

Analysis of SEC's Proposed New Rules Concerning Executive Compensation and Related Disclosure

March 31, 2006

The Securities and Exchange Commission has released the text of its proposed new rules that would amend disclosure requirements for executive and director compensation, related party transactions, director independence and other corporate governance matters, and security ownership of officers and directors. The proposals represent the SEC's undertaking of the most significant revisions of its rules governing executive compensation in 14 years and the SEC believes that the proposed improved disclosure would provide better information to stockholders for purposes of evaluating the actions of the board of directors in fulfilling its responsibilities to the company and its stockholders.

It should be emphasized that the amendments to the disclosure rules are only proposed, and are subject to changes in response to public comments.¹ The public comment period will expire on April 10, 2006. The SEC currently anticipates that new rules will be in effect for the 2007 proxy season.

Prior to the release of the text of the rules, we prepared an alert for our clients, based upon the open meeting of the SEC Commissioners and certain other public statements, for the purpose of alerting readers to matters that they may wish to take into consideration now, in anticipation of the enhanced disclosure regime that will likely govern the future disclosure of compensation awarded to, earned by or paid to directors, executives and certain other employees during the current fiscal year.² The purpose of this memorandum is to explain in detail the impact of the proposed rules on future executive compensation practices.

Summary of Principal Changes in Proposed Disclosure Rules

The principal changes contained in the proposed rules are the following:

Executive and Director Compensation

- The proposed rules would mandate extensive tabular compensation disclosure and require clearer narrative disclosure to explain the information provided in the tables. Disclosure

¹ The one exception to this statement is that the SEC release also contains some new guidance on the SEC's view of which items constitute perquisites or other personal benefits. This guidance is discussed later in this memorandum.

² See our alert dated January 24, 2006 entitled "Corporate Alert: SEC Proposes New Rules Concerning Executive Compensation and Related Disclosure," which is available upon request or at our website: www.simpsonthacher.com.

would be “principles-based”; that is, all compensation would be required to be disclosed and explained, and specific types of compensation would be listed in the rules as examples only.

- The definition of the “named executive officers” for whom compensation disclosure is made would be changed.
 - Any individual who served as the company’s principal financial officer during the last completed fiscal year would be included (in addition to any individual who served as principal executive officer).
 - The determination of the three most highly compensated executive officers (other than the CEO and CFO) who were serving as executive officers at the end of the fiscal year (as well as the determination of up to two additional individuals who would have been in this category had they still been executive officers at year-end) would be made on the basis of “total compensation” for the fiscal year (defined by far more expansive compensation disclosure requirements), rather than just salary and bonus.
- A new Compensation Discussion and Analysis section would replace the current Compensation Committee report and the performance graph. This section would require an explanation of *all* elements of compensation of the named executive officers, including a discussion of the objectives of the company’s compensation programs, each element of compensation, how the amount of each element is determined and how such elements fit into the company’s overall objectives and affect decisions regarding other elements.
 - The required discussion must include a discussion of post-termination compensation arrangements, in addition to arrangements for compensation while serving as named executive officers.
 - The new Compensation Discussion and Analysis section would, unlike the Compensation Committee report and performance graph it replaces, be considered filed with, rather than furnished to, the SEC. This section would therefore be included in the material included or incorporated in the Form 10-K that is certified by companies’ CEOs and CFOs.
- Tabular compensation disclosure would be organized into 3 categories of tables and related narrative disclosure:
 - compensation for the last completed fiscal year (and in the Summary Compensation Table, the preceding 2 fiscal years);

- ☐ holdings of equity-based interests that relate to compensation or are potential sources of future gains and realization on these interests during the last completed fiscal year; and
 - ☐ retirement and other post-employment compensation, including benefits payable in the event of a change in control.
- The Summary Compensation Table would include, as a new first column, total annual compensation, in dollars, for each reported person. This total compensation would include essentially *all* items of annual compensation, including many not currently reported with dollar values, such as
 - ☐ the grant date value of all stock-based awards, including stock options, computed in the same manner as that used for financial statement purposes (except that the total value of awards would be reported in the fiscal year of grant rather than amortized over the period of required service as it is for financial statement purposes);
 - ☐ all earnings, such as dividends, on previously granted stock-based awards;
 - ☐ the aggregate increase in the actuarial value of pension plans accrued during the year; and
 - ☐ all earnings on deferred compensation that is not tax-qualified.
- With respect to perquisites and other personal benefits, the proposed rules would
 - ☐ lower the dollar threshold for the disclosure of perquisites and other personal benefits to an aggregate of \$10,000 per person;
 - ☐ require the identification of all perquisites, regardless of value, if the aggregate perquisites and other personal benefits of the executive are \$10,000 or more; and
 - ☐ require disclosure of the value of any perquisite that exceeds the greater of \$25,000 or 10% of total perquisites.
- The proposal would also mandate tabular disclosure, by named executive officer, of
 - ☐ the number and value of all outstanding equity awards at fiscal year-end (not just stock options); and
 - ☐ the amounts “realized” upon the vesting of stock or similar awards (not just upon the exercise of stock options).

