



## LEGAL ALERT

July 14, 2009

### SEC PROPOSES ENHANCED PROXY DISCLOSURE REQUIREMENTS

On Friday, July 10, 2009, the Securities and Exchange Commission released proposed rules enhancing the compensation and corporate governance disclosures made by public companies in proxy statements, annual reports and registration statements. The proposed rules revise the current rules addressing disclosure of executive and director compensation, director biographical information and qualifications and compensation consultants. It also clarifies rules relating to the solicitation of proxies and the granting of proxy authority.

Among the changes, the proposed rules require that:

- Stock and option awards disclosure in the Summary Compensation Table and Director Compensation Table to be disclosed as the aggregate grant date fair value of awards computed in accordance with FASB No. 123 instead of the dollar amount recognized for financial statement reporting purposes.
- The CD&A be broadened to include a new section that will provide information about how the company's overall compensation policies for employees, including non-executive officers, create incentives that can affect the company's risk and management of that risk.
- Disclosure must detail for each director and nominee, the particular experience, qualifications, attributes or skills that qualify that person to serve as a director, including any directorships held during the past five (5) years at public companies and any legal proceeding within the last ten (10) years that are material to the evaluation of the director.
- Disclosure of the company's leadership structure and why the company believes it is the best structure for it at the time of filing be addressed in the proxy statement. Disclosure must also address the board's role in the company's risk management process.

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- The fees paid to compensation consultants, when they play any role in determining or recommending the amount or form of executive and director compensation if they also provide other services to the company, be disclosed.

The proposed rules also transfer the requirement to disclose shareholder vote results from Form 10-Q to Form 8-K. The results of a shareholder vote must be filed within four (4) business days after the end of the meeting at which the vote was held.

The proposed rules provide expressly that a form of revocation does not include an unmarked copy of management's proxy card that the soliciting shareholder requests be returned directly to management. The rules also provide changes to the solicitation of proxy rules to provide certainty in how the rules operate and to facilitate the proxy solicitation process, particularly solicitations by shareholders.

If adopted as outlined, the proposed rules are effective for the 2010 proxy season. We suggest reviewing your proxy and annual disclosures as soon as feasible in preparation for the enhanced disclosures. We intend to provide further guidance once the SEC takes final action on the proposal.

Should you have any questions regarding the proposed rules, you may contact the following individuals of our office at (717) 731-1700 or the email addresses below.

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2010 SEC and Corporate Governance  
Conference  
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*In addition, please note that Bybel Rutledge LLP's 2010 SEC and Corporate Governance Conference will be held on November 18, 2009 at the Hershey Country Club, Hershey, Pa. For more information, please contact Nancy J. Runk of our office at [runk@bybelrutledge.com](mailto:runk@bybelrutledge.com).*



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