratification or where such policies and procedures were not followed.

Instruction to Item 404(b).

Disclosure need not be provided pursuant to this paragraph regarding any transaction that occurred at a time before the related person became one of the enumerated persons in Instruction 1.a.i., ii., or iii. to Item 404(a) if such transaction did not continue after the related person became one of the enumerated persons in Instruction 1.a.i., ii., or iii. to Item 404(a).

(c) Promoters and certain control persons.

(1) Registrants that are filing a registration statement on Form S-1 or Form SB-2 under the Securities Act (§239.11 or §239.10 of this chapter) or on Form 10 or Form 10-SB under the Exchange Act (§249.210 or §249.210b of this chapter) and that had a promoter at any time during the past five fiscal years shall:

(i) State the names of the promoter(s), the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter, directly or indirectly, from the registrant and the nature and amount of any assets, services or other consideration therefore received or to be received by the registrant; and

(ii) As to any assets acquired or to be acquired by the registrant from a promoter, state the amount at which the assets were acquired or are to be acquired and the principle followed or to be followed in determining such amount, and identify the persons making the determination and their relationship, if any, with the registrant or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the registrant, also state the cost thereof to the promoter.

(2) Registrants shall provide the disclosure required by paragraphs (c)(1)(i) and (c)(1)(ii) of this Item as to any person who acquired control of a registrant that is a shell company, or any person that is part of a group, consisting of two or more persons that agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of a registrant, that acquired control of a registrant that is a shell company. For purposes of this Item, shell company has the same meaning as in Rule 405 under the Securities Act (17 CFR 230.405) and Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2).

Instructions to Item 404.

1. If the information called for by this Item is being presented in a registration statement filed pursuant to the Securities Act or the Exchange Act, information shall be given for the periods specified in the Item and, in addition, for the two fiscal years preceding the registrant's last fiscal year, unless the information is being incorporated by reference into a registration statement on Form S-4 (17 CFR 239.25), in which case, information shall be given for the periods specified in the Item.

2. A foreign private issuer will be deemed to comply with this Item if it provides the information required by Item 7.B. of Form 20-F (17 CFR 249.220f) with more detailed information provided if otherwise made publicly available or required to be disclosed by the issuer's home jurisdiction or a market in which its securities are listed or traded.

16. Add §229.407 to read as follows:

§229.407 (Item 407) Corporate governance.

(a) Director independence. Identify each director and, when the disclosure called for by this paragraph is being presented in a proxy or information statement relating to the election of directors, each nominee for director, that is independent under the independence standards applicable to the registrant under paragraph (a)(1) of this Item. In addition, if such independence standards contain independence requirements for committees of the board of directors, identify each director that is a member of the compensation, nominating or audit committee that is not independent under such committee independence standards. If the registrant does not have a separately designated audit, nominating or compensation committee or committee performing similar functions, the registrant must provide the disclosure of directors that are not independent with respect to all members of the board of directors applying such committee independence standards.

(1) In determining whether or not the director or nominee for director is independent for the purposes of paragraph (a) of this Item, the registrant shall use the applicable definition of independence, as follows:

(i) If the registrant is a listed issuer whose securities are listed on a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, the registrant's definition of independence that it uses for determining if a majority of the board of directors is independent in compliance with the listing standards applicable to the registrant. When determining whether the members of a committee of the board of directors are independent, the registrant's definition of independence that it uses for determining if the members of that specific committee are independent in compliance with the

independence standards applicable for the members of the specific committee in the listing standards of the national securities exchange or inter-dealer quotation system that the registrant uses for determining if a majority of the board of directors are independent. If the registrant does not have independence standards for a committee, the independence standards for that specific committee in the listing standards of the national securities exchange or inter-dealer quotation system that the registrant uses for determining if a majority of the board of directors are independent.

(ii) If the registrant is not a listed issuer, a definition of independence of a national securities exchange or of an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, and state which definition is used. Whatever such definition the registrant chooses, it must use the same definition with respect to all directors and nominees for director. When determining whether the members of a specific committee of the board of directors are independent, if the national securities exchange or national securities association whose standards are used has independence standards for the members of a specific committee, use those committee specific standards.

(iii) If the information called for by paragraph (a) of this Item is being presented in a registration statement on Form S-1 (§239.11 of this chapter) or Form SB-2 (§239.10 of this chapter) under the Securities Act or on a Form 10 (§249.210 of this chapter) or Form 10-SB (§249.210b of this chapter) under the Exchange Act where the registrant has applied for listing with a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, the definition of independence that the registrant uses for determining if a majority of the

board of directors is independent, and the definition of independence that the registrant uses for determining if members of the specific committee of the board of directors are independent, that is in compliance with the independence listing standards of the national securities exchange or inter-dealer quotation system on which it has applied for listing, or if the registrant has not adopted such definitions, the independence standards for determining if the majority of the board of directors is independent and if members of the committee of the board of directors are independent of that national securities exchange or inter-dealer quotation system.

(2) If the registrant uses its own definitions for determining whether its directors and nominees for director, and members of specific committees of the board of directors, are independent, disclose whether these definitions are available to security holders on the registrant's Web site. If so, provide the registrant's Web site address. If not, include a copy of these policies in an appendix to the registrant's proxy statement or information statement that is provided to security holders at least once every three fiscal years or if the policies have been materially amended since the beginning of the registrant's last fiscal year. If a current copy of the policies is not available to security holders on the registrant's Web site, and is not included as an appendix to the registrant's proxy statement or information statement, identify the most recent fiscal year in which the policies were so included in satisfaction of this requirement.

(3) For each director and nominee for director that is identified as independent, describe, by specific category or type, any transactions, relationships or arrangements not disclosed pursuant to Item 404(a) (§229.404(a)), or for investment companies, Item 22(b) of Schedule 14A (§240.14a-101 of this chapter), that were considered by the board of

directors under the applicable independence definitions in determining that the director is independent.

Instructions to Item 407(a).

1. If the registrant is a listed issuer whose securities are listed on a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, and also has exemptions to those requirements (for independence of a majority of the board of directors or committee member independence) upon which the registrant relied, disclose the exemption relied upon and explain the basis for the registrant's conclusion that such exemption is applicable. The same disclosure should be provided if the registrant is not a listed issuer and the national securities exchange or inter-dealer quotation system selected by the registrant has exemptions that are applicable to the registrant. Any national securities exchange or inter-dealer quotation system which has requirements that at least 50 percent of the members of a small business issuer's board of directors must be independent shall be considered a national securities exchange or inter-dealer quotation system which has requirements that a majority of the board of directors be independent for the purposes of the disclosure required by paragraph (a) of this Item.

2. Registrants shall provide the disclosure required by paragraph (a) of this Item for any person who served as a director during any part of the last completed fiscal year, except that no information called for by paragraph (a) of this Item need be given in a registration statement filed at a time when the registrant is not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d))

respecting any director who is no longer a director at the time of effectiveness of the registration statement.

3. The description of the specific categories or types of transactions, relationships or arrangements required by paragraph (a)(3) of this Item must be provided in such detail as is necessary to fully describe the nature of the transactions, relationships or arrangements.

(b) Board meetings and committees; annual meeting attendance.

(1) State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of:

(i) The total number of meetings of the board of directors (held during the period for which he has been a director); and

(ii) The total number of meetings held by all committees of the board on which he served (during the periods that he served).

(2) Describe the registrant's policy, if any, with regard to board members' attendance at annual meetings of security holders and state the number of board members who attended the prior year's annual meeting.

Instruction to Item 407(b)(2).

In lieu of providing the information required by paragraph (b)(2) of this Item in the proxy statement, the registrant may instead provide the registrant's Web site address where such information appears.

(3) State whether or not the registrant has standing audit, nominating and compensation committees of the board of directors, or committees performing similar functions. If the registrant has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by each such committee. Such disclosure need not be provided to the extent it is duplicative of disclosure provided in accordance with paragraph (c), (d) or (e) of this Item.