- The retirement and post-employment compensation tables would also for the first time require disclosure of
 - potential annual pension payments for each named executive officer; and
 - additions to, earnings on and withdrawals from deferred compensation plan balances during the fiscal year.
- The proposal would require disclosure, including estimated dollar amounts (not just a description of formulas), of the amounts of payments and benefits, including perquisites, payable on termination or upon a change in control.
- Narrative disclosure would also include for the first time disclosure of total compensation for up to three employees who are not executive officers (identifying them by job description although not by name), but who earn higher total compensation than any one of the executive officers included in the disclosure tables.
- The proposed rules also reflect an expanded focus on director compensation, and would require tabular disclosure similar to that of the Summary Compensation Table for named executive officers.
 - The value of perquisites provided to each director would be disclosed on the same basis as the enhanced disclosure that would be required for named executive officers.
 - The annual costs of payments and promises of payments pursuant to director legacy programs and similar charitable award programs would expressly be considered reportable compensation to a director.

Executive Compensation Disclosure on Form 8-K

- The proposed rules would expressly limit required disclosure on Form 8-K of the entry into, or material amendment of, a material definitive agreement related to a compensatory plan, contract or arrangement to those in which the CEO, CFO or a named executive officer participates or is a party (thus excluding directors' and other executive officers' agreements), and would expressly exempt grants or awards that are materially consistent with the previously disclosed original terms of a plan, contract or arrangement.
- All named executive officers would be included in the list of executive officers whose departure would trigger a Form 8-K disclosure requirement.

Related Party Transactions

- The proposed rules would require a description of the company's policies and procedures for the review, approval or ratification of transactions with related parties and the identification of any reported related party transactions that did not require review, approval or ratification or where the company's policies and procedures were not followed.
- The proposed rules would also raise the threshold for related party transactions with related parties that may be subject to disclosure from \$60,000 to \$120,000.
- The proposed rules would eliminate many of the specific instructions as to which transactions must be disclosed, relying instead on a "principles-based" materiality analysis.

Director Independence and Other Corporate Governance Matters

- The proposals would also require, for each director or director nominee identified as independent, a description of any transactions, relationships or arrangements (other than related party transactions otherwise disclosed) that were considered by the board of directors in determining that the applicable independence standards were met.
 - As currently proposed, the rules would not permit disclosure of specific matters considered by the board to be avoided if such transactions, relationships or arrangements met categorical standards adopted by the board to aid in its determination and such categorical standards are disclosed by the company, as is permitted under New York Stock Exchange and Nasdaq Stock Market listing standards.
- The proposed rules would require disclosure relating to the company's compensation committee (or of the company's reasons for not having such a committee) similar to that currently required regarding the audit and nominating committees of the company's board of directors.
 - The company would also be required to describe the compensation committee's policies and procedures for the consideration and determination of executive and director compensation.

Security Ownership of Officers and Directors

- The proposed rules would expressly require disclosure of the number of shares pledged as security by named executive officers, directors and director nominees.

General

- All disclosure relating to executive and director compensation, related party transactions, director independence and other corporate governance matters, and security ownership of officers, directors and 5% beneficial owners would be required to be in plain English.

As is currently the case, special rules would apply for foreign private issuers and small businesses.

New Guidance on Perquisites

The proposal release also contains interpretative guidance, applicable also to the current disclosure requirements, that among the factors to be considered in determining whether an item is a perquisite or other personal benefit are

- whether “it is integrally and directed related to the performance of the executive’s duties” and
- whether “it confers a direct or indirect benefit that has a personal aspect, without regard to whether it may be provided for some business reason or for the convenience of the company, unless it is generally available on a non-discriminatory basis to all employees.”

The release further states that personal benefits that may facilitate job performance, such as company-provided aircraft or watercraft, commuter transportation services, secretarial services devoted to personal matters or investment management services, are not “integrally and directed related” to job performance.

Detailed Analysis of Significant Changes in Proposed Disclosure Rules

Charts setting forth the more significant changes contained in the proposed rules are attached to this memorandum.

This memorandum 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 reporting and governance developments, can be obtained from our website, www.simpsonthacher.com.

	CURRENT RULES	PROPOSED RULES
<i>Compensation Overview</i>	<p>Compensation Committee Report</p> <p>The current report requires disclosure of the committee’s policies applicable to all executive officers (not just named executive officers) for the last completed fiscal year, including the specific relationship of corporate performance to executive compensation. Specific discussion is also required of the committee’s bases for the CEO’s compensation, with a detailed discussion of the relationship of each measure of corporate performance to his or her compensation.</p> <p>Staff guidance states that a discussion is also required of the committee’s policies regarding Section 162(m) of the Internal Revenue Code (which limits the deductibility of compensation that does not meet specified requirements to be performance-based).</p> <p>The report is made over the name of each member of the compensation committee.</p>	<p>Compensation Discussion and Analysis</p> <p>This new section would replace the compensation committee report and performance graph.</p> <p>The section is intended to be an overview that puts into context the compensation disclosure provided in the subsequent tables and narrative. All elements of compensation of named executive officers would be explained, including a discussion of the objectives of the company’s compensation programs, what they are designed to reward and not to reward, why the committee chooses to pay each identified element, how the amount of each element is determined and how such elements fit into the company’s overall objectives and affect decisions regarding other elements, and must include a discussion of post-termination compensation.</p> <p>The proposed rules are “principles-based” (similar to the current requirements for management’s discussion and analysis of financial condition and results of operations (MD&A)); that is, they identify disclosure concepts and provide a list of illustrative examples. Boilerplate disclosure would not be in compliance with the required discussion.</p>

	CURRENT RULES	PROPOSED RULES
		<p>Among the examples of information that may be required to be addressed are several items that companies may not have previously considered, including</p> <ul style="list-style-type: none"> • how amounts realized from prior compensation awards are considered in setting current compensation, • the impact of accounting (as well as tax) treatments of particular forms of compensation, • equity ownership requirements or guidelines and policies on hedging, and • the role of executive officers in the compensation process. <p>The discussion and analysis should be sufficiently precise to identify material differences in compensation policies and decisions for individual named executive officers where appropriate.</p> <p>Companies would still not be required to disclose competitively-sensitive target levels with respect to performance-related factors.</p>

