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The New Proxy Disclosure Tables: What Goes Where? — Updated

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Introduction

The new proxy disclosure rules[1] continue to require public companies to disclose compensation information in tabular format for certain executive officers, i.e., the Named Executive Officers (NEOs).[2] This article and the accompanying tables will help describe how typical compensation arrangements for the NEOs[3] would or could be disclosed in the new and revised compensation tables.

This article updates the article with the same title that appeared in the Executive Compensation Library's *Journal Reports: Law & Policy* in November 2006 for the amendments to the final proxy disclosure rules issued on Dec. 22, 2006, by the U.S. Securities and Exchange Commission (SEC).[4]

Who is an NEO?

The starting point in figuring out what goes where is determining for whom these tabular disclosures are required. The NEOs will be the principal executive officer (PEO), the principal financial officer (PFO), and the three highest paid executives (other than the PEO and PFO), determined on the basis of total compensation, less the change in actuarial present value of accumulated pension benefits and above-market earnings on nonqualified deferred compensation (NQDC).[5]

The new rules cause NEO treatment to apply to anyone who served as PEO (CEO under the current rules) during the prior fiscal year (as was the case under the old rules), and extend this concept to the PFO as well.[6] The new rules also keep the old rule that requires the inclusion of up to two additional executives who would have been amongst the top four (top three under the new rules) highest paid executives other than the CEO (other than the PEO or PFO under the new rules) but for the fact that they were not serving as executive officers as of the last day of the applicable fiscal year.[7]

In summary, a company's NEOs are:

- anyone who served as PEO during the last completed fiscal year,[8]
- anyone who served as PFO during the last completed fiscal year, [9]

- the three most highly compensated executives other than the PEO and PFO who were serving as executive officers at the end of the last completed fiscal year (Top Three Executives),[10] and

- up to two additional individuals who would have been among the Top Three Executives but for the fact that the individual was not serving as an executive officer at the end of the last completed fiscal year.[11]

Because the new rules include amounts paid or accrued to an NEO pursuant to a plan or arrangement in connection with termination of employment or a change-in-control, companies may now find themselves including more terminated executives in their proxy tables than they ever did under the old rules. From a practical perspective, given the size of typical executive termination/severance/change-in-control payments, if an executive terminates his or her employment or receives a change-in-control payment, he or she will generally end up in the tables, unless other executives received larger termination/change-in-control payments. Thus, a company that has two or more such executives (other than the PEO and PFO) who were paid in relation to their termination or a change-in-control is virtually assured of having to include seven executives (at minimum) in its tables.

In the final rules, the SEC took comments about establishing NEOs on the basis of total compensation into account and decided that the NEOs will be determined on the basis of total compensation after taking out the change in the actuarial present value of accumulated pension benefits and above-market earnings on NQDC.[12] This methodology will somewhat moderate, but will not eliminate, the variability that is likely to exist in the NEOs disclosed year to year. Under the rules as adopted in the Adopting Release, the NEOs were likely to still vary from year to year as a result of special, one-time compensation (e.g., signing bonuses, retention bonuses, and relocation expenses), equity awards, and retirement and severance payments. This variability is likely to have its greatest impact on those executives who traditionally have not been considered among the NEOs, but are only a step or two away.

However, the Amending Release's methodology, which generally calls for only including the expense that would be recognized for equity awards under the Financial Accounting Standards Board's Financial Accounting Standards Statement No. 123 (revised 2004), *Share-Based Payment* (FAS 123R), for the last fiscal year in the SCT (instead of the full, grant date fair value as originally required under the Adopting Release), should substantially moderate this potential variability as special one-time equity awards such as hire-on grants, would then typically be included in the SCT to the extent of the expense recognized for such awards under FAS 123R.

The new rules eliminate the ability to exclude an executive officer from the tables due to special, one-time compensation payments.[13] However, the new rules continue to permit companies to exclude executive officers due to overseas assignment income.[14]

During this proxy season, some companies will likely be surprised by the individual executives who end up being their NEOs or by those executives who were left out. In such cases, companies would do well to remember that the new proxy rules merely set the minimum number of executives that must be disclosed in the tables.[15] Companies can include additional executives if they choose. However, before doing so, they should carefully consider all the ramifications of including an executive who did not qualify as an NEO in the tables. For example, will this establish an expectation with the company's shareholders that the company will always disclose compensation for more than the NEOs? What happens if the company later decides not to include an additional executive in the tables? Are there any securities or tax implications from including an extra executive in the tables? Once a company has answers to these and related questions, it can make an informed decision as to whether it will include such an executive in the tables.