(c) Nominating committee. (1) If the registrant does not have a standing nominating committee or committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a committee and identify each director who participates in the consideration of director nominees.

(2) Provide the following information regarding the registrant's director nomination process:

(i) State whether or not the nominating committee has a charter. If the nominating committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the nominating committee charter;

(ii) If the nominating committee has a policy with regard to the consideration of any director candidates recommended by security holders, provide a description of the material elements of that policy, which shall include, but need not be limited to, a statement as to whether the committee will consider director candidates recommended by security holders;

(iii) If the nominating committee does not have a policy with regard to the consideration of any director candidates recommended by security holders, state that fact and state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a policy;

(iv) If the nominating committee will consider candidates recommended by security holders, describe the procedures to be followed by security holders in submitting such recommendations;

(v) Describe any specific minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the registrant's board of directors, and describe any specific qualities or skills that the nominating committee believes are necessary for one or more of the registrant's directors to possess;

(vi) Describe the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder;

(vii) With regard to each nominee approved by the nominating committee for inclusion on the registrant's proxy card (other than nominees who are executive officers or who are directors standing for re-election), state which one or more of the following categories of persons or entities recommended that nominee: security holder, non-management director, chief executive officer, other executive officer, third-party search firm, or other specified source. With regard to each such nominee approved by a nominating committee of an investment company, state which one or more of the

following additional categories of persons or entities recommended that nominee: security holder, director, chief executive officer, other executive officer, or employee of the investment company's investment adviser, principal underwriter, or any affiliated person of the investment adviser or principal underwriter;

(viii) If the registrant pays a fee to any third party or parties to identify or evaluate or assist in identifying or evaluating potential nominees, disclose the function performed by each such third party; and

(ix) If the registrant's nominating committee received, by a date not later than the 120th calendar day before the date of the registrant's proxy statement released to security holders in connection with the previous year's annual meeting, a recommended nominee from a security holder that beneficially owned more than 5% of the registrant's voting common stock for at least one year as of the date the recommendation was made, or from a group of security holders that beneficially owned, in the aggregate, more than 5% of the registrant's voting common stock, with each of the securities used to calculate that ownership held for at least one year as of the date the recommendation was made, identify the candidate and the security holder or security holder group that recommended the candidate and disclose whether the nominating committee chose to nominate the candidate, provided, however, that no such identification or disclosure is required without the written consent of both the security holder or security holder group and the candidate to be so identified.

Instructions to Item 407(c)(2)(ix).

1. For purposes of paragraph (c)(2)(ix) of this Item, the percentage of securities held by a nominating security holder may be determined using information set forth in

the registrant's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Commission pursuant to the Exchange Act (or, in the case of a registrant that is an investment company registered under the Investment Company Act of 1940, the registrant's most recent report on Form N-CSR (§§249.331 and 274.128 of this chapter)), unless the party relying on such report knows or has reason to believe that the information contained therein is inaccurate.

2. For purposes of the registrant's obligation to provide the disclosure specified in paragraph (c)(2)(ix) of this Item, where the date of the annual meeting has been changed by more than 30 days from the date of the previous year's meeting, the obligation under that Item will arise where the registrant receives the security holder recommendation a reasonable time before the registrant begins to print and mail its proxy materials.

3. For purposes of paragraph (c)(2)(ix) of this Item, the percentage of securities held by a recommending security holder, as well as the holding period of those securities, may be determined by the registrant if the security holder is the registered holder of the securities. If the security holder is not the registered owner of the securities, he or she can submit one of the following to the registrant to evidence the required ownership percentage and holding period:

a. A written statement from the "record" holder of the securities (usually a broker or bank) verifying that, at the time the security holder made the recommendation, he or she had held the required securities for at least one year; or

b. If the security holder has filed a Schedule 13D (§240.13d-101 of this chapter), Schedule 13G (§240.13d-102 of this chapter), Form 3 (§249.103 of this chapter), Form 4

(§249.104 of this chapter), and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting ownership of the securities as of or before the date of the recommendation, a copy of the schedule and/or form, and any subsequent amendments reporting a change in ownership level, as well as a written statement that the security holder continuously held the securities for the one-year period as of the date of the recommendation.

4. For purposes of the registrant's obligation to provide the disclosure specified in paragraph (c)(2)(ix) of this Item, the security holder or group must have provided to the registrant, at the time of the recommendation, the written consent of all parties to be identified and, where the security holder or group members are not registered holders, proof that the security holder or group satisfied the required ownership percentage and holding period as of the date of the recommendation.

Instruction to Item 407(c)(2).

For purposes of paragraph (c)(2) of this Item, the term nominating committee refers not only to nominating committees and committees performing similar functions, but also to groups of directors fulfilling the role of a nominating committee, including the entire board of directors.

(3) Describe any material changes to the procedures by which security holders may recommend nominees to the registrant's board of directors, where those changes were implemented after the registrant last provided disclosure in response to the requirements of paragraph (c)(2)(iv) of this Item, or paragraph (c)(3) of this Item.

Instructions to Item 407(c)(3).

1. The disclosure required in paragraph (c)(3) of this Item need only be provided in a registrant's quarterly or annual reports.

2. For purposes of paragraph (c)(3) of this Item, adoption of procedures by which security holders may recommend nominees to the registrant's board of directors, where the registrant's most recent disclosure in response to the requirements of paragraph (c)(2)(iv) of this Item, or paragraph (c)(3) of this Item, indicated that the registrant did not have in place such procedures, will constitute a material change.

(d) Audit committee.

(1) State whether or not the audit committee has a charter. If the audit committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the audit committee charter.

(2) If a listed issuer's board of directors determines, in accordance with the listing standards applicable to the issuer, to appoint a director to the audit committee who is not independent (apart from the requirements in §240.10A-3 of this chapter), including as a result of exceptional or limited or similar circumstances, disclose the nature of the relationship that makes that individual not independent and the reasons for the board of directors' determination.

(3)(i) The audit committee must state whether:

(A) The audit committee has reviewed and discussed the audited financial statements with management;

(B) The audit committee has discussed with the independent auditors the matters required to be discussed by the statement on Auditing Standards No. 61, as amended

(AICPA, Professional Standards, Vol. 1. AU section 380), as adopted by the Public Company Accounting Oversight Board in Rule 3200T;

(C) The audit committee has received the written disclosures and the letter from the independent accountants required by Independence Standards Board Standard No. 1 (Independence Standards Board Standard No. 1, Independence Discussions with Audit Committees), as adopted by the Public Company Accounting Oversight Board in Rule 3600T, and has discussed with the independent accountant the independent accountant's independence; and

(D) Based on the review and discussions referred to in paragraphs (d)(3)(i)(A) through (d)(3)(i)(C) of this Item, the audit committee recommended to the board of directors that the audited financial statements be included in the company's annual report on Form 10-K (17 CFR 249.310) (or, for closed-end investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), the annual report to shareholders required by section 30(e) of the Investment Company Act of 1940 (15 U.S.C. 80a-29(e)) and Rule 30d-1 (17 CFR 270.30d-1) thereunder) for the last fiscal year for filing with the Commission.

(ii) The name of each member of the company's audit committee (or, in the absence of an audit committee, the board committee performing equivalent functions or the entire board of directors) must appear below the disclosure required by paragraph (d)(3)(i) of this Item.

(4)(i) If the registrant meets the following requirements, provide the disclosure in paragraph (d)(4)(ii) of this Item:

(A) The registrant is a listed issuer, as defined in §240.10A-3 of this chapter;

(B) The registrant is filing either an annual report on Form 10-K or 10-KSB (17 CFR 249.310 or 17 CFR 249.310b), or a proxy statement or information statement pursuant to the Exchange Act (15 U.S.C. 78a et seq.) if action is to be taken with respect to the election of directors; and

(C) The registrant is neither:

(1) A subsidiary of another listed issuer that is relying on the exemption in §240.10A-3(c)(2) of this chapter; nor

(2) Relying on any of the exemptions in §240.10A-3(c)(4) through (c)(7) of this chapter.