	CURRENT RULES	PROPOSED RULES
	<p>Performance Graph</p> <p>The current rules require the company to provide a line graph comparing the yearly percentage change in the cumulative total shareholder return on the company's stock over a period of generally 5 years to (i) a broad equity market index and (ii) a published industry index or an index of peer issuers.</p> <p>The compensation committee report and the performance graph are considered to be furnished to, rather than filed with, the SEC.</p>	<p>The proposed rules would not require any comparable graphic presentation.</p> <p>The compensation discussion and analysis section would be filed with, rather than furnished to, the SEC; and therefore would be subject to disclosure liability and included in the material included or incorporated in Form 10-K that is certified by companies' CEOs and CFOs.</p>
<i>Covered Executives</i>	<p>Named Executive Officers</p> <ul style="list-style-type: none"> • All individuals who served as CEO during the last completed fiscal year • The 4 most highly compensated executive officers other than the CEO who were serving as executive officers at the end of the last completed fiscal year and 	<p>Named Executive Officers</p> <ul style="list-style-type: none"> • Same as current rule • All individuals who served as CFO during the last completed fiscal year • Same as current rule, except the 3 most highly compensated executive officers other than the CEO (and a different standard for determining compensation) and

	CURRENT RULES	PROPOSED RULES
	<ul style="list-style-type: none"> Up to 2 additional individuals who would have been in the previous category but for the fact that they were not serving as executive officers at the end of the last completed fiscal year <p>The determination of the most highly compensated executive officers is made on the basis of total annual salary and bonus for the last completed fiscal year.</p> <p>Excludable in limited circumstances for these purposes:</p> <ul style="list-style-type: none"> Unusually large, non-recurring compensation and Compensation attributed to overseas assignments. 	<ul style="list-style-type: none"> Same as current rule (except a different standard of determining compensation). <p>The determination of the most highly compensated executive officers is made on the basis of total compensation for the last completed fiscal year (as described below). <i>Note that the group of named executive officers may change from year to year as a result of unusual items.</i></p> <p>Unusually, large, non-recurring compensation would <i>not</i> be excludable under the proposed rules.</p> <p>Same as current rules</p> <p><i>Note that, if the CFO would not have been among the 4 most highly compensated executive officers (other than the CEO), under current Treasury Regulations the "covered employees" for purposes of Section 162(m) would include someone who is not a named executive officer.</i></p>

	CURRENT RULES	PROPOSED RULES
	<u>Summary Compensation Table</u>	<u>Summary Compensation Table</u>
<i>Total Compensation</i>	No disclosure of total compensation is currently required.	<p>Total Compensation Column. The arithmetic total of all columns in the table would be required to be disclosed in this new, first column.</p> <p>These totals would provide the basis for the determination of named executive officers (other than individuals who served as CEO or CFO during the last completed fiscal year).</p>
<i>Annual Salary and Bonus</i>	<p>Salary and Bonus Columns. The current rules only address optional presentation of salary or bonus deferred at the election of the executive.</p> <p>The current rules only require that if salary or bonus is not currently calculable, that fact be stated in a footnote, and no disclosure of the amounts later determined is required until the subsequent year's table is filed.</p>	<p>Salary and Bonus Columns. Similar to current disclosure, except that</p> <ul style="list-style-type: none"> the instructions would state expressly that any amounts (not just salary or bonus) deferred at the direction of the company (and not just at the election of the executive) are to be included in the appropriate column of the table for the fiscal year in which earned (with required footnote disclosure of the deferral) and if the amount of salary or bonus is currently not calculable, that fact must be disclosed in a footnote, together with the date that the amount is expected to be determined.

	CURRENT RULES	PROPOSED RULES
		In addition, the determination of salary or bonus that was previously disclosed as not currently calculable would trigger disclosure on Forms 8-K.
<i>Stock and Option Awards</i>	<p>Restricted Stock Awards. The value of restricted stock and RSUs granted is, except as noted below, currently reported in this column. The current rules, however, may not have the flexibility to address new forms of compensation that may be developed in the future.</p> <p>Awards that are subject to performance-based conditions on vesting may instead be reported as long-term incentive plan (LTIP) awards in the separate LTIP Awards Table and not be reported in the Summary Compensation Table until vested.</p> <p>The dollar value of restricted stock and RSU awards is currently required to be calculated by multiplying the closing market price of the company's stock on the date of grant by the number of shares or units awarded.</p>	<p>Stock Awards Column. This column would disclose the grant date fair value of stock-related awards, such as restricted stock, restricted stock units (RSUs), phantom stock or other similar instruments that do not have option-like features.</p> <p>Stock awards subject to performance-based vesting would be required to be included in this column in the year of grant.</p> <p>The value would be computed pursuant to Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), <i>Share-Based Payment</i> (FAS 123R), in the same as that used for financial statement purposes manner (other than being fully reported in the fiscal year of grant rather than amortized over the period of required service as it is for financial statement purposes).</p>

