



Client Alert

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SEC Announces New Disclosure Rules Effective This Proxy Season

On December 16, 2009, the SEC approved new rules that will impact the preparation of your 2010 proxy statement. The new rules are intended to provide enhanced disclosure to investors regarding risk, compensation and corporate governance matters. The new rules encompass several areas of disclosure and will likely require Board and management attention in the early stages of drafting your proxy statement. The following is a brief overview of the new rules, which will become effective February 28, 2010.

- **Risk Management** – The new rules require disclosure of compensation policies and practices as they relate to risk management and whether a company has incentivized excessive or inappropriate risk-taking by employees. Companies will now be required to include a narrative disclosure in their proxy statement, though not in the CD&A, about compensation policies and practices for all employees, not just executive officers, if any risks are created that are reasonably likely to have a material adverse impact on the company. While the situations requiring disclosure will vary depending on the particular company and compensation program, the SEC has provided a non-exclusive list in its adopting release (Release No. 33-9089) of situations that could potentially trigger discussion in a company's proxy statement. Specifically, companies should review compensation policies and practices in business units that may carry a significant portion of the company's risk, have different compensation structures compared to the rest of the company, are significantly more profitable than other units within the company or in which compensation expense is a significant percentage of the unit's revenues. Also, compensation policies and practices that vary significantly from the overall risk and reward structure of the company may warrant disclosure.
- **Enhanced Information About Directors and Nominees** – With respect to each director or nominee, the new rules require disclosure regarding (a) the particular experience, qualifications, attributes or skills that led the Board to conclude that the person should serve as a director, (b) any directorships at public companies and registered investment companies held by that person at any time during the past five years and (c) any involvement in legal proceedings going back ten years, instead of the current five years, as well as an expanded list of legal proceedings covered by the rule. The expanded disclosure regarding legal proceedings applies to executive officers, as well as directors

and nominees. Companies should consider updating their 2010 Directors and Officers Questionnaire to reflect these new disclosure requirements.

- **Diversity in the Director Nomination Process** – The new rules require disclosure of whether, and if so how, a company’s nominating committee considers diversity in identifying nominees. If the committee or Board has a policy with regard to the consideration of diversity in identifying director nominees, the new rules require disclosure of how the policy is implemented and how the committee or Board assesses the effectiveness of its policy. The SEC has not defined diversity and stated in its release that, for the purpose of this disclosure requirement, companies should be allowed to define diversity in ways that they consider appropriate.
- **The Board’s Leadership Structure and Role in Risk Oversight** – The new rules will require disclosure about (a) a company’s board leadership structure, including a discussion of whether the company has combined or separated the CEO and Chairman position, and why the company believes its structure is appropriate, (b) in certain circumstances, whether and why a company has a lead independent director and the specific role of that director and (c) the extent of the Board’s role in the risk oversight of the company.
- **Revisions to Summary Compensation Table and Director Compensation Table** – The new rules require companies to report the value of stock and option awards when they are awarded to executives (i.e. the aggregate grant date fair value), instead of the current requirement to report the annual accounting charge. In addition to complying with respect to fiscal 2009 compensation, you will also be required to revise the stock and option awards columns and the total compensation column of your Summary Compensation Table with respect to compensation reported for fiscal years 2008 and 2007 in your upcoming proxy statement.
- **Enhanced Disclosure About Compensation Consultants** – Generally, the new rules require disclosure about fees paid to compensation consultants and their affiliates when they provide (i) advice with respect to executive and director compensation and (ii) other non-executive compensation services to the company, provided the fees for the non-executive compensation services exceed \$120,000 during the company’s fiscal year.
- **Disclosure of Shareholder Vote Within Four Days** – Instead of waiting until the respective quarter’s Form 10-Q to report annual meeting results, the results will now be reported within four days of the meeting under a new item on Form 8-K.

If you want to learn more about the new rules and how to draft your proxy this year, or any other matter, please feel free to contact any member of the Securities and Corporate Governance Team at Arnall Golden Gregory LLP.

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