

CORPORATE AND SECURITIES LAW

Alert

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

SEC Proposes Significant Changes to Executive and Director Compensation Disclosure Requirements

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Following months of public discussion, this afternoon the Securities and Exchange Commission, in a 5 to 0 vote, proposed the most sweeping set of changes to executive and director compensation disclosure since 1992. The proposed rules would amend the disclosure requirements for executive and director compensation, related party transactions, security ownership of officers and directors and director independence and other corporate governance matters. The proposed rules are expected to impact disclosure in proxy statements, annual reports, current reports on Form 8-K and registration statements and require that most of this disclosure be provided in plain English. The proposed rules, which will be published for comment in the coming days, will be subject to a 60-day comment period and will likely not be effective for the Spring 2006 proxy season.

Executive and Director Compensation

The proposed rules would refine the currently required tabular disclosure in proxy statements and combine it with enhanced narrative "Compensation Discussion and Analysis" in an effort to eliminate boilerplate compensation committee reports and elicit clearer and more complete disclosure of the compensation received by the principal executive officer, principal financial officer, and three other highest paid executive officers and the directors.

The familiar summary compensation table would also be overhauled to require a more detailed picture of the total compensation for a company's principal executive officer, principal financial officer and three other most highly compensated officers with a similar table being required for director compensation. In particular, perquisites would need to be itemized if they total \$10,000 or more and there would also be detailed descriptions of payments that could be made if an executive is terminated.

Under the proposal, executive compensation disclosure would be organized into three broad categories: compensation over the last three years; holdings of outstanding equity-related interests received as compensation that are the source of future gains; and retirement plans and other post-employment payments and benefits.

Related Person Transactions, Director Independence and Other Corporate Governance Matters

The proposal would update, clarify, and slightly expand the disclosure provisions regarding related person transactions. The principal changes would include a disclosure requirement regarding policies and procedures for approving related party transactions, a slight expansion of the categories of related persons, and a change in the disclosure threshold from \$60,000 to \$120,000. The requirement to disclose these transactions would also be made more principles-based, and would necessitate disclosure if the company is a participant in a transaction in which a related person has a direct or indirect material interest.

The proposal would also require disclosure regarding

- disclosure of whether each director and director nominee is independent;
- a description of any relationships not otherwise disclosed that were considered when determining whether each director and director nominee is independent; and
- disclosure of any audit, nominating and compensation committee members who are not independent.

Form 8-K

The proposed rules would also modify the disclosure requirements in Form 8-K surrounding certain employment matters and consolidate all Form 8-K disclosure regarding employment arrangements under a single item.

SEC Release

A copy of the SEC press release announcing the proposed rules may be obtained at <http://www.sec.gov/news/press/2006-10.htm>.