(ii)(A) State whether or not the registrant has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)), or a committee performing similar functions. If the registrant has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the registrant's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(B) If applicable, provide the disclosure required by §240.10A-3(d) of this chapter regarding an exemption from the listing standards for audit committees.

(5) Audit committee financial expert.

(i)(A) Disclose that the registrant's board of directors has determined that the registrant either:

(1) Has at least one audit committee financial expert serving on its audit committee; or

(2) Does not have an audit committee financial expert serving on its audit committee.

(B) If the registrant provides the disclosure required by paragraph (d)(5)(i)(A)(1) of this Item, it must disclose the name of the audit committee financial expert and whether that person is independent, as independence for audit committee members is defined in the listing standards applicable to the listed issuer.

(C) If the registrant provides the disclosure required by paragraph (d)(5)(i)(A)(2) of this Item, it must explain why it does not have an audit committee financial expert.

Instruction to Item 407(d)(5)(i).

If the registrant's board of directors has determined that the registrant has more than one audit committee financial expert serving on its audit committee, the registrant may, but is not required to, disclose the names of those additional persons. A registrant choosing to identify such persons must indicate whether they are independent pursuant to paragraph (d)(5)(i)(B) of this Item.

(ii) For purposes of this Item, an audit committee financial expert means a person who has the following attributes:

(A) An understanding of generally accepted accounting principles and financial statements;

(B) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

(C) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be

raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;

(D) An understanding of internal control over financial reporting; and

(E) An understanding of audit committee functions.

(iii) A person shall have acquired such attributes through:

(A) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(B) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(C) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(D) Other relevant experience.

(iv) Safe harbor.

(A) A person who is determined to be an audit committee financial expert will not be deemed an expert for any purpose, including without limitation for purposes of section 11 of the Securities Act (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item 407.

(B) The designation or identification of a person as an audit committee financial expert pursuant to this Item 407 does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such

person as a member of the audit committee and board of directors in the absence of such designation or identification.

(C) The designation or identification of a person as an audit committee financial expert pursuant to this Item does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

Instructions to Item 407(d)(5).

1. The disclosure under paragraph (d)(5) of this Item is required only in a registrant's annual report. The registrant need not provide the disclosure required by paragraph (d)(5) of this Item in a proxy or information statement unless that registrant is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to General Instruction G(3) to Form 10-K (17 CFR 249.310).

2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (d)(5)(iii)(D) of this Item, the registrant shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures required under Item 401(e) (§229.401(e)).

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of paragraph (d)(5) of this Item, the term board of directors means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of §240.10A-3(c)(3) of this chapter, for purposes of paragraph (d)(5) of this Item, the term board of directors means the issuer's board of auditors (or similar body) or statutory auditors, as applicable. Also, in the case of a foreign private issuer, the term generally accepted accounting principles in paragraph (d)(5)(ii)(A) of this Item means the

body of generally accepted accounting principles used by that issuer in its primary financial statements filed with the Commission.

4. A registrant that is an Asset-Backed Issuer (as defined in §229.1101) is not required to disclose the information required by paragraph (d)(5) of this Item.

Instructions to Item 407(d).

1. The information required by paragraphs (d)(1) - (3) of this Item shall not be deemed to be "soliciting material," or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a-1 through 240.14b-2 or 240.14c-1 through 240.14c-101), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the registrant specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act. Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

2. The disclosure required by paragraphs (d)(1) - (3) of this Item need only be provided one time during any fiscal year.

3. The disclosure required by paragraph (d)(3) of this Item need not be provided in any filings other than a registrant's proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting).

(e) Compensation committee.

(1) If the registrant does not have a standing compensation committee or committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a committee and identify each director who participates in the consideration of executive officer and director compensation.

(2) State whether or not the compensation committee has a charter. If the compensation committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the compensation committee charter.

(3) Provide a narrative description of the registrant's processes and procedures for the consideration and determination of executive and director compensation, including:

(i)(A) The scope of authority of the compensation committee (or persons performing the equivalent functions); and

(B) The extent to which the compensation committee (or persons performing the equivalent functions) may delegate any authority described in paragraph (e)(3)(i)(A) of this Item to other persons, specifying what authority may be so delegated and to whom;

(ii) Any role of executive officers in determining or recommending the amount or form of executive and director compensation; and

(iii) Any role of compensation consultants in determining or recommending the amount or form of executive and director compensation, identifying such consultants, stating whether such consultants are engaged directly by the compensation committee (or persons performing the equivalent functions) or any other person, describing the nature

and scope of their assignment, and the material elements of the instructions or directions given to the consultants with respect to the performance of their duties under the engagement.

(4) Under the caption "Compensation Committee Interlocks and Insider Participation":

(i) Identify each person who served as a member of the compensation committee of the registrant's board of directors (or board committee performing equivalent functions) during the last completed fiscal year, indicating each committee member who:

(A) Was, during the fiscal year, an officer or employee of the registrant;

(B) Was formerly an officer of the registrant; or

(C) Had any relationship requiring disclosure by the registrant under any paragraph of Item 404 (§229.404). In this event, the disclosure required by Item 404 (§229.404) shall accompany such identification.

(ii) If the registrant has no compensation committee (or other board committee performing equivalent functions), the registrant shall identify each officer and employee of the registrant, and any former officer of the registrant, who, during the last completed fiscal year, participated in deliberations of the registrant's board of directors concerning executive officer compensation.

(iii) Describe any of the following relationships that existed during the last completed fiscal year:

(A) An executive officer of the registrant served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one

of whose executive officers served on the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of the registrant;

(B) An executive officer of the registrant served as a director of another entity, one of whose executive officers served on the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of the registrant; and

(C) An executive officer of the registrant served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one of whose executive officers served as a director of the registrant.

(iv) Disclosure required under paragraph (e)(4)(iii) of this Item regarding a compensation committee member or other director of the registrant who also served as an executive officer of another entity shall be accompanied by the disclosure called for by Item 404 with respect to that person.

Instruction to Item 407(e)(4).

For purposes of paragraph (e)(4) of this Item, the term entity shall not include an entity exempt from tax under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).

(5) Under the caption "Compensation Committee Report:"

(i) The compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) must state whether:

(A) The compensation committee has reviewed and discussed the Compensation Discussion and Analysis required by Item 402(b) (§229.402(b)) with management; and

(B) Based on the review and discussions referred to in paragraph (e)(5)(i)(A) of this Item, the compensation committee recommended to the board of directors that the Compensation Discussion and Analysis be included in the registrant's annual report on Form 10-K (§249.310 of this chapter), proxy statement on Schedule 14A (§240.14a-101 of this chapter) or information statement on Schedule 14C (§240.14c-101 of this chapter).

(ii) The name of each member of the registrant's compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) must appear below the disclosure required by paragraph (e)(5)(i) of this Item.

Instructions to Item 407(e)(5).

1. The information required by paragraph (e)(5) of this Item shall not be deemed to be "soliciting material," or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a-1 through 240.14b-2 or 240.14c-1 through 240.14c-101), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the registrant specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act.

2. The disclosure required by paragraph (e)(5) of this Item need not be provided in any filings other than an annual report on Form 10-K (§249.310 of this chapter), a proxy statement on Schedule 14A (§240.14a-101 of this chapter) or an information statement on Schedule 14C (§240.14c-101 of this chapter). Such information will not be

deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference. If the registrant elects to incorporate this information by reference from the proxy or information statement into its annual report on Form 10-K pursuant to General Instruction G(3) to Form 10-K, the disclosure required by paragraph (e)(5) of this Item will be deemed furnished in the annual report on Form 10-K and will not be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act as a result as a result of furnishing the disclosure in this manner.

3. The disclosure required by paragraph (e)(5) of this Item need only be provided one time during any fiscal year.

(f) Shareholder communications.

(1) State whether or not the registrant's board of directors provides a process for security holders to send communications to the board of directors and, if the registrant does not have such a process for security holders to send communications to the board of directors, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a process.

