

CORPORATE AND SECURITIES LAW

Alert

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

SEC Issues Comment Letters on 2007 Proxy Statements

September 13, 2007

As you most likely know, last year the Staff of the Securities and Exchange Commission adopted extensive revisions to public company executive compensation disclosure requirements. The 2006 revisions, which took effect for most issuers with the most recent proxy season, were undoubtedly some of the most extensive disclosure changes in the last 20 years. Recently, the Staff has issued a wave of comment letters to a number of companies concerning their 2007 proxies. The comment letters are part one of the Staff's two-phased project designed to provide a targeted review of proxy statements filed under the new rules.

Generally, the comment letters fall into one of the following three categories: (1) requesting companies to provide more information immediately; (2) requesting companies to make changes to their 2007 proxies immediately; or (3) requesting that companies provide more information in their 2008 proxies (future filing comments). From all indications, the vast majority of comment letters are future filing comments and do not require any amendments to prior filings, but instead require companies to prospectively modify their proxies.

As it relates to the content of the Staff's comments, most were directed to the Compensation Discussion and Analysis, or CD&A section. Perhaps not unsurprisingly, this area received a significant amount of focus in the rule making process. While some comments focused on relatively minor points, such as where in the proxy the CD&A should be located, many comment letters were more specific and requested detailed quantitative and qualitative disclosures of a company's decision to make compensation awards. For example, many comment letters requested comprehensive information on the role named executive officers and others play in making compensation decisions.

The Staff, in some instances, is requesting that companies disclose option granting practices in cases where the Staff believes such practices were not thoroughly discussed. Additionally, for companies who reported that their executives' salaries were based on a range or median of

executives at other companies, the Staff is requiring that a thorough disclosure of these peer companies, as well as an amount or range of peer compensation, be included in future proxies.

The Staff also focused consistently on the fact that most issuers did not provide disclosure of specific performance target levels with respect to incentive compensation. In addition to asking issuers to provide a supplemental explanation of the basis for omitting the performance targets for the last completed year, the Staff is, somewhat surprisingly, asking for disclosure of current year target levels as well.

In cases where the Staff is allowing a company to make revisions prospectively, companies are required to confirm in writing that they will modify their proxies and explain how they intend to do so. For comments that request additional information, or require revisions to presently filed documents, the Staff has usually provided a 30-day time limit for responses.

Phase two of the Staff's project is anticipated to be released in time for the 2008 proxy season and will provide a comprehensive review of executive compensation disclosures as well as what the Staff observed in issuer responses from this recent round of comment letters. The second report is expected to provide guidance on issues the Staff anticipates for the 2008 proxy season.

If you have received a comment letter from the Staff, have any questions about this Corporate and Securities Law Alert, or would like any additional information, please contact any Bass, Berry & Sims attorney in the Corporate and Securities Practice Area.

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