	CURRENT RULES	PROPOSED RULES
	<p>Companies must currently disclose in a footnote</p> <ul style="list-style-type: none"> • if a restricted stock or RSU award will vest, in whole or in part, in less than 3 years, the number of shares awarded and the vesting schedule; • whether dividends are paid on restricted stock or RSUs; and • the number and value (based on closing market price) of the aggregate restricted stock and RSU holdings at the end of the last completed fiscal year. <p><i>Securities Underlying Options/SARs</i> Currently only the number of shares underlying option or SAR awards is presented in the Summary Compensation Table.</p> <p>Valuation is provided in the separate Option/SAR Grants Table by either (i) the potential realizable value assuming appreciation in the market price of the underlying shares at 5% and 10% annualized rates or (ii) the present value of the grant under any option pricing model, the methodology assumptions of which must be described in a footnote.</p>	<p>The numbers of shares of all restricted stock and RSUs awarded and their vesting dates would be reported in the separate Grants of All Other Equity Awards Table, similar to current (and proposed) requirements for the number of shares underlying options and the expiration dates of the options.</p> <p>All dividends on awards previously granted would be included in the Stock Awards column</p> <p>The number and value of outstanding awards, and their vesting dates, would be disclosed in the separate Outstanding Equity Awards at Fiscal Year-End Table.</p> <p><i>Option Awards Column.</i> This column would disclose the grant date fair value of options, stock appreciation rights (SARs) or other similar instruments that have option-like features.</p> <p>The value would be computed pursuant to FAS 123R in the same manner as Stock Awards.</p>

	CURRENT RULES	PROPOSED RULES
		<p>For both stock awards and option awards, the FAS 123R valuation would be used whether the award itself is in stock, options or similar instruments or the award is settled in cash but the amount of payment is tied to stock performance.</p> <p>A footnote to the valuation of Stock Awards and Option Awards must reference a discussion of the relevant assumptions in either the notes to the company's financial statements or the MD&A. <i>It should be noted, however, that such sources may discuss FAS 123R assumptions on a weighted aggregate basis; but the proposed rules require that the table grant date fair value be based on the assumptions used for the employee group that includes the named executive officers in calculating compensation expenses for the financial statements.</i></p> <p>The stock awards and option awards columns would also be required to include all earnings on outstanding awards.</p>

	CURRENT RULES	PROPOSED RULES
<i>Incentive Plan Compensation</i>	<p>LTIP Payouts. Currently the dollar value of LTIP payouts (including performance-based restricted stock or RSUs that the company has elected to treat as LTIP awards) are reported in the Summary Compensation Table at the time that they are actually paid or are matured but deferred at the election of the executive.</p> <p>Grants of LTIP awards (and performance-based restricted stock or RSUs that the company has elected to treat as LTIP awards) are reported in an LTIP Awards Table in the fiscal year of grant.</p>	<p>Non-Stock Incentive Plan Compensation Column. The dollar value of all amounts earned pursuant to incentive plans that are either stock awards or option awards would be disclosed in this column. Unlike most items reported in the Summary Compensation Table, disclosure would be required in the fiscal year when the relevant performance criteria under the plan are satisfied and the compensation is earned, whether or not payment is actually made, rather than the fiscal year of grant. No further disclosure would be required when the payment is actually made or matured. This treatment would be limited to awards where the relevant performance measure under the plan is not based on the price of the company's equity securities and the award may not be settled by the issuance of equity securities.</p> <p>All earnings on outstanding awards would also be required to be included.</p> <p>Grants of non-stock incentive plan compensation awards would be disclosed in the Grants of Performance Based Awards Table in the fiscal year of grant. The number and the market or payout value of all unvested incentive plan awards would be disclosed in the Outstanding Equity Awards at Fiscal Year-End Table.</p>

	CURRENT RULES	PROPOSED RULES
<i>Other Compensation</i>	<p><i>Other Annual Compensation and All Other Compensation Columns.</i> The current disclosure creates a distinction between annual compensation and compensation that is not considered related only to a single fiscal year.</p> <p>Other annual compensation is limited to five identified categories, which include</p> <ul style="list-style-type: none"> • perquisites and other personal benefits; • above-market or preferential earnings on deferred compensation payable during the year; • tax reimbursements; and • discounted securities purchases. <p>Disclosure under Other Annual Compensation and All Other Compensation is subject to certain limitations.</p>	<p><i>All Other Compensation Column.</i> All current compensation not reported in the other columns would be required to be included in this column, without any distinction between annual and “long-term” compensation. Such items would include</p> <ul style="list-style-type: none"> • perquisites and other personal benefits; • all earnings on deferred compensation; • tax reimbursements; • discounted securities purchases; • payments or accruals on termination plans; • company contributions to defined contribution plans; • increases in actuarial value of pension plans; • insurance premiums; and • all other compensation not required to be included in another column.

	CURRENT RULES	PROPOSED RULES
	<p>Currently perquisites and other personal benefits need not be disclosed if the aggregate amount is lower than the lesser of \$50,000 or 10% of the executive's total annual salary and bonus. Each perquisite or other personal benefit exceeding 25% of the total perquisites and other personal benefits for a named executive officer must be identified by type and amount in a footnote or accompanying narrative disclosure.</p> <p>The other elements of Other Annual Compensation, such as tax reimbursements, are not subject to the foregoing limitation on disclosure.</p> <p>Earnings on restricted stock, RSUs, options, SARs or deferred compensation and earnings on LTIP compensation during the fiscal year (reported as Other Annual Compensation if paid or payable but deferred at the election of the executive; otherwise reported as All Other Compensation) are only reported to the extent of above-market or preferential earnings.</p>	<p>Perquisites and other personal benefits would not need to be disclosed if the aggregate amount is less than \$10,000. If the \$10,000 threshold is met, all perquisites and other personal benefits would be required to be described in a manner that identifies the particular nature of the benefit received; and each that is valued at more than the greater of \$25,000 or 10% of the total must be quantified.</p> <p>Similar to current rules, tax reimbursement and other items of All Other Compensation would not be subject to the foregoing threshold limitation on disclosure applicable to perquisites and other personal benefits.</p> <p>All earnings on compensation that is deferred on a basis that is not tax-qualified (not only above-market or preferential earnings) would be required to be reported. All earnings (whether or not above-market or preferential) on restricted stock, RSUs, options or SARs would be reported in the appropriate Stock Awards or Option Awards columns.</p>

