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TRANSACTIONAL AND SECURITIES UPDATE

SEC Amends Final Rules on Executive and Director Compensation Disclosure

On December 22, 2006, the Securities and Exchange Commission adopted amendments to its recently enacted rules regarding proxy statement disclosure of executive and director compensation. The amendments primarily relate to equity-based awards and generally are intended to make disclosures in the Summary Compensation Table and Director Compensation Table more consistent with disclosures in financial statements pursuant to Statement of Financial Accounting Standards No. 123(R) ("FAS 123R"). This approach was recommended by a number of commenters, including Foley & Lardner LLP, in comments to the SEC on the proposed rules on executive and director compensation disclosure initially released earlier in 2006.

The most recent amendments, which the SEC adopted without notice as interim final rules, became effective on December 29, 2006 and are applicable for the 2007 proxy season. Although the amendments were adopted as final, the SEC is soliciting comments with respect to the amendments for a 30-day period. As a result, it is possible there may be further changes.

SUMMARY COMPENSATION TABLE

Prior to the amendments, a company would have been required to disclose the full grant date fair value of each equity award as compensation in the Summary Compensation Table for the year in which the company made the grant. As a result of the amendments, a company now must disclose, in the Stock Awards and Option Awards columns of the Summary Compensation Table, the amount of the compensation cost recognized over the requisite service period, as described in FAS 123R. The amount to be disclosed will include both amounts recorded as compensation expense for the year and any amounts earned by the executive that have been capitalized for balance sheet purposes during the year. The amount will include compensation cost recognized in the financial statements for the year in question with respect to awards granted in both prior years and the subject year. For purposes of disclosure in the Summary Compensation Table, a company must use the FAS 123R modified prospective transition method, regardless of whether it has adopted that method for financial statement reporting purposes, in calculating the expense for awards granted prior to the company's adoption of FAS 123R.

While the calculation of compensation cost pursuant to the amendments generally follows the principles of FAS 123R, a company may not include an estimate of forfeitures related to service-based vesting conditions for Summary Compensation Table purposes, even though such estimates are required by FAS 123R. Instead, compensation cost for awards containing service-based vesting conditions must be disclosed assuming that a named executive officer will perform the necessary service for the award to vest. If the officer fails to perform the necessary service and forfeits the award, then the company will reverse out in the year of the forfeiture the amount of compensation cost related to the forfeited award previously disclosed in the Summary Compensation Table. In addition, a company must disclose in a footnote to the Summary Compensation Table any awards that a named executive officer forfeits during the year.

Under FAS 123R, a company must re-measure, or mark to market, an award classified as a "liability" award under FAS 123R (e.g., cash-settled stock appreciation rights) at each financial statement reporting date until the award is settled. Pursuant to the amendments, the annual change in value of these awards, which may be positive or negative, will be reflected in the Summary Compensation Table.

Under the amendments, compensation costs for awards with performance-based vesting may only be disclosed in the Summary Compensation Table if it is probable that the performance condition will be achieved. If the achievement of the performance condition is not probable during the year of the grant but becomes probable in a subsequent year, the proportionate amount of compensation cost based on service previously rendered will be disclosed in the Summary Compensation Table during the year in which achievement of the performance condition becomes probable. Alternatively, if the achievement of a performance condition was previously considered probable but in a later year is no longer considered probable, then the amount of compensation cost previously disclosed in the Summary Compensation Table will be reversed during the year in which it is determined that achievement of the performance condition is no longer probable.

The SEC noted in its adopting release that if an award with service or performance-based conditions ultimately vests, then the amount cumulatively reflected in the Summary Compensation Table over a number of years should be equal to 100% of the grant date fair value of the equity award or the total fair value at the date of settlement of the liability award, respectively. The amount cumulatively reflected in the Summary Compensation Table for such an award that does not vest will be zero. This may result in negative numbers in certain years if the value of awards that a named executive officer forfeits in a year exceeds the value of other awards reflected in the Summary Compensation Table for that officer. The SEC clarified that a company would disclose this negative number in the Summary Compensation Table, which would impact the calculation of total compensation, including for purposes of determining who is a named executive officer.

The amendments also provide that a company must report any salary or bonus forgone at the election of a named executive officer in favor of receiving a non-cash form of compensation in the Salary or Bonus column of the Summary Compensation Table. Previously, the SEC's rules would have required such amounts be disclosed in the Stock Awards, Option Awards or All Other Compensation column, as applicable. A company must also disclose in a footnote the receipt of the non-cash compensation with a reference to the Grants of Plan-Based Awards Table where the non-cash compensation is disclosed.

GRANTS OF PLAN-BASED AWARDS TABLE

The amendments also modify the Grants of Plan-Based Awards Table to add a column disclosing the full grant date fair value of each equity award calculated in accordance with FAS 123R for the most recent completed fiscal year. The revised Grants of Plan-Based Awards Table is set forth in Appendix A to this bulletin. In addition, if a company "reprices" or materially modifies an equity award during the most recent completed fiscal year, then the company must disclose the incremental fair value resulting from the repricing or material modification in this new column. Prior to the amendments, these disclosures would have been required to be included in the Summary Compensation Table.

DIRECTOR COMPENSATION TABLE

The amendments generally revise the requirements for the Director Compensation Table to be consistent with the changes to the Summary Compensation Table described above. Because there is no Grants of Plan-Based Awards Table for directors, a company must now include the new disclosures required for named executive officers in the Grants of Plan-Based Awards Table described above in footnotes to the Director Compensation Table.

KEY IMPACTS OF THE AMENDMENTS

Companies that have already started preparing their 2007 proxy statement disclosures will need to revise the Summary Compensation Table, Grants of Plan-Based Awards Table and Director Compensation Table to reflect the changed disclosures required by the amendments. While these new amendments may require additional effort by companies in the short term, most of the information needed should be reasonably available to companies as a result of the preparation of their financial statements and related footnote disclosures. In addition, we believe that the revised rules provide for more appropriate disclosure overall, as they better reflect the costs of equity-based awards by allocating such costs over several years consistent with the terms of the underlying awards.

It is important to note that the revised amounts to be included in the Summary Compensation Table as a result of the amendments could affect a company's determination of its named executive officers for proxy statement purposes. A company that has identified its named executive officers for the year should make sure that the new rules do not change one or more officers' total compensation to such an extent that the composition of the named executive officers is altered.

Foley & Lardner LLP bulletins are intended to provide information (not advice) about important new legislation or legal developments in the transactional and securities area. The great number of legal developments does not permit the issuing of an update for each one, nor does it allow the issuing of a follow-up on all subsequent developments.

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Appendix A

GRANTS OF PLAN-BASED AWARDS

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 or Base Price of Option Awards ($/Sh)	Grant Date Fair Value of Stock and Option Awards
		Thresh-old ($)	Target ($)	Maxi-mum ($)	Thresh-old (#)	Target (#)	Maxi-mum (#)				
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
PEO											
PFO											
A											
B											
C											