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## What's New in 2010 Proxy Disclosures

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## Today's Speakers



### **Theo Sharp**

Mr. Sharp is a Managing Director in the Boston office of Pearl Meyer & Partners, specializing in incentive plan design, deferred compensation, benchmarking, golden parachute design and evaluation, and the tax and accounting treatment of equity compensation.

### **Deborah Lifshey**

Ms. Lifshey is a Managing Director in the New York office of Pearl Meyer & Partners, specializing in advising clients on compensation matters from a legal perspective, including securities disclosure, taxation and corporate governance issues, as well as contract negotiations and reasonableness opinion letters.

### **Peter R. Gleason**

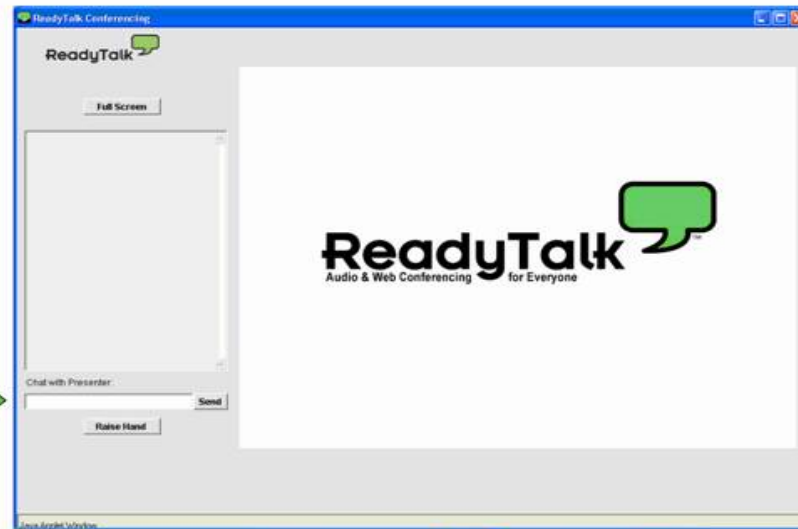
Mr. Gleason is Managing Director and Chief Financial Officer of the NACD and leads its research arm, the Center for Board Leadership.

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# Agenda



- Methodologies and Research
- Continued Study Results – The “Early 50 Filers”
- The New Rules and Observations
- Closing Remarks

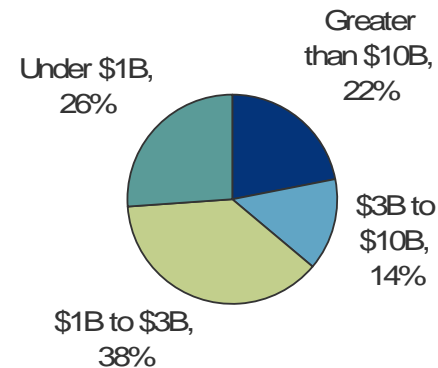
# PM&P Continued its “Early 50 Filers” Study for the Fourth Year



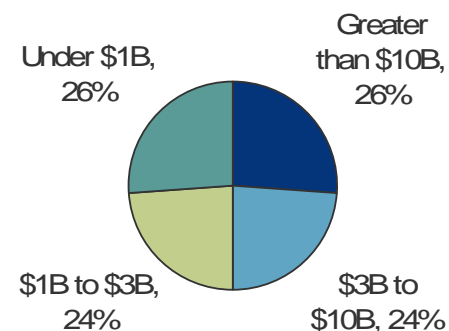
## Approach and Methodology

- Companies in this study filed proxy statements by April 1, 2010 and have been reporting under SEC disclosure rules for the past four years.
  - Cross-industry sample, distributed relatively evenly by revenue size and market cap.
  - Includes 5 companies participating in TARP.
  - The 50 companies have remained fairly consistent over the years .
- Compared trends from 2007 – 2010.
- Analyzed five categories of new items
  - Risk.
  - Consultant Independence.
  - Impact of Grant Date Value Reporting.
  - Board Diversity.
  - Board Leadership.

Revenue of "Early 50 Filers"



Market Capitalization of "Early 50 Filers"