	CURRENT RULES	PROPOSED RULES
	<p>Current rules require the reporting of premiums paid for term life insurance and, in the case of split-dollar life insurance (under which the executive will have an interest in any cash surrender value under the policy), in addition to the amount of premiums paid with respect to the term portion of the policy, the company must report either the remaining amount of the premiums paid or the actuarial value of the benefit to the executive after any future projected refund of premiums to the company.</p> <p>Companies may omit information regarding relocation plans that do not discriminate in favor of executive officers or directors and that are generally available to all salaried employees.</p> <p>Any compensation reported in the All Other Compensation column for the last completed fiscal year, regardless of amount, must be identified and quantified in a footnote.</p>	<p>The proposed rules would require the disclosure of all premiums paid with respect to life insurance for the executive's benefit.</p> <p>Compensation received under relocation plans would no longer be excludable from reporting, even if generally available to all salaried employees.</p> <p>For the first time, the proposed rules would also require disclosure of the aggregate increase in the actuarial value of defined benefit and actuarial plans (including supplemental employee retirement plans (SERPs) and cash balance plans) accrued during the fiscal year.</p> <p>Each item of compensation included in the column (for any fiscal year, not just the most recently completed) that exceeds \$10,000 would be required to be separately identified and quantified in a footnote.</p>

	CURRENT RULES	PROPOSED RULES
<i>Transition</i>		<p>The proposing release indicates that, as a transition, for the first year after the new rules are adopted only information for the last completed fiscal year would be included in the Summary Compensation Table; and for the second year, the two last completed fiscal years; with the complete table required in the third year.</p> <p>Companies would not be required to restate compensation or related party transaction disclosure previously made.</p>
		<u>Supplemental Annual Compensation Tables</u>
<i>Performance-Based Awards</i>	<p>LTIP Awards Table</p> <p>Currently LTIP awards where performance is to occur over a period longer than one year (and, if elected to be similarly treated, restricted stock or RSUs with performance-based conditions) are required to be disclosed in a separate table. All option grants, whether or not performance-based, are currently reported in the Option/SAR Grants Table.</p>	<p>Grants of Performance-Based Awards Table</p> <p>Disclosure would be required in this supplemental table for <i>all</i> awards that are performance-based, regardless of the length of the performance period. Awards would be considered performance-based if subject to either a “performance condition” or a “market condition” for purposes of FAS 123R.</p>

	CURRENT RULES	PROPOSED RULES
	<p>The table currently discloses the number of shares, units or other rights; the performance or other period until payout or maturation; and the estimated future payouts (in either dollar amounts or shares) at threshold, target and maximum levels.</p>	<p>Separate columns are proposed for numbers of shares, units or other rights for (i) awards of performance-based stock and awards under stock-based incentive plans, (ii) awards of performance-based options and (iii) awards under non-stock incentive plans.</p> <p>Same as current rules, except that disclosure would relate to all performance-based awards; would include the amount of any consideration paid for an award and the grant date (in the case of stock or option awards); and the performance or other period would be until earning, payout or maturation.</p>
<i>Other Equity-Based Awards</i>	<p>Option/SAR Grants Table</p> <p>Current disclosure for option and SAR grants includes the number of securities underlying the grant, the percentage the grant represents of total options and SARs granted to employees during the fiscal year, the exercise or base price (and, if less than the market price on the date of grant, an additional column with the grant-date market price), the expiration date and the alternate valuation methods described above under "Securities</p>	<p>Grants of All Other Equity Awards Table</p> <p>This second supplemental table would show all awards of equity-based compensation that are not performance-based (for example, where the payout or future value is tied solely to the stock price).</p> <p>Disclosure for options, SARs and similar instruments would be the same as current rules, except that</p> <ul style="list-style-type: none"> • the grant dates would also be disclosed; • the percentage of total grants represented would no longer be required and • disclosure of valuation would not be

	CURRENT RULES	PROPOSED RULES
	<p>Underlying Options/SARs.”</p> <p>Disclosure of stock, restricted stock and RSU awards is limited to the Summary Compensation Table and, for restricted stock or RSUs with performance-based vesting, the LTIP Awards Table.</p> <p>Ten-Year Option/SAR Repricings</p> <p>Currently, if there has been a repricing during the last completed fiscal year, the compensation committee report must explain the repricing and the bases for it and companies must present a table setting forth information with respect to repricings during the last 10 completed fiscal years.</p> <p>The number of repriced options or SARs are also currently required to be included in the Summary Compensation Table.</p>	<p>required here (since the FAS 123R value is reported in the Summary Compensation Table).</p> <p>Disclosure for stock, restricted stock, RSUs and similar instruments would include the grant date, the number of shares or units and the vesting date for restricted securities.</p> <p>Repricings (direct or indirect adjustments or amendments of option or SAR exercise prices) or other material modifications of such awards would be treated as new grants in both the appropriate grant table and the Summary Compensation Table.</p>
<i>Explanations of Annual Compensation</i>	<p>Narrative Disclosure</p> <p>Currently, explanatory narrative descriptions are generally not expressly mandated, except as follows:</p>	<p>Narrative Disclosure to Summary Compensation Table and Subsidiary Tables</p> <p>A narrative description would be required of any material factors necessary to an understanding of the information disclosed in the Summary Compensation Table, Grants of Performance-Based Awards Table and Grants of All Other Equity Awards Table.</p>