Based on my experience, the Amending Release should generally moderate the surprise of who gets included in the proxy tables for companies. As a general matter, the Amending Release's methodology for recognizing compensation in the SCT related to equity awards covered by FAS 123R is to only include the amount of expense that a company would recognize for accounting purposes related to outstanding, unvested awards during the fiscal year.[16] But, in doing so, companies cannot take into account any forfeiture estimates they make for accounting expense purposes under FAS 123R.[17] Companies can take actual forfeitures into account once they have occurred. Probably the two most typical scenarios where forfeitures will need to be assessed are where an executive terminates employment with unvested equity awards that are then forfeited according to their terms and where the performance goals for an award are not achieved and previously it looked probable that some shares would be earned. In both situations, the Amending Release permits companies to reverse out the previously recognized expense/compensation amount.[18] The Amending Release specifically states that this reversal can result in a negative number that would then be displayed in the SCT.[19]

The Amending Release does not eliminate the rule under the Adopting Release that the full grant date fair value for awards needs to be disclosed. However, the Amending Release moves this disclosure from the SCT to the Grants of Plan-Based Awards Table.[20] So, while the full grant date fair value amount for awards is no longer used to determine which executives are included in the proxy tables, once an executive is included in the SCT, his/her awards during the last fiscal year must all be detailed in the Grants of Plan-Based Awards Table, which now requires detailing the grant date fair value on a grant-by-grant basis.[21]

What Tables?

Once you figure out who your NEOs are, the next step is to figure out what tables might be required. The instructions to the new proxy rules indicate that if a company does not have any information for a particular table or a column within a table, the company is permitted to exclude such a table or column.[22] For example, if a company does not have a pension plan for its NEOs, it could exclude the Pension Benefits Table from its proxy. However, some companies might want to include such columns or tables so that they can enter zeroes as a way to emphasize the compensation programs that they do not have.

The NEO compensation disclosure tables that are required to be included in a company's[23] proxy statement are as follows (assuming at least one of your NEOs has compensation that needs to be reported under the table):

- **Summary Compensation Table**[24] – discloses salary, (discretionary) bonus, accounting expense amount recognized in the last fiscal year for outstanding, unvested stock awards and option awards, nonequity incentive compensation earned, change in pension value and above-market earnings on nonqualified deferred compensation, all other compensation (including perquisites, if their aggregate value exceeds $10,000), and the total of the other columns in the table.

- **Grants of Plan-Based Awards Table**[25] – supplements the Summary Compensation Table and discloses plan-based grants to NEOs during the last fiscal year on a grant-by-grant basis, including each award's full, grant date fair value as determined under FAS 123R (a sample of the Grants of Plan-Based Awards Table as revised by the Amending Release to require inclusion of the grant date fair value of each award is attached as Exhibit 3).

- **Outstanding Equity Awards at Fiscal Year-End Table**[26] **–** discloses outstanding equity awards held by NEOs, including out-of-the-money awards, on a grant-by-grant basis for stock option and similar awards and on an aggregate basis for nonvested stock and equity incentive plan awards.

• **Option Exercises and Stock Vested Table**[27] **–** discloses the options exercises and stock awards that vested for each NEO during the last fiscal year on an aggregated basis.

• **Pension Benefits Table**[28] **–** discloses for each NEO, each pension plan that provides him or her benefits, the number of years of credited service (if different from actual years of service, a footnote must explain) under the plan, the actuarial present value of the accumulated benefits under the plan, and the dollar amount of any payments and benefits paid during the last fiscal year.

• **Nonqualified Deferred Compensation Table**[29] **–** for the last fiscal year, discloses the NEO's and company's contributions, aggregate earnings, aggregate withdrawals/distributions, and aggregate balance at fiscal year end.

Additionally, while only a narrative disclosure is required to detail potential payments upon termination of employment or a change-in-control,[30] many companies are considering using some type of table to detail all or some portion of the required quantification disclosure for such payments. One format for this tabular disclosure of termination payments and benefits that has proven both effective and popular is to use one table to show all the amounts that each NEO would be entitled to receive upon any termination (the vertical axis would detail the various kinds of payments and benefits while each executive would be detailed in a separate column, see **Table 1** below) and then a separate table for each individual NEO showing what additional amounts they would receive upon specific terminations (see **Table 2** below).

