



**DATALINE 2006-32:
SEC FINAL RULE: EXECUTIVE COMPENSATION AND RELATED PERSON DISCLOSURE**

OVERVIEW

.1 The Securities and Exchange Commission (SEC or the "Commission") has made significant changes to its disclosure requirements regarding:

- executive and director compensation,
- related-person transactions,
- director independence and other corporate governance matters, and
- security ownership of officers and directors.

.2 The primary intent of the new rules is to ensure investors and other parties receive clear, comprehensive, and transparent disclosures regarding executive compensation and related matters. The SEC has published the new rules in a document entitled [Executive Compensation and Related Person Disclosure](#). Refer also to the [Executive Compensation and Related Person Disclosure Transition Question and Answer Guide](#) for a discussion of various transition issues.

.3 The new rules do not regulate *how much* an executive officer should be paid; rather they are meant to ensure that companies disclose relevant information so that investors and other parties can readily determine the total amount of compensation that is actually awarded to executive officers.

.4 This DataLine highlights the significant aspects of the new rules and their impact on registrants. Registrants should consult their counsel and other parties (such as compensation consultants) regarding the specific application of these rules.

.5 The significant components of the new rules include:

- A new definition of the term *named executive officer* and a different method of determining which officers are the three most highly compensated
- A new Compensation Discussion and Analysis (CD&A) section
- A new Summary Compensation Table, accompanied by six new supplemental tables
- Modified and consolidated Form 8-K disclosure requirements
- Enhanced related-person disclosures, including disclosure of the policies for the review, approval, or ratification of transactions with related persons
- The executive compensation disclosures (including the new CD&A section) and related-person disclosures are considered "filed" with the Commission and as such are covered by the certifications required under the Sarbanes-Oxley Act of 2002

.6 Refer to Appendix B of this DataLine for a comparison of the new rules to the prior rules.

.7 The following discussion focuses on the new rules for registrants that are other than small business issuers and foreign private issuers. A separate section further within this DataLine discusses how the rules apply to small business issuers, which differ in many respects from the rules applicable to other registrants. The new rules do not apply to foreign private issuers.

.8 The new rules impact the content and timing of certain current reports on Form 8-K and significantly amend the Regulation S-K rules governing executive compensation disclosures included in periodic reports (e.g., Form 10-K), proxy and information statements, and registration statements.

.9 The executive compensation and related-person disclosures are required by Part III of Form 10-K. Similar to other information required by Part III, registrants may incorporate by reference the executive

compensation and related-person disclosures from their annual proxy statement (if it involves the election of directors) as long as it is filed within 120 days of the registrant's year end.

PwC Observation: *As was the case before the new rules were adopted, information that is included in the proxy statement and incorporated by reference in the registrant's annual report is covered by the CEO/CFO certifications included in the annual report. This means that if the executive compensation disclosures are incorporated by reference in the Form 10-K from the proxy statement, the certifications included in the Form 10-K will be considered to extend to the executive compensation disclosures "as and when filed." This is true even though the proxy statement is filed after the Form 10-K. Similarly, the registrant's disclosure controls and procedures must cover the preparation of information filed in the proxy statement including the executive compensation information.*

If a registrant is considering a securities offering or similar transaction after its annual report is filed but before the date that the proxy statement is filed, it should consult with counsel regarding the need to file updated compensation disclosures (and other Part III information). As a general matter, we understand that the Part III information must be filed with the SEC before a registration statement (other than an automatic shelf registration statement or a Form S-8) can become effective.

Effective Date

.10 Registrants must comply with the new requirements affecting Form 8-K filings upon the occurrence of a specified triggering event that occurs on or after November 7, 2006.

.11 The amendments to the executive compensation disclosures are generally required in (1) registration statements, proxy statements, and information statements filed on or after December 15, 2006 that are required to include disclosures regarding executive compensation and related-person transactions for fiscal years ending on or after December 15, 2006 and (2) Form 10-K/10-KSB for fiscal years ending on or after December 15, 2006. When the rules first go into effect, registrants should provide the Summary Compensation Table and the related-person disclosures for the most recently completed fiscal year, increasing to a two-year period in Year 2, and a three-year period in Year 3 and thereafter. Refer to the "Effective Dates and Transition" section below.

IDENTIFYING THE NAMED EXECUTIVE OFFICER

.12 The new rules require disclosures related to named executive officers. The following individuals are considered the named executive officers:

1. The principal executive officer (or persons performing similar functions) even if not still serving at the end of the most recent fiscal year
2. The principal financial officer (or persons performing similar functions) even if not still serving at the end of the most recent fiscal year
3. The three other most highly compensated executive officers (e.g., executive vice president general counsel, chief accounting officer, or treasurer) who were serving as executive officers at the end of the last fiscal year, unless the individual's total compensation does not exceed \$100,000

.13 Consistent with previous requirements, disclosure is also required for up to two additional persons who served as executive officers during some part of the most recent fiscal year, but were no longer serving as executive officers at the end of the fiscal year.

.14 The determination of who constitutes the three most highly compensated executive officers is based on the "total compensation" amount reported in the Summary Compensation Table, adjusted to exclude the change in pension value and nonqualified deferred compensation earnings.

