

In the course of informal conversations with SEC Staff and members of the American Bar Association regarding the agency's proposed rules for disclosure of executive and director compensation, we have gathered information that we believe will be important to our clients in preparing for the next proxy season.

The SEC currently is considering the huge volume of commentary submitted since the proposed rules were released in January. Along with those from individual investors, there were many lengthy and substantive letters submitted by consultancies, law firms and other organizations, including a 74-page memo from the Committee on Federal Regulation of Securities of the American Bar Association and Pearl Meyer & Partners' own comment letter.<sup>1</sup>

The following information, while not official, is our understanding of the current status of the rules:

- Timing: The Staff expects to present the next – and probably final – version of the rules to the Commission by the end of June, with publication in late July or August. We still expect the final rules to be effective for fiscal year companies in the 2007 proxy season.
- Possible Elimination of Three Extra Non-Executive Officers: The proposal to report by total compensation the additional three highest-paid individuals is likely to be eliminated.
- Very Few Cutbacks to Proposed Rules: Most of the current proposals (other than the three extra non-executive officers) appear to be "locked in stone."
- CD&A Will be Signed by the Company and Filed: The Compensation Discussion and Analysis will still come from the company, rather than the compensation committee, and be a filed, rather than furnished, document. There would therefore be liability for this portion of the proxy statement under the Securities Exchange Act of 1934.
- Pension Disclosure: Some refinements are likely to proposed rules with respect to preparation of this disclosure, which is among the most controversial of the new provisions.
- Deferred Compensation: Disclosure of earnings on deferred compensation for purposes of the summary compensation table may be restored to include only preferential or above-market earnings, rather than all earnings.
- Computation of "Total Compensation": Strong arguments are being made to exclude earnings on deferred compensation and pension accruals from the total used to determine the company's named executive officers.
- Perquisites: The proposed rules will probably be finalized as is, although the ABA and some other groups are continuing to advocate for a more precise definition of a "perquisite."

We will continue to provide insights into the status of these regulations and invite you to contact us to discuss.

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<sup>1</sup> See [www.sec.gov/rules/proposed/s70306/jrich7010.pdf](http://www.sec.gov/rules/proposed/s70306/jrich7010.pdf)

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