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SECURITIES LAW ALERT

SEC ADOPTS NEW DISCLOSURE RULES CONCERNING COMPENSATION POLICIES AND PRACTICES, DIRECTOR QUALIFICATIONS AND RELATED MATTERS

In December 2009, the Securities and Exchange Commission ("SEC") adopted amendments to its disclosure rules that will require registrants to make new or revised disclosures in their SEC filings about compensation policies and practices and director qualifications and related matters.

The amendments will be applicable to proxy and information statements, annual reports and registration statements under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and registration statements under the Securities Act of 1933, as amended (the "Securities Act"), as well as the Investment Company Act of 1940, as amended (the "Investment Company Act"). The effective date of the amendments is February 28, 2010.

The amendments will require:

- To the extent that risks arising from a company's compensation policies and practices for employees are reasonably likely to have a material adverse effect on the company, the company will have to include in its executive compensation disclosure a discussion of its compensation policies or practices as they relate to risk management and risk-taking incentives that can affect the company's risk and management of that risk;
- Reporting of the aggregate grant date fair value of stock awards and option awards granted in the fiscal year in the Summary Compensation Table and Director Compensation Table to be computed in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 718, Compensation—Stock Compensation ("FASB ASC Topic 718"), rather than the dollar amount recognized for financial statement purposes for the fiscal year, with a special instruction for awards subject to performance conditions;
- New disclosure of the qualifications of directors and nominees for director, and the reasons why that person should serve as a director of the company at the time at which the relevant filing is made with the SEC;
- Additional disclosure of any directorships held by each director and nominee at any time during the past five years at any public company or registered investment company;
- New disclosure regarding the consideration of diversity in the process by which candidates for director are considered for nomination by a company's nominating committee;
- Additional disclosure of other legal actions involving a company's executive officers, directors, and nominees for director, and lengthening the time during which such disclosure is required from five to ten years;
- New disclosure about a company's board leadership structure and the board's role in the oversight of risk;
- New disclosure about the fees paid to compensation consultants and their affiliates under certain circumstances; and
- Disclosure of the vote results from a meeting of shareholders on Form 8-K generally within four business days of the meeting.

(Please see next page for more information.)

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ENHANCED COMPENSATION DISCLOSURE

Narrative Disclosure of the Company's Compensation Policies and Practices as They Relate to the Company's Risk Management

The new rules require a company (other than a smaller reporting company) to provide a discussion of its compensation policies and practices for all employees, including non-executive officers, if the compensation policies and practices create risks that are reasonably likely to have a material adverse effect on the company.

The new rules contain a non-exclusive list of situations where compensation programs may have the potential to raise material risks to companies, and examples of the types of issues that would be appropriate for a company to address. The SEC believes situations that potentially could trigger discussion include, among others, compensation policies and practices:

- At a business unit of the company that carries a significant portion of the company's risk profile;
- At a business unit with compensation structured significantly differently than other units within the company;
- At a business unit that is significantly more profitable than others within the company;
- At a business unit where the compensation expense is a significant percentage of the unit's revenues; and
- That vary significantly from the overall risk and reward structure of the company, such as when bonuses are awarded upon accomplishment of a task, while the income and risk to the company from the task extend over a significantly longer period of time.

This is a non-exclusive list of situations where compensation programs may have the potential to raise material risks to the company. There may be other features of a company's compensation policies and practices that have the potential to incentivize its employees to create risks that are reasonably likely to have a material adverse effect on the company. However, disclosure is only required if the compensation policies and practices create risks that are reasonably likely to have a material adverse effect on the company. The SEC has indicated that in the situations listed above, a company may under appropriate circumstances conclude that its compensation policies and practices are not reasonably likely to have a material adverse effect on the company.

The new rules include certain non-exclusive illustrative examples of the issues that would potentially be appropriate for a company to address. If a company determines that disclosure is required, examples of the issues that companies may need to address regarding their compensation policies or practices include the following:

- The general design philosophy of the company's compensation policies and practices for employees whose behavior would be most affected by the incentives established by the policies and practices, as such policies and practices relate to or affect risk taking by those employees on behalf of the company, and the manner of their implementation;
- The company's risk assessment or incentive considerations, if any, in structuring its compensation policies and practices or in awarding and paying compensation;
- How the company's compensation policies and practices relate to the realization of risks resulting from the actions of employees in both the short term and the long term, such as through policies requiring claw backs or imposing holding periods;
- The company's policies regarding adjustments to its compensation policies and practices to address changes in its risk profile;
- Material adjustments the company has made to its compensation policies and practices as a result of changes in its risk profile; and
- The extent to which the company monitors its compensation policies and practices to determine whether its risk management objectives are being met with respect to incentivizing its employees.