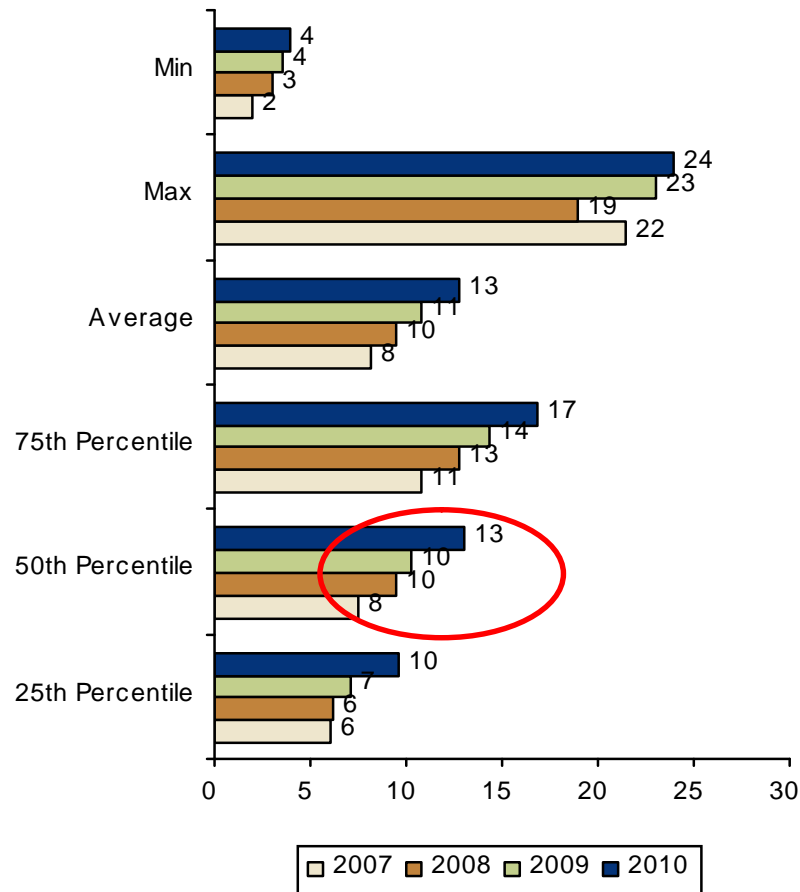
# **DISCLOSURE TRENDS**

## **2007 - 2010**

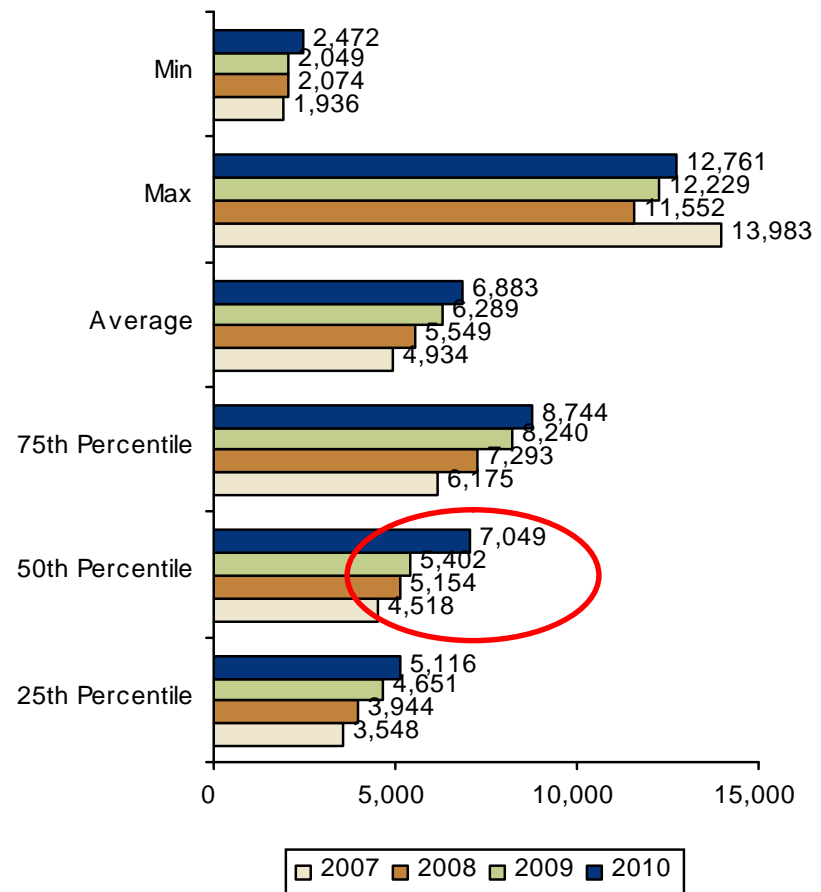
# How Long was the CD&A?

- It comes as no surprise – CD&As continue to become longer and more verbose...

# of Pages in CD&A "Early 50 Filers"



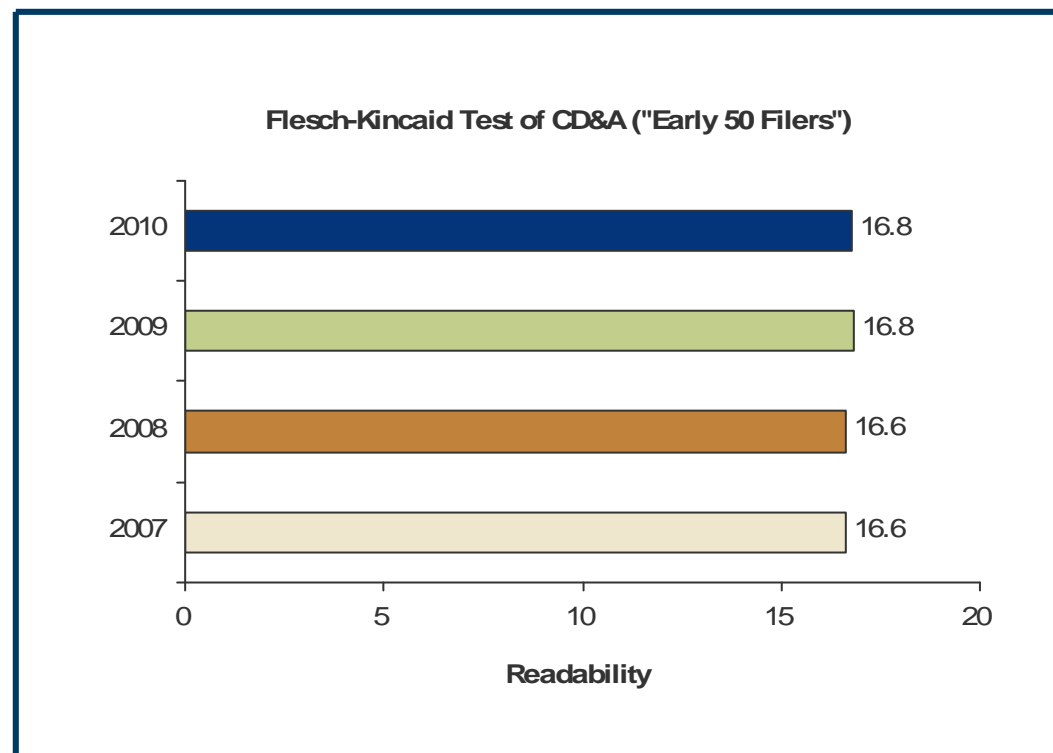
# of Words in CD&A "Early 50 Filers"



## Were CD&A's Written in "Plain English"?



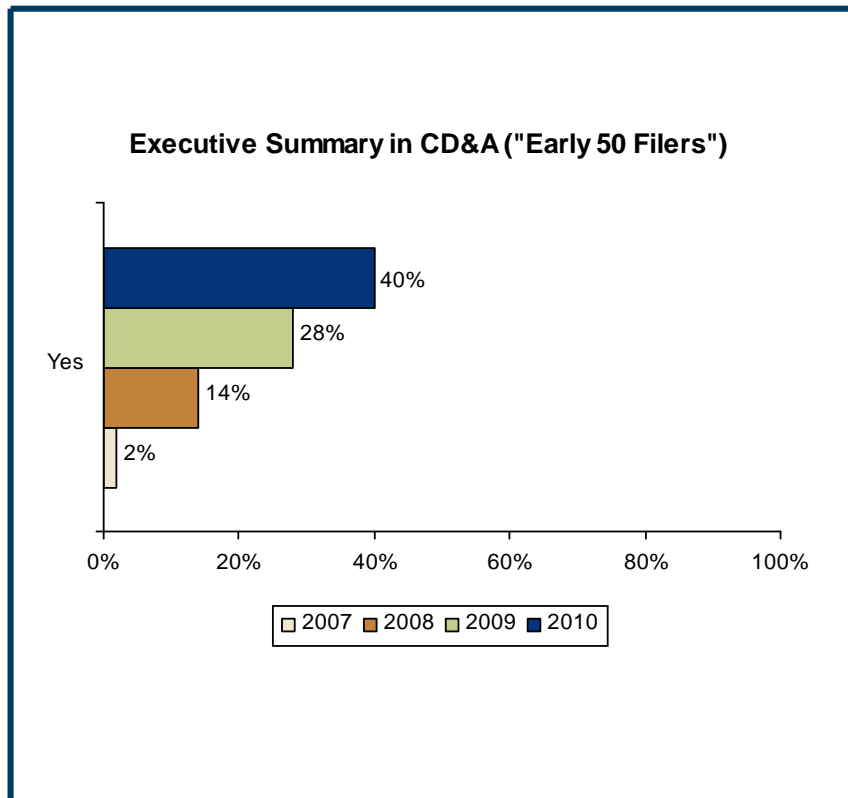
- ...and not any easier to read than a year earlier.



