


New SEC Proxy Guidance Regarding Presentation of FAS 123R Equity Expense in Proxy Tables

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EXEQUITY

Independent Board and Management Advisors





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What Happened?

- On Friday, December 22, 2006 at about 5:15 pm Eastern, the Securities and Exchange Commission (SEC) issued an amendment to the proxy disclosure rules just released in July 2006
 - SEC Release No. 33-8765
 - Issued as Interim Final Rules
 - Thirty (30) day comment period ends January 29, 2007
 - Made changes to:
 - Summary Compensation Table (SCT)
 - Grants of Plan-Based Awards Table (GPBAT)
 - Director Compensation Table (DCT) and Required Footnotes

Summary Compensation Table

- The Amendments Impact the Stock Awards and Option Awards columns of the SCT
 - The dollar values (\$) disclosed in these columns must be the compensation cost for outstanding awards, without taking into account estimates of forfeitures, that was recognized under FAS 123R during the fiscal year
 - *Example:* Grant on 7/1/04 of 1,000 shares with a grant date fair value of \$40 share, and 4-year ratable, service-based vesting. The amount recognized each year for accounting purposes, before forfeitures, is:
 - 2004 – \$ 5,000
 - 2005 – \$10,000
 - 2006 – \$10,000
 - 2007 – \$10,000
 - 2008 – \$ 5,000

SCT Impact: The company will include \$10,000 in the Stock Award column for 2006 and 2007, and \$5,000 for 2008 related to this stock award.



Summary Compensation Table

- Forfeitures

- Estimates for Expensing – are not taken into account
- Actual Forfeitures – are taken into account and described in a footnote to the SCT

- Performance-Based Awards

- Must assess the probable number of shares to be earned
- Only have to include the expense related to the number of shares that are **probable** of being awarded

- Negative value in Stock Awards and Option Awards columns

- Due to actual forfeitures being taken into account to reverse previously recognized expense amounts and performance-based awards being included only to the extent payout is probable
- Can be used to offset other compensation in determining Named Executive Officers (NEOs) and whether terminated executives must be included in the SCT



Summary Compensation Table

- Awards Granted to Retirement Eligible NEOs
 - An award granted to a retirement eligible NEO who is entitled to retain the award upon retirement generally is not considered to have a substantive service requirement under FAS 123R
 - Full, grant date fair value of such stock and option awards to such an NEO would be included in the SCT for the year of grant
 - If a retirement eligible NEO is **not** entitled to retain the award upon retirement, generally do not have to include the full, grant date fair value in the SCT in the year of grant

Summary Compensation Table

● Salary or Bonus NEOs Elect to Take as Non-Cash Compensation

- Rules regarding reporting of salary or bonus forgone at the election of a NEO in favor of receiving a non-cash form of compensation have been revised
- Such forgone amounts **must** be included in the Salary or Bonus column, with footnote disclosure of the receipt of non-cash compensation
 - Must refer to the Grants of Plan-Based Awards Table where the stock, option or non-equity incentive plan award elected is reported
 - Q: *What is the fair value for stock under FAS 123R when salary or bonus is converted into shares using current stock price, e.g., \$50,000 converted into 1,000 shares when the stock price is \$50?*
 - “Bonus” refers to amounts reportable in the Bonus column under the new disclosure rules
 - Q: *What about elections concerning payments under a “typical” 162(m)-qualified annual bonus plan that is treated as a Non-Equity Incentive Plan?*



Grants of Plan-Based Awards Table

- New column has been added to report the grant date fair value of each individual equity award
- Grant date fair value does **not** have to be reported for NEOs or Directors at Small Business Issuers
- Must disclose any option or SAR that was repriced or otherwise materially modified during the last completed fiscal year
 - Include the Incremental Fair Value for such awards

Grants of Plan-Based Awards Table

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares of Stock or Units (#)	All Other Option Awards: Number of Securities Underlying Options (#)	Exercise of Base Price of Option Awards (\$/Sh)	Grant Date Fair Value of Stock and Option Awards
		Threshold (\$)	Target (\$)	Maximum (\$)	Threshold (#)	Target (#)	Maximum (#)				
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
PEO											
PFO											
A											
B											
C											



Director Compensation Table

- The Director Compensation Table will reflect the expense of all awards attributable to the last fiscal year under FAS 123R
- Footnote disclosure of the grant date fair value of each equity award computed in accordance with FAS 123R is required
- Footnote disclosure is also required to detail the incremental fair value for repriced or otherwise modified options



Implications

- These changes are likely to trigger a variety of disclosure and other executive compensation issues:
 - Greater Consistency in the Executives Disclosed
 - Comparability will be Impeded Due to Companies that Accelerated the Vesting of Outstanding Equity Awards Prior to Adopting FAS 123R
 - Retirement Eligibles will Appear to be Higher Paid
 - Terminated Officers Less Likely to be Disclosed
 - Liability Awards Under FAS 123R will have a Lingering Effect
 - Continuing Inconsistencies in Disclosure of Different Award Types
 - Method of Analyzing Competitive Pay Levels May Change
 - Companies Need to Reevaluate Their Disclosures Immediately



Thank You !

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