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SEC AMENDS PROXY AND FORM 10-K RULES REGARDING EQUITY COMPENSATION PLANS

The SEC has adopted amendments to its disclosure rules that will require disclosure in a registrant's annual report on Form 10-K and in certain proxy statements of information regarding securities authorized for issuance and issued under equity compensation plans in effect as of the end of the most recently completed fiscal year.

The new disclosure requirements will be applicable to:

- annual reports on Form 10-K or 10-KSB for fiscal years ending on or after March 15, 2002; and
- proxy and information statements for meetings of, or actions by, security holders occurring on or after June 15, 2002, that involve submitting a compensation plan for security holder action (which would include the amendment of an existing plan).

Registrants may comply with the new disclosure requirements voluntarily before these compliance dates.

The new rules do not apply to foreign private issuers.

A. Background of New Disclosure Requirements

As the use of equity compensation, particularly in the form of stock options, has grown, so too have concerns about its impact. These concerns include:

- the absence in a single location of disclosure to security holders about equity compensation plans that allows investors to understand the total number of securities remaining available under all of the registrant's plans;
- the potential dilutive effect of equity compensation plans, from the standpoint of both economic and voting power;

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- the potential for significant reallocation of ownership between existing security holders, and management and employees; and
- the adoption of many plans without the approval of security holders.

Traditionally, SEC rules did not require, in a single location, disclosure of the total number of securities that a registrant has authorized, or the number remaining available for issuance, under all of its equity compensation programs. While the pre-existing rules required disclosure in a registrant's proxy statement of the material features of a compensation plan when submitting the plan for security holder action, including, in the case of a plan containing options, warrants or rights, the amount of securities underlying such options, warrants or rights, that disclosure addressed only the plan upon which action was being taken.

Although disclosure of the overall number of securities of a registrant authorized for issuance under employee stock option plans then in effect is sometimes available indirectly through the registrant's financial statements included in its annual report to security holders, the SEC found reliance on such disclosure ineffective.

B. The New Required Disclosure

The new rules require registrants to include new tabular and narrative disclosure in annual reports on Form 10-K, and in proxy statements (including Schedule 14C information statements) in years when submitting compensation plans for security holder action.

1. Tabular Disclosure

A new table described in Item 201(d) of Regulation S-K requires information about two categories of equity compensation plans in effect as of the end of the registrant's last completed fiscal year. The disclosure covers plans that provide for the award of a registrant's securities or the grant of options, warrants or rights to purchase the registrant's securities to any person, including employees of the registrant, its parent, a subsidiary or its affiliated companies. For purposes of this Item, a plan is "in effect" so long as securities remain available for future issuance or so long as options, warrants or other rights granted under the plan remain outstanding.

The two categories are:

- plans that have been approved by security holders; and
- plans that have not been approved by security holders.

For *each* category, the registrant must disclose:

- the number of securities to be issued upon exercise of outstanding options, warrants and rights;

- the weighted-average exercise price of outstanding options, warrants and rights previously granted under the plan; and
- the number of securities remaining available for future issuance under the plan.

In a change from the SEC's original proposal, registrants need not list plans separately. Instead, aggregated disclosure, including grants under individual arrangements and under plans assumed in business combinations (where further grants and awards can be made), is permitted for each category. Where action is being taken to amend an existing equity compensation plan to increase the number of shares available under the plan, the table should include information about the securities previously authorized for issuance under the plan, but without giving effect to the proposed amendment. Similarly, where action is being taken with respect to a new plan, the securities under the new plan should not be included in the table.

Disclosure is required whether the securities underlying a plan are newly issued or treasury shares.

The format of the table required by Item 201(d) is provided in Annex A to this memorandum.

2. Narrative Disclosure Regarding Non-Security Holder Approved Plans

The new rules also require narrative disclosure of the material features of all non-security holder approved plans in effect as of the end of the last completed fiscal year. In contrast to the proposal, which called for disclosure only in the year following adoption, the new rules require this disclosure to be provided annually. Registrants may satisfy this requirement by cross-referencing to the portion of the required Statement of Financial Accounting Standards No. 123 disclosure in the notes to their financial statements containing descriptions of their non-security holder approved plans. The cross-reference should identify the specific plan or plans in the required SFAS 123 disclosure that have not been approved by security holders.

C. Location of New Disclosure

The new tabular and narrative disclosure is required to be set forth:

- in the registrant's annual report on Form 10-K; and
- in the registrant's proxy statement, whenever the registrant is seeking security holder action regarding any compensation plan.

Where a registrant would be required to include the information in both an annual report and a proxy statement, the requirement to include information in the annual report may be satisfied by incorporating by reference from the definitive proxy statement for a meeting that includes the election of directors, if the definitive proxy statement is filed with the SEC not later than 120 days after the end of the fiscal year covered by the Form 10-K.

By requiring disclosure in annual reports on Form 10-K, the disclosure requirement will apply to registrants with a Section 15(d) reporting obligation as well as registrants with a class of securities registered under Section 12 of the Exchange Act.

Except where it is part of a document required to be incorporated by reference into a prospectus, the information called for by the new rules need not be provided in any registration statement filed under the Securities Act.

D. Filing of Non-Security Holder Approved Plans

The SEC also amended Item 601(b)(10) of Regulation S-K to expand the scope of equity compensation plan documents that must be filed as exhibits to annual reports on Form 10-K. As amended, Item 601(b)(10) will require registrants to file any equity compensation plan adopted without security holder approval in which any employee participates, unless immaterial in amount or significance. Item 601(b)(10) did not previously require the filing of plans in which executive officers do not participate. A compensation plan assumed by a registrant in connection with a merger, consolidation or other acquisition transaction under which additional grants or awards may be made will be considered a compensation plan of the registrant for purposes of the filing requirement.

* * *

This memorandum provides only a general overview of the amendments to proxy and Form 10-K rules regarding equity compensation plans. It is not intended to provide or constitute legal advice, and no legal or business decision should be based on its contents. Any questions concerning the foregoing should be addressed to members of the Paul Weiss Securities Group (see below). In addition, memoranda on related topics may be accessed under Securities Group publications on our web site (www.paulweiss.com).

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Equity Compensation Plan Information

	(a)	(b)	(c)
Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders			
Equity compensation plans not approved by security holders			
Total			