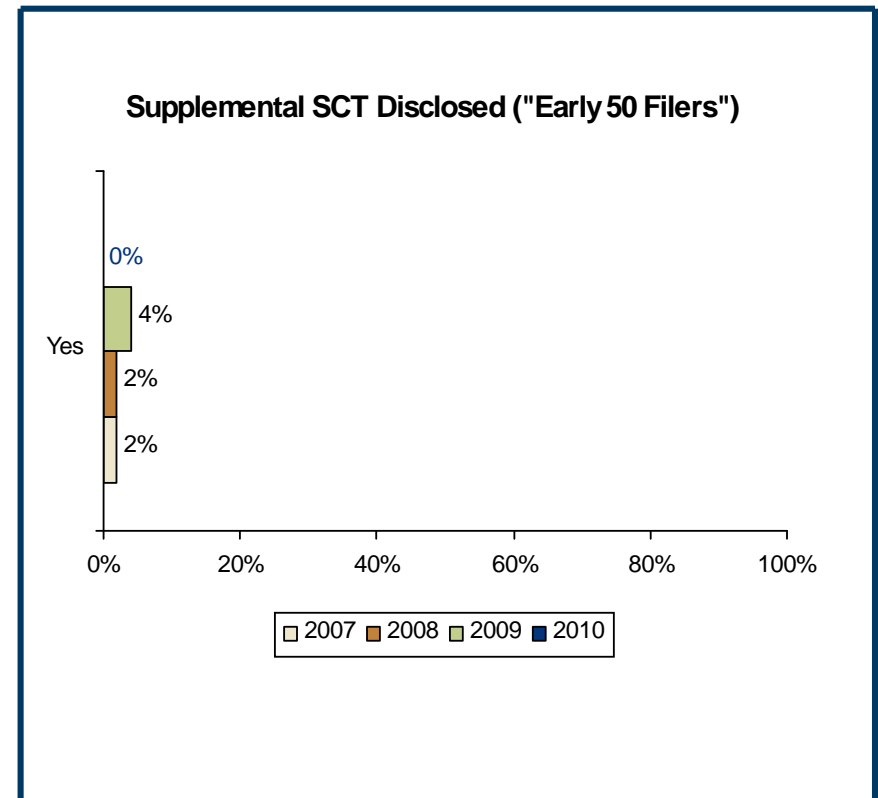
# Have Steps Been Taken to Help Understand the CD&A?



## Use of executive summary



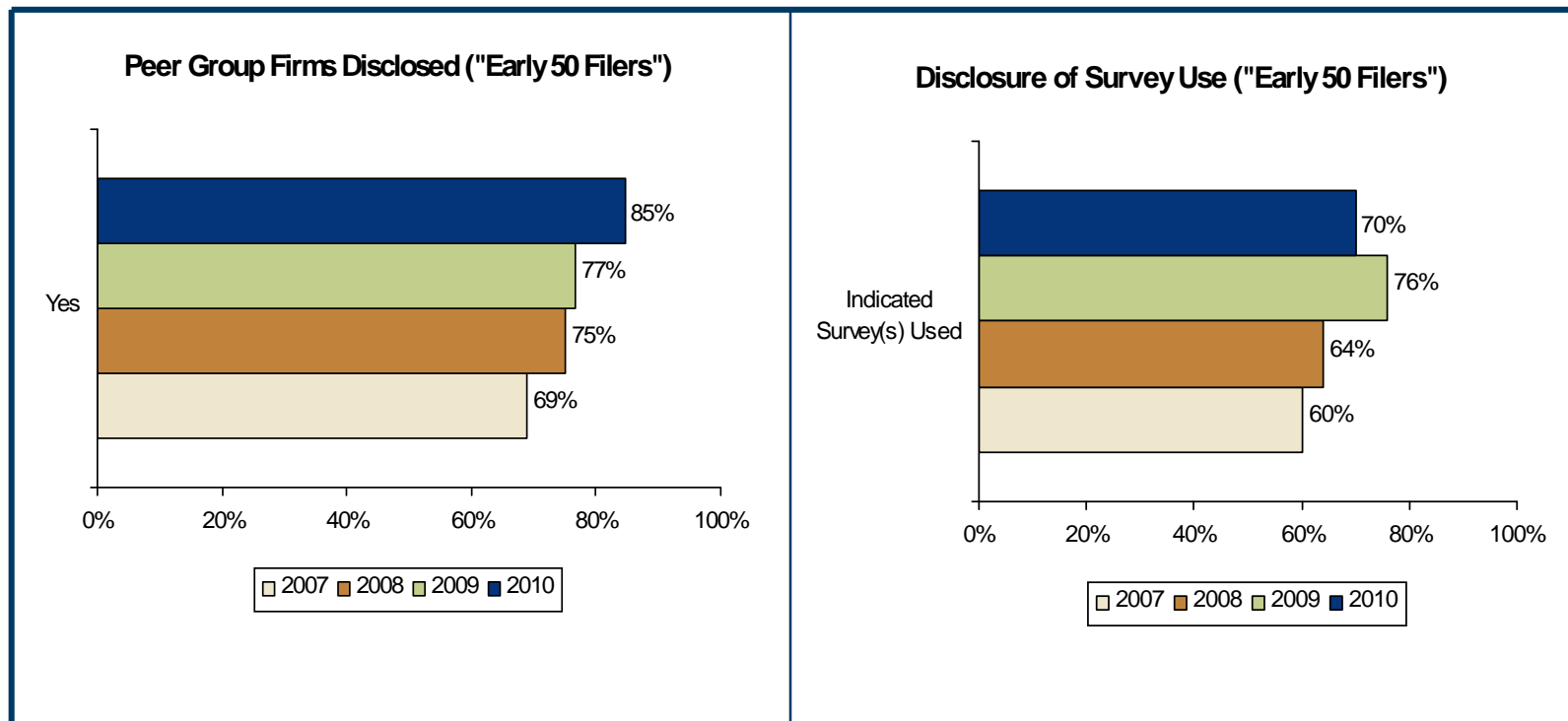
## Supplemental SCT





## Has benchmarking disclosure grown?

- More companies continue to provide details about peer group use and survey sources.