TABLE 1
Benefits due NEOs upon Any Termination of Employment

Benefit Type	**PEO**	**PFO**	**A**	**B**	**C**
Qualified Profit Sharing and Savings Plan Balance	$	$	$	$	$
Nonqualified Profit Sharing and Savings Plan Balance					
Qualified Pension/Cash Balance Value					
Nonqualified Pension/Cash Balance Value					
Vested Stock Options Spread Value					
Total	$	$	$	$	$

TABLE 2
Potential Payments and Benefits upon Termination or Change in Control
NEO Name, Title

	Termination Event					
Benefit Type	**Voluntary**	**Involuntary without Cause**	**By NEO for Good Reason**	**CIC Only**	**CIC + Involuntary without Cause**	**CIC + Good Reason**
Cash Severance	$	$	$	$	$	$
Bonus for Year of Termination						
Unvested Option Spread Value						
Restricted Stock/Unit Value						
Performance Share Payout						
Performance Unit Payout						
Other Retention Awards						
Enhancement to DB Supplemental Pension						
Enhancement to Supplemental Savings						
Enhancement to Retiree Medical						
Health and Welfare Benefits*						
Perquisites						
Outplacement						
Excise Tax Gross-Up/Forfeiture						
Total	$	$	$	$	$	$

*Includes premiums for health, dental, life, and other ongoing insurance benefits.

Other possible termination events that might be necessary to detail in the above individual NEO table (Table 2) include: retirement, disability, death, involuntary for cause, and CIC + involuntary for cause.

The required tables themselves are fairly rigid. Most typical compensation items will fit nicely into the tabular disclosure regime. But a few common compensation items raise questions as to just how they should be disclosed under the new rules. Hopefully, the SEC will provide some guidance on the compensation disclosures for such items to help companies and practitioners implement the new rules.

The proxy rules even added a few “stealth” columns to the tables, i.e., columns that are only required if certain requirements are met. Generally, these “stealth” columns are located in the Grants of Plan-Based Awards Table and were not given names by the SEC (however, I have added suggested titles for these columns to make it easier for readers both of this article and proxies to understand the information being presented in these columns):

- ***Date of Action*** column – If the grant date is different from the date the compensation committee or full board of directors takes action or is deemed to take action to grant an option, a separate column (adjoining the ***Grant Date*** column) must be added to the table that shows the date the compensation committee or full board of directors took action or was deemed to take action to grant the option.[31]

• ***Grant Date Closing Market Price*** column **–** If the exercise price is less than the closing market price on the date of grant, a separate column (adjoining the ***Exercise or Base Price of Option Awards ($/Sh)*** column) must be added to the table that shows the closing market price on the date of grant.[32]

• ***Required Footnote*** – If the exercise price is not the closing market price on the date of grant, a footnote to the table must set forth the company's methodology for determining the exercise price.[33]

• ***Units/Rights*** # column – If a nonequity incentive plan award is denominated in units (such as a performance unit that pays out in cash), a separate column (adjoining the ***Grant Date*** column) must be added to the table that quantifies the number of units or other rights awarded.[34]

Additionally, companies may want to add columns to the tables to make some of their other disclosures easier. For example, in the Outstanding Equity Awards at Fiscal Year End Table, companies might want to add a column that discloses stock options' spread value (difference between the current stock price and the exercise and strike price of the option). This column could then be referenced in the narrative supplemental disclosure that is required to be included that details all payments and benefits upon a termination of employment or change-in-control,[35] especially as a means to explain the in-the-money amount for vested stock options. Depending on the particular termination provisions applicable to the outstanding stock option awards, it may even make sense to include a column showing the spread value for unvested stock options (especially if unvested awards are automatically vested upon a termination event or change-in-control).

The December 2006 Amendments

The Amending Release was issued as interim final rules, but the SEC provided a 30 day comment period that expired Jan. 29, 2007, and stated that it would revise the rules if necessary following the comment period. The rules set out in the Amending Release were effective upon publication in the *Federal Register* and will generally apply to proxy statements, information statements, and registration statements filed on or after Dec. 15, 2006, that must include the Item 402 compensation disclosures covering fiscal years ending on or after that date (the same effective date as the rules announced in the Adopting Release). The Amending Release amended the rules regarding certain aspects of the SCT, the Grants of Plan-Based Awards Table, and the Director Compensation Table and related footnote disclosure.

In the SCT, the Amending Release changed the values that are disclosed in the Stock Awards and Option Awards columns to equal the compensation expense recognized for such awards, without regard to forfeiture estimates, over the requisite service period (vesting period), as determined under FAS 123R. In other words, the amount shown in the SCT will be the grant date fair value recognized ratably over the requisite service period. This means that the amounts shown in the SCT will reflect awards granted in prior years that were not fully expensed as of the beginning of the last fiscal year (assuming a company did not accelerate the vesting of equity awards prior to its adoption of FAS 123R). For example, if a company uses three-year vesting and generally grants awards in February, the value shown for 2006 in the SCT would typically include the accounting expense attributable to 2006 for awards granted in 2003, 2004, 2005, and 2006. For awards that contain a performance-based vesting condition, expense amounts for such awards will only be included in the SCT to the extent that it is probable that the performance condition will be achieved.