PwC Observation: *The criteria for determining the "most highly compensated" executive officers and the requirement to include the principal financial officer (regardless of the magnitude of his or her compensation) are the primary changes in this area. The prior rules required disclosure related to the principal executive officer and the four most highly compensated executive officers, which may not have included the principal financial officer. Also, the*

determination of "most highly compensated" based on "adjusted" total compensation is a significantly broader measure of compensation than the previous measure, which was based solely on annual salary and bonus amounts. The new measure may result in the three most highly compensated executive officers changing frequently due to the proliferation of diverse forms of compensation and the volatility in the valuation of that compensation. In addition, since adjusted total compensation includes severance and other post-employment benefits, the requirement discussed in paragraph 13 above may result in additional disclosures regarding severed executive officers.

.15 The SEC decided to re-propose the rules that would have required registrants to disclose the total compensation and job description of up to an additional three employees who are not executive officers or directors, but who nevertheless earned more than any of the named executive officers. In response to constituents' concerns about the potential requirement to disclose the compensation of non-management employees, the SEC sought comments on a number of questions, including whether this disclosure requirement should (1) apply only to large accelerated filers (as defined in the Securities Exchange Act of 1934 (the "Exchange Act") Rule 12b-2 and (2) call for disclosure for only employees who are responsible for significant policy decisions within the company, its subsidiaries, or business units. The comment period ended on October 23, 2006 and a final decision on additional disclosures is pending.

COMPENSATION DISCUSSION AND ANALYSIS (CD&A)

.16 The new rules require registrants to file a CD&A. The CD&A is intended to be an overview that provides investors and other users with management's perspective on the numbers and narrative that follow the CD&A. This overview will explain material elements of named executive officers' compensation by answering the following questions:

- What are the objectives of the company's compensation programs?
- What is the compensation program designed to reward?
- What is each element of compensation?
- Why does the company choose to pay each element?
- How does the company determine the amount (and, where applicable, the formula) for each element?
- How does each element and the company's decisions regarding that element fit into the company's overall compensation objectives and affect decisions regarding other elements?

.17 The guidance on developing the CD&A is principles-based in that it focuses on broader topics regarding the objectives and implementation of executive compensation policies, identifies the disclosure concepts, and provides several illustrative examples. Refer to Appendix A of this DataLine for the SEC's examples of topics that should be discussed in the CD&A.

.18 Similar to the disclosures commonly referred to as Management's Discussion and Analysis (or MD&A), the CD&A should be tailored to the facts and circumstances specific to a particular company. The CD&A should not merely repeat information included elsewhere. The CD&A should be sufficiently precise to identify material differences in compensation policies and decisions for individual named executive officers, where appropriate. When policies or decisions are materially similar with respect to two or more officers, those officers can be grouped together.

.19 Registrants are not, however, required to disclose target levels with respect to specific quantitative or qualitative performance-related factors that the compensation committee or the board of directors considers, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm for the registrant. Although the omission of target information for certain registrants will make it difficult for investors and others to link pay with performance, disclosure of proprietary business information could be useful to competitors and, thus, could pose a risk of competitive harm. Accordingly, the SEC decided that this disclosure could pose a risk of competitive harm and provided a standard to be used in determining whether to omit confidential target-level information (refer to instruction 4 to Item 402(b) of Regulation S-K).

.20 The CD&A must cover compensation for the past fiscal year, although in some cases it may be necessary to discuss prior years or future actions to give the disclosures context.

PwC Observation: *Some of the disclosures that will be included in the new CD&A were previously included in the Board Compensation Committee Report on Executive Compensation, which was "furnished" with the Commission. The new CD&A will be "filed" with the Commission and thus will be subject to the liabilities of Section 18 of the Exchange Act. As noted earlier, the CD&A is also covered by the CEO/CFO certifications required under the Sarbanes-Oxley Act of 2002 and its preparation is subject to a company's disclosure controls and procedures. In recent speeches, the SEC staff has reminded registrants of the need to review, and possibly revamp, their disclosures controls and procedures to address the requirements of the new rules.*

COMPENSATION COMMITTEE REPORT

.21 A new Compensation Committee Report is also required. Together with the CD&A, this new Compensation Committee Report replaces the previous Board Compensation Committee Report on Executive Compensation. Unlike the CD&A, the Compensation Committee Report will be "furnished" rather than "filed." And, unlike the Audit Committee Report, it is required to be included or incorporated by reference in the company's annual report on Form 10-K. The new Compensation Committee Report must state whether the compensation committee has done the following:

- Reviewed and discussed the CD&A with management, and
- Recommended to the board of directors (based on the Compensation Committee's review and discussions) that the CD&A be included in the company's annual report on Form 10-K and in the proxy or information statement, as applicable.

PwC Observation: *The proposed rules recommended the elimination of the stock price Performance Graph previously required under Item 402(l) of Regulation S-K. However, the new rules retain the requirement to prepare and present a Performance Graph, but relocate the graph to new Item 201(e) of Regulation S-K. Similar to the Compensation Committee Report, the Performance Graph will be "furnished" instead of "filed."*

SUMMARY COMPENSATION TABLE AND RELATED DISCLOSURE

.22 The Summary Compensation Table is the principal disclosure vehicle for executive compensation. The revised table is intended to elicit greater disclosure and provide a clear, logical picture of total compensation and its corresponding elements for each named executive officer. The table should not only provide meaningful information but also facilitate comparability from company to company and across years.

