

Corporate Alert: Changes to Form 8-K Relating to Executive Compensation Disclosure

September 21, 2006

As part of the new rules recently adopted by the Securities and Exchange Commission that amend disclosure requirements for executive and director compensation, related person transactions, director independence and other corporate governance and disclosure matters, the SEC adopted certain changes to current reports on Form 8-K, reflecting a re-evaluation of the types of compensation and employment disclosures that merit real-time disclosure. Compliance with the changes to current reports on Form 8-K will be required for triggering events that occur on or after November 7, 2006.

The purpose of this alert is to highlight the impact of the new rules on reporting obligations with respect to Form 8-K. For additional information regarding the SEC's new rules regarding executive compensation and other related disclosure, please refer to our memorandum dated August 28, 2006 entitled "*SEC Adopts Final Rules Concerning Executive Compensation and Related Disclosure*" which is available on our website: www.simpsonthacher.com.

SUMMARY OF PRINCIPAL CHANGES TO FORM 8-K

The principal changes to Form 8-K contained in the new rules are the following:

- Disclosure regarding compensatory plans, contracts or arrangements will no longer be subject to Items 1.01 (Entry into a Material Definitive Agreement) or 1.02 (Termination of a Material Definitive Agreement) of Form 8-K, but will be made under newly reformulated Item 5.02 (Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers).
- The new rules limit required disclosure on Form 8-K of the entry into, or material amendment of, a material definitive agreement related to a compensatory plan, contract or arrangement to those in which the CEO, CFO or a named executive officer participates or is a party (thus excluding arrangements for other executive officers or directors unless entered into, or amended, in connection with their appointment or election), and exempt from Form 8-K disclosure grants or awards that are materially consistent with the previously disclosed original terms of a plan, contract or arrangement (again other than grants made in connection with the appointment of certain officers or the election of directors).

- The departure of any named executive officer will now require disclosure on Form 8-K.
- In connection with the appointment of specified principal officers or the election of directors, disclosure will be required regarding grants or awards and entry into, or material amendment of, any material plan, contract or arrangement to which such person participates or is a party that is granted, entered into or materially amended in connection with such appointment or election, with such disclosures no longer limited to employment agreements.
- To address the potential difficulty in determining the executives for whom disclosure is required during the early part of a fiscal year (when the “named executive officers” for the last completed fiscal year may not yet have been determined), for purposes of Form 8-K disclosure the “named executive officers” will be those persons for whom compensation disclosure was required in the last proxy statement, Form 10-K or registration statement filed by the company.
- Under the new rules, when salary or bonus for the most recent fiscal year was not available at the latest practicable date in connection with the filing of the Summary Compensation Table in the company’s proxy statement, Form 10-K or registration statement, a Form 8-K disclosure requirement will be triggered when a payment, grant, award, decision or other occurrence makes the salary or bonus calculable. The required disclosure includes a recalculated total compensation figure.

ADDITIONAL NOTE

The SEC emphasized in the adopting release that many disclosures under Item 5.02 of Form 8-K require a “brief description” of the specified matter and not the fuller narrative disclosures required in connection with executive compensation in a proxy statement, Form 10-K or registration statement.

EXPANSION OF SAFE HARBOR

Consistent with the limited safe harbor adopted by the SEC when it amended Form 8-K disclosure requirements in 2004, the safe harbor from public and private claims under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder for companies that fail to file certain Form 8-K reports in a timely manner has been expanded to apply additionally to new Item 5.02(e), which covers compensatory arrangements with the principal executive or financial officer and any person qualifying as a named executive officer. Compensation disclosure had previously enjoyed this safe harbor when made under Items 1.01 and 1.02 of Form 8-K. It should be noted, however, that this safe harbor does not extend to the required disclosure of compensatory arrangements entered into, or amended, in connection with the appointment of specified principal officers or the election of directors.

The safe harbor applies to a failure to file a report on Form 8-K and not to any material misstatements or omissions in a Form 8-K that has been filed. Additionally, the safe harbor extends only until the due date of the periodic report of the company for the relevant period in which the Form 8-K was not filed. If, for example, an event occurs during a quarter and is not reported in a Form 8-K, it must be disclosed in the Form 10-Q for that period (or, in the case of the fourth quarter, the Form 10-K). The failure of a company to file a Form 8-K contemplated by Item 5.02(e) will not result in loss of Form S-3 registration statement eligibility for a new Form S-3 filed prior to the due date of the relevant periodic report, provided that a Form 8-K containing the missing disclosure is filed on or before the filing of the Form S-3.

This alert is for general information purposes and should not be regarded as legal advice. Please contact your relationship partner if we can be of assistance regarding these important developments. The names and office locations of all of our partners, as well as memoranda regarding recent corporate reporting and governance developments, can be obtained from our website, www.simpsonthacher.com.