(2) If the registrant has a process for security holders to send communications to the board of directors:

(i) Describe the manner in which security holders can send communications to the board and, if applicable, to specified individual directors; and

(ii) If all security holder communications are not sent directly to board members, describe the registrant's process for determining which communications will be relayed to board members.

Instructions to Item 407(f).

1. In lieu of providing the information required by paragraph (f)(2) of this Item in the proxy statement, the registrant may instead provide the registrant's Web site address where such information appears.

2. For purposes of the disclosure required by paragraph (f)(2)(ii) of this Item, a registrant's process for collecting and organizing security holder communications, as well as similar or related activities, need not be disclosed provided that the registrant's process is approved by a majority of the independent directors or, in the case of a registrant that is an investment company, a majority of the directors who are not "interested persons" of the investment company as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)).

3. For purposes of this paragraph, communications from an officer or director of the registrant will not be viewed as "security holder communications." Communications from an employee or agent of the registrant will be viewed as "security holder communications" for purposes of this paragraph only if those communications are made solely in such employee's or agent's capacity as a security holder.

4. For purposes of this paragraph, security holder proposals submitted pursuant to §240.14a-8 of this chapter, and communications made in connection with such proposals, will not be viewed as "security holder communications."

Instructions to Item 407.

1. For purposes of this Item:

a. Listed issuer means a listed issuer as defined in §240.10A-3 of this chapter;

b. National securities exchange means a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a));

c. Inter-dealer quotation system means an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o-3(a)); and

d. National securities association means a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o-3(a)) that has been approved by the Commission (as that definition may be modified or supplemented).

2. With respect to paragraphs (c)(2)(i), (d)(1) and (e)(2) of this Item, disclose whether a current copy of the applicable committee charter is available to security holders on the registrant's Web site, and if so, provide the registrant's Web site address. If a current copy of the charter is not available to security holders on the registrant's Web site, include a copy of the charter in an appendix to the registrant's proxy or information statement that is provided to security holders at least once every three fiscal years, or if the charter has been materially amended since the beginning of the registrant's last fiscal year. If a current copy of the charter is not available to security holders on the registrant's Web site, and is not included as an appendix to the registrant's proxy or information statement, identify in which of the prior fiscal years the charter was so included in satisfaction of this requirement.

17. Amend §229.601 to revise paragraph (b)(10)(iii)(C)(5) to read as follows:

§229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(10) * * *

(iii) * * *

(C) * * *

(5) Any compensatory plan, contract or arrangement if the registrant is a foreign private issuer that furnishes compensatory information under Item 402(a)(1) (§229.402(a)(1)) and the public filing of the plan, contract or arrangement, or portion thereof, is not required in the registrant's home country and is not otherwise publicly disclosed by the registrant.

* * * * *

18. Amend §229.1107 by revising paragraph (e) to read as follows:

§229.1107 (Item 1107) Issuing entities.

* * * * *

(e) If the issuing entity has executive officers, a board of directors or persons performing similar functions, provide the information required by Items 401, 402, 403 404 and 407(a), (c)(3), (d)(4), (d)(5) and (e)(4) of Regulation S-K (§§229.401, 229.402, 229.403, 229.404 and 229.407(a), (c)(3), (d)(4), (d)(5) and (e)(4)) for the issuing entity.

* * * * *

PART 232 – REGULATION S-T – GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

19. The authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 et seq.; and 18 U.S.C. 1350.

* * * * *

20. Amend §232.304 to revise paragraphs (d) and (e) to read as follows:

§232.304 Graphic, image, audio and video material.

* * * * *

(d) For electronically filed ASCII documents, the performance graph that is to appear in registrant annual reports to security holders required by Exchange Act Rule 14a-3 (§240.14a-3 of this chapter) or Exchange Act Rule 14c-3 (§240.14c-3 of this chapter) to precede or accompany proxy statements or information statements relating to annual meetings of security holders at which directors are to be elected (or special meetings or written consents in lieu of such meetings), as required by Item 201(e) of Regulation S-K (§229.201(e) of this chapter), and the line graph that is to appear in registrant annual reports to security holders, as required by paragraph (b)(7)(ii) of Item 22 of Form N-1A (§274.11A of this chapter), must be furnished to the Commission by presenting the data in tabular or chart form within the electronic ASCII document, in compliance with paragraph (a) of this section and the formatting requirements of the EDGAR Filer Manual.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, electronically filed HTML documents must present the following information in an HTML graphic or image file within the electronic submission in compliance with the formatting requirements of the EDGAR Filer Manual: the performance graph that is to appear in registrant annual reports to security holders required by Exchange Act Rule 14a-3 (§240.14a-3 of this chapter) or Exchange Act Rule 14c-3 (§240.14c-3 of this chapter) to precede or accompany registrant proxy statements or information statements relating to annual meetings of security holders at which directors are to be elected (or

special meetings or written consents in lieu of such meetings), as required by Item 201(e) of Regulation S-K (§229.201(e) of this chapter); the line graph that is to appear in registrant annual reports to security holders, as required by paragraph (b)(7)(ii) of Item 22 of Form N-1A (§274.11A of this chapter); and any other graphic material required by rule or form to be filed with the Commission. Filers may, but are not required to, submit any other graphic material in a HTML document by presenting the data in an HTML graphic or image file within the electronic filing, in compliance with the formatting requirements of the EDGAR Filer Manual. However, filers may not present in a graphic or image file information such as text or tables that users must be able to search and/or download into spreadsheet form (e.g., financial statements); filers must present such material as text in an ASCII document or as text or an HTML table in an HTML document.

* * * * *

PART 239 – FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

21. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll(d), 77mm, 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

22. Amend Form SB-2 (referenced in §239.10) by revising Item 15 to read as follows:

Note-The text of Form SB-2 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM SB-2

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 15. Certain Relationships and Transactions and Corporate Governance.

Furnish the information required by Item 404 of Regulation S-B and Item 407(a) of Regulation S-B.

* * * * *

23. Amend Form S-1 (referenced in §239.11) by revising Item 11, paragraphs (l) and (n) to read as follows:

Note-The text of Form S-1 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM S-1

REGISTRATION STATEMENT UNDER THE SECURITES ACT OF 1933

* * * * *

Item 11. Information with Respect to the Registrant.

* * * * *

(l) Information required by Item 402 of Regulation S-K (§229.402 of this chapter), executive compensation, and information required by paragraph (e)(4) of Item 407 of Regulation S-K (§229.407 of this chapter), corporate governance;

* * * * *

(n) Information required by Item 404 of Regulation S-K (§229.404 of this chapter), transactions with related persons, promoters and certain control persons, and Item 407(a) of Regulation S-K (§229.407(a) of this chapter), corporate governance.

* * * * *

24. Amend Form S-3 (referenced §239.13) by revising General Instruction I.A.3.(b) and the introductory text of General Instruction I.B.4.(c) to read as follows:

Note-The text of Form S-3 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM S-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form S-3 * * *

A. Registrant Requirements. * * *

3. * * *

(b) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement, other than a report that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a) or 5.02(e) of Form 8-K (§249.308 of this chapter). If the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b-25(b) (§240.12b-25(b) of this chapter) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that rule.

* * * * *

B. Transaction Requirements. * * *

4. * * *

(c) The issuer also must have provided, within the twelve calendar months immediately before the Form S-3 registration statement is filed, the information required by Items 401, 402, 403 and 407(c)(3), (d)(4), (d)(5) and (e)(4) of Regulation S-K (§229.401 - §229.403 and §229.407(c)(3),(d)(4), (d)(5) and (e)(4) of this chapter) to:

* * * * *

25. Amend Form S-4 (referenced in §239.25) by revising Items 18(a)(7)(ii) and (iii) and 19(a)(7)(ii) and (iii) to read as follows:

Note-The text of Form S-4 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM S-4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 18. Information if Proxies, Consents or Authorizations are to be Solicited.