Also, it is important to note that under FAS 123R, for employees who are retirement eligible and are entitled to keep their awards upon retirement, such an executive in effect no longer has to provide any substantive services. As a result, under FAS 123R, a company must recognize the full, grant date fair value amount of awards granted to such retirement-eligible employees. Given that the

Amending Release has generally adopted the FAS 123R expense recognition methodology for compensation disclosure purposes in the proxy statement, the SEC also felt that this accounting rule for retirement-eligible employees should also be applied in the compensation disclosure context. Thus, companies will be forced to include the full grant date fair value for awards made to retirement-eligible employees if they are entitled to keep the award upon retirement. This may have an impact on the determination of the NEO group (the Top Three Executives) if executives who are not typically viewed as NEOs receive equity awards that they are able to keep upon retirement while the typical NEOs are not retirement eligible.

The Amending Release requires companies to discuss forfeitures in a footnote to the appropriate column of the SCT. The amounts shown in the Stock Awards or Option Awards column for a year can be negative.

Another change made to the SCT by the Amending Release is the treatment of Salary or Bonus that an NEO elects to take as noncash compensation, e.g., an NEO elects to take $50,000 of his/her bonus in company stock. Under the Adopting Release, such amounts could simply be reported as equity grants in the appropriate column of the SCT and in the other applicable proxy tables, with no amount being included in the Salary or Bonus columns related to such elected amounts. The Amending Release changes this and requires that the full elected amount be included in the Salary or Bonus column of the SCT, but not otherwise disclosed in the SCT as an award of noncash compensation (stock, options or nonequity incentive plan award), and also in the Grants of Plan-Based Awards Table and other appropriate proxy tables. When the awards are put into the Grants of Plan-Based Awards Table, their full grant date fair value must also be included, which could cause companies to read carefully through the Amending Release and discuss with their advisers just how such awards should be disclosed.

The Amending Release also modified the Grants of Plan-Based Awards Table by adding a new column at the far right hand side of the table that will detail the grant date fair value of each individual equity award, as computed in accordance with FAS 123R. Additionally, companies must now disclose information concerning repriced or materially modified awards, including their incremental fair value as determined under FAS 123R.

Finally, the Amending Release made similar changes to the Director Compensation Table and the required, related footnote disclosure for directors. Again, the gist of the new rules is to require companies to include in compensation disclosure the amount recognized as expense for outstanding awards during the last fiscal year in accordance with FAS 123R and to require the disclosure of the full grant date fair value of awards on a grant-by-grant basis.

What Goes Where?

Now that you know who needs to be included in the tables, and what tables will apply, the next step is to see how various typical compensation elements would be reported in the new tables. Exhibit 1 is a chart that details common compensation elements, where they would be included in the main tables, and when the disclosure would be required. The following tables are not covered by the chart: Pension Benefits Table, Nonqualified Deferred Compensation Table, and the (voluntarily provided) payments/benefits upon a termination of employment or change-in-control table. For compensation elements for which the new rules do not provide any clear advice or instruction, the chart displays a proposal for how this compensation might be reported. Additionally, to give some sense of how an equity award will appear in the proxy statements throughout its life, please see Exhibit 2 that is a Lifecycle of Proxy Reporting of an Option with Service-Based Vesting Requirement.

Conclusion

The new proxy rules will cause some elements of compensation to be disclosed in ways that may seem strange (annual bonuses with pre-established performance goals granted under a plan), and may even have an impact on compensation surveys (disclosing performance-based annual bonuses as nonequity incentive plan compensation on an aggregated basis with other nonequity incentive plan awards, such as long-term cash plans that are performance-based, may make it difficult to be able to gather competitive data on "bonuses"). Even which executives get included in the tables has undergone a major revision that will take companies a little time to fully appreciate and incorporate into their compensation practices and procedures.

It will take some time before people are fully accustomed to the new requirements and fully understand the implications of the rules for many of the less mainstream compensation elements. Determining how best to disclose such elements of compensation will prove a challenging test of interpretation (and possibly divination) of the new rules, hopefully with some guidance (regardless of whether it is as formal as a release or as informal as a comment or two at a major speaking engagement) from the SEC.

