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NEW SEC RISK REVIEWS FOR PROXY DISCLOSURE

As you know from the Client Bulletin we sent you on January 8, 2010, the Securities and Exchange Commission ("SEC") issued new disclosure rules that apply to proxy statements filed on or after February 28, 2010. In the past, the proxy rules were only concerned with disclosure of compensation for directors and named executive officers ("NEOs"). Now, public companies that are not "smaller reporting companies"[1] are required to undertake an annual review of their broader compensation plans and overall compensation practices for ***all employees generally (not just NEOs)***, to determine whether risks arising from those policies or practices are reasonably likely to have a material adverse effect on the Company and, in certain instances, provide disclosures about those risks. Smaller reporting companies are not subject to this new requirement.

Because the results of such review may need to be included in the upcoming 2010 proxy statements, the review process should commence as soon as possible. Regardless of whether an annual compensation review yields a required proxy disclosure, registrants should nonetheless document their review process. Registrants may choose to engage a compensation consulting firm to assist them with this review. However, if you are planning to conduct this review internally, we have set forth below some considerations that will assist you in performing the new annual compensation review.

Assignment to Responsible Persons. Identify the persons who will be responsible for undertaking the review and preparing documentation for the Compensation Committee of the Board to review, approve and adopt. Such "Responsible Persons" might include the Human Resources Director, Chief Financial Officer or Controller, and a senior risk officer.

Creation of Risk Review Analysis. The Responsible Persons should undertake a "top to bottom" review and analysis of the overall compensation practices for all employees to determine whether such practices pose material risks for the Company, which would trigger disclosure of such practices. **Such review and analysis may take the form of answering relevant compensation related questions and documenting the actions taken, including documents reviewed, to arrive at those answers. While the questions asked should be tailored to the company and its industry, typical questions may include:**.

(A) ***Does any business unit of the Company carry a significant portion of the Company's risk?*** For example, the AIG derivative securities trading unit carried significantly more of AIG's risk than the rest of AIG.

[1] Companies that have less than $75 million in public equity float.

(B) ***Does any business unit of the Company have its compensation structured significantly differently than other units within the Company?*** For example, are employees of an insurance subsidiary or mortgage subsidiary compensated on commission, while corporate headquarters and branch employees are paid a straight base salary?

(C) ***Are there business units that are significantly more profitable than other units within the Company?*** For example, if Subsidiary A accounts for 40% of the Company's overall profits, and Subsidiary B accounts for 60% of the Company's profits, that difference should be taken into account as part of this review process.

(D) ***Does the Company have any business units where the compensation expense is a significant percentage of the business unit's revenues?*** For example, commissions paid to employees of an insurance subsidiary might be a large percentage of that subsidiary's revenue.

(E) ***Does the Company provide bonuses upon accomplishment of a task, while income and risk to the Company from that task extend over a significantly longer period of time?*** For example, is payment given for generating a specified number of (or dollar volume of) loans but there is no mechanism to reflect the impact of such loans becoming non-performing within a reasonable period of time?

(F) ***Does the Company have compensation policies and practices for different groups that mitigate or balance incentives for risk-taking?*** If so, these mitigating factors could be considered in deciding whether risks are likely to have a material adverse effect on the Company as a whole. Such mitigating factors could include (but are not limited to):

(1) Adjusting the amount of employee compensation to account for the risk posed to the Company by the employee's activities.

(2) Delaying payment of compensation until an appropriate period of time has passed to determine whether the risk will be realized.

(3) Adjusting compensation for losses and other aspects of performance that come to light after the performance period ends (i.e., "clawbacks").

(4) Extending the performance period for determining an award to account for long-term performance, instead of rewarding short term performance;

(5) Reducing incentives for taking greater short-term risks by reducing the rate at which an award increases in value as higher performance levels are achieved.

(6) Paying bonuses in long-term restricted stock instead of in cash, which restrains risk-taking incentives, especially if the stock must be held through retirement or termination of employment (and even a year or two thereafter, to allow the risk factors to become resolved).