.23 The primary columns in the Summary Compensation Table are (see Exhibit A):

- Salary
- Bonus
- Stock Awards
- Option Awards
- Non-Equity Incentive Plan Compensation
- Change in Pension Value and Nonqualified Deferred Compensation Earnings
- All Other Compensation
- Total Compensation

.24 The Summary Compensation Table should be accompanied by narrative disclosure of material information so that investors and other parties can understand the information.

Salary and Bonus

.25 In the *Salary* and *Bonus* columns, registrants must disclose the dollar value of each named executive officer's base salary and the bonus earned (including cash and non-cash components), even if payment is deferred. Deferred amounts will generally also be reflected in the Nonqualified Deferred Compensation Table discussed below.

.26 When a named executive officer's salary or bonus cannot be calculated as of the most recent practicable date, a current report under Item 5.02 of Form 8-K will be triggered by a payment, a decision, or some other occurrence as a result of which either of such amounts become calculable in whole or

part. The Form 8-K should disclose the salary or bonus and reflect that amount in its disclosure of a new total compensation figure.

PwC Observation: *When a bonus cannot be calculated until a later date as a result of a decision or the occurrence of some event (e.g., a bonus that is tied to specific performance criteria as of the end of the first quarter of the new fiscal year), a Form 8-K must be filed when the amount becomes calculable.*

Stock Awards and Option Awards

.27 The *Stock Awards* column discloses the grant-date fair value as determined under FAS 123(R) of stock-related awards within the scope of FAS 123(R), including restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or other similar instruments.

.28 The *Option Awards* column discloses the grant-date fair value of option awards, stock appreciation rights (SARs), and similar equity-based compensation instruments with option-like features within the scope of FAS 123(R).

PwC Observation: *The Stock Awards and Option Awards columns disclose the full compensation cost of an award in the fiscal year granted. These amounts will differ from the amount of compensation cost recognized in the financial statements since FAS 123(R) requires that employers recognize compensation cost over the requisite service period, which is generally the vesting period. Compensation cost recognized in the financial statements is also affected by the effects of anticipated forfeitures.*

.29 The new rules require that a footnote to the table refer to a discussion of the assumptions that the registrant used to determine the grant-date fair value (e.g., a discussion in the footnotes to the financial statements or Management's Discussion and Analysis).

.30 The number of shares and options underlying an award, along with other details regarding the award, must be disclosed in the Grants of Plan-Based Awards Table (see paragraph .51).

.31 In the event that options are modified in the current year, the incremental fair value resulting from the modification is required to be reported in the Summary Compensation Table.

Non-Equity Incentive Plan Compensation

.32 This column discloses the dollar value of all amounts that, during the fiscal year, were earned from incentive plan awards but were not included in the *Stock Awards* and *Option Awards* columns. Such compensation must be disclosed in this column in the year in which the relevant specified performance criteria are satisfied and the compensation earned, regardless of when paid. An incentive plan provides compensation as an incentive for performance over a specified period, regardless of whether such performance is based on the financial performance of the registrant, its stock price, or any other performance measure. A non-equity incentive plan is an incentive plan under which awards are granted that do not fall within the scope of FAS 123(R), such as a cash bonus based on the performance of a business unit.

PwC Observation: *The new rules do not provide specific instructions regarding whether certain awards should be included in the Bonus column or the Non-Equity Incentive Plan Compensation column of the Summary Compensation Table. Registrants will need to review the terms of awards and may need to consult with counsel regarding the appropriate classification. We believe that registrants should classify awards with similar terms in a consistent manner in the table from year to year and among the named executive officers.*

.33 The grant of an award under a non-equity incentive plan must be disclosed in the Grants of Plan-Based Awards Table in the year the award is granted, which may be prior to the year that it is reported in the Summary Compensation Table. Once the award is disclosed in the *Non-Equity Incentive Plan Compensation* column and Grants of Plan-Based Awards Table, a company does not have to make any additional disclosure in the period in which payment is made.

.34 Companies are encouraged to use the narrative section to disclose material features of awards that are not reflected in the tabular disclosures (e.g., forfeitures of amounts reported in the table in previous fiscal years).

.35 The dollar value of all earnings for services performed during the fiscal year and all earnings on outstanding non-equity incentive plan awards should be included in the *Non-Equity Incentive Plan Compensation* column and identified and quantified in a footnote to the table.

Change in Pension Value and Nonqualified Deferred Compensation Earnings

.36 This column includes information regarding (1) the aggregate increase in actuarial value to the named executive officer of all defined benefit and actuarial plans (including supplemental plans) accrued during the year; and (2) earnings on nonqualified deferred compensation. A footnote must identify and quantify the full amount of each element.

Change in Pension Value

.37 The new rules require disclosure of the aggregate increase in the actuarial value to each named executive officer of all defined benefit and actuarial plans (including cash balance plans, tax-qualified defined benefit plans, and supplemental executive retirement plans) accrued during the year. This disclosure must be made for each plan that provides for payment of retirement benefits, or benefits that will be paid primarily following retirement, excluding defined contribution plans.

.38 The disclosure applies to the change in the actuarial present value of the named executive officer's accumulated benefit under all plans referred to in paragraph 37 between the prior period's measurement date used for the company's audited financial statements and the date used for the company's audited financial statements for the covered fiscal year.

