

## Client Alert

# Reminder: New Form 8-K Requirements for Executive Compensation Matters Take Effect November 7, 2006

New SEC rules on Form 8-K disclosure of executive compensation matters, adopted by the SEC in July 2006 as part of its overhaul of executive compensation disclosure rules generally, will become effective for triggering events occurring on or after November 7, 2006.

The new rules, among other things, eliminate employment compensation arrangements from the scope of Item 1.01 disclosure, expand Item 5.02 disclosure to cover entry into material compensatory arrangements with the principal executive officer, the principal financial officer or a “named executive officer,” and distinguish Regulation S-K Item 601(b)(10)(iii) exhibit disclosure standards from Form 8-K requirements.

Effective November 7, 2006, new provisions of Item 5.02 of Form 8-K will require the following:

- under a new Item 5.02(e), for the principal executive officer, the principal financial officer and each named executive officer, a brief description of any material new compensatory plan, contract or arrangement, or material grant or award thereunder, or any material amendment to a material compensatory plan, contract or arrangement (or any material modification to a grant or award thereunder), whether or not the event is in connection with an appointment or departure. However, grants and awards or modifications thereto will not need to be disclosed if they are materially consistent with the terms of previously disclosed plans or arrangements and are disclosed the next time the company is required to provide new disclosure under Regulation S-K Item 402;
- a new instruction to Item 5.02 clarifies that “named executive officers” are the persons for whom disclosure was required in the most recent filing with the SEC that required disclosure under Regulation S-K Item 4.02(c);
- disclosure of information regarding the departure of all named executive officers, in addition to the officers currently specified in Item 5.02 (*i.e.*, in addition to the principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer and anyone performing similar functions);
- a brief description of any material plan, contract or arrangement to which a new covered officer (*i.e.*, a principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or person performing similar functions) or new director is a party or in which he or she participates that is entered into or materially amended in connection with any of the triggering events specified in Item 5.02(c) or (d) (*i.e.*, appointment of the new covered officer or election of the new director except at a stockholder meeting convened for such purpose) or any grant or award to such covered officer or director in connection with any such event; and
- disclosure of salary and bonus for the most recent fiscal year that was not available at the latest practicable date in connection with a disclosure made under Regulation S-K Item 402. This disclosure requires a new total compensation recalculation to reflect the new salary or bonus information.

Item 5.02 requires only a brief description of the specified matters and is not intended to require an updating of all the Regulation S-K Item 402 disclosure.

In addition to the amendments to Items 1.01 and 5.02, General Instruction D of Form 8-K has been revised to permit companies in most cases to omit the Item 1.01 heading so long as all of the substantive disclosure required by Item 1.01 is included elsewhere in the Form 8-K.

The SEC also extended to Item 5.02(e) disclosures on Form 8-K the current safe harbors regarding Section 10(b) and Rule 10b-5 liability and Form S-3 eligibility for failures to timely file reports required by certain items of Form 8-K, including Item 1.01, if the company includes the relevant information in its next following quarterly or annual report.

One of the SEC's stated reasons for adopting the new rules is to limit current reporting by issuers of entry into compensation arrangements with executive officers to those matters that are "unquestionably or presumptively material." Under the existing rules, issuers have been reporting the entry into of these arrangements under Item 1.01 and, in accordance with the rules, have been relying on Item 601(b)(10)(iii) of Regulation S-K when determining whether such arrangements are "material." Item 601(b)(10)(iii) in effect requires, subject to certain exceptions, disclosure of (i) all compensation arrangements with directors or named executive officers and (ii) all compensation arrangements with other executive officers unless "immaterial in amount or significance." As the SEC noted in its adopting release, the incorporation of Item 601(b)(10)(iii) disclosure standards into Item 1.01 of Form 8-K has significantly affected executive compensation disclosure practices and "resulted in executive compensation disclosures that are much more frequent and accelerated than those included in a company's proxy statement." Moreover, according to the SEC the requirements of Item 1.01 have led to "compensation disclosure of the types of matters that, in some cases, appear to have fallen short of the 'unquestionably or presumptively material' standard associated with the expanded Form 8-K disclosure items."

The SEC's hope is that the changes outlined above, among other things, will restore a more balanced approach to Form 8-K disclosure of executive compensation arrangements by limiting disclosure to those matters the SEC believes are unquestionably or presumptively material.