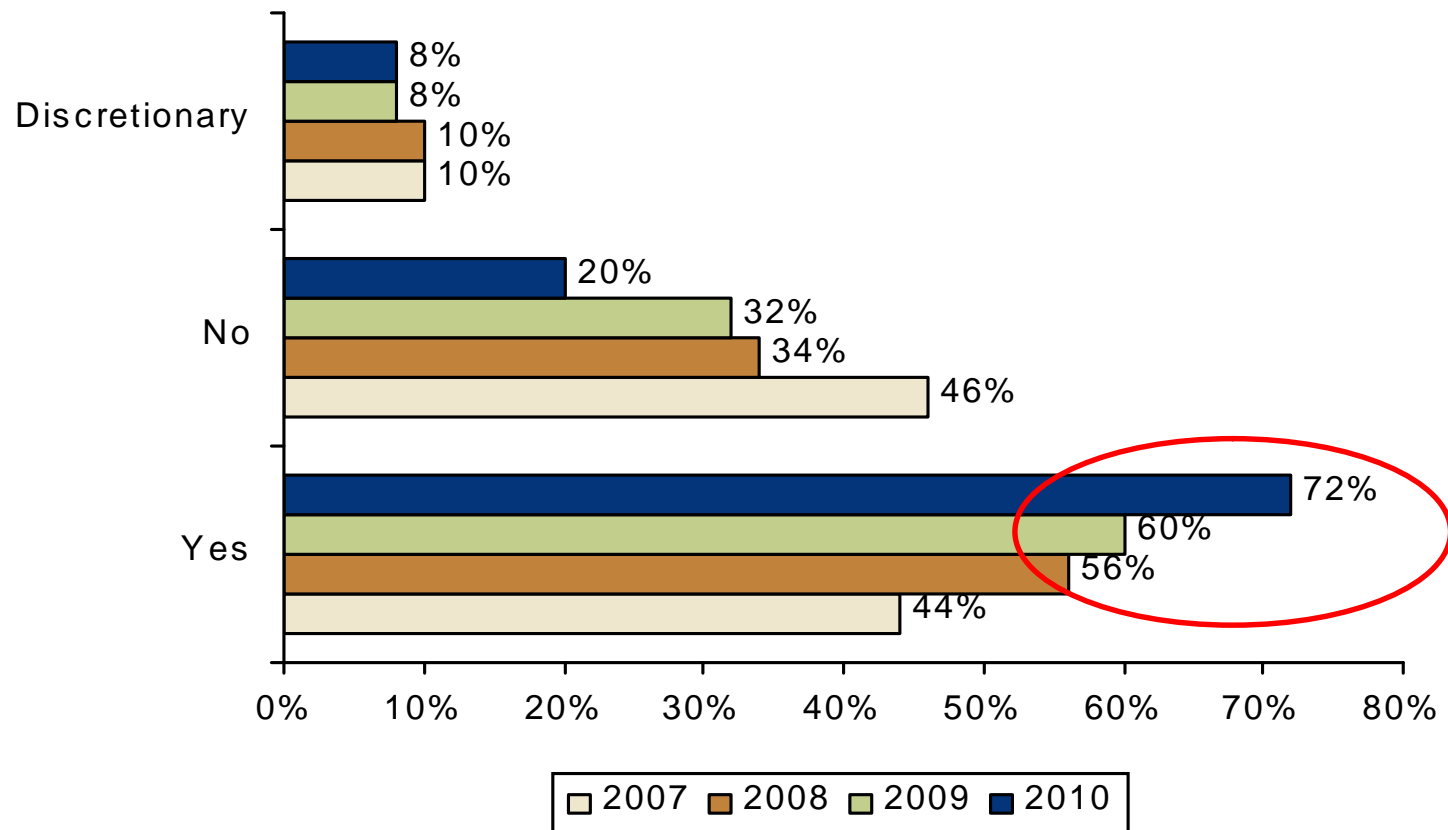


# Were Specific Corporate Performance Goals and Targets Disclosed?



- There was significantly more disclosure of specific corporate goals and targets in 2010.

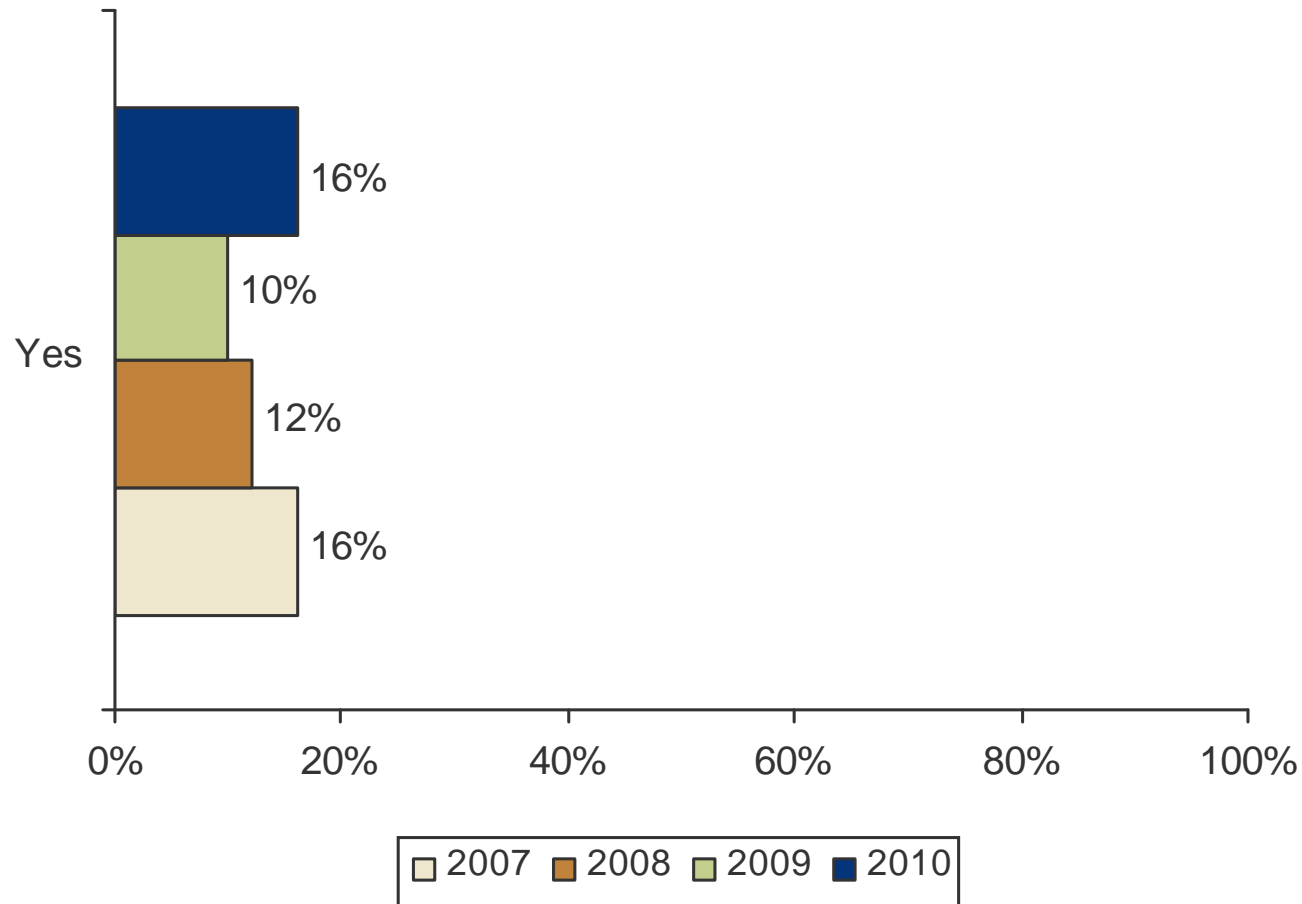
Disclosed Specific Corporate Goals ("Early 50 Filers")



