



3rd Annual CEP Symposium 

## Certified Equity Professional Institute

### Tips for 2007: Preparing for the Proxy under the New SEC Rules

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## Agenda

- Background
- Elements of Proxy Statement
  - CD&A - where do we begin?
  - Total Compensation - who is covered?
  - New Tables - what is covered?
  - Other Requirements - have you backdated your options lately?
  - Related Party - what has really changed?
  - Director Independence and Committees - just a new location?
  - Section 16(a) - nothing has changed!
- Questions and Answers

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## Background

- **All Compensation Covered** - executive compensation is Chapter II of Sarbanes-Oxley Act
- **Proxy Statement** - know your source of rules: Schedule 14A and Regulation S-K
- **New Disclosure Rules** - effective for years on or after December 15, 2006
- **Changing Landscape** - new CD&A, principles-based approach and "plain" English
- **D&O Questionnaires** - revise now!
- **Information Not "Soliciting Material" and Not "Filed" or "Incorporated by Reference"**

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**The New CD&A**

- Covers Principles, Philosophy, Policies and Practices
- All Material Elements re Compensation of NEOs
  - Objectives of compensation programs
  - What they are intended to reward
  - Identification of all compensation elements, why selected, how the amount is determined and how each element fits in with overall objectives
  - Stock option grants policies and methods
  - Confidentiality of performance metrics
- Covers Past Fiscal Year and Ongoing Policies
- Relationship to Compensation Committee Report
  - Filed vs. furnished
  - New form of Compensation Committee Report

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**Total Compensation – Who is Covered?**

- Named Executive Officers – who are they now?
  - CEO - at any time during last fiscal year
  - CFO - at any time during last fiscal year
  - Top *three* others whose *total* compensation\* was over \$100,000 and who were serving as executive officers at the year end
  - Up to two additional officers who would have been included, but for the fact that they were no longer serving as executive officers at the year end
- "Total Compensation" to determine NEOs
  - Salary, bonus, equity-based and non-equity-based awards and perquisites,\* but not change in pension values and earnings on nonqualified deferred compensation\* = column "j" minus column "h" in the new Summary Compensation Table
- Interplay with IRC Section 162(m)

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**Summary Compensation Table – Appendix A**

- New "Total" compensation column
- Quantification of dollar value for all equity based awards – FAS 123R
- Increases in values of pension plans and nonqualified deferred compensation
- Three years will be covered, but there is a three-year phase-in
- Perquisites thresholds revised downward to \$10,000
- Footnotes, footnotes, footnotes – explain, qualify and clarify

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**Supplemental Tables – Old and New**

**● Equity-Related Tables:**

- **Grants of Plan-Based Awards Table - Appendix B**
  - Covers grants during past fiscal year
  - Includes grant date under FAS 123R
  - Includes closing market price on grant date if higher than exercise price
  - Method of price determination if not equal to closing market price
  - Date of Board/Committee action if different from grant date
- **Outstanding Equity Awards at Fiscal-Year-End Table - Appendix C**
  - Covers all option and stock grants outstanding at year end
- **Option Exercises and Stock Vested Table - Appendix D**
  - Covers amounts realized on equity awards during last fiscal year

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**Supplemental Tables – Old and New**

**● Retirement Plans Tables:**

- **Pension Benefits Table - Appendix E**
  - Covers actuarial present value of each NEO accumulated benefit under each pension plan
- **Nonqualified Deferred Compensation Table - Appendix F**
  - Covers the year-end balance and executive and company contributions, earnings and withdrawals for the year

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**Other Requirements**

- **Termination and Change of Control – NOT a Table**
  - All amounts to be received, including perquisites
  - Must be quantified in dollars using assumption of triggering event on the last business day of last fiscal year
  - If uncertain, must make reasonable estimate and disclose assumptions
- **Stock Options Grants Practices – NOT a Table**
  - Plans, programs or practices of timing grant to public disclosures
  - Roles of executive officers in such programs or practices

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### Related Party Transactions

- New discussion of policies and procedures for approval
- Categories of related parties expanded
  - Business transactions
  - Family ties
  - D&O Questionnaire changes
- Disclosure thresholds
  - Increased upward to \$120,000

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### Director Independence and Committees

- Director Compensation Table – Appendix G
  - Similar to summary compensation table for NEOs
  - Covers preceding fiscal year
- New Item 407 of S-K
  - Director independence
  - Committee members independence
  - Comp Committee processes and procedures re compensation determinations
  - Disclosure re other transactions considered in determining independence
  - D&O Questionnaire changes

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### Miscellaneous – What’s New? And Old?

- Other Items
  - Beneficial Ownership Table – disclosure of pledged shares
  - Amendments to Form 8-K – new officers; old officers; directors; new triggers
  - Performance Graph – stays, but moved
- Disclosure Controls and Procedures
  - Checklist and procedures updates for gathering new information

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### Compliance with Section 16(a)

- Review
  - All Forms 3, 4 and 5 filed during last fiscal year
- Report
  - Names of each Director, Officer or 10% Holder who failed to timely file Section 16(a) reports
  - Number of late reports and number of transactions not reported timely
  - Known failures to file
- Retain Written Representation re Form 5s for Two Years

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### Questions and Answers

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