Revisions to the Summary Compensation Table

The rules governing the preparation of the Summary Compensation Table and Director Compensation Table in Item 402 of Regulation S-K have been revised to require disclosure of the aggregate grant date fair value of stock awards and option awards computed in accordance with FASB ASC Topic 718, rather than the dollar amount recognized for financial statement purposes for the fiscal year, with a special instruction for awards subject to performance conditions as described below.

The new rules provide that the value of performance awards reported in the Summary Compensation Table, Grants of Plan-Based Awards Table and Director Compensation Table shall be computed based upon the probable outcome of the performance condition(s) as of the grant date because the SEC believes that value better reflects how compensation

committees take performance-contingent vesting conditions into account in granting such awards. New Instructions to these tables clarify that this amount will be consistent with the grant date estimate of compensation cost to be recognized over the service period, excluding the effect of forfeitures.

To provide investors additional information about an award's potential maximum value subject to changes in performance outcome, the new rules also require in the Summary Compensation Table and Director Compensation Table footnote disclosure of the maximum value assuming the highest level of performance conditions is probable.

To facilitate year-to-year comparisons, the Summary Compensation Table amendments require companies providing Item 402 disclosure for a fiscal year ending on or after December 20, 2009 to present recomputed disclosure for each preceding fiscal year required to be included in the table, so that the stock awards and option awards columns present the applicable full grant date fair values, and the total compensation column is correspondingly recomputed. The stock awards and option awards columns amounts should be computed based on the individual award grant date fair values reported in the applicable year's Grants of Plan-Based Awards Table, except that awards with performance conditions should be recomputed to report grant date fair value based on the probable outcome as of the grant date, consistent with FASB ASC Topic 718.

In addition, if a person who would be a named executive officer for the most recent fiscal year (2009) also was disclosed as a named executive officer for 2007, but not for 2008, the named executive officer's compensation for each of those three fiscal years must be reported pursuant to the amendments. However, companies are not required to include different named executive officers for any preceding fiscal year based on recomputing total compensation for those years pursuant to the amendments, or to amend prior years' Item 402 disclosure in previously filed Forms 10-K or other filings.

Enhanced Director and Nominee Disclosure

Item 401 of Regulation S-K has been amended to require companies to disclose for each director and any nominee for director the particular experience, qualifications, attributes or skills that led the board to conclude that the person should serve as a director for the company as of the time that a filing containing this disclosure is made with the SEC. The same disclosure, with respect to any nominee for director put forward by another proponent, would be required in the proxy soliciting materials of that proponent. This new disclosure will be required for all nominees and for all directors, including those not up for reelection in a particular year. The final rule requires this disclosure to be made annually because the composition of the entire board is important information for voting decisions.

The new rules do not specify the particular information that should be disclosed.

The new rules also require disclosure of any directorships at public companies and registered investment companies held by each director and nominee at any time during the past five years. Item 401 presently requires disclosure of any current director positions held by each director and nominee in any company with a class of securities registered pursuant to Section 12 of the Exchange Act, or subject to the requirements of Section 15(d) of that Act, or any company registered as an investment company under the Investment Company Act.

In addition to these amendments, the new rules lengthen the time during which disclosure of legal proceedings involving directors, director nominees and executive officers is required from five to ten years. The new rules also expand the list of legal proceedings involving directors, executive officers, and nominees covered under Item 401(f) of Regulation S-K. These new legal proceedings include:

- Any judicial or administrative proceedings resulting from involvement in mail or wire fraud or fraud in connection with any business entity;
- Any judicial or administrative proceedings based on violations of federal or state securities, commodities, banking or insurance laws and regulations, or any settlement to such actions; and
- Any disciplinary sanctions or orders imposed by a stock, commodities or derivatives exchange or other self-regulatory organization.

New Disclosure about Board Leadership Structure and the Board's Role in Risk Oversight

Under amendments to Item 407 of Regulation S-K and to Item 7 of Schedule 14A, a company will be required to disclose in its proxy or information statement whether and why it has chosen to combine or separate the principal executive officer and board chairman positions, and the reasons why the company believes that this board leadership structure is the most

appropriate structure for the company at the time of the filing. In addition, in some companies the role of principal executive officer and board chairman are combined, and a lead independent director is designated to chair meetings of the independent directors. In these circumstances, the amendments will require disclosure of whether and why the company has a lead independent director, as well as the specific role the lead independent director plays in the leadership of the company.