PwC Observation: *Companies that will switch from an early measurement date to a year-end measurement date to comply with FAS 158, Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, will disclose a change that covers greater than a 12 month period. For example, for a company that uses a September 30 measurement date, the change in the accumulated present value of benefits will be measured by comparing the value of the benefits at September 30, 2006 and the value as of December 31, 2007.*

.39 The determination of the change in actuarial value includes the following components: (1) increases in value due to an additional year of service, compensation increases, and plan amendments, and (2) increases (or decreases) in value attributed to interest. The change should be determined using the same assumptions used for financial reporting purposes under generally accepted accounting principles.

PwC Observation: *A company should disclose any negative amounts (decreases in actuarial value) in a footnote, but not reflect that negative amount in the amount reported in the Change in Pension Value column.*

Nonqualified Deferred Compensation Earnings

.40 The disclosure of earnings (e.g., interest and dividends) on nonqualified deferred compensation is limited to the above-market or preferential portion. Interest on deferred compensation is above-market only if the rate exceeds 120 percent of the applicable federal long-term rate with compounding at the rate that corresponds most closely to the rate under the company's plan at the time the interest rate or formula is set. Dividends are preferential only if earned at a rate higher than dividends on the company's common stock.

All Other Compensation

.41 The *All Other Compensation* column includes all other compensation that does not have to be included in any other column. This column consists of (1) perquisites and other personal benefits, and (2) additional all other compensation.

.42 The *All Other Compensation Column* includes, but is not limited to, the following items:

- Amounts paid or accrued pursuant to a plan or arrangement in connection with any termination of employment or change in control
- Annual company contributions or other allocations to vested and unvested defined contribution plans
- The dollar value of any insurance premiums paid by the company with respect to life insurance for the benefit of a named executive officer
- "Gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes, and
- Compensation cost computed in accordance with FAS 123(R) for any security of the company purchased at a discount from the market price, unless that discount is available to all security holders or to all salaried employees of the company.

PwC Observation: *All of the above items must be included in the All Other Compensation column regardless of how small the amount with the exception of perquisites and other personal benefits as noted below.*

Perquisites and Other Personal Benefits

.43 The new rules require that perquisites and other personal benefits be included in the table if the aggregate amount of such compensation is \$10,000 or greater. The previous rules required disclosure if the aggregate amount exceeded the lesser of \$50,000 or 10 percent of total annual salary and bonus.

.44 Individual perquisites and other personal benefits that are valued at the greater of \$25,000 or 10 percent of total perquisites and other personal benefits must be separately disclosed and quantified in a note. The description must identify the particular nature of the benefit received and the methodology used to compute the benefit's cost.

.45 The determination of whether an item is a perquisite or personal benefit is a two-prong test: (1) whether it is integrally and directly related to the performance of the executive's duties (if it is, it is not a perquisite or personal benefit); and (2) whether it confers a direct or indirect benefit that has a personal aspect (regardless of whether it may be provided for some business reason or for the convenience of the company). If it does, it is a perquisite or personal benefit unless the item is generally available on a non-discriminatory basis to all employees.

.46 Since business travel is generally integrally and directly related to the performance of an executive's duties, these costs would not be considered perquisites (regardless of whether there is a less expensive alternative such as renting a compact car instead of a mid-sized car), and the second prong of the test does not need to be considered. Other examples of items that would not generally qualify as perquisites include a Blackberry or a laptop computer if the company believes that these are an integral part of the executive's duties to be readily accessible.

.47 Examples of items that would be characterized as perquisites include: club membership not used exclusively for business entertainment; personal financial or tax advice; personal travel using company-leased vehicles; housing and other living expenses including relocation assistance and payments for the executive to stay at his or her personal residence; commuting expenses; and security provided during personal travel.

PwC Observation: *A company should determine a perquisite's value by measuring the aggregate incremental cost of providing such benefit which may differ from the value that the company uses for tax purposes.*

Additional All Other Compensation

.48 In the *All Other Compensation* column, items that exceed \$10,000 must be separately identified and quantified in a footnote for the last fiscal year.

Total Compensation

.49 The *Total Compensation* column aggregates the total dollar value of each form of compensation that is included in the Summary Compensation Table.

SUPPLEMENTAL TABLES

.50 In addition to the Summary Compensation Table, the new rules require that a company include six additional tables. These tables are required for the most recent fiscal year only. The supplemental tables cover:

1. Grants of Plan-Based Awards
2. Outstanding Equity Awards at Fiscal Year End
3. Option Exercises and Stock Vested
4. Pension Benefits
5. Non-Qualified Deferred Compensation
6. Director Compensation

Grants of Plan-Based Awards Table (see Exhibit B)

.51 This new table provides disaggregated information supporting the Stock Awards, Option Awards, and Non-Equity Incentive Plan Compensation disclosures in the Summary Compensation Table. This table should follow the Summary Compensation Table. Disclosure must be made about each award that was granted to a named executive officer under each plan during the most recently completed fiscal year.

.52 In addition to the columns specified in Exhibit B, a company may be required to present up to three additional columns:

- A separate column must be added to disclose the date on which the board of directors or compensation committee took action (or is deemed to have taken action) to grant such awards, if different than the grant date determined in accordance with FAS 123(R).
- An additional column must also be added to disclose instances in which the exercise price or base price of option-like instruments is less than the closing market price of the underlying security on the grant date. The methodology for determining an exercise or base price that differs from the closing market price must be disclosed in a footnote or in an accompanying narrative.

