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SEC Provides Guidance on Effective Dates of Expanded Executive Compensation and Corporate Governance Rules

As we recently reported in our [December 18, 2009 blog article](#), the SEC adopted substantial [amendments](#) on December 16, 2009 that significantly expand the executive compensation and corporate governance disclosure requirements for publicly held companies. These new rules were presumably adopted now in order to become effective for the 2010 proxy season but, as we noted in our [blog](#), the SEC's adopting release did not provide much guidance regarding the effective dates of the new rules.

Fortunately, on December 22, 2009, the SEC issued five new compliance and disclosure [interpretations](#) ("*Proxy Disclosure Enhancements Transition*") in Q&A format that provide clarifications regarding when the new rules are operative.

Pursuant to these interpretations, December 20, 2009 and February 28, 2010 are the key dates for determining when the new rules must be complied with in company filings with the SEC.

With respect to the enhanced proxy disclosure requirements:

- ***FY End Before 12/20/09*** - If a company's fiscal year ends before December 20, 2009, its 2009 Form 10-K and related proxy statement are not required to be in compliance with the new proxy disclosure requirements.
- ***FY End On or After 12/20/09*** - If a company's fiscal year ends on or after December 20, 2009, its Form 10-K and proxy statement must be in compliance with the new proxy disclosure requirements if filed on or after February 28, 2010. A preliminary proxy statement filed before February 28, 2010 would also need to comply with the new disclosure rules if its definitive proxy will be filed on or after February 28, 2010. Similarly, if a company files its 2009 Form 10-K before February 28, 2010 and its proxy statement on or after February 28, 2010, the proxy statement must be in compliance with the new proxy disclosure requirements.

With respect to registration statements and the accelerated reporting (on Form 8-K) of results from shareholder meetings:

- ***Registration Statements*** - For companies with a 2009 fiscal year that ends before December 20, 2009, any Securities Act or Exchange Act registration statements that are filed before the company's 2010 Form 10-K is required to be filed would not be subject to the Regulation S-K amendments.
- ***Shareholder Meetings*** - Any shareholder meeting that takes place on or after February 28, 2010 will be subject to the new Form 8-K accelerated reporting requirements.

The Q&As in the interpretations also provided effective date guidance for: (i) companies that wish to voluntarily comply with the new disclosure rules in its 2009 Form 10-K and related proxy statement (even if not required to do so) and (ii) companies that are going through the IPO process or filing a first registration on Form 10.

If you have any questions regarding this information, please contact [Greg Schick](#) at (415) 774-2988.