



It's Never Too Early to Plan Ahead: SEC Staff Guidance on Executive Compensation Disclosures for the 2008 Proxy Season

May 2007

In a recent speech, John White, the Director of the SEC's Division of Corporation Finance, provided an early assessment of the first wave of proxy disclosure under the new rules. While cautioning that the SEC staff has only just begun its formal review of these disclosures and will publish its report this fall, White's views provide an early indicator of what might be in store – both in that report and in individual comments from the staff.

- The CD&A should explain *how* the company arrived at the levels and forms of compensation for the top executives, not just what they are.
- The goal of the proxy rules is a “layered” approach to disclosure. CD&A is the top layer, whose purpose is to put the more detailed tabular information in context.
- In its review of proxy statements, the staff will take a hard look when companies fail to disclose their performance targets on grounds of confidentiality, and may ask the companies to justify this characterization.
- Disclosure of how hard the performance targets are, which is required when the targets themselves are not disclosed, has not been adequate. Statements that the targets are “challenging but achievable” are not sufficiently informative. This may be an area where new rulemaking is necessary.
- The rules regarding treatment of negative numbers in the tables (such as those resulting from forfeitures of equity awards or changes in the present value of pension benefits) may need to be revisited.
- Disclosure about the CEO's role in the compensation process may need to be enhanced. The staff is looking for information such as the extent to which the CEO attended compensation committee meetings, met with the compensation consultant used by the committee, had access to another compensation consultant who influenced the compensation package, or provided input into the compensation process.

It's not too early to begin thinking about how to improve the proxy disclosure for next year. John White's comments should be factored into that process.

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May 2007



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