PwC Observation: *The SEC staff added the disclosures noted in the two bullets above in response to current issues involving the timing of option grants and the determination of the option's exercise price. In addition, disclosures are also required in the CD&A section with respect to stock options grants, including, among other issues, whether the company has any programs to time option grants to its executives in coordination with the release of material non-public information.*

- If non-equity incentive plan awards are denominated in units or rights, a third additional column must be included to disclose the number of such units or rights.

.53 Narrative disclosure is required after the Summary Compensation Table and the Grants of Plan-Based Awards Table in order to give context to those disclosures. A company should further disclose information about material factors (e.g., material terms of employment agreements, the nature of performance-based vesting or payment conditions, and descriptions of repricings and material modifications of outstanding options or equity-based awards) if that information is not evident from the quantitative disclosure and is not included in CD&A. The content of the disclosure is dependent on a company's specific facts and circumstances.

Equity Holdings Tables

.54 Companies must present the following two tables for holdings and exercises of previously-awarded equity compensation.

Outstanding Equity Awards at Fiscal Year-End Table (see Exhibit C)

.55 This table discloses outstanding option and stock awards that have been granted but remain unexercised or unvested.

.56 For option awards, including stock appreciation rights (SARs) and similar instruments with option-like features, and option awards that have been transferred in exchange "other than for value," the following must be disclosed for each instrument:

- The number of securities underlying unexercised options that are exercisable
- The number of securities underlying unexercised options that are unexercisable
- The number of securities underlying unexercised and unearned options under equity incentive plans
- The exercise or base price, and
- The expiration date

PwC Observation: *This table includes option awards that have been transferred during the year, except for those transfers where value was provided to the holder of the option. For example, a buyback of options would not be included because compensation would already have been provided to the holder. Refer to the Option Exercises and Stock Vested Table in paragraph 59.*

.57 For stock awards, including restricted stock and phantom stock, a company must disclose the following:

- The number of shares of stock that have not vested,
- The aggregate market value of shares of stock that have not vested at the end of the last completed fiscal year
- The number of unearned shares, units, or other rights awarded under any equity incentive plan, and
- The aggregate market or payout value of unearned shares, units, or other rights awarded under any equity incentive plan

.58 A company must additionally disclose in the footnotes (1) any award that has been transferred "other than for value," including the nature of the transfer and (2) the vesting dates of options, stock, and equity incentive plan awards.

Option Exercises and Stock Vested Table (see Exhibit D)

.59 This table provides information regarding the amount a named executive officer realized during the most recent fiscal year on the exercise of stock options, SARs, and similar instruments and on the vesting of shares of stock, including restricted stock, restricted stock units, and similar instruments. This new table provides the following information:

- The number of shares acquired upon exercise or the number of shares of stock that vested,
- The aggregate dollar value realized on exercise of options or vesting of stock, including amounts realized upon the transfer of an award for value.

.60 The disclosures that companies are required to make in this table are similar to the disclosures that companies previously had to make in the Aggregated Option/SAR Exercises and Fiscal Year-End Option/SAR Values Table; the main difference is that the new table includes the vesting of restricted stock.

.61 Companies must include in a footnote the aggregate number of stock awards and option awards held by each director at fiscal year-end.

Post-Employment Compensation

.62 Since retirement packages and other post-employment compensation amounts often represent a significant portion of an executive's overall compensation package, the SEC revised its former rules to require numerical disclosure of the potential amount of post-employment compensation that each named executive officer may receive. The new rules do the following:

- Replace the former pension plan table and alternative plan and other disclosures with a new Pension Benefits table, along with enhanced narrative disclosures,
- Add a new table, Non-qualified Deferred Compensation, and require narrative disclosures related to the table, and

- Revise the prior requirements regarding disclosures about compensation arrangements triggered upon a termination of employment and a change in control

Pension Benefits Table (see Exhibit E)

.63 The Pension Benefits Table applies to retirement benefits under defined-benefit plans, cash- balance plans, and supplemental executive retirement plans; it excludes defined-contribution plans. In this table, a company must disclose for each plan the following information about each named executive officer:

- the number of years of credited service;
- the actuarial present value of the accumulated benefit under the plan; and
- payments made during the last fiscal year.

.64 Companies should use the same pension plan measurement date and assumptions (other than the retirement age assumption, which must be set as the normal retirement age) that were used for financial reporting purposes.

PwC Observation: *Disclosing information about individual named executive officers for each plan will require additional record keeping since most companies do not currently maintain this information by individual.*

.65 Registrants must also disclose (or include a reference to disclosure elsewhere) the valuation method and all material assumptions used to determine the present value of the accrued benefit.

.66 Additionally, registrants must make narrative disclosures about material factors that are necessary to understand each plan that is disclosed in the table. Examples may include: (1) the material terms and conditions of plan benefits, (2) any early-retirement arrangements available to named executive officers, (3) the specific elements of compensation (e.g., salary and bonus) that the registrant uses in applying the benefit formula, and (4) the registrant's policies regarding matters such as granting extra years of credited service.

Nonqualified Deferred Compensation Table (see Exhibit F)

.67 For each named executive officer's nonqualified defined contribution and other deferred-compensation plans, a company must disclose:

- contributions by the named executive officer and the registrant during the last fiscal year,
- aggregate earnings,
- aggregate withdrawals and distributions, and
- aggregate balances at the end of the last fiscal year.