Tables: What Goes Where

Exhibit 1 - Table to Assist Figuring Out Where Compensation Goes in the New Proxy Disclosure Tables

Exhibit 2 - Lifecycle of Proxy Reporting of an Option with Service-Based Vesting Requirement

Exhibit 3 - Grants of Plan-Based Awards Table

Footnotes

1 *Executive Compensation and Related Person Disclosure,* SEC Release Nos. 33-8732; 34-54302; IC-27444; File No. S7-03-06, issued Aug. 11, 2006, and published in the *Federal Register*, 17 CFR Parts 228, 229, 232, 239, 240, 245, 249, and 274, Sept. 8, 2006, as SEC Release Nos. 33-8732A, 34-54302A; IC-27444A [71 Fed. Reg. 53,158] (Adopting Release).

2 Adopting Release, Regulation S-K, Item 402(a)(3) and Instructions 1 to 3 to Item 402(a)(3).

3 This article will not cover the Director Compensation Table, which is also required by the new proxy disclosure rules and that details the compensation earned or received by directors during the last fiscal year.

4 *Executive Compensation Disclosure*, SEC Release Nos. 33-8765; 34-55009; File No. S7-03-06, issued Dec. 22, 2006, and published in the *Federal Register*, 17 CFR Parts 228, and 229, Dec. 29, 2006 [71 Fed. Reg. 78,338] (Amending Release).

5 Adopting Release, Regulation S-K, Item 402(a)(3).

6 Adopting Release, Regulation S-K, Item 402(a)(3) and Current Item 402(a)(3).

7 *Id*.

8 Adopting Release, Regulation S-K, Item 402(a)(3)(i).

9 Adopting Release, Regulation S-K, Item 402(a)(3)(ii).

[10] Adopting Release, Regulation S-K, Item 402(a)(3)(iii). Note that no disclosure is required for any executive officer, other than the PEO or PFO, whose total compensation as determined for purposes of determining NEOs, does not exceed $100,000. *Id*. at Instruction 1 to Item 402(a)(3).

[11] Adopting Release, Regulation S-K, Item 402(a)(3)(iv).

[12] Adopting Release, at Section II.C.6. [71 Fed. Reg. 53,189-53,190].

[13] Adopting Release, at Section II.C.6.b. [71 Fed. Reg. 53,190], and Final Item 402(a)(3).

[14] Instruction 3 to Final Item 402(a)(3).

[15] Adopting Release, Regulation S-K, Item 402(a)(3).

[16] 71 Fed. Reg. 78,338, at 78,341.

[17] *Id.* at 78,344.

[18] *Id.* at 78,342.

[19] *Id*.

[20] *Id*.

[21] *Id*. at 73,343.

[22] Adopting Release, Regulation S-K, Instruction 5 to Item 402(a)(3).

[23] Assumes that the company is not a small business issuer or a foreign private issuer, but is a "typical" public company.

[24] Adopting Release, Regulation S-K, Item 402(c), as amended by the Amending Release.

[25] Adopting Release, Regulation S-K, Item 402(d), as amended by the Amending Release.

[26] Adopting Release, Regulation S-K, Item 402(f).

[27] Adopting Release, Regulation S-K, Item 402(g).

[28] Adopting Release, Regulation S-K, Item 402(h).

[29] Adopting Release, Regulation S-K, Item 402(i).

[30] Adopting Release, Regulation S-K, Item 402(j).

[31] Adopting Release, Regulation S-K, Item 402(d)(2)(ii).

[32] Adopting Release, Regulation S-K, Item 402(d)(2)(vii).

[33] Adopting Release, Regulation S-K, Instruction 3 to Item 402(d).

[34] Adopting Release, Regulation S-K, Instruction 6 to Item 402(d).

[35] Adopting Release, Regulation S-K, Item 402(j).

Exhibit 1 – Table to Assist Figuring Out Where Compensation Goes in the New Proxy Disclosure Tables

