

August 21, 2009

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File No. S7-13-09, Release No. 33-9052
Summary Compensation Table (SCT) Value of Stock And Option Awards

Dear Secretary Murphy:

Below are comments on a proposed change in the reporting of stock awards in the SCT.

Current Approach: Report the “fair value” of stock option and stock awards to executive officers and directors that are expensed during that year for financial reporting under FAS 123R.

Proposed Change: Report instead the grant date “fair value” of the full awards made/granted that year under FAS 123R, not what was expensed for the prior grants.

I think the proposed approach will only continue investor confusion and the media’s uncertainty on how to report compensation that executives receive. It perpetuates the misunderstanding about whether the SCT is providing an accurate picture of what an executive (or director) “makes.” *Instead of proposing to go back to the approach the SEC originally adopted in the summer of 2006 for stock options and stock awards in the Summary Compensation Table (SCT), the SEC should consider using in the SCT the “Values Realized” numbers from the table for **Options Exercised and Stock Vested.***

Below are seven reasons why the SEC should reconsider its proposed change and re-propose for comment the approach that requires disclosing realized values in the SCT:

1. Investors, other than institutional investors and others schooled in accounting, do not think about stock compensation in terms of the accounting rules and valuation models. Investors think about what is actually realized and received. The SCT should be a tally of how much an executive “made” in the past year according to the tax code definition of compensation, assuming no deferral of income.
2. All the other numbers in the SCT are amounts of actual compensation that the senior executive/reporting person actually received/was paid in the prior year (or could have if not deferred). The dollar numbers for all other compensation items are real amounts

- that executives could spend or put in the bank. This is not true with the grant date FAS 123R value, as grants must first vest, and then (for options) be exercised.
3. FAS 123R involves theoretical numbers based on assumptions. No other compensation numbers in the SCT are theoretical or based on assumptions. All the other numbers are actual amounts that executives have received. The severe stock market downturn shows that these assumptions and the models used for employee stock option valuation often prove to be flawed or inaccurate.
 4. For compensation-planning purposes, FAS 123R does not represent the way all companies value stock grants for determining the size of the grants or their value at grant, whether options, restricted stock, or performance shares. Many companies use either different methods or modifications to FAS 123R valuation models for setting grant sizes and their compensation guidelines.
 5. FAS 123R and the models used for valuing options and performance-based equity awards for accounting purposes were not developed for comparing the value of stock compensation to the value of cash. By using it in the SCT, it represents to regular investors that this is a guaranteed, fully transferrable, certain amount, similar to the salary or bonus amounts appearing in the SCT.
 6. For annual cash bonuses and long-term cash incentives, companies report only what is actually received/paid in that year, not the value of bonuses offered or some value for potential long-term cash incentives. For stock grants it should be the same in that the amount actually realized is what should appear in the SCT.
 7. FAS 123R value will often not represent actual value realized, which is the concern of investors. In rising markets, it will underestimate, potentially by large amounts for stock options, the actual gains from stock grants. In falling markets, it will overestimate the value, particularly with stock options that go underwater. The rulemaking petition submitted by Ira T. Kay and Steven Seelig (May 26, 2009, File No. 4-585, <http://www.sec.gov/rules/petitions/2009/petn4-585.pdf>) clearly explains the dilemma in using a fixed date for FAS 123R valuation. We support their petition proposing an approach to SCT valuation for stock and option awards focuses on the “pay realizable” as an alternative to using the actual realized value.

Under the approach we propose, the SCT would use the numbers in the **Options Exercised and Stock Vested** table. The amounts realized from the stock grants would be based on the actual W-2 income that an executive is taxed on from the grants at exercise, vesting, or performance share payout. When incentive stock options (ISOs) are exercised and the ISO stock is held through the calendar year of exercise, the spread value at exercise would be used, as there is no W-2 income in this situation (for details on ISO taxation, including the AMT, see the [ISO section](#) on www.myStockOptions.com). For amounts realized from grants that had already appeared in the SCT in previous years, a footnote can be added explaining the portion of the value that had appeared in prior proxy statements.

Part of the confusion with the SCT arises from the SEC's potentially conflicting goals. It wants to provide both a clear picture of senior executives' compensation and a way for investors to evaluate the decision-making of directors related to executive compensation and stock grant sizes. However, this latter goal can be better achieved through the other proxy statement tables. Investors interested in new stock grants made to an executive or director will have all the details in the table "Grants of Plan-Based Awards." The SCT should be a tally of the compensation realized.

I can gladly discuss this alternative with the SEC staff. It is a better solution for preventing investor and media confusion about stock grant compensation and represents the way most investors think about the numbers in the SCT: the "value" of the grants is the actual amount realized and not the accounting value.

Sincerely,

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