	CURRENT RULES	PROPOSED RULES
	<ul style="list-style-type: none"> • A narrative description is required of the terms and conditions of employment contracts. • Repricings must be described in detail in the compensation committee report. • The material terms of performance-based awards treated as LTIP awards must be described in a footnote or narrative text. • Waivers of specified performance targets, goals or conditions resulting in an LTIP payout must be disclosed in a footnote to the Summary Compensation Table. <p>No disclosure of the compensation of anyone who is not a director or executive officer is currently required</p>	<p>Examples of such information include</p> <ul style="list-style-type: none"> • the material terms of employment agreements or arrangements (whether written or unwritten); • descriptions of repricings or other material modifications of options, SARs or other equity-based awards; • the material terms of performance-based awards; • waivers or modifications of specified performance targets, goals or conditions to payout of non-stock incentive plan compensation; • the assumptions underlying any determination of increases in the actuarial value of defined benefit and actuarial plans; and • the method of calculating earnings on deferred compensation plans. <p>The proposed rules would also require for the first time disclosure of the total compensation and description of job position for up to 3 employees who were not executive officers but whose total compensation for the</p>

	CURRENT RULES	PROPOSED RULES
		last completed fiscal year was greater than that of any one of the named executive officers (including for this purpose even “unusually large, non-recurring compensation,” such as severance payments and large bonuses). <i>Note that this item may necessitate tracking for the first time total compensation for a number of individuals in companies with highly paid commissioned salesmen, financial services traders and professional talent, which may be considered competitively sensitive information. This requirement may also impose burdens on the company that outweigh the value of such information to investors. Note also that since anyone who was a CEO or CFO during the last completed fiscal year, even for a short period, is an named executive officer, the threshold for disclosure of additional non-executive employees may be relatively low.</i>
		<u>Exercises and Holdings of Previously Awarded Equity</u>
<i>Year-End Holdings of Equity-Based Awards</i>	Aggregated Option/SAR Exercises and Fiscal Year-End Option/SAR Value Table (year-end portion of table) The columns of the currently required table relating to year-end values disclose the total number of securities underlying unexercised options and SARs and the aggregate value of in-the-money, unexercised options and SARs held at fiscal-year end, in each case separately identifying the amounts for exercisable and unexercisable options and SARs.	Outstanding Equity Awards at Fiscal Year-End Table This proposed table would report <ul style="list-style-type: none"> the total number of securities underlying unexercised options, SARs and similar instruments and the aggregate value of in-the-money, unexercised options, SARs and similar instruments held at fiscal-year end as under current rules;

	CURRENT RULES	PROPOSED RULES
	In addition, the number and fiscal year-end market value of aggregate restricted stock and RSU holdings are currently required to be disclosed in a footnote to the Summary Compensation Table	<ul style="list-style-type: none"> • (in the table itself) the total number of nonvested shares of stock (including restricted stock, RSUs and similar instruments) and the aggregate market value of such shares held at fiscal-year end; and • the total number of nonvested shares, units or other rights awarded under any incentive plan (and the number of shares, if any, underlying such rights) and the aggregate market or payout value of such rights held at fiscal year-end. <p>Footnotes would also be required to report</p> <ul style="list-style-type: none"> • the expiration dates of options, SARs and similar instruments, separately identifying the exercisable and unexercisable instruments; • if any such expiration date has subsequently occurred, whether the option, SAR or similar instrument was exercised or expired unexercised; and • the vesting dates of the nonvested shares of stock and incentive plan awards. <p><i>Note that, since a change of control is considered a performance condition under FAS 123R, stock-based and certain other change-in-control payments may be required</i></p>

	CURRENT RULES	PROPOSED RULES
		<i>by the currently proposed rules to be included in this table, as well as in the narrative discussed below.</i>
<i>Realizations on Equity-Based Awards</i>	<p>Aggregated Option/SAR Exercises and Fiscal Year-End Option/SAR Value Table (exercise portion of table)</p> <p>The columns of the currently required table relating to option and SAR exercises disclose the number of shares acquired upon exercise (or with respect to which options or SARs were exercised) and the aggregate value realized upon exercise during the last completed fiscal year.</p>	<p>Option Exercises and Stock Vested Table</p> <p>In addition to the currently required information for options, SARs and similar instruments, the proposed table would also include</p> <ul style="list-style-type: none"> • the number of shares of stock (including restricted stock, RSUs and similar instruments) that vested during the last completed fiscal year; • the aggregate value realized their vesting; and • for options, SARs and similar instruments exercised and shares of stock vested, the grant date fair value previously reported in the Summary Compensation Table (or which would have been reported had the individual then been a named executive officer) for such instruments.