Compensation Element	Summary Compensation Table[1]	Grants of Plan-Based Awards[2]	Outstanding Equity Awards at Fiscal Year-End[3]	Option Exercises and Stock Vested[4]
Table covers…	*Compensation when awarded, earned or expensed under FAS 123R*	*Plan awards in year of award*	*Equity awards outstanding at FYE; until equity award vests or is exercised*	*Option exercises and stock vested during last FY*
Salary				
Paid in Cash	$ in col. (c)[5]	NA	NA	NA
Paid in Non-Cash Compensation at Company's Election	$ in col. (c)[6]	See treatment for appropriate equity or non-equity award below	See treatment for appropriate equity or non-equity award below	See treatment for appropriate equity or non-equity award below
Taken in Non-cash Compensation at NEO's Election	$ in col. (c)[7]	See treatment for appropriate equity or non-equity award below	See treatment for appropriate equity or non-equity award below	See treatment for appropriate equity or non-equity award below
Bonus				
Discretionary/Non-formulaic	$ in col. (d)[8]	NA	NA	NA
Performance-Based / Section 162(m)	$ in col. (g) when earned[9]	In cols. (b) [grant date] and (c)/(d)/(e) [threshold/target/max. $ amts.]	NA	NA
Paid in Non-Cash Compensation at Company's Election	$ in col. (d)[10]	See treatment for appropriate equity or non-equity award below	See treatment for appropriate equity or non-equity award below	See treatment for appropriate equity or non-equity award below
Taken in Non-cash Compensation at NEO's Election	$ in col. (d)[11]	See treatment for appropriate equity or non-equity award below	See treatment for appropriate equity or non-equity award below	See treatment for appropriate equity or non-equity award below
Equity Awards – Time/Service-Based Vesting*[12]				
Restricted Stock	$ amount recognized under FAS 123R for the applicable year in col. (e)	In cols. (b) [grant date], (i) [# shares], and (l) [grant date fair value]	Until vested at FYE, in cols. (g) [# shares], (h) [$ market value]	In FY becomes vested, in cols. (d) [# shares] and (e) [$ value realized] – on an aggregated award basis
RSUs/DSUs	$ amount recognized under FAS 123R for the applicable year in col. (e)	In cols. (b) [grant date], (i) [# shares], and (l) [grant date fair value]	Until vested at FYE, in cols. (g) [# shares], (h) [$ market value]	In FY becomes vested, in cols. (d) [# shares] and (e) [$ value realized] – on an aggregated award basis
Stock Options/SARs	$ amount recognized under FAS 123R for the applicable year in col. (f)	In cols. (b) [grant date], (j) [# option shares], (k) [XP], and (l) [grant date fair value]	Until exercised, in cols. (b) [# exercisable], (c) [# unexercisable], (e) [XP] and (f) [expiration date]	In FY exercised, in cols. (b) [# shares] and (c) [$ value realized] – on a grant-by-grant basis

Compensation Element	Summary Compensation Table[1]	Grants of Plan-Based Awards[2]	Outstanding Equity Awards at Fiscal Year-End[3]	Option Exercises and Stock Vested[4]
Stock Options/SARs				
• XP is less than closing stock price	$ amount recognized under FAS 123R for the applicable year in col. (f)	In cols. (b) [grant date], (j) [# option shares], (k) [XP], (l) [grant date fair value], and Closing Stock Price col.	Until exercised, in cols. (b) [# exercisable], (c) [# unexercisable], (e) [XP] and (f) [expiration date]	In FY exercised, in cols. (b) [# shares] and (c) [$ value realized] – on a grant-by-grant basis
• Action date is different than grant date	$ amount recognized under FAS 123R for the applicable year in col. (f)	In cols. (b) [grant date], (j) [# option shares], (k) [XP], (l) [grant date fair value], and Action Date col.	Until exercised, in cols. (b) [# exercisable], (c) [# unexercisable], (e) [XP] and (f) [expiration date]	In FY exercised, in cols. (b) [# shares] and (c) [$ value realized] – on a grant-by-grant basis
Equity Awards – Performance-Based Vesting**[13]				
Performance Shares	$ amount recognized under FAS 123R to the extent it is probable the performance condition will be satisfied for the applicable year in col. (e)	In cols. (b) [grant date], (f)/(g)/(h) [threshold/target/max. # shares], and (l) [grant date fair value]	• Until earned, at FYE, in cols. (i) [# unearned shares at threshold performance unless prior FY performance exceeded threshold, then use next higher performance measure, i.e., target or max.] and (j) [$ market value] • After earned and until vested, in cols. (g) [# unvested shares] and (h) [$ market value]	In FY becomes vested, in cols. (d) [# shares] and (e) [$ value realized] – on an aggregated award basis
Restricted Stock	$ amount recognized under FAS 123R to the extent it is probable the performance condition will be satisfied for the applicable year in col. (e)	In cols. (b) [grant date], (f)/(g)/(h) [threshold/target/max. # shares], and (l) [grant date fair value]	• Until earned at FYE, in cols. (i) [# unearned shares at threshold performance unless prior FY performance exceeded threshold, then use next higher performance measure, i.e., target or max.] and (j) [$ market value] • After earned and until vested, in cols. (g) [# unvested shares] and (h) [$ market value]	In FY becomes vested, in cols. (d) [# shares] and (e) [$ value realized] – on an aggregated award basis
Stock Options/SARs	$ amount recognized under FAS 123R to the extent it is probable the performance condition will be satisfied for the applicable year in col. (f)	In cols. (b) [grant date], (f)/(g)/(h) [threshold/target/max. # option shares], (k) [XP], and (l) [grant date fair value]	• Until earned, in cols. (d) (# unexercised and unearned at threshold performance unless prior FY performance exceeded threshold, then use next higher performance measure, *i.e.*, target or max.], (e) [XP], and (f) [expiration date] • After earned and until exercised, in cols. (b) [# exercisable], (c) [# unexercisable], (e) [XP] and (f) [expiration date]	In FY exercised, in cols. (b) [# shares] and (c) [$ value realized] – on a grant-by-grant basis