# Were targets disclosed for upcoming year?



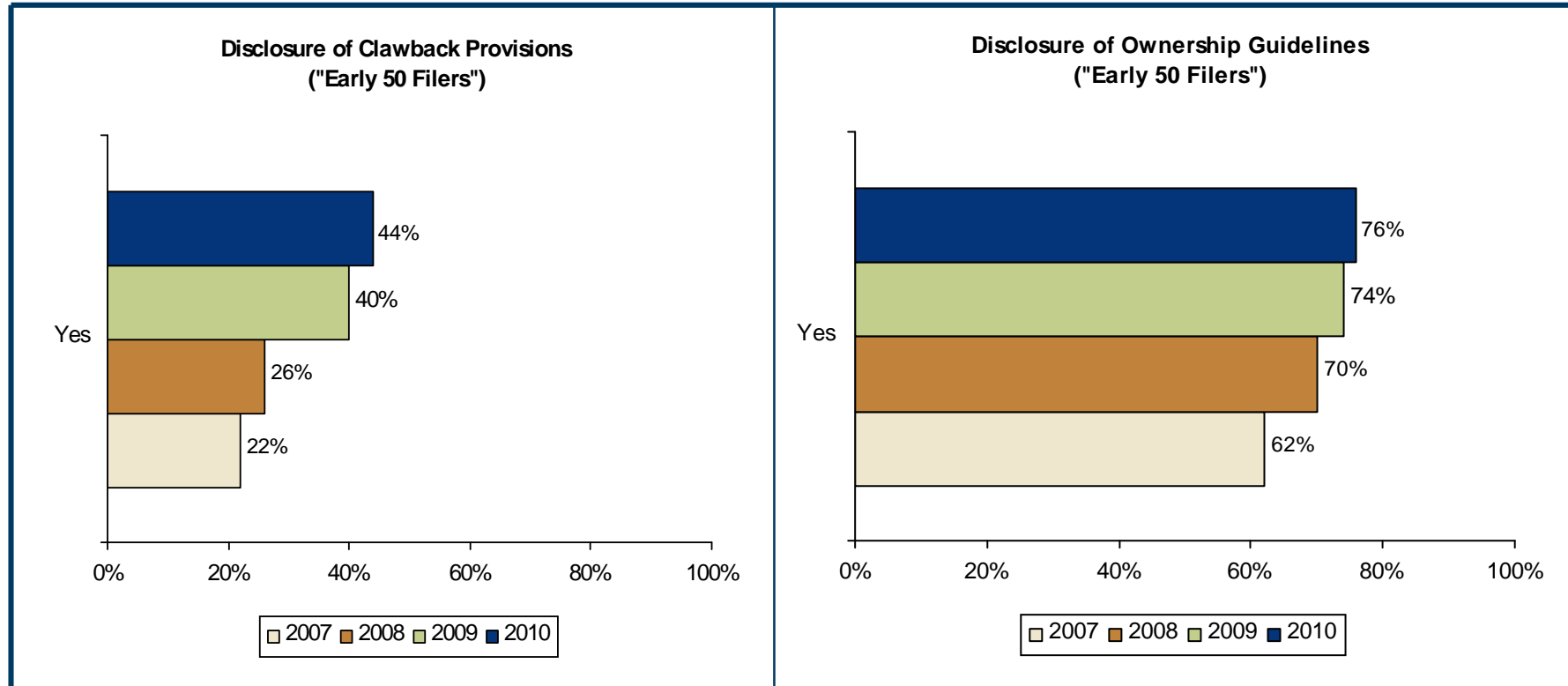
Were Targets Disclosed for Upcoming Year?  
("Early 50 Filers")



# What is the Impact on the Disclosure of “Favorable” Corporate Governance Practices?



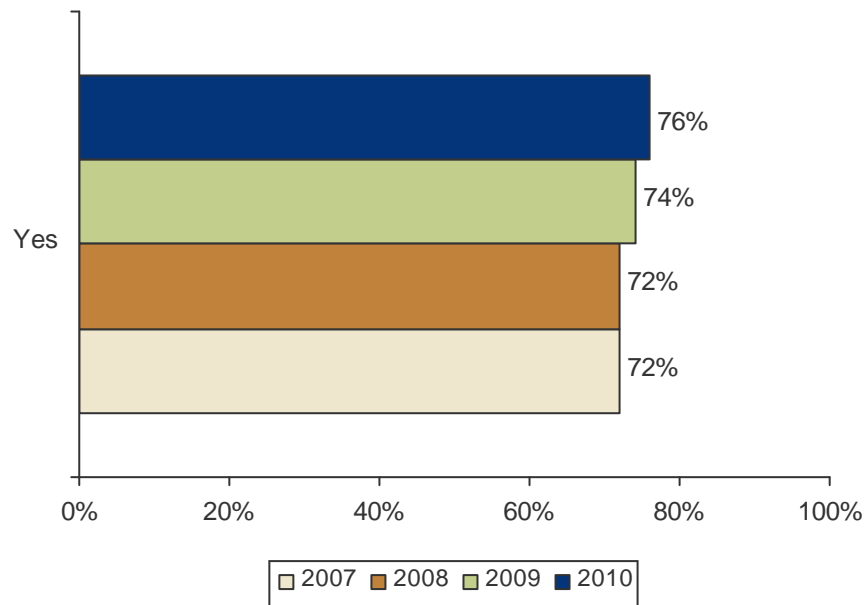
- There was a slight increase in disclosure of clawback provisions and ownership guidelines.





