



McGUIREWOODS
Relationships That Drive Results

Mergers & Acquisitions, Securities & Corporate Services



Enhancing Proxy Disclosures

SEC Releases Nos. 33-9089; 34-61175 and IC-29092

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Overview

- Effective February 28, 2010
- Applicable for 2010 proxy season
- Impacts:
 - Proxy and information statements
 - Registration statements ('33 and '34 Act)
 - Form 8-K
 - Forms 10-Q and 10-K
 - Investment Company Act filings

Corporate Governance Disclosures

- Expanded director and nominee disclosures
- New disclosures addressing board leadership structure
- New disclosures related to board's role in risk oversight
- New disclosures concerning diversity
- Reporting of shareholder voting results

Compensation-Related Disclosures

- Compensation policies and practices that impact company's risk management
- Stock and option awards reported in summary compensation and director compensation tables
- Compensation consultants

Director and Nominee Disclosures – Background and Experience

- Regulation S-K, Item 401
- Particular experience, qualifications, attributes or skills that led board to conclude that the person should serve as a director
- Annual disclosure
- Applies to both nominees and directors not standing for re-election

Director and Nominee Disclosures – Board Service

- Regulation S-K, Item 401
- Directorships at public companies and registered investment companies
- Five years

Director and Nominee Disclosures – Legal Proceedings

- Regulation S-K, Item 401
- Extended to ten years
- Expanded list of legal proceedings
 - Mail or wire fraud
 - Fraud in connection with a business entity
 - Federal or state securities, commodities, banking or insurance laws
 - Stock, commodities or derivatives exchanges or self-regulatory organizations

Board Leadership Structure

- Regulation S-K, Item 407
- Description of board leadership structure
- Relationship between positions of principal executive officer and board chair
- Lead independent director
- Explanation of appropriateness of leadership structure

Board's Role in Risk Oversight

- Regulation S-K, Item 407
- Extent of board's role in risk oversight
- How board administers its oversight function
- Impact on board's leadership structure

Diversity

- Regulation S-K, Item 407
- Nominating Committee
- Whether and how diversity considered when identifying nominees
- Implementation of any diversity policy
- Assessment of effectiveness of diversity policy

Reporting Results of Shareholder Votes

- Form 10-Q and Form 10-K reporting eliminated
- Form 8-K, Item 5.07
- Generally, must file within four business day's of meeting's end
- Final results, where possible
- Preliminary results and Form 8-K/A

Compensation Policies and Practices – Overview

- Regulation S-K, Item 402(s)
- Narrative disclosure
- Standard:
 - Risks
 - Compensation policies and practices
 - All employees
 - Reasonably likely
 - Material adverse effect

Compensation Policies and Practices – Examples

- Business unit that carries significant portion of company's risk profile
- Business unit with compensation structured significantly differently than other units
- Business unit where compensation expense is significant percentage of unit's revenues
- Business unit that is significantly more profitable than others

Compensation Policies and Practices – Sample Disclosures

- General design philosophy
- Risk assessment or incentive considerations
- Risk realization based on employee actions in short term and long term
- Policy adjustments
- Monitoring

Reporting of Stock and Option Awards – Overview

- Regulation S-K, Item 402
- Summary Compensation, Director Compensation and Grants of Plan-Based Awards Tables
- Aggregate grant date fair value of awards
- FASB ASC Topic 718

Reporting of Stock and Option Awards – Of Note

- Awards made during the year
- Performance awards
 - Probable outcome of performance conditions (tabular disclosure)
 - Maximum value (footnote disclosure)
- Transition provisions
- Revised calculation for previous years
- NEOs remain same
- Additional rules for NEOs

Compensation Consultants – Overview

- Regulation S-K, Item 407
- Role of compensation consultants
- Identification
- Fee disclosures (threshold of \$120,000)
- Exceptions
- Engagement

Compensation Consultants – Of Note

- Potential conflicts of interest
- Performance of non-executive compensation consulting services
- Exceptions:
 - Broad-based non-discriminatory plans
 - Information such as surveys not customized for company OR customized based on parameters not developed by consultant