Compensation Element	Summary Compensation Table[1]	Grants of Plan-Based Awards[2]	Outstanding Equity Awards at Fiscal Year-End[3]	Option Exercises and Stock Vested[4]
• XP is less than closing stock price	$ amount recognized under FAS 123R to the extent it is probable the performance condition will be satisfied for the applicable year in col. (f)	In cols. (b) [grant date], (f)/(g)/(h) [threshold/target/max. # option shares], (k) [XP], (l) [grant date fair value], and Closing Stock Price col.	• Until earned, in cols. (d) (# unexercised and unearned at threshold performance unless prior FY performance exceeded threshold, then use next higher performance measure, *i.e.*, target or max.], (e) [XP], and (f) [expiration date] • After earned and until exercised, in cols. (b) [# exercisable], (c) [# unexercisable], (e) [XP] and (f) [expiration date]	In FY exercised, in cols. (b) [# shares] and (c) [$ value realized] – on a grant-by-grant basis
• Action date is different than grant date	$ amount recognized under FAS 123R to the extent it is probable the performance condition will be satisfied for the applicable year in col. (f)	In cols. (b) [grant date], (f)/(g)/(h) [threshold/target/max. # option shares], (k) [XP], (l) [grant date fair value] and Action Date col.	• Until earned, in cols. (d) (# unexercised and unearned at threshold performance unless prior FY performance exceeded threshold, then use next higher performance measure, *i.e.*, target or max.], (e) [XP], and (f) [expiration date] • After earned and until exercised, in cols. (b) [# exercisable], (c) [# unexercisable], (e) [XP] and (f) [expiration date]	In FY exercised, in cols. (b) [# shares] and (c) [$ value realized] – on a grant-by-grant basis
Performance-accelerated vesting equity awards[14]	$ amount recognized under FAS 123R to the extent it is probable the performance condition will be satisfied for the applicable year in col. (e)	• If stock: in cols. (b) [grant date], (i) [# shares], and (l) [grant date fair value] • If Options: in cols. (b) [grant date], (j) [# option shares], (k) [XP], and (l) [grant date fair value]	If Options: • Until earned, in cols. (d) (# unexercised and unearned], (e) [XP], and (f) [expiration date] • After earned and until exercised, in cols. (b) [# exercisable], (c) [# unexercisable], (e) [XP] and (f) [expiration date] If Stock: • Until vested at FYE, in cols. (i) [# unearned shares] and (j) [$ market value]	If Stock: • In FY becomes vested, in cols. (d) [# shares] and (e) [$ value realized] – on an aggregated award basis If Options: • In FY exercised, in cols. (b) [# shares] and (c) [$ value realized] – on a grant-by-grant basis

Compensation Element	Summary Compensation Table[1]	Grants of Plan-Based Awards[2]	Outstanding Equity Awards at Fiscal Year-End[3]	Option Exercises and Stock Vested[4]
Liability Awards under FAS 123R***[15] • Cash SARs, • Awards that can be paid in cash or stock at employee's election, or • Awards that can be paid in cash or stock at the Company's election and the Company has established a practice of paying such awards in cash	$ amount recognized under FAS 123R for the applicable year in col. (e) or (f), depending on the type of award	See treatment for appropriate type of award above	See treatment for appropriate type of award above	See treatment for appropriate type of award above
Non-Equity Incentive Plan Compensation				
Long-Term Cash Plans	$ in col. (g) when earned	In cols. (b) [grant date] and (c)/(d)/(e) [threshold/target/max. $ amts.]	NA	NA
Performance Units	$ in col. (g) when earned	In cols. (b) [grant date], (c)/(d)/(e) [threshold/target/max. $ amts.], and Units/Rights # col.	NA	NA

Legend:

Amts. – amounts	FY – fiscal year	Max. – maximum	NA – not applicable
Col. – column	FYE – fiscal year end	XP – exercise price	

* The Amending Release requires companies to disclose the full grant date fair value amount for time/service-based vesting awards in the Grants of Plan-Based Awards Table in the year of grant. Also for the year of grant and until the award is vested, the amount taken into account for FAS 123R expense purposes must be included in the Stock or Options Column of the SCT, which will detail the expense recognized for all such outstanding awards under FAS 123R during the last fiscal year.

