

CORPORATE ALERT:
SEC STAFF VIEWS ON FORM 8-K DISCLOSURE REQUIREMENTS
RELATING TO DIRECTOR AND EXECUTIVE OFFICER COMPENSATION

FEBRUARY 23, 2005

Based upon recent discussions we have had with members of the staff of the Division of Corporation Finance of the Securities and Exchange Commission, the staff's views on the disclosure requirements for current reports on Form 8-K in connection with director and executive officer compensation arrangements may require disclosures not necessarily expected from a reading of the form and related rules or past practices of registrants. While such views are not considered rules, regulations or statements of the SEC itself, they do represent the staff's position on Form 8-K disclosure requirements.

Effective August 23, 2004, Form 8-K was amended to expand the types of events or developments requiring current disclosure and to shorten the deadlines for filing most current reports. Among the new events or developments requiring disclosure on Form 8-K are the entry into, material amendment to or termination of, material definitive agreements not made in the ordinary course of business. These material agreements are defined to include many compensatory plans, contracts or arrangements with directors or executive officers.

For example, items that we understand may, in the staff's view, require disclosure on Form 8-K are:

- Material changes in the compensation of an executive officer or in directors' fees, even where there is no formal agreement.
- The setting of specific performance goals and business criteria for a performance period under a cash bonus plan or performance-based equity compensation plan.
- The award of cash bonuses where
 - The specific performance criteria upon which a bonus was based had not been previously reported, including bonuses for fiscal year 2004 where the performance criteria may have been set before the new Form 8-K requirements were adopted; or
 - Either one or more of the performance criteria are waived or negative discretion is used to reduce significantly the amount of a bonus.
- The award of performance-based equity awards where certain general terms of the award had not been previously reported.

In addition, compensation arrangements that are subject to current reporting but not reflected in written agreements may require summaries of the arrangements to be filed as exhibits to a company's periodic reports on Form 10-Q or 10-K.

The consequences of failing to file timely a Form 8-K under the circumstances outlined above, including the loss of eligibility to file a short-form registration statement on Form S-2 or S-3, can be mitigated by including the applicable disclosure in the Form 10-Q, or with respect to the fourth fiscal quarter, the Form 10-K, for the period in which the event giving rise to the disclosure took place.

A variety of issues, and registrant practices, with respect to the application of the Form 8-K disclosure requirements to routine executive compensation matters are still developing.

The staff of the Division of Corporation Finance of the SEC has posted a number of frequently asked questions on Form 8-K disclosure on the SEC's website at <http://www.sec.gov/divisions/corpfin/form8kfaq.htm>. We again note that our recent discussions with members of the staff in some cases go beyond what is reflected in the FAQs.

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This alert is for general information purposes and should not be regarded as legal advice. Please contact your relationship partner if we can be of assistance regarding these important developments. The names and office locations of all of our partners, as well as memoranda regarding recent corporate governance developments, can be obtained from our website, www.simpsonthacher.com.

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