PwC Observation: *Information about tax-qualified plans, such as Section 401(k) plans, is not included in the above table.*

.68 Companies are required to make certain narrative disclosures regarding material factors necessary to understand the disclosure in the table such as (1) the extent to which the aggregate earnings amounts were previously reported in the Summary Compensation Table, and (2) the types of compensation that could be deferred, the measures for calculating interest or other plan earnings, quantifying interest rates and other earnings measures, and material terms with respect to payouts, withdrawals, and other distributions.

Narrative Disclosure Regarding Potential Payments upon Termination and Change in Control Provisions

.69 The final rules significantly expand the prior disclosures, requiring companies to disclose the specific aspects of (1) written or unwritten arrangements that provide for payments to a named executive officer upon termination (i.e., resignation, severance, retirement, or other termination) and (2) a change in control of the company. Disclosures should include the following information:

- The specific circumstances that would trigger payment or the provision of other benefits (including prerequisites and health care benefits)

- The estimated payments and benefits, including (1) whether such amounts are lump sum or annual and (2) the duration of the payment/benefit
- The methods used to determine the payment and benefit levels
- Any material conditions or obligations that need to be satisfied to receive payment, (e.g., confidentiality covenants and non-compete arrangements), and the duration of these agreements
- Any other material factors regarding each such contract, agreement, plan, or arrangement.

.70 The quantified disclosure should be calculated assuming that (1) the triggering event took place on the last business day of the most recently completed fiscal year, and (2) the price per share of the registrant's securities is the closing market price as of that date. If the amounts payable under these arrangements are uncertain, a registrant must make a reasonable estimate of those amounts, and disclose the assumptions utilized.

Director Compensation Table (see Exhibit G)

.71 The new rules require that director compensation be disclosed in numerical form in the new Director Compensation Table and be accompanied by narrative disclosure of material factors that need to be made known if the table is to be understood, such as the terms of any compensation arrangements that are different for specific directors.

.72 The format is substantially similar to the Summary Compensation Table, except that (1) the disclosure is required for only the most recent fiscal year and (2) multiple directors may be grouped in a single row in the table if all of their elements and amounts of compensation are identical. The *All Other Compensation* column includes perquisites of \$10,000 or more, tax reimbursements, and other items that are similar to those disclosed for named executive officers, as well as other items not generally associated with named executive officers, such as consulting fees and awards under director legacy or charitable awards programs.

.73 The new rules do not require any supplemental tables for directors. Refer to paragraph 61 of the DataLine for additional footnote disclosure regarding outstanding stock awards and option awards held by each director.

REVISIONS TO FORM 8-K

.74 Prior to the new rules, Form 8-K required disclosure (under Item 1.01) when a company entered into a material definitive agreement not made in the ordinary course of business, including employment compensation agreements. Disclosure was also required (under Item 5.02) for the appointment or departure of directors and specified officers, as well as the election of directors. The new rules modify the overall requirements for disclosure of employment compensation arrangements on Form 8-K and consolidate all such disclosures under a single item (Item 5.02). The new Item 5.02 disclosures are expanded to include:

- All named executive officers who retired, resigned, or terminated their employment
- A brief description of (1) any material plan, contract, or arrangement that a specified officer or director enters into, or that is materially amended, and (2) any grant or award to such person, or modification, in connection with an appointment or departure
- A brief description of any material new compensatory plan, contract, or arrangement, or new grant or award (whether or not written), or material amendment, for named executive officers, whether or not in connection with an appointment or departure
- Disclosure of salary or bonus for the most recent fiscal year if the information was not available at the time of filing the Item 402 disclosures

.75 Grants or awards to named executive officers are not required to be disclosed if they are consistent with the terms of previously disclosed plans or arrangements.

PwC Observation: *The revisions to the rules are intended to clarify which agreements meet the materiality standard to trigger the requirement to file Form 8-K and seek to limit the disclosure of information about agreements that are not considered material.*

CERTAIN RELATIONSHIPS AND RELATED-PERSON TRANSACTIONS

.76 The disclosure requirements for related-person transactions are generally consistent with prior Item 404 of Regulation S-K but have been streamlined and now follow a principles-based approach.

.77 The new rules expand the terms "transaction" and "related party" to broaden the scope of transactions and relationships that are covered by the new rules. A company must disclose any transaction (e.g., any financial transaction, arrangement, or relationship including any indebtedness or guarantee of indebtedness) or a series of transactions that has taken place since the beginning of the company's last fiscal year or any currently proposed transaction in which:

- The company was or is to be a participant
- The amount involved exceeds \$120,000 (increased from \$60,000), and
- Any related person had or will have a direct or indirect material interest in the transaction during any part of the fiscal year.

.78 Companies must also disclose a description of their policies and procedures established for the review, approval, or ratification of related-person transactions. The description must include the material features necessary for an understanding of the policies and procedures. Examples of material features include:

- The types of transactions covered and the standards to be applied;
- The individual(s) on the board of directors or otherwise who are responsible for applying such policies and procedures and
- Whether such policies and procedures are in writing and, if not, how they are evidenced.

CORPORATE GOVERNANCE DISCLOSURES

.79 The new rules consolidate into a single place the disclosures regarding director independence and other corporate governance. These items were previously contained in various places throughout Regulation S-K.