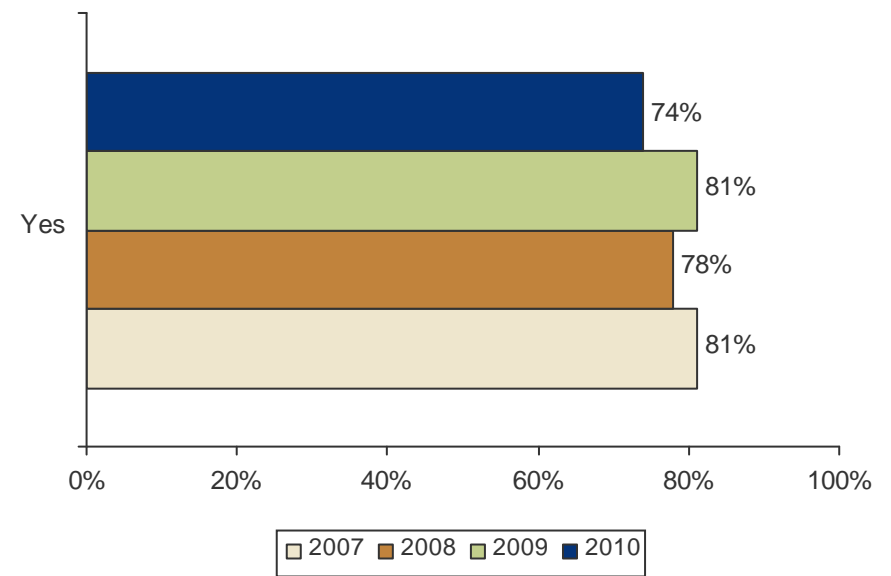
## CEO Contracts

Disclosure of CEO CIC Contract/Agreement



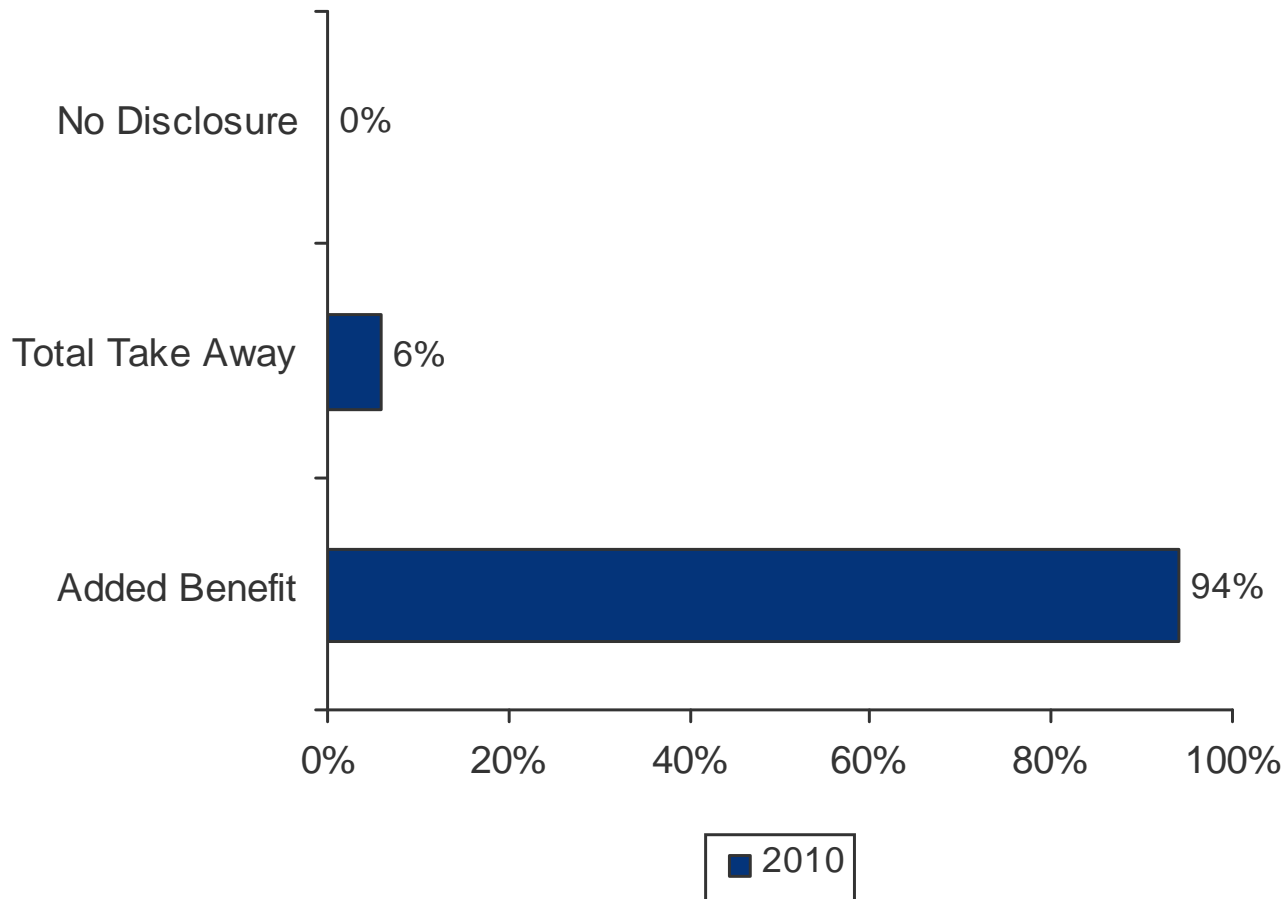
## Section 280G

Prevalence of 280G Gross-Up Provision in CEO CIC Contract/Agreement





## Quantifying Termination





# THE NEW RULES FOR 2010

## New Board Oversight of Risk Disclosure – The Rule



- The new requirement is that the proxy outline:
  - Board’s role in risk oversight.
  - How the Board administers this oversight function.
  - The effect this has on Board’s leadership structure.
- Further requirement to discuss how a company’s compensation plans and policies affect the company’s risk if there is a reasonable likelihood that compensation could have a material adverse effect on the company.
- The SEC hopes that the disclosure will reveal more about the relationship of the Board and senior management in managing the material risks to the company.

## New Board Oversight of Risk Disclosure – The Disclosure



- All but 1 company in our study addressed risk oversight directly in the proxy.
- Section titles fall into two categories.
  - Risk Management or
  - Board’s Role in Risk Oversight.
- The structure of the oversight is similar across companies.
- Most companies do not directly address the effect this has on the Board’s leadership structure.

## New Compensation Risk Disclosure – More on the Rule



- Company is required to address 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.
- Disclosure related to compensation risk management is not required as part of the CD&A, but is still required as part of Section 402 of Regulation S-K.
- The SEC has given limited guidance as to what types of items should be disclosed under this section.
- The rule does not require a company to make an affirmative statement that it has determined that the risks arising from its compensation policies and practices are not reasonably likely to have a material adverse effect on the company.

# New Board Oversight of Risk Disclosure – Observations and Predictions



- There was a range of disclosure strategies in the first 50 filers.
  - Ignore it altogether.
  - Briefly mention in the general discussion of risk, but do not reveal results.
  - Mention in the general discussion of risk and the CD&A.
  - Include description in the risk discussion and outline process and findings in the CD&A.
  - Include in the risk discussion and the CD&A more fully.