	CURRENT RULES	PROPOSED RULES
		<i>It is not clear in the proposed rules what value, if any, should be reported in the last-mentioned column during the transition period when the value of restricted stock or RSUs was previously reported in the Summary Compensation Table using a grant date market value that would not be the fair value under FAS 123R or when the value of stock options was previously reported in the Option/SAR Grants Table using either of the permitted presentations, but which would not be the fair value under FAS 123R.</i>
		<u>Post-Employment Compensation</u>
<i>Defined Benefit Plans</i>	<p>Pension Plan Table Alternative Pension Plan Disclosure</p> <p>Currently companies are not required to present retirement benefits information for any specific named executive officer, but only the following general information:</p> <ul style="list-style-type: none"> For defined benefit and actuarial plans under which benefits are determined primarily by final or final average compensation, a matrix showing estimated benefits payable upon retirement by specified compensation and years of service classifications; and For other defined benefit and actuarial 	<p>Retirement Plan Potential Annual Payments and Benefits Table</p> <p>This proposed table would include for each named executive officer and each retirement plan (including tax-qualified defined benefit plans and SERPs)</p> <ul style="list-style-type: none"> the name of the applicable retirement plan; the number of years of service credited under the plan;

	CURRENT RULES	PROPOSED RULES
	<p>plans, the formula for determining benefits and the estimated annual benefits payable upon retirement for each named executive officer in narrative form.</p> <p>Companies must disclose, in connection with the first-mentioned pension plan table, specified matters relating to the compensation covered by the plans, the estimated credited years of service for each named executive officer, the basis upon which benefits are computed and whether benefits are subject to offset amounts.</p>	<ul style="list-style-type: none"> the normal retirement age under the plan and the estimated annual payments and benefits that the executive would be entitled to receive upon normal retirement (or if currently eligible to retire, if he or she had retired at the end of the last completed fiscal year); and any early retirement age under the plan and the estimated annual payments and benefits that the executive would be entitled to receive upon early retirement (or if currently eligible to retire, if he or she had retired at the end of the last completed fiscal year). <p>Where the named executive officer is not currently eligible to retire, the estimated annual benefits would be calculated assuming that he or she will continue to receive the same compensation as reported for the last fiscal year.</p>

	CURRENT RULES	PROPOSED RULES
		<p>Footnotes would be required</p> <ul style="list-style-type: none"> • to quantify the difference in years and any benefit augmentation resulting from years of service credited being different from actual years of service and • to specify the form of benefit (such as joint and survivor annuity or single life annuity) elected to be received by the executive. <p>Any material factors necessary to an understanding of each plan would be presented in a narrative description, including the elements of compensation used to determine the payments and benefits, the material terms of each plan's formula and eligibility standards, any amount that could be received at the election of the executive in a lump-sum distribution, the reason for any multiple plans, policies for granting extra years of credited service.</p>

	CURRENT RULES	PROPOSED RULES
<i>Defined Contribution Plans</i>	<p>Summary Compensation Table (All Other Compensation)</p> <p>Other than including company contributions to defined contribution plans and above-market or preferential earnings on deferred compensation in the Summary Compensation Table, no other disclosure regarding these plans is required.</p>	<p>Nonqualified Defined Contribution and Other Deferred Compensation Plans Table</p> <p>This proposed table would disclose for each defined contribution plan or other non-qualified deferred compensation plan during the last completed fiscal year by named executive officer</p> <ul style="list-style-type: none"> • aggregate contributions made by such named executive officer ; • aggregate company contributions; • aggregate interest or other earnings; • the aggregate amount of all withdrawals and distributions; and • the total balance of each executive's accounts at fiscal year-end. <p>A footnote would be required to tie in amounts reported in various columns of this table to amounts currently or previously reported in the Summary Compensation Table.</p> <p>A narrative description would also be required of any material factors necessary to an understanding of each plan.</p>

	CURRENT RULES	PROPOSED RULES
<i>Termination and Change-in-Control Arrangements</i>	<p>Termination and Change-in-Control Disclosure</p> <p>The current rules require a description of the terms and conditions, including the payments to be received, of any compensatory plan or arrangement resulting from the resignation, retirement or other termination of a named executive officers, or from a change-in-control of the company, if the total amount involved exceeds \$100,000.</p>	<p>Potential Termination or Change-in-Control Payments</p> <p>The proposed rules would require a description of each contract, agreement, plan or arrangement that provides for payments to a named executive officer at, following or in connection with any termination of a named executive officer or a change-in-control of the company or in his or her responsibilities, regardless of amount, including</p> <ul style="list-style-type: none"> • the specific triggering circumstances; • the estimated annual payments and benefits that would be provided in each circumstance; whether they would be lump sum or annual; their duration; and by whom they would be provided; • the specific factors used to determine payment and benefit levels under each circumstance; • any material conditions or obligations applicable to the receipt of payments or benefits (such as non-compete, non-solicitation, non-disparagement or confidentiality agreements); their duration; and provisions regarding waiver of breaches; and • any other material factors.

	CURRENT RULES	PROPOSED RULES
		<p>Perquisites and other personal benefits or property may be excluded only if the aggregate amount will be less than \$10,000. If included, individual perquisites and other personal benefits must be identified and quantified in the same manner as for the Summary Compensation Table.</p> <p>If uncertainties exist as to the provision of payments or benefits or as to the amounts involved, the company is required to make reasonable estimates and to disclose material assumptions underlying its estimates. <i>Note that such estimates and assumptions may be particularly problematic in connection with change-in-control payments, especially whether payments to an executive include Section 280G "golden parachute" tax gross-ups. If payments depend on the value of consideration that would be received in a change-in-control transaction, it is not clear whether required "reasonable estimates" would permit valuing the transaction at an historical market price of the company's stock (such as the fiscal year-end market price) rather than to predict (and publicly disclose) the amount of a likely change-in-control price. In addition, the assumptions required to determine the 280G tax gross-up (such as whether the change-in-control payments are reasonable compensation for past services and assumptions with respect to the valuation of future restrictions such as non-compete agreements) may later raise issues about the consistency of treatment between future tax positions taken by the company with the IRS</i></p>