(a) * * *

(7) * * *

(ii) Item 402 of Regulation S-K (§229.402 of this chapter), executive compensation, and paragraph (e)(4) of Item 407 of Regulation S-K (§229.407(e)(4) of this chapter), corporate governance;

(iii) Item 404 of Regulation S-K (§229.404 of this chapter), transactions with related persons, promoters and certain control persons, and Item 407(a) of Regulation S-K (§229.407(a) of this chapter), corporate governance.

* * * * *

Item 19. Information if Proxies, Consents or Authorizations are not to be Solicited or in an Exchange Offer.

(a) * * *

(7) * * *

(ii) Item 402 of Regulation S-K (§229.402 of this chapter), executive compensation, and paragraph (e)(4) of Item 407 of Regulation S-K (§229.407(e)(4) of this chapter), corporate governance;

(iii) Item 404 of Regulation S-K (§229.404), transactions with related persons, promoters and certain controls persons, and Item 407(a) of Regulation S-K (§229.407(a)), corporate governance.

* * * * *

26. Amend Form S-11 (referenced in §239.18) by revising Items 22 and 23 to read as follows:

Note-The text of Form S-11 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM S-11

FOR REGISTRATION UNDER THE SECURITIES ACT OF 1933 OF SECURITIES OF CERTAIN REAL ESTATE COMPANIES

* * * * *

Item 22. Executive Compensation.

Furnish the information required by Item 402 of Regulation S-K (§229.402 of this chapter), and the information required by paragraph (e)(4) of Item 407 of Regulation S-K (§229.407(e)(4) of this chapter).

Item 23. Certain Relationships and Related Transactions and Director Independence.

Furnish the information required by Items 404 and 407(a) of Regulation S-K (§§229.404 and 229.407(a) of this chapter). If a transaction involves the purchase or sale of assets by or to the registrant, otherwise than in the ordinary course of business, state

the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller. Furthermore, if the assets have been acquired by the seller within five years prior to the transaction, disclose the aggregate depreciation claimed by the seller for federal income tax purposes. Indicate the principle followed in determining the registrant's purchase or sale price and the name of the person making such determination.

* * * * *

PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

27. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

28. Amend §240.13a-11 by revising paragraph (c) to read as follows:

§240.13a-11 Current reports on Form 8-K (§249.308 of this chapter).

* * * * *

(c) No failure to file a report on Form 8-K that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e) or 6.03 of Form 8-K shall be deemed to be a violation of 15 U.S.C. 78j(b) and §240.10b-5.

29. Add §240.13a-20 to read as follows:

§240.13a-20 Plain English presentation of specified information.

(a) Any information included or incorporated by reference in a report filed under section 13(a) of the Act (15 U.S.C. 78m(a)) that is required to be disclosed pursuant to Item 402, 403, 404 or 407 of Regulation S-B (§§228.402, 228.403, 228.404 or 228.407 of this chapter) or Item 402, 403, 404 or 407 of Regulation S-K (§§229.402, 229.403, 229.404 or 229.407 of this chapter) must be presented in a clear, concise and understandable manner. You must prepare the disclosure using the following standards:

(1) Present information in clear, concise sections, paragraphs and sentences;

(2) Use short sentences;

(3) Use definite, concrete, everyday words;

(4) Use the active voice;

(5) Avoid multiple negatives;

(6) Use descriptive headings and subheadings;

(7) Use a tabular presentation or bullet lists for complex material, wherever possible;

(8) Avoid legal jargon and highly technical business and other terminology;

(9) Avoid frequent reliance on glossaries or defined terms as the primary means of explaining information. Define terms in a glossary or other section of the document only if the meaning is unclear from the context. Use a glossary only if it facilitates understanding of the disclosure; and

(10) In designing the presentation of the information you may include pictures, logos, charts, graphs and other design elements so long as the design is not misleading and the required information is clear. You are encouraged to use tables, schedules, charts and graphic illustrations that present relevant data in an understandable manner, so long

as such presentations are consistent with applicable disclosure requirements and consistent with other information in the document. You must draw graphs and charts to scale. Any information you provide must not be misleading.

(b) Reserved.

Note to §240.13a-20. In drafting the disclosure to comply with this section, you should avoid the following:

1. Legalistic or overly complex presentations that make the substance of the disclosure difficult to understand;

2. Vague "boilerplate" explanations that are imprecise and readily subject to different interpretations;

3. Complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and

4. Disclosure repeated in different sections of the document that increases the size of the document but does not enhance the quality of the information.

30. Amend §240.14a-3 to revise paragraph (b)(9) to read as follows:

§240.14a-3 Information to be furnished to security holders.

* * * * *

(b) * * *

(9) The report shall contain the market price of and dividends on the registrant's common equity and related security holder matters required by Items 201(a), (b) and (c) of Regulation S-K (§229.201(a), (b) and (c) of this chapter). If the report precedes or accompanies a proxy statement or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written

consents in lieu of such meeting), furnish the performance graph required by Item 201(e) (§229.201(e) of this chapter).

* * * * *

31. Amend §240.14a-6 to revise paragraph (a)(4) to read as follows:

§240.14a-6 Filing requirements.

(a) * * *

(4) The approval or ratification of a plan as defined in paragraph (a)(6)(ii) of Item 402 of Regulation S-K (§229.402(a)(6)(ii) of this chapter) or amendments to such a plan;

* * * * *

32. Amend §240.14a-101 by:

a. Removing paragraphs (f), (g), and (h) of Item 7 and paragraph (b)(13)(iii) of Item 22;

b. Revising "$60,000" to read "$120,000" in the introductory text of Items 22(b)(7), (b)(8), and (b)(9); Instruction 2 to Item 22(b)(7); and Instruction 6 to Item 22(b)(9);

c. Revising Note C, Item 7(b), (c), (d), and (e), the introductory text of Item 8, the undesignated paragraph following Item 8(d), Item 10(b)(1)(ii), the Instruction to Item 10(b)(1)(ii), Instruction 1 to Item 10, the introductory text of Item 22(b), Item 22(b)(11), the Instruction to paragraph (b)(11) of Item 22, and the introductory text of Item 22(b)(13); and

d. Adding Items 22(b)(15), (b)(16), and (b)(17).

The revisions and additions read as follows:

§240.14a-101 Schedule 14A. Information required in proxy statement.

* * * * *

Notes.

* * * * *

C. Except as otherwise specifically provided, where any item calls for information for a specified period with regard to directors, executive officers, officers or other persons holding specified positions or relationships, the information shall be given with regard to any person who held any of the specified positions or relationship at any time during the period. Information, other than information required by Item 404 of Regulation S-B (§228.404 of this chapter) or Item 404 of Regulation S-K (§229.404 of this chapter), need not be included for any portion of the period during which such person did not hold any such position or relationship, provided a statement to that effect is made.

* * * * *

Item 7. Directors and executive officers. * * *

(b) The information required by Items 401, 404(a) and (b), 405 and 407(d)(4) and (d)(5) of Regulation S-K (§229.401, §229.404(a) and (b), §229.405 and §229.407(d)(4) and (d)(5) of this chapter).

(c) The information required by Item 407(a) of Regulation S-K (§229.407 of this chapter).

(d) The information required by Item 407(b), (c)(1), (c)(2), (d)(1), (d)(2), (d)(3), (e)(1), (e)(2), (e)(3) and (f) of Regulation S-K (§229.407(b), (c)(1), (c)(2), (d)(1), (d)(2), (d)(3), (e)(1), (e)(2), (e)(3) and (f) of this chapter).

(e) In lieu of the information required by this Item 7, investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a) must furnish the information required by Item 22(b) of this Schedule 14A.

Item 8. Compensation of directors and executive officers.

Furnish the information required by Item 402 of Regulation S-K (§229.402 of this chapter) and paragraphs (e)(4) and (e)(5) of Item 407 of Regulation S-K (§229.407(e)(4) and (e)(5) of this chapter) if action is to be taken with regard to:

* * * * *

(d) * * *

However, if the solicitation is made on behalf of persons other than the registrant, the information required need be furnished only as to nominees of the persons making the solicitation and associates of such nominees. In the case of investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a), furnish the information required by Item 22(b)(13) of this Schedule 14A.

