

There appears to be widespread concern over compensation granted to managers of publicly traded companies. So, this proposed rulemaking is important in addressing those concerns.

However, the SEC and all government agencies must be more stringent with themselves in limiting the regulatory costs they are imposing on businesses in this country. If it takes 370 pages to explain this rule, it is going to cost too much for companies to comply with it. SEC should consider implementing semi-annual rather than quarterly reporting.

In addition to the general concern with regulatory costs, SEC reporting requirements can have unacceptable detrimental effects for United States investors. Companies, especially those launching IPOs, can decide to list their securities on the exchanges of other countries and companies currently registered in the US, can voluntarily delist from US exchanges. This trend has already begun and if it accelerates, US investors will have increased costs and hurdles in locating and investing in those companies. I will leave it to more knowledgeable people than me to determine what detriment the outflow of investment dollars to foreign exchanges will have on the US economy.

Now, as to the specifics of the proposed rule:

It is appropriate to broadly define total compensation of company officers, highly compensated managers and directors and to require public reporting of those amounts. The detail should be reported to the SEC and made available to shareholders. Shareholders should have increased opportunity to moderate executive and director compensation.

- If aggregate compensation for all officers and managers subject to reporting, as proposed by the company board's compensation committee equals or exceeds five percent (5%), of the average company profit for the prior three fiscal years, the proposal should be submitted to a vote of the shareholders. Prior approval by a majority of shareholders (not shares voted) should be required. For purposes of this provision, calculation of company profit would exclude gains from sale of discontinued operations, subsidiaries, business units and real estate used for corporate purposes.
- Similarly if proposed total compensation of any individual director exceeds \$50,000 per year, the proposal must be approved by a majority of shareholders.
- Start up companies would propose maximum total compensation amounts for the first three years of operations as part of the IPO filing, and investors buying shares would be deemed to have approved those compensation amounts.
- If stock-related compensation proposals for company employees and directors would, in the aggregate, dilute the total authorized shares by more than one-half percent (0.5%), that proposal would also require prior approval by a majority of shareholders.
- All change of control, discharge, resignation and retirement packages for officers and highly paid executives with an individual value in excess of \$300,000 must be approved by a majority of shareholders.

An additional concern is investor confidence that directors are fulfilling their duties to represent shareholder interests. Directors should be required to sign an acknowledgement of their duties at the end of each board or committee meeting in which measures were voted on. The acknowledgement would state:

I acknowledge that my duty as a director requires me to be reasonably knowledgeable about each matter I vote on and to represent the interests

of all shareholders equitably. I certify that I have acted with due diligence in acquiring and reviewing information relevant to each matter submitted for a vote at this meeting. I further certify that I have not knowingly voted to approve measures that would convey special direct or indirect benefits to myself, members of my family, other board members, company officers or managers or any individual or group of shareholders, except for appropriate differences related to classes of shares.

Directors who do not reasonably fulfill their duties are not acting within the scope of their position as directors and could be found personally liable for malfeasance. Proposals to amend Director and Officer liability insurance policies to cover personal malfeasance should be submitted to shareholders for approval.

Given, the special role of mutual fund managers, directors and trustees, additional reporting and certification requirements are appropriate.

Mutual fund managers who hold more than one position within their companies should specify their responsibilities for each position and the number of hours they spent fulfilling the duties of each position in the prior reporting period and the proportionate amount of total compensation attributable to each position.

Individual mutual fund managers should submit certifications to SEC each reporting period that underscore their responsibilities to not act to manipulate share prices. Specifically:

I certify that I have not knowingly acted alone, or in concert with other fund managers within and outside this company or with any shareholders to increase or decrease the market price of shares of any publicly traded company or the pricing of any commodity. In addition, I specifically certify that I have not given any information to or taken any action more favorable to any individual or group of shareholders in the fund(s) I manage. Further, I specifically certify that I have not engaged in any naked short sales or knowingly allowed any employee within my area of responsibility to do so.

Mutual fund officers and directors should certify each reporting period that they have taken reasonable measures to verify that managers and the company as a whole is in compliance with the provisions detailed in the above certification.

If such measures are proposed, there will be a huge outcry from corporations that they will not be able to attract and retain qualified executives and directors. Folderol! Talented executives will be able to explain and prove their value to shareholders. Board members with special expertise and qualifications will be able to do the same. Moreover, there is a huge pool of experienced and talented managers available in this country. Likewise there are enormous numbers of retired and semi-retired white-collar workers, educators, and other experts that have the time and ability to serve as company directors. If the best of the best move to more lucrative employment outside of publicly traded companies, so be it. That possibility should not forestall the ability of shareholders to deny unwarranted compensation to mediocre, self-serving and even ineffectual company managers and directors.

Respectfully,  
LoVeen Moody