# New Board Oversight of Risk Disclosure – Observations and Predictions



- Two general methods for concluding that no material risk was found.
  - Process.
    - How total compensation is determined.
    - How metrics are determined.
    - General risk management process at the company.
  - Mitigating factors.
    - Rather than discuss how the process avoids risk, discuss what factors decrease the risk associated with the compensation elements granted.
    - Top mitigating factors cited:
      - Mix of pay (guarantee v. incentive, cash v. equity).
      - Balance of pay (short-term focus v. long-term focus).
      - Caps on incentive payments.
      - Negative Committee discretion.
      - Ownership guidelines.
      - Clawbacks.
    - Some interesting factors:
      - Diversity of businesses.
      - Geographic diversity.

# New Board Oversight of Risk Disclosure – Observations and Predictions



- Interesting matrix from Newmont Mining.
  - Several areas were analyzed within the matrix.
    - Pay mix
    - Performance metrics
    - Governance
  - The time horizon for each mitigating factor was also cited in a separate table.

Category	General Potential Risk Factors	Company Compensation Design to Mitigate Risk
Pay Mix	Very low salary and overemphasis on incentive pay, or extremely low equity compensation that fails to align executive interests with company interests	The Company set salary to approximate the 62.5 percentile of the large survey data, and at least the 50 <sup>th</sup> percentile of the smaller compensation peer group to avoid overemphasis on incentive pay. At the same time, the Company understands the necessity to align executive interests with company and shareholder interests, which the Financial Performance Stock Bonus, stock options and 2010 PSUs are designed to accomplish.
	Reliance on one equity vehicle, rather than portfolio of vehicles	In 2009 the Company used two equity vehicles, Financial Performance Stock Bonus and stock options. In 2010, the Company will add PSUs and grant three vehicles.

# New Board Oversight of Risk Disclosure – Observations and Predictions



- Predictions for risk disclosure.
  - Very few companies will fail to discuss the compensation risk review.
  - Compensation-related risk discussions will gravitate to the more robust.
    - Since Committees are doing the work, they might as well get credit for it.
    - Robust discussion will show that the Committee is taking the issue seriously.
  - The CD&A will become the repository of the discussion.
    - General discussion of the risk management process is not suited to specific compensation discussions...but it will be mentioned there.
    - Having the compensation discussion in the CD&A makes it easier for the reader, which is one of the goals for the proxy.



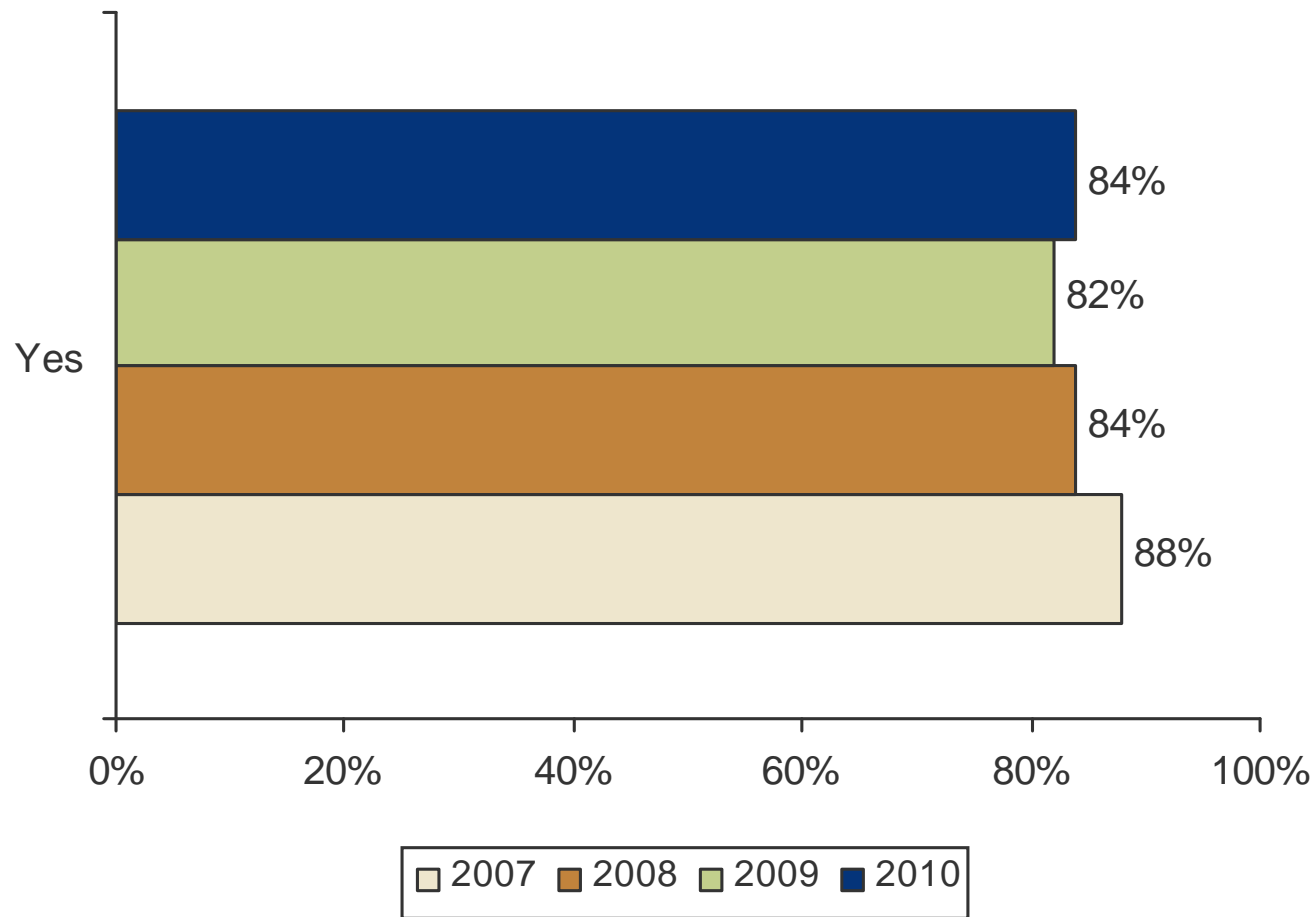
## New Consultant Independence – The Rules

- Enhanced disclosure where the compensation consultant performs both executive compensation consulting work and “other” services in excess of \$120,000.
  - Broad-based plan consulting and certain surveys not considered executive compensation consulting work.
- If Committee engages consultant that also provides “other services” in excess of \$120K, additional disclosure must include:
  - Aggregate fees for executive compensation consulting and aggregate fees for other services;
  - Whether management participated in decision to hire consultant for other services; and
  - Whether Committee approved other services.
- If both the Committee and management retain separate consultants, no additional disclosure required

# New Consultant Independence Observations



### Was a Consultant Used?



## New Consultant Independence Observations



- Of those companies that did retain a compensation consultant:
  - 40% retained independent boutique firms.
  - 60% retained multidisciplinary firms.
- Of those reporting use of multi-disciplinary firms:
  - 17% indicated they would be switching to independent firms.
  - 14% were subject to mandatory fee disclosure.
- Many companies are adopting policies regarding independence of consultants.

