



LEGAL ALERT

December 21, 2009

New and Enhanced SEC Disclosure Requirements Regarding Risk, Compensation, and Corporate Governance

On December 16th, the U.S. Securities & Exchange Commission (the “SEC”) voted to adopt amendments to its rules enhancing corporate disclosure regarding risk, compensation, and corporate governance matters in a company’s proxy statement and annual report on Form 10-K which will take effect February 28, 2010. For our clients, we will provide an updated Director and Officer Questionnaire at the beginning of January 2010 which will address these rule changes and assist you in the preparation of the proxy statement for your 2010 Annual Meeting of Shareholders and annual report on Form 10-K. In particular the new rules will require or revise disclosure about:

1. The relationship of a company’s compensation policies and practices to risk management;
2. The method of reporting the value of stock and option awards;
3. The background and qualifications of directors and nominees;
4. Legal actions involving a company’s executive officers, directors, and nominees;

5. The consideration of diversity in the process by which candidates for director are considered for nomination;
6. Board leadership structure and the board’s role in risk oversight;
7. Stock and option awards to company executives and directors; and
8. Potential conflicts of interests of compensation consultants.

Furthermore, the SEC adopted an amendment to the Form 8-K requiring companies to disclose shareholder voting results on a Form 8-K to be filed within four business days after the end of the meeting at which the vote was held. Companies will no longer be required to disclose shareholder voting results in a Form 10-Q or Form 10-K.

Boards would be wise to take steps to address these new requirements now so they will have adequate time to draft effective disclosure under the new rules. Below is a summary of an action plan we recommend that the board or the identified committee begin undertaking:

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Compensation Committee: Determine whether the company's overall compensation practices are reasonably likely to have a material adverse effect on the company, and, if so, begin creating a narrative disclosure describing the policies and practices of compensating all employees (including non-executive officers) as they relate to risk management practices and risk-taking incentives.

In certain circumstances, the company will need to prepare disclosure about the fees paid to compensation consultants and their affiliates.

Corporate Governance Committee: Assess the board's leadership structure (e.g., Is the CEO also the chairman?) and prepare a narrative discussing why this structure is best suited for the company. Since there has been a movement towards splitting the principal executive officer and board chairman position, companies that combine these two positions should thoughtfully address why the board believes maintaining this structure is in the best interests of the company.

Audit or Enterprise Risk Management Committee: Prepare a narrative disclosing the extent of the board's role in the company's risk management and the effect that this has on the company's leadership structure.

Nominating Committee: Prepare a brief narrative for each director and nominee proposed by management that discusses the specific experience, qualifications or skills that qualify that person to serve as a director and committee member.

The company also will need to disclose any directorships held by directors at other public companies in the past five years as well as any legal proceedings in which a director has been involved in the past 10 years instead of the current five years required under the previous rule. The new rules also expand the scope of legal proceedings the company must disclose.

Furthermore, the company will need to disclose whether, and if so how, a nominating committee considers diversity in identifying nominees for director. If the nominating committee or the board has a policy with regard to the consideration of diversity in identifying director nominees, the company is required to disclose how this policy is implemented and how the nominating committee or the board assesses the effectiveness of its policy.

If you have questions regarding the steps you should be taking to comply with these new rules, please do not hesitate to contact our office. We are prepared to assist you in meeting these new legal obligations imposed by the SEC. We can be reached at 717.731.1700.

