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SEC Clarifies Transition Rules and Effective Dates for Expanded Disclosure Requirements

On December 22, 2009, the Securities and Exchange Commission (SEC) issued interpretive guidance clarifying the transition rules that will govern the effectiveness of the expanded executive compensation, corporate governance and shareholder vote disclosure requirements described in our prior bulletin of December 22, 2009. As we previously noted, the SEC's adopting release indicated that the new rules would be effective February 28, 2010, except for the rule change concerning how equity awards are valued in the Summary Compensation Table and Director Compensation Table, which applies to companies with fiscal years ending after December 20, 2009. The SEC's transition guidance clarifies the application of these dates in the following respects:

Transition Guidance Applicable to Form 10-K Annual Reports and Proxy Statements

The SEC's guidance indicates that these effective dates will apply to an issuer's Form 10-K annual report for fiscal 2009, and its related proxy statement containing Form 10-K Part III information, as follows:

If the issuer's fiscal year ends before December 20, 2009, its fiscal 2009 Form 10-K and related proxy statement are not required to be in compliance with the new proxy executive compensation and corporate governance disclosure requirements, even if either or both documents are filed on or after February 28, 2010.

If the issuer's fiscal year ends on or after December 20, 2009, the following transition rules apply:

The issuer's fiscal 2009 Form 10-K and the related proxy statement must be in compliance with the new executive compensation and corporate governance disclosure requirements if filed on or after February 28, 2010.

If the issuer files its fiscal 2009 Form 10-K before February 28, 2010 and files its related proxy statement on or after February 28, 2010, the proxy statement must be in compliance with the new executive compensation and corporate governance disclosure requirements.

If the issuer is required to file a preliminary proxy statement and expects to file its definitive proxy statement on or after February 28, 2010, the preliminary proxy statement must be in compliance with the new executive compensation and corporate governance disclosure requirements, even if filed before February 28, 2010.

Transition Guidance Applicable to Voluntary Early Compliance

Issuers that are not required to comply with these new disclosure requirements in their fiscal 2009 Form 10-K annual reports and proxy statements, based on the guidance set forth above, may do so on a voluntary basis. Care must be exercised in electing this option, however, because the guidance allows an issuer to voluntarily elect early compliance with some, but not all, of the new executive compensation and corporate governance disclosure requirements **unless** the issuer elects early compliance with the amendments to the Summary Compensation Table and Director Compensation Table concerning equity award valuations. If an issuer elects early compliance with the revised equity award valuations, then the issuer **must** comply with **all** of the new requirements applicable to the form being filed.

Transition Guidance Applicable to Registration Statements

The SEC provided the following guidance concerning application of the February 28, 2010 effective date for the new executive compensation and corporate governance disclosure requirements to registration statements:

A reporting issuer with a 2009 fiscal year ending before December 20, 2009 will not be required to comply with the new disclosure requirements until it files its Form 10-K annual report for fiscal year 2010. Accordingly, the new disclosure requirements will not apply to any Securities Act or Exchange Act registration statements for such registrant that are filed before the registrant's 2010 Form 10-K is required to be filed.

In the case of new registrants, such as an issuer filing an IPO under the Securities Act or its first Form 10 registration under the Exchange Act, any such registration statement filed on or after December

20, 2009 must comply with the new disclosure requirements in order to be declared effective on or after February 28, 2010.

Transition Guidance Applicable to Accelerated Reporting of Shareholder Voting Results

Any votes taken at shareholder meetings that occur on or after February 28, 2010 must be reported within four (4) business days following the meeting as required by new Item 5.07 of SEC Form 8-K regardless of whether the proxy statement for the meeting was mailed to shareholders before or after February 28, 2010. The new reporting requirement does not apply to shareholder votes taken at meetings that occur before February 28, 2010. Rather, these results must be reported in the issuer's next Form 10-K or 10-Q as previously required.

Contact Info

If you have any questions about this or any other corporate governance matters, please contact your Husch Blackwell Sanders attorney.

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