(G) ***Conversely, does the Company have policies or practices that encourage risk-taking?*** Employees may be encouraged to take risks if they have a contractual right to payments regardless of the outcome of their risk-taking activities. For example, does the Company:

(1) Pay signing or retention bonuses?

(2) Have employment agreements, change in control agreements, or broad-based severance plans or policies that provide for guaranteed severance, regardless of risk-taking activities?

(3) Have equity-based award agreements or deferred compensation agreements that automatically accelerate vesting upon termination of employment or change in control, regardless of risk-taking activities?

Prepare Report / Findings: After analyzing and documenting the Company's total employee compensation structure in light of risk-taking behavior (as described above), the Responsible Persons (perhaps with the assistance of outside counsel) should then prepare a report for the Compensation Committee or full Board, (i.e., "Report on Compensation Practices and Risk Taking") identifying any issues that it may need to disclose in the proxy statement. If such report concludes that the Company does not have any issues to disclose in the proxy statement, the Responsible Persons should nonetheless present their analysis and the basis for their recommendation of non-disclosure to the Compensation Committee or Board, so they can form their own independent judgment as to whether proxy disclosure is necessary.

Board or Committee Resolutions. The Compensation Committee or Board should adopt resolutions or otherwise record in the minutes of their meeting: (i) that they received the report from the Responsible Persons; (ii) that the report appears to be comprehensive (or that the report is not sufficiently comprehensive and must be returned to the Responsible Persons for further development); (iii) that they either agree with the recommendations, or agree with the recommendations with some modifications, or disagree with the recommendations; and (iv) that disclosure in the proxy either will or will not be made.

Review of Proxy Disclosure. If disclosure in the proxy statement is required for the broad-based employee compensation practices, the Compensation Committee (with the assistance of outside counsel) will draft the appropriate disclosure. This disclosure is not required to be part of the "Compensation Discussion and Analysis" (CD&A) section of the proxy (although it could be included in the CD&A). The Final Rules provide these examples of issues that the Company may need to disclose in its proxy statement:

(1) The general design philosophy of the policies and practices.

(2) The Company's risk assessment or incentive considerations, if any, in structuring policies and practices or in awarding and paying compensation.

(3) How the policies and practices relate to the realization of risks resulting from the actions of employees in both the long and short term, such as through claw backs (i.e., an obligation to repay certain compensation if the long term results do not bear out the short term reward that was paid to individuals) or imposing holding periods (such as "company stock grants must be held until 2 years after retirement").

(4) Plans for adjustments to policies and practices to address changes in risk profile.

(5) Adjustments made as a result of changes in risk profile.

(6) The extent to which the Company monitors the practices and policies to determine whether risk management objectives are being met with respect to incentivizing employees.

Conclusion: Management must quickly begin the required review of broad-based employee compensation practices in order to be able to timely provide the Compensation Committee with management's recommendations with respect to disclosure in the 2010 proxy. Even if management and the Compensation Committee determine that the Company does not engage in any of the compensation practices described in this memo, or that the Company's broad-based compensation practices are not reasonably likely to have a material adverse effect on the Company, the Company is not excused from having to perform this comprehensive review every year. An adequate record related to the annual review should be prepared and maintained in order to demonstrate compliance with the Final Rules, even if nothing is required to be reported in the proxy statement. Therefore, this is an entirely new obligation for management and the Compensation Committee that will become an annual agenda item in advance of the preparation of the annual proxy statement.

We would be happy to work with management and Compensation Committees in undertaking these new requirements, including providing sample resolutions and assistance with due diligence and drafting reports. We would also be happy to assist with maintaining the integrity of management's risk management system, including reviewing document controls, policies and tracking systems needed to promote and protect sound compensation practices, taking both a backward-looking and forward-looking perspective, and assessing the long-term impact of activities that result in short-term increases in compensation and revenue, with the goal of making broad based employee compensation more sensitive to overall organizational risk.

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