	CURRENT RULES	PROPOSED RULES
		<i>and the disclosure made to stockholders in public documents.</i>
		<u>Director Compensation</u>
<i>Director Compensation</i>	<p>Director Compensation Disclosure</p> <p>The current rules require</p> <ul style="list-style-type: none"> • a description of any standard arrangements by which directors are compensated for their services, including services on committees or special assignments; and • a description of any other arrangements by which any director was compensated for such services. 	<p>Director Compensation Table and Narrative</p> <p>The proposed rules would include tabular disclosure, similar to the Summary Compensation Table for named executive officers but limited to only the last completed fiscal year. The table would present compensation for each director by name, although directors with identical compensation could be grouped in the same row. <i>Note that this table would include quantification and disclosure of perquisites and other personal benefits for directors in the same manner as for named executive officers.</i></p> <p>Footnotes would also be required to disclose information about each director's outstanding equity awards and earnings pursuant to non-stock incentive plans.</p>

	CURRENT RULES	PROPOSED RULES
		<p>The annual costs of payments and promises of payments pursuant to director legacy programs and similar charitable award programs would expressly be considered reportable compensation to a director. The material terms of such programs would be disclosed in a footnote.</p> <p>Factors necessary to an understanding of the directors' compensation, such as the standard and any individual compensation arrangements, would be provided in narrative disclosure.</p>

	CURRENT RULES	PROPOSED RULES
<i>Related Party Transactions</i>	<p>The current rules do not require disclosure of a company's policies or procedures with respect to related party transactions.</p> <p>The current threshold for transactions with related parties that may be subject to disclosure is \$60,000.</p> <p>The current rules contain detailed instructions specifying which types of related party transactions must, and which need not, be disclosed.</p>	<p>The proposed rules would require a description of the company's policies and procedures for the review, approval or ratification of transactions with related parties and the identification of any reported related party transactions that did not require review, approval or ratification or where the company's policies and procedures were not followed.</p> <p>Under the proposed rules, the threshold for transactions with related parties that may be subject to disclosure would be \$120,000.</p> <p>Certain step-relatives, and persons sharing the household, of directors, nominees for director and executive officers would also be included as related persons under the proposed rules.</p> <p>The proposed rules would apply a more "principles-based" materiality approach to the determination of which related party transactions must be disclosed.</p>

	CURRENT RULES	PROPOSED RULES
	<p>The amount of the related party's interest in a reported transaction is to be disclosed where practicable.</p> <p>Compensation paid to executive officers is not disclosed as a related party transaction unless they are immediate family members of a related person.</p>	<p>The amount of a related party's interest in a reported transaction must be disclosed.</p> <p>Compensation paid to executive officers would not be disclosed as a related party transaction if (i) they are not immediate family members of a related person, (ii) the compensation would have been reported if he or she were a named executive officer and (iii) the compensation has been approved by the compensation committee (or independent directors performing a similar function).</p>

	CURRENT RULES	PROPOSED RULES
<i>Corporate Governance</i>	<p>Disclosure requirements regarding director independence and other corporate governance matters are currently scattered among of number of separate Items in Regulation S-K and the proxy rules.</p> <p>Disclosure is required of certain business relationships involving directors or nominees for director.</p>	<p>The proposed rules would consolidate director independence and other corporate governance matters under a single Item in Regulation S-K and revise slightly the required director independence disclosure.</p> <p>The proposed rules would substitute for the current disclosed relationships the following for any person who served as a director during any part of the relevant fiscal year:</p> <ul style="list-style-type: none"> • the identification of the independent directors (and nominees for director) under the applicable stock exchange or other independence standards; • the identification of any members of the compensation, nominating or audit committees who is not independent under such standards; and

	CURRENT RULES	PROPOSED RULES
		<ul style="list-style-type: none"> a description of any transactions, relationships or arrangements not disclosed as related party transactions that were considered by the board in determining that the applicable independence standards were met. <i>Note that the proposed rules would not permit disclosure of specific matters considered by the board to be avoided if such transactions, relationships or arrangements met categorical standards adopted by the board to aid in its determination and such categorical standards are disclosed by the company, as is permitted under stock exchange listing standards.</i> <p>The proposed rules also would add disclosure regarding compensation committees similar to that currently required for audit and nominating committees (or the company's reasons for not having such a committee). Companies would also be required to disclose their policies and procedures for the consideration and determination of executive and director compensation, specifically including</p>

	CURRENT RULES	PROPOSED RULES
		<ul style="list-style-type: none"> • the authority of the compensation committee (or of persons performing its functions); • what authority may be delegated by the committee (or persons performing its functions) and to whom; • any role of executive officers in determining or recommending the amount or form of executive and director compensation; and • any role of compensation consultants in determining or recommending the amount or form of executive and director compensation, <ul style="list-style-type: none"> ○ naming the consultants,

	CURRENT RULES	PROPOSED RULES
		<ul style="list-style-type: none">o describing the nature and scope of their assignment,o describing the material instructions or directions given to them, ando identifying any executive officer contacted by the consultants.

	CURRENT RULES	PROPOSED RULES
<i>Security Ownership of Management</i>	The number of shares pledged as security by named executive officers, directors, nominees for director, and directors and executive officers as a group may be indirectly disclosed under the existing rules where, as a result of the pledge, the reported persons no longer have sole dispositive power with respect to the shares reported (such as when the person does not have a unilateral right to substitute collateral).	The number of shares pledged as security by named executive officers, directors, nominees for director, and directors and executive officers as a group would be required to be expressly indicated in a footnote to the table.