* * * * *

Item 10. Compensation Plans. * * *

(b)(1) Additional information regarding specified plans subject to security holder action. * * *

(ii) The estimated annual payment to be made with respect to current services. In the case of a pension or retirement plan, information called for by paragraph (a)(2) of this Item may be furnished in the format specified by paragraph (h)(2) of Item 402 of Regulation S-K (§229.402(h)(2) of this chapter).

Instruction to paragraph (b)(1)(ii).

In the case of investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a), refer to Instruction 4 in Item 22(b)(13)(i) of this Schedule in lieu of paragraph (h)(2) of Item 402 of Regulation S-K (§229.402(h)(2) of this chapter).

* * * * *

Instructions

1. The term plan as used in this Item means any plan as defined in paragraph (a)(6)(ii) of Item 402 of Regulation S-K (§229.402(a)(6)(ii) of this chapter).

* * * * *

Item 22. Information required in investment company proxy statement.

* * * * *

(b) Election of Directors. If action is to be taken with respect to the election of directors of a Fund, furnish the following information in the proxy statement in addition to, in the case of business development companies, the information (and in the format) required by Item 7 and Item 8 of this Schedule 14A.

* * * * *

(11) Provide in tabular form, to the extent practicable, the information required by Items 401(f) and (g), 404(a), and 405 of Regulation S-K (§§229.401(f) and (g), 229.404(a), and 229.405 of this chapter).

Instruction to paragraph (b)(11).

Information provided under paragraph (b)(8) of this Item 22 is deemed to satisfy the requirements of Item 404(a) of Regulation S-K for information about directors,

nominees for election as directors, and Immediate Family Members of directors and nominees, and need not be provided under this paragraph (b)(11).

* * * * *

(13) In the case of a Fund that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a), for all directors, and for each of the three highest-paid Officers that have aggregate compensation from the Fund for the most recently completed fiscal year in excess of $60,000 ("Compensated Persons"):

* * * * *

(15)(i) Provide the information (and in the format) required by Items 407(b)(1), (b)(2) and (f) of Regulation S-K (§229.407(b)(1), (b)(2) and (f) of this chapter); and

(ii) Provide the following regarding the requirements for the director nomination process:

(A) The information (and in the format) required by Items 407(c)(1) and (c)(2) of Regulation S-K (§229.407(c)(1) and (c)(2) of this chapter); and

(B) If the Fund is a listed issuer (as defined in §240.10A-3 of this chapter) whose securities are listed on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o-3(a)) that has independence requirements for nominating committee members, identify each director that is a member of the nominating committee that is not independent under the independence standards described in this paragraph. In determining whether the nominating committee members are independent, use the Fund's definition of independence that it uses for determining if the members of the nominating

committee are independent in compliance with the independence standards applicable for the members of the nominating committee in the listing standards applicable to the Fund. If the Fund does not have independence standards for the nominating committee, use the independence standards for the nominating committee in the listing standards applicable to the Fund.

Instruction to paragraph (b)(15)(ii)(B).

If the national securities exchange or inter-dealer quotation system on which the Fund's securities are listed has exemptions to the independence requirements for nominating committee members upon which the Fund relied, disclose the exemption relied upon and explain the basis for the Fund's conclusion that such exemption is applicable.

(16) In the case of a Fund that is a closed-end investment company:

(i) Provide the information (and in the format) required by Item 407(d)(1), (d)(2) and (d)(3) of Regulation S-K (§229.407(d)(1), (d)(2) and (d)(3) of this chapter); and

(ii) Identify each director that is a member of the Fund's audit committee that is not independent under the independence standards described in this paragraph. If the Fund does not have a separately designated audit committee, or committee performing similar functions, the Fund must provide the disclosure with respect to all members of its board of directors.

(A) If the Fund is a listed issuer (as defined in §240.10A-3 of this chapter) whose securities are listed on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A of the Act (15 U.S.C.

78o-3(a)) that has independence requirements for audit committee members, in determining whether the audit committee members are independent, use the Fund's definition of independence that it uses for determining if the members of the audit committee are independent in compliance with the independence standards applicable for the members of the audit committee in the listing standards applicable to the Fund. If the Fund does not have independence standards for the audit committee, use the independence standards for the audit committee in the listing standards applicable to the Fund.

(B) If the Fund is not a listed issuer whose securities are listed on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o-3(a)), in determining whether the audit committee members are independent, use a definition of independence of a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A of the Act (15 U.S.C. 780-3(a)) which has requirements that a majority of the board of directors be independent and that has been approved by the Commission, and state which definition is used. Whatever such definition the Fund chooses, it must use the same definition with respect to all directors and nominees for director. If the national securities exchange or national securities association whose standards are used has independence standards for the members of the audit committee, use those specific standards.

Instruction to paragraph (b)(16)(ii).

If the national securities exchange or inter-dealer quotation system on which the Fund's securities are listed has exemptions to the independence requirements for nominating committee members upon which the Fund relied, disclose the exemption relied upon and explain the basis for the Fund's conclusion that such exemption is applicable. The same disclosure should be provided if the Fund is not a listed issuer and the national securities exchange or inter-dealer quotation system selected by the Fund has exemptions that are applicable to the Fund.

(17) In the case of a Fund that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a), if a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of security holders because of a disagreement with the registrant on any matter relating to the registrant's operations, policies or practices, and if the director has furnished the registrant with a letter describing such disagreement and requesting that the matter be disclosed, the registrant shall state the date of resignation or declination to stand for re-election and summarize the director's description of the disagreement. If the registrant believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its view of the disagreement.

* * * * *

33. Amend §240.14c-5 to revise paragraph (a)(4) before the undesignated paragraph to read as follows:

§240.14c-5 Filing requirements.

(a) * * *

(4) The approval or ratification of a plan as defined in paragraph (a)(6)(ii) of Item 402 of Regulation S-K (§229.402(a)(6)(ii) of this chapter) or amendments to such a plan.

* * * * *

34. Amend §240.15d-11 by revising paragraph (c) to read as follows:

§240.15d-11 Current reports on Form 8-K (§249.308 of this chapter).

* * * * *

(c) No failure to file a report on Form 8-K that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e) or 6.03 of Form 8-K shall be deemed to be a violation of 15 U.S.C. 78j(b) and §240.10b-5.

35. Add §240.15d-20 to read as follows:

§240.15d-20 Plain English presentation of specified information.

(a) Any information included or incorporated by reference in a report filed under section 15(d) of the Act (15 U.S.C. 78o(d)) that is required to be disclosed pursuant to Item 402, 403, 404 or 407 of Regulation S-B (§§228.402, 228.403, 228.404 or 228.407 of this chapter) or Item 402, 403, 404 or 407 of Regulation S-K (§§229.402, 229.403, 229.404 or 229.407 of this chapter) must be presented in a clear, concise and understandable manner. You must prepare the disclosure using the following standards:

(1) Present information in clear, concise sections, paragraphs and sentences;

(2) Use short sentences;

(3) Use definite, concrete, everyday words;

(4) Use the active voice;

(5) Avoid multiple negatives;

(6) Use descriptive headings and subheadings;

(7) Use a tabular presentation or bullet lists for complex material, wherever possible;

(8) Avoid legal jargon and highly technical business and other terminology;

(9) Avoid frequent reliance on glossaries or defined terms as the primary means of explaining information. Define terms in a glossary or other section of the document only if the meaning is unclear from the context. Use a glossary only if it facilitates understanding of the disclosure; and

(10) In designing the presentation of the information you may include pictures, logos, charts, graphs and other design elements so long as the design is not misleading and the required information is clear. You are encouraged to use tables, schedules, charts and graphic illustrations that present relevant data in an understandable manner, so long as such presentations are consistent with applicable disclosure requirements and consistent with other information in the document. You must draw graphs and charts to scale. Any information you provide must not be misleading.

