

Client Alert

August 24, 2007

The SEC's First Phase of Proxy Review:

Comment Letters Transmitted to Certain Companies This Week

As part of its first phase of review of executive and director compensation disclosure in 2007 proxies, the SEC Corporate Finance Staff (the "Staff") began sending its first wave of comment letters to certain targeted companies earlier this week. A second phase of review, discussed below, will provide all companies with general guidance as to what the Staff will expect for the upcoming proxy season.

As part of this first phase of review, we understand that many letters have been received in the past few days, and that there may be many more in the near future. We understand that the Staff has been calling companies in advance to give them warning that the comment letters will be faxed to them.

Responses to comment letters are generally due back to the Staff within a month of receipt. The responses must (to the extent applicable) answer the Staff's requests for additional information concerning the 2007 proxy disclosure, confirm whether (and how) the company intends to comply with suggestions for future proxy disclosures, and, alternatively, if the company does not intend to comply, provide reasons where the company disagrees with the comment.

Our initial review of a sample of comment letters suggests that they are long and detailed. Some of the information requested goes beyond the scope of the disclosure rules. It appears that the focus of the comments is on the adequacy of disclosure of specific subjects discussed by John White, Director of the Division of Corporate Finance of the SEC at an ABA meeting in San Francisco last week, as follows:

- Performance targets
 - If performance targets were not disclosed, whether there was adequate justification for keeping them confidential, and whether alternative disclosure about difficulty of achieving them was adequate
- Descriptions of the components of compensation
- Termination and change in control payments
- Benchmarking process
- Who makes compensation decisions, including the CEO's and others' roles in the decision-making process

Going forward, the second phase of the SEC's review will involve a Staff report that summarizes what the Staff has seen generally, and more importantly, guidance for those companies who were not targeted in the first phase of review as to what the Staff expects to see in next season's proxy statements. While we do not have an exact date for release of this report, John White indicated that it will be out sometime in the Fall, and at least in time for the next proxy season. White also indicated that while the Staff did publish some additional updated Interpretive Guidance on August 8, 2007 (<http://www.sec.gov/divisions/corpfin/guidance/execcomp402interp.htm>) the rules themselves will not be amended for the coming proxy season.



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