

***Are there any special disclosure considerations for a company considering an IPO?***

There are no special considerations. IPO companies are subject to the same rules as other filers. Compensation disclosure is within the form S-1 registration statement rather than a proxy statement. IPO companies must disclose the same information as other companies.

***The Summary Compensation Table ("SCT") reports equity compensation on an accounting basis. This means the compensation expense disclosed for equity grants is equal to the expense recognized for accounting purposes. Have any companies voluntarily disclosed "actual" compensation in addition to the expense recognized for accounting purposes?***

While the SCT reports equity compensation on an accounting basis, the grant date value is reported in the *Grants of Plan-Based Awards Table*. The problem is one of semantics. What is meant by "actual" or "total" compensation? Many companies use tally sheets to keep track of executive compensation. These schedules are often dynamic allowing for various assumptions that might include equity grant date value, target or maximum performance or other variables. The SCT itself is an example of a tally sheet.

A few companies have disclosed supplemental "total compensation" information. For example, Wal-Mart discloses "Maximum Total Direct Compensation," which is based on executives achieving maximum performance levels and is used to benchmark against their peer group. However, while many companies have disclosed their use of tally sheets, few have disclosed supplemental detail regarding the tally sheet numbers for total compensation.

***If the strike price of a stock option is set at a price other than the closing price on the day of grant, what disclosure is required?***

There are two situations that require additional disclosure. If the grant date is not the same as the date the Board took action, a separate column to the *Grants of Plan-Based Awards Table* must be added identifying the date the Board took action. In addition, if the strike price is different from the closing market price on the date of grant, the methodology for determining the strike price must be discussed in the narrative or by footnote.

***Have companies generally stopped using discretionary/subjective factors in determining executive compensation?***

No. During the Webcast we discussed the unintended consequence that the disclosure rules may be pushing companies toward either formula-based plans or discretionary plans. Many companies are continuing to use plans that are part formula-based and part discretionary. While in our experience many companies have considered plans that are totally discretionary, we have not seen any adopt such a design.

***What are the requirements for disclosing performance measure targets for future years?***

At a panel discussion in January 2008, the SEC clearly stated that if the 2008 goals had been set by the time the proxy was filed, they should be disclosed to the extent that they are material to an understanding of the overall compensation program and not necessarily limit disclosure to a discussion of 2007 compensation.

***What do you mean by the terms positive discretion and negative discretion? What are the consequences of using discretion?***

Negative discretion means that an award is reduced on a discretionary basis. Most plans allow the Compensation Committee or the Board to reduce an incentive award on a discretionary basis, but there is usually a reluctance to do so absent a clear and principles-based rationale.

In some cases, Boards may exercise positive discretion by increasing an award above the level the plan would have otherwise allowed. That can render the entire award non-deductible for tax purposes, since IRS Code Section 162(m) generally limits non-performance based compensation to \$1 million and permits only negative discretion.

***Please comment on how the setting of lower targets for variable compensation (to reflect the reality of the 2008 economy) may impact a company's Compensation Discussion and Analysis (CD&A) filed in 2009.***

This question brings to mind two possible scenarios: 1) 2008 performance targets are set below 2007 levels; or 2) executives do not achieve 2008 target performance levels, but the Board wants to pay them anyway. In the case of lower performance targets, the Company would be required to disclose how the performance targets were set. It also would be appropriate to discuss why the 2008 performance targets were set below 2007 targets. If actual 2008 performance is less than target (or even threshold), Boards may be disposed to provide bonuses that are greater than the plan provides for. This positive discretion may make the incentive non-deductible (as discussed above) and would require an explanation in the CD&A. Whether such bonus should be paid is a different issue. The SEC's disclosure rules make no judgments on this issue, requiring only that Boards explain their decisions.

***Do you see any trend in the use of performance metrics relative to competition rather than relative to the budget?***

Relative performance metrics have been something of a holy grail. We are seeing more plans using relative performance and even more discussion of potentially adding such a plan, but in practice putting together appropriate relative performance metrics and peer or competitor groups is challenging. Such designs should provide a good measure of relative performance, but legacy issues such as a more or less leveraged balance sheet than the competitor group, relative size, market share, labor issues, and/or exposure to international markets can cause comparison difficulties.

***A complication of public company compensation is the need to be competitive with private equity opportunities. How do SEC rules or company disclosure practices deal with this factor?***

It has been argued that companies must keep up with private equity to be competitive, but we believe this is a company-specific issue. Some organizations may need to provide additional compensation or increase the retentive characteristics of their plans and would need to disclose why the Board believes these actions are appropriate. Companies may also decide they will not compete with private equity.

***If a public company does not give guidance to the street, does that eliminate the need to publicly disclose targets?***

No. Whether guidance is provided to the street has no impact on target disclosure. In the Webcast, we pointed out that if a company does provide guidance on a particular performance measure, it would be very difficult to argue against disclosure of the same performance measure target on the basis of competitive harm. However, not providing guidance has no impact on whether to disclose.

***You made the point that many companies and Boards are uncomfortable with the requirement to disclose performance measures. Will this mean the end of most non-financial performance measures - e.g. diversity goals?***

No, but it may have a chilling effect. Many companies prefer that goals based on diversity or other non-financial metrics not be made public and this has influenced how many companies structure performance measures in some cases by making these goals part of a plan's discretionary component.

***Where do we disclose a pension contribution (our company prepays 100% of the liability) and payment for excess vacation days?***

Pension contributions are reported in one of two places. If it is for a defined benefit plan, the payment is reported in the "Change in Pension Value and Nonqualified Deferred Compensation Earnings" column of the *Summary Compensation Table* to the extent it caused an increase in the present value of the executive's accumulated benefit from the previous measurement date. Payments for a defined contribution plan are reported in the "All Other Compensation" column of the *Summary Compensation Table* and the *Nonqualified Deferred Compensation Table*. The contribution would also be described in a footnote.

Payment of excess vacation days is reported in "All Other Compensation" column of the *Summary Compensation Table* and also should be described in a footnote.

***What is the typical time frame (e.g. 3 years) used for "long-term" compensation calculations?***

The most common long-term performance period is three years. However, we have seen a number of plans structured with one- or two-year performance periods that vest over an additional one or two year, for a total time frame of three years. These shorter performance periods are usually the result of difficulty in predicting performance over a multi-year period.

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