

SEC ISSUES GUIDANCE REGARDING ENHANCED PROXY DISCLOSURE

On January 20, 2010, the SEC issued Compliance and Disclosure Interpretations to assist with issues presented by the recently adopted rules governing enhanced proxy disclosure.

The new rules require added disclosure in the proxy materials describing for each director and nominee the specific experience, qualifications, attributes or skills that led the board to the conclusion that the individual should serve as a director given the structure of the company and its business at the time of the filing containing the disclosure. The staff has made clear in the C&DIs that this disclosure must be made on an *individual* basis and not presented on behalf of the board as an entire group. The C&DIs emphasize that this disclosure must be particular and specific to each director/nominee. The staff, by example, indicates that merely stating that a director should serve because he or she is an audit committee financial expert is not sufficient. Further detail about the specific experience, qualifications, attributes or skills of the director/nominee is required. In addition, even if the entire board possesses similar characteristics the information must be disclosed on an individual basis. Furthermore, the staff, in a C&DI directed to companies with classified boards, has highlighted the importance for shareholder voting decisions of the particular disclosure for each director/nominee within the context of the composition of the entire board. Additional disclosure controls and processes, in addition to annual self-evaluations, may be required to ensure proper information is available and reportable for timely disclosure.

Recommended Action:

- Review the qualifications of each director/nominee within the context of the needs of the board as a whole and take appropriate actions so that the required disclosure can be made for *each* director/nominee

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