** The Amending Release requires companies to include compensation for performance-based awards only if it is probable that the performance condition will be achieved.

*** The Amending Release adopts FAS 123R's approach to measurement of liability awards for the reporting of compensation for such awards, i.e., such awards are initially measured at fair value on their date of grant and then remeasured at each financial statement reporting date until settled.

Exhibit 2 – Lifecycle of Proxy Reporting of an Option with Service-Based Vesting Requirement

The chart below details the proxy disclosure for a stock option with a service-based vesting requirement (time-based vesting), from grant until exercise in the proxy disclosure tables and related narrative.

Proxy Covering Year of Grant	Proxies Covering Years After Year of Grant, But Prior to Vesting	Proxies Covering Years after Vesting, But Prior to Exercise	Proxy Covering Year of Exercise
SCT – FAS 123R expense recognized during the year **GPBAT** – detailed information about the grant, including grant date fair value **Narrative** – discuss material terms of award	**SCT** – FAS 123R expense recognized during each such year; footnote if forfeited and executive is an NEO **OEAFYE** – # of securities underlying option, XP and XD **Narrative** – discuss material terms of award	**OEAFYE** – # of securities underlying option, XP and XD	**OESVT** – # of shares acquired on exercise and $ value realized on exercise

Legend:

GPBAT – Grant of Plan-Based Awards Table	OEAFYE – Outstanding Equity Awards at Fiscal Year End table	XD – expiration date
OESVT – Option Exercises and Stock Vested table	SCT – Summary Compensation Table	XP – exercise price

Exhibit 3 – Grants of Plan-Based Awards Table[16]

The highlighted area in the table below indicates the column that was added by the Amending Release.

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares of Stock or Units (#)	All Other Option Awards: Number of Securities Underlying Options (#)	Exercise of Base Price of Option Awards ($/Sh)	Grant Date Fair Value of Stock and Option Awards
		Threshold ($)	Target ($)	Maximum ($)	Threshold (#)	Target (#)	Maximum (#)				
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
PEO											
PFO											
A											
B											
C											

Exhibit Footnotes

1 Adopting Release, Regulation S-K, Item 402(c), as amended by the Amending Release.
2 Adopting Release, Regulation S-K, Item 402(d), as amended by the Amending Release.
3 Adopting Release, Regulation S-K, Item 402(f).
4 Adopting Release, Regulation S-K, Item 402(g).
5 Adopting Release, Regulation S-K, Item 402(c)(2)(iii).
6 *Ibid.* Technically, Item 402(c)(2)(iii) requires companies to include the amount of salary earned by a NEO in cash and non-cash in the Salary column of the SCT. However, an argument could be made that such amounts should be reported in their appropriate column in the SCT, i.e., in the Stock Awards, Option Awards or Non-Equity Incentive Plan Compensation columns, as the other rules regarding disclosure seem to require. Otherwise, companies may have double counting of compensation within the SCT, e.g., if a company elects to pay out $50,000 of salary in stock, the $50,000 would show up in the Salary Column and then its FAS 123R expense would appear in the Stock Awards column over its vesting period.
7 Amending Release, Regulation S-K, Instruction 2 to Item 402(c)(2)(iii) and (iv).
8 Adopting Release, Regulation S-K, Item 402(c)(2)(iv).
9 Adopting Release, Regulation S-K, Item 402(c)(2)(vii).
10 Adopting Release, Regulation S-K, Item 402(c)(2)(iv). Technically, Item 402(c)(2)(iv) requires companies to include the amount of bonus earned by a NEO in cash and non-cash in the Bonus column of the SCT. However, an argument could be made that such amounts should be reported in their appropriate column in the SCT, i.e., in the Stock Awards, Option Awards or Non-Equity Incentive Plan Compensation columns, as the other rules regarding disclosure seem to require. Otherwise, companies may have double counting of compensation within the SCT, e.g., if a company elects to pay out $50,000 of a bonus in stock, the $50,000 would show up in the Bonus Column and then its FAS 123R expense would appear in the Stock Awards column over its vesting period.
11 Amending Release, Regulation S-K, Instruction 2 to Item 402(c)(2)(iii) and (iv).
12 Amending Release, Regulation S-K, Item 402(c)(2)(v) and (vi).
13 *Ibid.*
14 Assume these awards would otherwise vest based on the passage of time, *i.e.*, providing continued service to the company for a period of time.
15 Amending Release, Regulation S-K, Item 402(c)(2)(v) and (vi).
16 Amending Release, Regulation S-K, Item 402(d).