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SEC ADOPTS NEW DISCLOSURE RULES REGARDING RISK, COMPENSATION, AND CORPORATE GOVERNANCE

New Disclosures for the 2010 Proxy Season

On Wednesday, the Securities and Exchange Commission (SEC) adopted new disclosure rules regarding risk, compensation, and corporate governance matters. The new rules are effective February 28, 2010. The SEC has not yet clarified how the effective date will be applied (e.g., whether the effective date applies to the annual meeting date, a preliminary or final proxy statement filing date, or some other interpretation). We encourage you to watch for additional SEC guidance regarding the effective date and other clarifications.

The purpose of the new rules is to improve information provided to shareholders regarding risk, governance, and compensation matters so that investors have better and more relevant information to evaluate the leadership of the company and to make informed voting and investment decisions.

Highlights of New Disclosure Rules

	New or Revised Disclosures
Risk	<ul style="list-style-type: none"> The board's role in risk oversight Risk assessment of the company's compensation policies that are "reasonably likely to have a material adverse effect" on the company
Corporate Governance (and Director Qualifications)	<ul style="list-style-type: none"> Background and qualifications of directors and director nominees (including nominees for director nominated by others) How diversity is considered in identifying candidates for director nominees The company's board leadership structure Accelerated reporting of shareholder voting results (within 4 days on Form 8-K)
Compensation	<ul style="list-style-type: none"> Full grant date fair value of stock awards and option awards reported in the Summary Compensation Table and Director Compensation Table, including recomputed amounts and total compensation for prior fiscal years Fees and information about potential conflicts of interest of compensation consultants

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The Final Rules and Key Changes from the Proposed Rules

The final rules are available at: <http://www.sec.gov/rules/final/2009/33-9089.pdf> (129 pages) and include several changes from the proposed rules released on July 10, 2009. For additional information about the proposed rules, see our HRO alert "[SEC Proposes New Compensation, Corporate Governance, and Proxy Solicitation Rules](#)" (August 7, 2009) at www.hro.com/publications.

Below is a brief summary of the final rules and how they differ from the proposed rules.

Expanded Compensation Disclosures

Overall Compensation Practices and Risk Assessment. The final rules require a discussion of the company's overall compensation practices (including compensation for non-executives) if the risks arising from such practices "are reasonably likely to have a material adverse effect" on the company. The proposed rules would have required disclosure if risks from the compensation practices "may have a material effect" on the company. The final rules require the effect on the company to be "adverse" and the threshold is now "reasonably likely," the same disclosure threshold for similar risk disclosures in Management Discussion and Analysis (MD&A) rules. The final rules change the placement of the disclosure to a new narrative disclosure separate from the Compensation Discussion and Analysis (CD&A). The company is required to discuss risk in the CD&A to the extent that risk considerations are a material aspect of the company policies or decisions for named executive officers. The final rules also include revised examples of practices that may trigger disclosure and the type of information that would need to be disclosed.

Amount Reported for Stock and Option Awards. As proposed, the final rules require disclosure of the *full grant date fair value* of stock and option awards granted during the fiscal year in the Summary Compensation Table and Director Compensation Table. Fair value of the award is computed in accordance with FASB ASC Topic 718 (formerly FAS 123R). Under the final rules, awards with a performance condition will be reported based on the probable outcome of performance (instead of maximum performance) as determined under the accounting rules. The potential maximum value must be reported in a footnote. As expected, the final rules continue to require disclosure of the full grant date fair value of *each* award in the Grants of Plan-Based Awards Table and the Director Compensation Table. Companies that provide executive and director compensation disclosures for a fiscal year ending on or after **December 20, 2009** must present recomputed disclosures for preceding fiscal years for stock and option awards and total compensation that reflects the full grant date fair values. Companies are not required to include different named executive officers for prior years as a result of the recomputed total compensation.

Enhanced Governance Disclosures

Director and Nominee Qualifications and Legal Proceedings. The final rules require enhanced annual disclosure regarding the particular experience, qualifications, attributes or skills of each director or nominee which qualify that person to serve as a director for the company (but not as a committee member) determined as of the time of the filing. In addition, disclosure is required of any directorships at public companies and registered investment companies held by each director and nominee at *any time* during the past five years. The final rules lengthen the time period for disclosure of specified legal proceedings involving directors, director nominees and executive officers from five to 10 years, and require disclosure of additional types of legal proceedings.

Diversity of Directors. The final rules require new disclosures regarding whether and how the nominating committee considers diversity in identifying nominees for director positions. If the company has a diversity policy, it must describe how the policy is implemented and how the board assesses the effectiveness of the policy.

Company Leadership Structure. The final rules require the company to disclose its leadership structure and why the company believes it is the best structure for the company. The company must disclose whether and why the company has chosen to combine or separate the principal executive officer and board chair positions. If the positions are combined, the company must disclose whether and why the company has a lead independent director, as well as the specific role the lead independent director plays in the leadership of the company.

Board's Role in Risk Oversight. The final rules require companies to disclose the board's involvement in the oversight of the risk management process, including the relationship between the board and senior management in managing the material risks facing the company. Companies have flexibility to describe how the board administers its risk oversight function and the effect it has on the board's leadership structure.

Compensation Consultant – Potential Conflicts of Interest. Under the final rules, fees paid to compensation consultants must be disclosed in certain circumstances. This is in addition to the current requirement to describe the role of the compensation consultant in determining or recommending the amount or form of executive and director compensation. If the board or committee has engaged its own consultant to provide advice and the consultant or its affiliates provide other non-executive consulting services to the company, generally fees and related disclosures are required for the other services if the fees for the other services exceed \$120,000. Fee and related disclosures for consultants are required under certain other circumstances. Some limited exceptions apply to certain services where the SEC believes there is less potential for a conflict of interest.

Shareholder Voting Results – Form 8-K. As expected, the final rules accelerate the time for reporting shareholder voting results and move the reporting requirement to Form 8-K (new Item 5.07, "Submission of Matters to a Vote of Security Holders"). The preliminary (or final) results of the shareholder vote are required to be filed on Form 8-K within four business days beginning on the day on which the meeting ended. If preliminary results are filed, the company must file an amended Form 8-K to disclose the final voting results within four business days after the final results are known.

Revisions to Proxy Solicitation Rules

The SEC deferred consideration of the proposed amendments to rules governing the proxy solicitation process, pending consideration of its proposal regarding changes to the shareholder director nomination process.

Action Required

A number of the changes will require companies to gather additional information and in some cases, action by the board or a committee. As you begin to review how the changes impact your company's filings and processes, you will also need to start gathering the required information. Steps that can be taken today include revising (or supplementing) your annual Director & Officer Questionnaires and revising your prior year disclosures, including total compensation, for the change in reporting of stock awards and option awards.

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