

January 9, 2007

To Our Banking Clients & Friends

SEC FURTHER REVISES COMPENSATION DISCLOSURE RULES FOR 2007 PROXY SEASON: NEW CHANGES TO EQUITY AWARD REPORTING

The Securities and Exchange Commission (SEC) recently made additional changes to the newly adopted executive and director compensation disclosure requirements.¹ These new modifications, which were adopted as interim final rules and will be effective immediately upon publication in the Federal Register, will apply to 2007 proxy statements.



The stated purpose of the recent amendments is to more closely conform the dollar amount of equity-based compensation reported under the SEC's executive and director compensation disclosure rules to the related expense reflected in the financial statements under FAS 123R. As a result of the most recent amendments:

- The amounts disclosed for stock and option awards in the summary compensation and director compensation tables will no longer be the aggregate fair value of the award on the grant date, but instead will be the amounts recognized for financial statement purposes with respect to the fiscal year in accordance with FAS 123R. However, in preparing the summary compensation and director compensation tables, companies must (i) disregard the estimate of forfeitures related to service-based vesting conditions; and (ii) use the FAS 123R "modified prospective transition method" in calculating the annual expense relating to awards granted prior to a company's adoption of FAS 123R. **Note:** Small business issuers are not required to provide aggregate grant date fair value information.

Effect: The change will permit companies to spread out the reporting of the grant over the same period of time that they spread out the related expense under FAS 123R (generally, the vesting period for service-based awards). The latest rules also provide further guidance on the treatment of performance-based awards.

¹ See our [Executive Compensation Disclosure Memo Series](#) (page 4 for listing) for an overview of the extensive amendments to the disclosure requirements for executive and director compensation adopted by the Securities and Exchange Commission on Aug. 11, 2006.

- The aggregate fair value of an award on the grant date will now be reported, on a grant-by-grant basis, (i) in a new column in the grants of plan-based awards table for named executive officers; and (ii) in a footnote to the director compensation table.

Effect: The change in the calculated value of an award may cause a change in the officers identified as “named executive officers,” which is determined by reference to an officer’s total compensation. Under the newly revised rules, equity awards granted in prior years will affect executives’ total compensation for the current fiscal year.

While these changes will help avoid the potential confusion and overstatement of compensation that would have resulted from reporting the full value of equity awards in the year granted regardless of vesting conditions, companies may need to quickly gather additional data to reflect the new reporting methodology. Companies that have already started the process of preparing compensation disclosure under the August rules will need to revise (i) the summary compensation table, (ii) the director compensation table, and (iii) the grants of plan-based awards table to reflect the information required by the latest amendments. In addition, companies will need to determine whether the list of their named executive officers (after the principal executive officer and principal financial officer) will change as a result of the new equity award reporting methodology.

As you move forward with your preparations for the 2007 proxy season, please feel free to contact your regular Powell Goldstein contact or any of our attorneys listed for assistance.

WALT MOELING
404.572.6629
wmoeling@pogolaw.com

LEN RUBIN
202.624.3925
lrubin@pogolaw.com

KATHRYN KNUDSON
404.572.6952
kknudson@pogolaw.com

KATHERINE KOOPS
404.572.6819
kkoops@pogolaw.com

JOHN REVEAL
202.624.7261
jreveal@pogolaw.com

JIM WHEELER
404.572.4561
jwheeler@pogolaw.com

GERALD BLANCHARD
404.572.9804
gblanchard@pogolaw.com

BETH LANIER
404.572.4571
blanier@pogolaw.com

MARK BARAN
202.624.3927
mbaran@pogolaw.com

LYN SCHROEDER
404.572.6904
lschroeder@pogolaw.com

ROB KLINGLER
404.572.6810
rklingler@pogolaw.com

JONATHAN HIGHTOWER
404.572.6781
jhightower@pogolaw.com

CAROLYN LINDSEY
202.624.7243
clindsey@pogolaw.com

LAUREN GUDRITZ
404.572.6769
lgudritz@pogolaw.com

AMBER NASH
404.572.6829
anash@pogolaw.com

KEN ACHENBACH
404.572.6808
kachenbach@pogolaw.com

One Atlantic Center
Fourteenth Floor
1201 West Peachtree Street, NE
Atlanta GA 30309
Tel: 404.572.6600

Third Floor
901 New York Avenue, NW
Washington DC 20001
Tel: 202.347.0066

JP Morgan Chase Tower
2200 Ross Avenue, Suite 3200
Dallas TX 75201
Tel: 214.721.8000

www.pogolaw.com