The new rules also require companies to describe the board's role in the oversight of risk. Companies face a variety of risks, including credit risk, liquidity risk, and operational risk. This disclosure requirement gives companies the flexibility to describe how the board administers its risk oversight function, such as through the whole board, or through a separate risk committee or the audit committee, for example. Where relevant, companies may want to address whether the individuals who supervise the day-to-day risk management responsibilities report directly to the board as a whole or to a board committee or how the board or committee otherwise receives information from such individuals.

New Disclosure Regarding Compensation Consultants

The new rules include amendments to Item 407 of Regulation S-K to require, for the first time, disclosure about the fees paid to compensation consultants and their affiliates when they played a role in determining or recommending the amount or form of executive and director compensation, and they also provided additional services to the company.

Under the new rules, in addition to the requirement under the current rule to describe the role of the compensation consultant in determining or recommending the amount or form of executive and director compensation, fee disclosure related to the retention of a compensation consultant will be required in certain circumstances, which are discussed as follows:

Disclosure required if the board's compensation consultant provides additional services to the company

If the board has engaged a compensation consultant to advise the board as to executive and director compensation, and such consultant or its affiliates provides other non-executive compensation consulting services to the company, the disclosures specified by the new rules are required. Subject to the disclosure threshold discussed below, the new rules requires disclosure of the aggregate fees paid for services provided to either the board or the company with regard to determining or recommending the amount or form of executive and director compensation, and the aggregate fees paid for any non-executive compensation consulting services provided by the compensation consultant or its affiliates.

In addition, the new rules require disclosure of whether the decision to engage the compensation consultant or its affiliates for the non-executive compensation consulting services was made, or recommended by, management, and whether the board approved such other services.

Disclosure required if the board does not have a compensation consultant, but the company receives executive compensation and non-executive compensation services from its consultant

The new rule also requires disclosure of fees in situations where the board has not engaged a compensation consultant, but management or the company received executive compensation consulting services and other non-executive compensation consulting services from a consultant or its affiliates, and the fees from the non-executive compensation consulting services provided by that consultant or its affiliates exceed \$120,000 for the company's fiscal year.

Disclosure not required if the board and management have different compensation consultants, even if management's consultant provides additional services to the company

In some instances, the board may engage a compensation consultant to advise it on executive or director compensation, and management may engage a separate consultant to provide executive compensation consulting services and one or more additional non-executive compensation consulting services. When the board engages its own compensation consultant, it mitigates concerns about potential conflicts of interest involving compensation consultants engaged by management. Accordingly, the final rules provide a limited exception to the disclosure requirements for fees paid to other compensation consultants retained by the company if the board has retained its own consultant that reports to the board. The exception would be available without regard to whether management's consultant participates in board meetings. Where the board's compensation consultant provides additional non-executive compensation consulting services to the company, the rule would, as described above, require fee and other related disclosures, which should address concerns about conflicts of interest by that consultant.

Disclosure required only if fees for additional services exceed \$120,000 during the company's last completed fiscal year

Under the new rules, if the board has engaged a compensation consultant to provide executive and director compensation consulting services to the board or if the board has not retained a consultant but there is a firm providing executive compensation consulting services, fee disclosure is required if the consultant or its affiliates also provides other non-executive compensation consulting services to the company, and the fees paid for the other services exceed \$120,000 for the company's fiscal year. This threshold is similar to the disclosure threshold for transactions with related persons in Item 404 of Regulation S-K, which also deals with potential conflicts of interest on the part of related persons who have financial transactions or arrangements with the company, and therefore provides some regulatory consistency.

Exceptions to the disclosure requirement for consulting on broad-based plans and provision of survey information

The new rules include an exception from the disclosure requirements for situations in which the compensation consultant's only role in recommending the amount or form of executive or director compensation is in connection with consulting on broad-based plans that do not discriminate in favor of executive officers or directors of the company. In addition, the exception includes situations where the compensation consultant's services are limited to providing information, such as surveys, that either is not customized for a particular company, or that is customized based on parameters that are not developed by the compensation consultant. However, the exception would not be available if the compensation consultant provides advice or recommendations in connection with the information provided in the survey.

REPORTING OF VOTING RESULTS ON FORM 8-K

The new rules transfer the requirement to disclose shareholder vote results from Forms 10-Q and 10-K to Form 8-K. New Item 5.07 to Form 8-K requires companies to disclose on the form the results of a shareholder vote and to have that information filed within four business days after the end of the meeting at which the vote was held.

The amended instruction to Form 8-K state that companies are required to file the preliminary voting results within four business days after the end of the shareholders' meeting, and then file an amended report on Form 8-K within four business days after the final voting results are known. However, if a company obtains the definitive voting results before the preliminary voting results must be reported and decides to report its definitive results on Form 8-K, it will not be required to file the preliminary voting results.

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