Director Independence

.80 Companies must identify the independent directors and director nominees based on the definition of independence in the listing standards applicable to the company. Additionally, for each independent director or director nominee, the company must describe (by specific category or type) any transactions, relationships, or arrangements that the company did not disclose under Item 404 but that the board of directors considered in determining that the company had met the independence requirements. A company must also disclose any compensation, nominating, and audit committee members who are not independent.

Compensation Committee Processes and Procedures

.81 Companies must describe the processes and procedures for the consideration and determination of executive and director compensation, including:

- The scope of authority of the compensation committee
- The extent to which the compensation committee may delegate authority to other persons, specifying what authority may be delegated and to whom the authority may be delegated

- Any role that executive officers or compensation consultants play in determining or recommending the amount or form of executive and director compensation, with the following information being disclosed about compensation consultants:
 - The name of each consultant
 - Whether the consultants were engaged directly by the compensation committee
 - The nature and scope of their assignment
 - The material elements of the instructions or directions given to the consultants with respect to the performance of their duties

SMALL BUSINESS ISSUERS

.82 The SEC has acknowledged that for SBIs, executive compensation is generally much less complex than the compensation of executives at other public companies. Accordingly, although some narrative disclosures are required (refer, for example, to Item 404 of Regulation S-B), SBIs do not have to provide the CD&A and other more extensive disclosures (e.g., supplemental tables and Compensation Committee Report) imposed on companies that are not SBIs. SBIs are, however, required to provide the following:

- the Summary Compensation Table (excluding pension plan disclosures) for the latest two fiscal years;
- the Outstanding Equity Awards at Fiscal Year-end Table; and
- the Director Compensation Table

.83 SBIs must include relevant disclosures for only three named executive officers: the principal executive officer and the two most highly compensated officers.

EFFECTIVE DATES AND TRANSITION

.84 The new rules become effective as follows:

- Form 8-K: compliance is required for triggering events that occur on or after November 7, 2006
- Form 10-K/KSB: compliance is required for fiscal years ending on or after December 15, 2006
- Registration statements, proxy statements, and information statements: compliance is required in filings on or after December 15, 2006 that are required to include disclosures regarding executive compensation and related-person transactions for fiscal years ending on or after December 15, 2006

.85 Companies that elect to comply with the rules before the required effective dates must include all of the disclosures required under the rules.

.86 With respect to the Summary Compensation Table and related-person disclosures, registrants will be required to provide the information for three fiscal years, subject to a phased-in implementation period. The phase-in period allows registrants to provide information for the most recently completed fiscal year when the new rules first become effective, increasing to a two-year period in Year 2, and a three-year period in Year 3. Thus, registrants do not have to present information for periods prior to the effective date at all (e.g., previously provided disclosures or "restated" previously presented information) unless information for prior periods has previously been disclosed in a filing in compliance with the new rules.

Questions and Comments

.87 PwC clients that have questions about this DataLine should contact a member of their engagement team. PwC engagement teams that have questions should contact Diana Cravotta (412-355-8037), Barbara Berlin (973-236-5349), Valerie Wieman (973-236-5887), or John May (973-236-4793) in National R&Q or Scott Olsen (646-471-0651) or Murray Akresh (646-471-2362) in GHRS.

APPENDIX A, COMPENSATION DISCUSSION AND ANALYSIS

Noted below are examples of the issues that companies should pay particular attention to when addressing CD&A. This is not an exhaustive list.

General:

- What specific items of corporate performance are taken into account in setting compensation policies and making compensation decisions?
- How the determination is made as to when awards are granted, including awards of equity-based compensation such as options
- How specific forms of compensation are structured and implemented to reflect these items of the company's performance, including whether discretion can be or has been exercised, identifying any particular exercise of discretion, and stating whether it applied to one or more specified named executive officers or to all compensation subject to the relevant performance goal(s)
- How specific forms of compensation are structured and implemented to reflect the named executive officer's individual performance and/or individual contribution to these items of the company's performance, describing the elements of individual performance and/or contribution that are taken into account
- The factors considered in decisions to increase or decrease compensation materially
- How compensation or amounts realizable from prior compensation are considered in setting other elements of compensation (e.g., how gains from prior option or stock awards are considered in setting retirement benefits)
- The role of executive officers in the compensation process
- For long-term compensation, the basis for allocating compensation to each different form of award
- Whether the company engaged in any benchmarking of total compensation or any material element of compensation, identifying the benchmark and, if applicable, its components (including component companies)
- With respect to any contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) at, following, or in connection with any termination or change-in-control, the basis for selecting particular events as triggering payment (e.g., the rationale for providing a single trigger for payment in the event of a change-in-control)
- The impact of accounting and tax treatments of a particular form of compensation

Policies:

- Policies for allocating between long-term and currently paid out compensation
- Policies for allocating between cash and non-cash compensation, and among different forms of non-cash compensation
- Company policies and decisions regarding the adjustment or recovery of awards or payments if the relevant company performance measures upon which they are based are restated or otherwise adjusted in a manner that would reduce the size of an award or payment
- The company's equity or other security ownership requirements or guidelines and any company policies regarding hedging the economic risk of such ownership

Stock Option Grants:

- Does a company have any program, plan or practice to time option grants to its executives in coordination with the release of material non-public information?
- How does any program, plan or practice to time option grants to executives fit in the context of the company's program, plan or practice, if any, with regard to option grants to employees more generally?
- What was the role of the compensation committee in approving and administering such a program, plan or practice? How did the board or compensation committee take such information into account when determining whether and in what amount to make those grants? Did the compensation committee delegate any aspect of the actual administration of a program, plan or practice to any other persons?
- What was the role of executive officers in the company's program, plan or practice of option timing?
- Does the company set the grant date of its stock option grants to new executives in coordination with the release of material non-public information?
- Does a company plan to time, or has it timed, its release of material non-public information for the purpose of affecting the value of executive compensation?