(b) Reserved.

Note to §240.15d-20. In drafting the disclosure to comply with this section, you should avoid the following:

1. Legalistic or overly complex presentations that make the substance of the disclosure difficult to understand;

2. Vague "boilerplate" explanations that are imprecise and readily subject to different interpretations;

3. Complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and

4. Disclosure repeated in different sections of the document that increases the size of the document but does not enhance the quality of the information.

36. Amend §240.16b-3 by:

a. Adding "and" at the end of paragraph (b)(3)(i)(B);

b. Removing "; and" at the end of paragraph (b)(3)(i)(C) and in its place adding a period;

c. Removing paragraph (b)(3)(i)(D); and

d. Adding Note (4) to read as follows:

§240.16b-3 Transactions between an issuer and its officers or directors.

* * * * *

Notes to § 240.16b-3:

* * * * *

Note (4): For purposes of determining a director's status under those portions of paragraph (b)(3)(i) that reference §229.404(a) of this chapter, an issuer may rely on the disclosure provided under §229.404(a) of this chapter for the issuer's most recent fiscal year contained in the most recent filing in which disclosure required under §229.404(a) is presented. Where a transaction disclosed in that filing was terminated before the director's proposed service as a Non-Employee Director, that transaction will not bar such service. The issuer must believe in good faith that any current or contemplated transaction in which the director participates will not be required to be disclosed under §229.404(a) of this chapter, based on information readily available to the issuer and the director at the time such director proposes to act as a Non-Employee Director. At such time as the issuer believes in good faith, based on readily available information, that a current or contemplated transaction with a director will be required to be disclosed under

§229.404(a) in a future filing, the director no longer is eligible to serve as a Non-Employee Director; provided, however, that this determination does not result in retroactive loss of a Rule 16b-3 exemption for a transaction previously approved by the director while serving as a Non-Employee Director consistent with this note. In making the determinations specified in this Note, the issuer may rely on information it obtains from the director, for example, pursuant to a response to an inquiry.

* * * * *

PART 245 – REGULATION BLACKOUT TRADING RESTRICTION (Regulation BTR – Blackout Trading Restriction)

37. The authority citation for Part 245 continues to read in part as follows:

Authority: 15 U.S.C. 78w(a), unless otherwise noted.

* * * * *

38. Amend §245.100, paragraph (a)(2), by revising the phrase "paragraph (a) or (b) of Item 404" to read "paragraph (a) of Item 404".

* * * * *

PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934

39. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a et seq. and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

40. Amend Form 10 (referenced in §249.210) by revising Items 6 and 7 to read as follows:

Note-The text of Form 10 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10

GENERAL FORM FOR REGISTRATION OF SECURITIES PURSUANT TO SECTION 12(b) or (g) OF THE SECURITIES EXCHANGE ACT OF 1934

* * * * *

Item 6. Executive Compensation.

Furnish the information required by Item 402 of Regulation S-K (§229.402 of this chapter) and paragraph (e)(4) of Item 407 of Regulation S-K (§229.407 of this chapter).

Item 7. Certain Relationships and Related Transactions, and Director Independence.

Furnish the information required by Item 404 of Regulation S-K (§229.404 of this chapter) and Item 407(a) of Regulation S-K (§229.407(a) of this chapter).

* * * * *

41. Amend Form 10-SB (referenced in §249.210b), Information Required in Registration Statement, by revising Item 7 to read as follows:

Note-The text of Form 10-SB does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10-SB

GENERAL FORM FOR REGISTRATION OF SECURITIES OF SMALL BUSINESS ISSUERS

* * * * *

Information Required in Registration Statement

* * * * *

Item 7. Certain Relationships and Related Transactions, and Director Independence.

Furnish the information required by Item 404 of Regulation S-B (§228.404 of this chapter) and Item 407(a) of Regulation S-B (§228.407(a) of this chapter).

* * * * *

42. Amend Form 20-F (referenced in §249.220f) by revising Instruction 4.(c)(v) to the Instructions as to Exhibits to read as follows:

Note-The text of Form 20-F does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 20-F

* * * * *

INSTRUCTIONS AS TO EXHIBITS

* * * * *

4.(a) * * *

(c) * * *

(v) Public filing of the management contract or compensatory plan, contract or arrangement, or portion thereof, is not required in the company's home country and is not otherwise publicly disclosed by the company.

* * * * *

43. Form 8-K (referenced in §249.308) is amended by:

a. Revising General Instruction D;

b. Revising the last sentence of Instruction 1 to Item 1.01;

c. Revising the heading of Item 5.02;

d. Revising Item 5.02(b), the introductory text of Item 5.02(c), Item 5.02(c)(2) and (c)(3);

e. Adding Items 5.02(d)(5), (e) and (f); and

f. Adding Instructions 3 and 4 to Item 5.02.

The revisions and additions read as follows:

Note-The text of Form 8-K does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 8-K
CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

GENERAL INSTRUCTIONS

* * * * *

D. Preparation of Report.

This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b-12 (17 CFR 240.12b-12). The report shall contain the number and caption of the applicable item, but the text of such item may be omitted, provided the answers thereto are prepared in the manner specified in Rule 12b-13 (17 CFR 240.12b-13). To the extent that Item 1.01 and one or more other items of the form are applicable, registrants need not provide the number and caption of Item 1.01 so long as the substantive disclosure required by Item 1.01 is disclosed in the report and the number and caption of the other applicable item(s) are provided. All items that are not required to be answered in a particular report may be omitted and no reference thereto need be made in the report. All instructions should also be omitted.

* * * * *

Item 1.01 Entry into a Material Definitive Agreement.

* * * * *

Instructions.

1. * * * An agreement involving the subject matter identified in Item 601(b)(10)(iii)(A) or (B) need not be disclosed under this Item.

* * * * *

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

* * * * *

(b) If the registrant's principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or any person performing similar functions, or any named executive officer, retires, resigns or is terminated from that position, or if a director retires, resigns, is removed, or refuses to stand for re-election (except in circumstances described in paragraph (a) of this Item 5.02), disclose the fact that the event has occurred and the date of the event.

(c) If the registrant appoints a new principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or person performing similar functions, disclose the following information with respect to the newly appointed officer:

(1) * * *

(2) the information required by Items 401(b), (d), (e) and Item 404(a) of Regulation S-K (17 CFR 229.401(b), (d), (e) and 229.404(a)), or, in the case of a small

business issuer, Items 401(a)(4), (a)(5), (c), and Item 404(a) of Regulation S-B (17 CFR 228.401(a)(4), (a)(5), (c), and 228.404(a), respectively); and

(3) a brief description of any material plan, contract or arrangement (whether or not written) to which a covered officer is a party or in which he or she participates that is entered into or material amendment in connection with the triggering event or any grant or award to any such covered person or modification thereto, under any such plan, contract or arrangement in connection with any such event.

(d) * * *

(5) a brief description of any material plan, contract or arrangement (whether or not written) to which the director is a party or in which he or she participates that is entered into or material amendment in connection with the triggering event or any grant or award to any such covered person or modification thereto, under any such plan, contract or arrangement in connection with any such event.

(e) If the registrant enters into, adopts, or otherwise commences a material compensatory plan, contract or arrangement (whether or not written), as to which the registrant's principal executive officer, principal financial officer, or a named executive officer participates or is a party, or such compensatory plan, contract or arrangement is materially amended or modified, or a material grant or award under any such plan, contract or arrangement to any such person is made or materially modified, then the registrant shall provide a brief description of the terms and conditions of the plan, contract or arrangement and the amounts payable to the officer thereunder.

Instructions to paragraph (e).

1. Disclosure under this Item 5.02(e) shall be required whether or not the specified event is in connection with events otherwise triggering disclosure pursuant to this Item 5.02.

2. Grants or awards (or modifications thereto) made pursuant to a plan, contract or arrangement (whether involving cash or equity), that are materially consistent with the previously disclosed terms of such plan, contract or arrangement, need not be disclosed under this Item 5.02(e), provided the registrant has previously disclosed such terms and the grant, award or modification is disclosed when Item 402 of Regulation S-K (17 CFR 229.402) requires such disclosure.