\* \* \* \* \*

November 1, 2006

**For Additional Information**

This client alert can be found, together with other recent Chadbourne & Parke LLP client alerts, on our website at [www.chadbourne.com/publications](http://www.chadbourne.com/publications). Our client alerts are for general informational purposes and should not be regarded as legal advice. If you have any questions regarding this alert, please contact any of the following:

***New York***

Marc A. Alpert	+1 (212) 408-5491	malpert@chadbourne.com
Philip L. Colbran	+1 (212) 408-1122	pcolbran@chadbourne.com
A. Robert Colby	+1 (212) 408-5571	rcolby@chadbourne.com
William Greason	+1 (212) 408-5527	wgreason@chadbourne.com
Morton E. Grosz	+1 (212) 408-5592	mgrosz@chadbourne.com
Charles E. Hord, III	+1 (212) 408-5353	chord@chadbourne.com
Peter K. Ingerman	+1 (212) 408-5422	pingerman@chadbourne.com
Jennifer Y. Kang	+1 (212) 408-2311	jkang@chadbourne.com
Peter R. Kolyer	+1 (212) 408-5564	pkolyer@chadbourne.com
Sey-Hyo Lee	+1 (212) 408-5122	shlee@chadbourne.com
J. Allen Miller	+1 (212) 408-5454	amiller@chadbourne.com
Alejandro R. San Miguel	+1 (212) 408-8009	asanmiguel@chadbourne.com
Edward P. Smith	+1 (212) 408-5371	esmith@chadbourne.com
Kevin C. Smith	+1 (212) 408-1092	ksmith@chadbourne.com
Jessica J. Tsai	+1 (212) 408-1125	jtsai@chadbourne.com

***London***

David Levin	+44 (20) 7337-8048	dlevin@chadbourne.com
Claude S. Serfilippi	+44 (20) 7337-8030	cserfilippi@chadbourne.com

**Chadbourne & Parke LLP**

***New York***

30 Rockefeller Plaza  
New York, NY 10112  
Telephone: +1 (212) 408-5100  
Facsimile: +1 (212) 541-5369

***Houston***

1100 Louisiana, Suite 3500  
Houston, TX 77002  
Telephone: +1 (713) 571-5900  
Facsimile: +1 (713) 571-5970

***St. Petersburg***

Italianskaya Str., office 56/57  
St. Petersburg 191186, Russian Federation  
Telephone: +7 (812) 326-9300  
Facsimile: +7 (812) 326-9341

***Almaty***

Dostyk Business Center  
43 Dostyk Avenue, 4th floor  
Almaty, 050010, Kazakhstan  
Telephone: +7 (3272) 585-088  
Facsimile: +7 (3272) 588-084

***Washington, D.C.***

1200 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
Telephone: +1 (202) 974-5600  
Facsimile: +1 (202) 974-5602

***London***

Chadbourne & Parke  
(a multinational partnership)  
Regis House, 45 King William Street  
London EC4R 9AN  
Telephone: +44 (20) 7337-8000  
Facsimile: +44 (20) 7337-8001

***Warsaw***

(through a Polish partnership)  
ul. Emilii Plater 53  
00-113 Warsaw, Poland  
Telephone: +48 (22) 520-5000  
Facsimile: +48 (22) 520-5001

***Tashkent***

3rd Floor  
1 Turab Tula Street  
Tashkent 700003, Uzbekistan  
Telephone: + 998 (71) 1206-627  
Facsimile: + 998 (71) 1206-329

***Los Angeles***

350 South Grand Avenue, Suite 3300  
Los Angeles, CA 90071  
Telephone: +1 (213) 892-1000  
Facsimile: +1 (213) 622-9865

***Moscow***

52/5 Kosmodamianskaya Naberezhnaya  
Moscow 115054, Russian Federation  
Telephone: +7 (495) 974-2424  
Facsimile: +7 (495) 974-2425

***Kyiv***

11 Mykhailivska Street, 4th Floor  
Kyiv 01001, Ukraine  
Telephone: +380 (44) 230-2534  
Facsimile: +380 (44) 230-2535

***Beijing***

Room 902, Tower A, Beijing Fortune Centre  
7 Dongsanhuan Zhonglu, Chaoyang  
District  
Beijing 100020, China  
Telephone: +86 (10) 6530-8846  
Facsimile: +86 (10) 6530-8849

If you would like additional copies of this client alert, please contact Phillipa Yule, Director of Marketing and Creative Services, at +1 (212) 408-5240 or e-mail: [pyule@chadbourne.com](mailto:pyule@chadbourne.com).