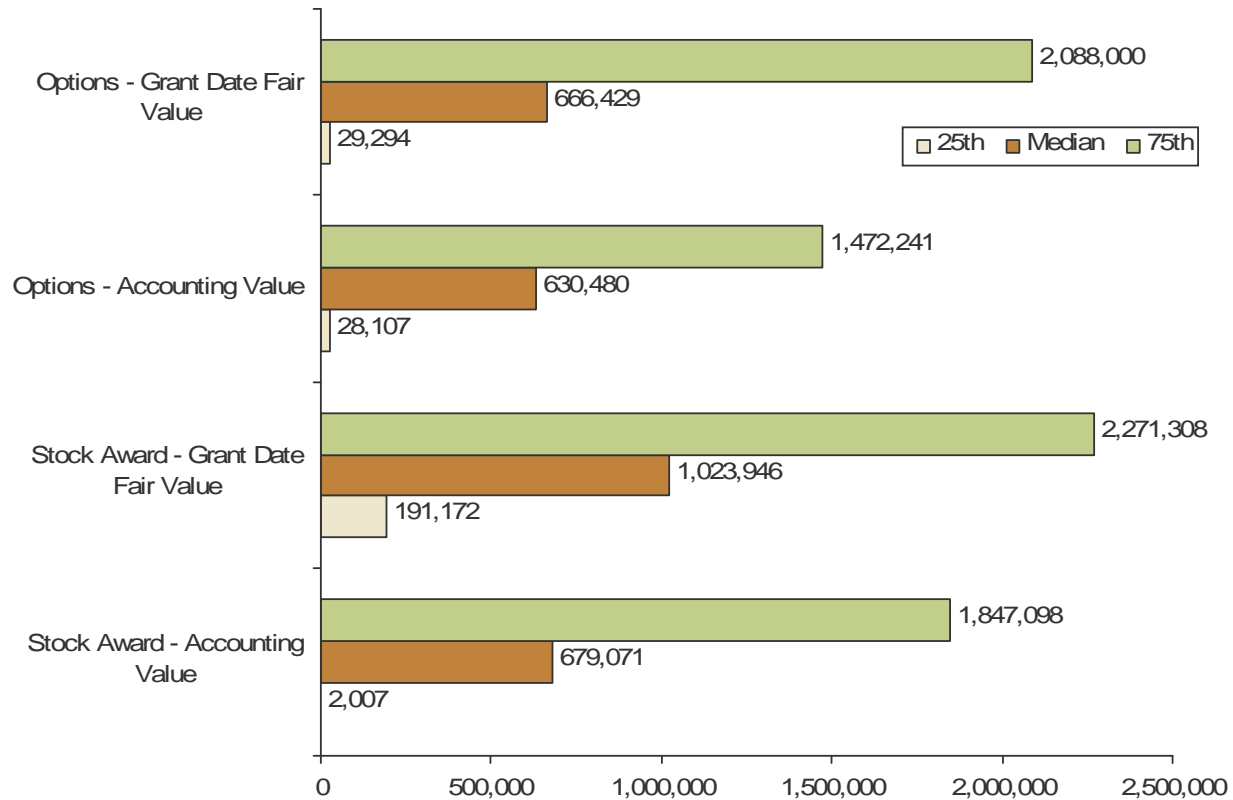
## Change in Reporting Values – The Rules

- Equity awards in SCT and DCT to be reported at grant date fair value, rather than financial statement expense values.
- Equity awards to be reported in year granted, not with respect to performance period earned.
- Prior year equity reporting (i.e., 2007 and 2008) must be restated
  - But does not require reporting different NEOs if the change in equity valuation would have resulted in different NEOs in those past years.

# Change in Reporting Values Observations



Change in Reporting Values  
2008 FAS 123R vs. 2008 Grant Date Fair Value (restated)



## Board Experience & Diversity – The Rules



### Director and Director Nominee Disclosure:

- Specific experience, qualifications, attributes or skills that qualify the person for service on the Board or a specific committee, including the person's risk assessment skills or other expertise.
- If material, disclosure should cover more than the past 5 years.
- Any legal proceedings in which the director or nominee was involved during the prior 10 years (not just 5 years).
- Company's policy for consideration of diversity on the Board (not in Proposed Rule).

## Board Experience & Diversity- Observations



- Length of director experience section was much longer and focused on specific skill set of each director.
- Not one company in the Early 50 Filers maintained a formal diversity policy that encompassed race, sex, religion, national origin.
  - Citi (not in the Early 50) was one of the few that contained such disclosure:
  - "Among the factors that the nomination and governance committee considers when evaluating the composition of the board, diversity is critical. For a company like Citi, which operates in over 100 countries around the globe, diversity includes race, ethnicity and gender as well as the diversity of the communities and geographies in which Citi operates. Included in the qualifications for directors listed in the company's Corporate Governance Guidelines is "whether the candidate has special skills, expertise and background that would complement the attributes of the existing directors, taking into consideration the diverse communities and geographies in which the company operates." Citi's board is committed to ensuring that it comprises individuals whose backgrounds reflect the diversity represented by our employees, customers and stakeholders. The candidates nominated for election at Citi's 2010 annual meeting exemplify that diversity: two nominees are women (13 percent) and five nominees (33 percent) - including the chairman and the chief executive officer - are Asian, African-American or Hispanic. In addition, each director candidate contributes to the board's overall diversity by providing a variety of perspectives, personal and professional experiences and backgrounds, as well as other characteristics, such as global and international business experience. The board is satisfied that the current nominees reflect an appropriate diversity of gender, age, race, geographical background and experience but is committed to continuing to consider diversity issues in evaluating the composition of the board."
- Most companies focused on diversity in terms of background of directors.

## Closing Remarks



- The recovering economy is having an impact on disclosures.
  - 38% of companies had a base salary freeze.
  - 44% of companies restructured their annual incentive programs.
  - 52% of companies restructured their long-term incentive programs.
- Governance concerns are causing practices to evolve.
  - Continued steady reduction in perks and benefits.
  - Fewer gross-ups.
  - Clawbacks and stock ownership guidelines.
  - Risk processes will continue to be enhanced.
- What to expect in 2011
  - Say on Pay.
  - Focus on Board leadership structures.
  - Continued focus on risk abating factors.
  - Impact of 2011 tax increases?



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