(f) If the salary or bonus of a named executive officer cannot be calculated as of the most recent practicable date and is omitted from the Summary Compensation Table as specified in Instruction 1 to Item 402(b)(2)(iii) and (iv) of Regulation S-B or Instruction 1 to Item 402(c)(2)(iii) and (iv) of Regulation S-K, disclose the appropriate information under this Item 5.02(f) when there is a payment, grant, award, decision or other occurrence as a result of which such amounts become calculable in whole or part. Disclosure under this Item 5.02(f) shall include a new total compensation figure for the named executive officer, using the new salary or bonus information to recalculate the information that was previously provided with respect to the named executive officer in the registrant's Summary Compensation Table for which the salary and bonus information was omitted in reliance on Instruction 1 to Item 402(b)(2)(iii) and (iv) of Regulation S-B (17 CFR 228.402(b)(2)(iii) and (iv)) or Instruction 1 to Item 402(c)(2)(iii) and (iv) of Regulation S-K (17 CFR 229.402(c)(2)(iii) and (iv)).

Instructions to Item 5.02.

* * * * *

3. The registrant need not provide information with respect to plans, contracts, and arrangements to the extent they do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees.

4. For purposes of this Item, the term "named executive officer" shall refer to those executive officers for whom disclosure was required in the registrant's most recent filing with the Commission under the Securities Act (15 U.S.C. 77a et seq.) or Exchange Act (15 U.S.C. 78a et seq.) that required disclosure pursuant to Item 402(c) of Regulation S-K (17 CFR 229.402(c)) or Item 402(b) of Regulation S-B (17 CFR 228.402(b)), as applicable.

* * * * *

44. Amend Form 10-Q (referenced in §249.308a) by revising Item 5(b) in Part II to read as follows:

Note-The text of Form 10-Q does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10-Q

* * * * *

PART II—OTHER INFORMATION

* * * * *

Item 5. Other Information.

(a) * * *

(b) Furnish the information required by Item 407(c)(3) of Regulation S-K (§229.407 of this chapter).

* * * * *

45. Amend Form 10-QSB (referenced in §249.308b) by revising Item 5(b) in Part II to read as follows:

Note-The text of Form 10-QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10-QSB

* * * * *

PART II—OTHER INFORMATION

* * * * *

Item 5. Other Information.

(a) * * *

(b) Furnish the information required by Item 407(c)(3) of Regulation S-B (§228.407 of this chapter).

* * * * *

46. Amend Form 10-K (referenced in §249.310) by revising Item 10 before the instruction and Items 11 and 13 in Part III to read as follows:

Note-The text of Form 10-K does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10-K

* * * * *

PART III

* * * * *

Item 10. Directors, Executive Officers and Corporate Governance.

Furnish the information required by Items 401, 405, 406, and 407(c)(3), (d)(4) and (d)(5) of Regulation S-K (§§229.401, 229.405, 229.406, and 229.407(c)(3), (d)(4) and (d)(5) of this chapter).

* * * * *

Item 11. Executive Compensation.

Furnish the information required by Item 402 of Regulation S-K (§229.402 of this chapter) and paragraphs (e)(4) and (e)(5) of Item 407 of Regulation S-K (§229.407(e)(4) and (e)(5) of this chapter).

* * * * *

Item 13. Certain Relationships and Related Transactions, and Director Independence.

Furnish the information required by Item 404 of Regulation S-K (§229.404 of this chapter) and Item 407(a) of Regulation S-K (§229.407(a) of this chapter).

* * * * *

47. Amend Form 10-KSB (referenced in §249.310b) by revising Item 9 before the instruction and Item 12 in Part III to read as follows:

Note-The text of Form 10-KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10-KSB

* * * * *

PART III

Item 9. Directors, Executive Officers, Promoters, Control Persons and Corporate Governance; Compliance With Section 16(a) of the Exchange Act.

Furnish the information required by Items 401, 405, 406, and 407(c)(3), (d)(4) and (d)(5) of Regulation S-B (§§228.401, 228.405, 228.406, and 228.407(c)(3), (d)(4) and (d)(5) of this chapter).

* * * * *

Item 12. Certain Relationships and Related Transactions, and Director Independence.

Furnish the information required by Item 404 of Regulation S-B (§228.404 of this chapter) and Item 407(a) of Regulation S-B (§228.407(a) of this chapter).

* * * * *

PART 274 – FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

48. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

* * * * *

49. Amend Form N-1A (referenced in §§239.15A and 274.11A) by:

a. Revising "$60,000" to read "$120,000" in the introductory text of Items 12(b)(6), (b)(7), and (b)(8); Instruction 2 to Item 12(b)(6); and Instruction 5 to Item 12(b)(8); and

b. Removing the word "relocation," in the second sentence of Instruction 2 to Item 15(b).

Note-The text of Form N-1A does not, and this amendment will not, appear in the Code of Federal Regulations.

50. Amend Form N-2 (referenced in §§239.14 and 274.11a-1) by:

a. Revising "$60,000" to read "$120,000" in the introductory text of paragraphs 9, 10, and 11 of Item 18; Instruction 2 to paragraph 9 of Item 18; and Instruction 5 to paragraph 11 of Item 18;

b. Revising the introductory text of paragraph 13 of Item 18;

c. Removing paragraph 13(c) of Item 18;

d. Redesignating paragraphs 14 and 15 of Item 18 as paragraphs 15 and 16, respectively;

e. Adding new paragraph 14 of Item 18;

f. Removing "relocation," from the second sentence of Instruction 2 to paragraph 2 of Item 21; and

g. Revising the cite "Item 18.15" to read "Item 18.16" in Instruction 8.a. to Item 24.

The addition and revision read as follows:

Note-The text of Form N-2 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N-2

* * * * *

Item 18. Management.

* * * * *

13. In the case of a Registrant that is not a business development company, provide the following for all directors of the Registrant, all members of the advisory board of the Registrant, and for each of the three highest paid officers or any affiliated person of the Registrant with aggregate compensation from the Registrant for the most recently completed fiscal year in excess of $60,000 ("Compensated Persons").

* * * * *

14. In the case of a Registrant that is a business development company, provide the information required by Item 402 of Regulation S-K (17 CFR 229.402).

* * * * *

51. Amend Form N-3 (referenced in §§239.17a and 274.11b) by:

a. Revising "$60,000" to read "$120,000" in the introductory text of paragraphs (h), (i), and (j) of Item 20; Instruction 2 to paragraph (h) of Item 20; and Instruction 5 to paragraph (j) of Item 20; and

b. Removing the word "relocation," in the second sentence of Instruction 2 to Item 22(b).

Note-The text of Form N-3 does not, and this amendment will not, appear in the Code of Federal Regulations.

52. Amend Form N-CSR (referenced in §§249.331 and 274.128) by revising Item 10 to read as follows:

Note-The text of Form N-CSR does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N-CSR

* * * * *

Item 10. Submission of Matters to a Vote of Security Holders.

Describe any material changes to the procedures by which shareholders may recommend nominees to the registrant's board of directors, where those changes were implemented after the registrant last provided disclosure in response to the requirements of Item 407(c)(2)(iv) of Regulation S-K (17 CFR 229.407) (as required by Item 22(b)(15) of Schedule 14A (17 CFR 240.14a-101)), or this Item.

Instruction. For purposes of this Item, adoption of procedures by which shareholders may recommend nominees to the registrant's board of directors, where the registrant's most recent disclosure in response to the requirements of Item 407(c)(2)(iv) of Regulation S-K (17 CFR 229.407) (as required by Item 22(b)(15) of Schedule 14A (17 CFR 240.14a-101)), or this Item, indicated that the registrant did not have in place such procedures, will constitute a material change.

* * * * *

By the Commission.

Nancy M. Morris
Secretary

Dated: August 11, 2006