Appendix B, COMPARISON OF PRIOR RULES WITH NEW RULES

Significant Changes to Regulation S-K:

	Prior Rules	New Rules
Scope	CEO and the 4 other most highly compensated executive officers	PEO, PFO, and 3 other most highly compensated executive officers
Disclosures/Tables		
	Disclosure of Board Compensation Committee Report on Executive Compensation	Older Compensation Committee Report eliminated; replaced by (1) new Compensation Committee Report, and (2) narrative Compensation Discussion and Analysis section
	Audit Committee Report - required under Item 306 of Regulation S-K	No changes to format; moved to disclosure under Item 407(d) of Regulation S-K
	Performance Graph - required by Item 402 of Regulation S-K	No changes to format; moved to disclosure under Item 201 of Regulation S-K
Summary Compensation Table	<ul style="list-style-type: none"> • Salary and bonus • Other annual compensation • Dollar-value of restricted stock awards • Securities underlying options/SARs • Long-term incentive plan payouts • All other compensation 	<ul style="list-style-type: none"> • Salary and bonus • Dollar-value of stock awards • Fair value of option/SAR awards • Non-equity incentive plan payouts • Change in pension value and nonqualified deferred compensation earnings • All other compensation (redefined) • Total compensation
Supplemental Tables		
	<ul style="list-style-type: none"> • Long-Term Incentive Plan Awards • Option and SAR Grants • Ten-Year Report on Repricing of Options/SARs • Aggregated Option/SAR Exercises and FYE Option/SAR Value • Pension Plan 	<ul style="list-style-type: none"> • Grants of Plan-Based Awards • Outstanding Equity Awards at Fiscal Year-End • Option Exercises and Stock Vested • Pension Benefits • Nonqualified Deferred Compensation • Director Compensation
Severance Benefits/Change-in- Control	Narrative disclosure of employment contracts and termination of employment and change-in-control arrangements	Narrative disclosure regarding potential payments upon termination and change-in-control provisions
Other		
Director Compensation	Narrative format	<ul style="list-style-type: none"> • New Director Compensation Table • narrative disclosures required
Related-Person Transactions	<ul style="list-style-type: none"> • Disclosure threshold of \$60,000 • Not required to disclose policies/procedures for approval 	<ul style="list-style-type: none"> • Disclosure threshold of \$120,000 • Disclose policies/procedures for approving related party transactions
Director Independence/Corporate Governance	Various disclosures required by Items 306, 401, 402 and 404 of Regulation S-K	New and reorganized disclosure regarding corporate governance matters (i.e., independence of directors, compensation committee processes and procedures)

EXHIBIT A, SUMMARY COMPENSATION TABLE

Name and Principal Position (a)	Year (b)	Salary (\$) (c)	Bonus (\$) (d)	Stock Awards (\$) (e)	Option Awards (\$) (f)	Non-Equity Incentive Plan Compensation (\$) (g)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (\$) (h)	All Other Compensation (\$) (i)	Total (\$) (j)
PEO									
PFO									
A									
B									
C									

EXHIBIT B, GRANTS OF PLAN-BASED AWARDS TABLE

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

EXHIBIT C, OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END TABLE

Name	Option Awards					Stock Awards			
	Number of Securities Underlying Unexercised Options (#) (Exercisable)	Number of Securities Underlying Unexercised Options (#) (Unexercisable)	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#)	Option Exercise Price (\$)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
PFO									
A									
B									
C									

EXHIBIT D, OPTION EXERCISES AND STOCK VESTED TABLE

Name	Option Awards		Stock Awards	
	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise (\$)	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting (\$)
(a)	(b)	(c)	(d)	(e)
PEO				
PFO				
A				
B				
C				

EXHIBIT E, PENSION BENEFITS TABLE

Name (a)	Plan Name (b)	Number of Years Credited Service (#) (c)	Present Value of Accumulated Benefit (\$) (d)	Payments During Last Fiscal Year (\$) (e)
PEO				
PFO				
A				
B				
C				

EXHIBIT F, NONQUALIFIED DEFERRED COMPENSATION TABLE

Name (a)	Executive Contributions in Last FY (\$) (b)	Registrant Contributions in Last FY (\$) (c)	Aggregate Withdrawals/ Distributions (\$) (d)	Aggregate Earnings in Last FY (\$) (e)	Aggregate Balance at Last FYE (\$) (f)
PEO					
PFO					
A					
B					
C					

EXHIBIT G, DIRECTOR COMPENSATION TABLE

Name	Fees Earned or Paid in Cash (\$)	Stock Awards (\$)	Option Awards (\$)	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation (\$)	Total (\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A							
B							
C							
D							
E							

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