

Legal Updates & News

Bulletins

SEC Publishes Additional Executive Compensation Guidance -- New 'FAQs' and 'Interpretative Responses' Address Detailed Disclosure Issues

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On January 24, 2007, the Staff of the SEC released additional guidance with respect to its new executive compensation rules in the form of revisions to its Manual of Publicly Available Telephone Interpretations (<http://www.sec.gov/divisions/corpfin/guidance/execcomp402interp.pdf>). In this guidance, the Staff provides “Questions and Answers of General Applicability” (“FAQs”) to address a number of important general issues under the new executive compensation rules, including among other items: (i) clarification regarding compliance dates for the new rules and certain transition issues; (ii) commentary concerning the new Compensation Discussion and Analysis requirements; (iii) discussion of when a company may omit disclosure of specific bonus performance target metrics for executive officer bonus and incentive plans; (iv) substantial discussion of the requirements for the Summary Compensation Table; and (v) discussion of issues pertaining to other compensation tables and disclosures including “Grants of Plans Based Awards Table,” “Outstanding Awards at Fiscal Year-End Table,” “Option Exercises and Stock Vested Table,” “Non-Qualified Deferred Compensation Table,” “Pension Benefits” and “Director Compensation Table.” Of particular interest in the FAQs is: (i) the discussion of Compensation Discussion and Analysis which provides helpful clarification concerning the scope of required disclosure with respect to option and equity grant programs, plans and practices (Questions 3.01 through 3.03) as well as Question 3.04 which clarifies that if a company wishes to omit disclosure of specific executive bonus target levels or other factors or criteria used in determining executive bonuses that would otherwise be required to be disclosed; it must be prepared to meet the same standards required for a confidential treatment request; (ii) the discussion regarding the Summary Compensation Table which answers a number of specific questions regarding the manner of completing the Summary Compensation Table (Questions 4.01 through 4.10); and (iii) the discussion of Item 402(h) Pension Benefits which focuses upon determining and disclosing the actuarial present value of executive pension benefits required to be disclosed (Questions 9.01 through 9.04).

In addition, the Staff has also provided a large number of “Interpretative Responses Regarding Particular Situations” (“Interpretative Responses”) that are designed to provide guidance on certain specific executive compensation disclosure issues, many of which have been posed by practitioners seeking clarification regarding application of the new rules. The Interpretative Responses regarding Item 402(c) – Summary Compensation Table, and Item 402(k) – Director Compensation Table, provide particularly helpful advice on what types of compensation need to be included in the various categories in these tables. The new executive compensation disclosure rules adopted in August and amended in December 2006 can be located at: <http://www.sec.gov/rules/final/2006/33-8732afr.pdf> and <http://www.sec.gov/rules/final/2006/33-8765.pdf>, respectively. Morrison & Foerster’s various Client Alerts on the new executive compensation rules can be found at: <http://www.mofo.com/news/updates/index.html>.