



Securities Law Information Memo

August 2009

Electronic Dispatch

[Go to BS&K Securities Law Home Page](#)

PROPOSED AMENDMENTS TO SEC COMPENSATION AND CORPORATE GOVERNANCE DISCLOSURES

Comments may be submitted to the Securities and Exchange Commission on or before September 15, 2009 with respect to the Commission's proposed amendments to its rules, to further enhance compensation and corporate governance disclosures¹. The proposed amendments will:

- Add new disclosure requirements to proxy and information statements, including information about:
 - **the role of risk in compensation decision making, and the relationship of risk to compensation philosophies for the company as a whole.** A new section will be added to the Compensation Discussion and Analysis ("CD&A"), pursuant to which a company will be required to discuss its overall compensation policies and practices for employees generally, and consider whether the structure and/or implementation of such policies and practices encourage employees to take excessive or inappropriate risks to meet their incentive compensation elements, to the detriment of the company. The Commission highlights compensation policies and practices at particular business units of a company as possible sources of risk to the company. The Commission references in its release proposing the CD&A amendments, the disclosure of risk considerations material to a company's compensation policies as to its named executive officers currently required under the principles-based standards of the CD&A.
 - **director and director nominee qualifications.** The proposed amendments will require disclosure detailing each incumbent director's and director nominee's specific experience, qualifications, attributes or skills that qualify him or her to serve as a director of the company, and as a member of the board committees on which he or she currently serves or is chosen to serve, in light of the company's business and structure. Additionally, disclosure of service on other public company boards will be expanded to cover the past five years, as opposed to current director positions, and the time frame for disclosure of certain legal proceedings will be increased to 10 years from five.
 - **a company's leadership structure and the board's role in the risk management process.** A company will be required to describe its leadership structure and why the company has determined its particular leadership structure is appropriate for it, in light of the company's characteristics and/or circumstances. Disclosure will include whether and why the company has chosen to combine or separate the principal executive officer and board chairman positions and whether and why the company has a lead independent director and, if so, the specific role the lead independent director plays in the leadership of the company. Companies will also be required to provide disclosure about the role of a company's board of directors in the company's risk management process, including the level of board oversight and the manner in which the board implements its risk management function, and the overall effect that the board's role has, if any, on the company's leadership structure.
 - **potential conflicts of interests of compensation consultants.** New and enhanced disclosure about fees paid to compensation consultants and their affiliates will be required if they provide services, in addition to compensation consulting services.
- Require disclosure of the aggregate grant date fair value of stock and option awards computed in accordance with FAS 123R in the Summary Compensation Table and Director Compensation Table, as opposed to disclosure of the dollar amount recognized for financial reporting purposes currently required to be disclosed.
- Require companies to report shareholder voting results on Forms 8-K within four business days after the end of the meeting, as opposed to disclosure in Forms 10-Q and 10-K.
- Provide clarification to certain Commission rules governing proxy solicitation and proxy authority.

If adopted, it is anticipated that compliance with the amendments would be effective for the 2010 proxy season.

¹ SEC Release No. 33-9052, Proxy Disclosure and Solicitation Enhancements.



This information memorandum is intended to be only a summary of the Commission's proposed rules. If you have any questions about the proposed rules or other rules and regulations of the Securities and Exchange Commission, please contact the Bond, Schoeneck & King, PLLC member in our Securities Practice Group with whom you work or any of the other members listed below.

In Central New York, call 315-218-8000 or e-mail:

Catherine A. King, Chair	caking@bsk.com
Ronald C. Berger	rberger@bsk.com
Brian J. Butler	bbutler@bsk.com
Stephen C. Daley	sdaley@bsk.com
David M. Ferrara	dferrara@bsk.com
Edwin J. Kelley, Jr.	ekelley@bsk.com
Danielle M. McCann	dmccann@bsk.com
Roderick C. McDonald	rmcdonald@bsk.com
John P. Paraschos	jparaschos@bsk.com
Paul W. Reichel	preichel@bsk.com
Mary L. Snyder	msnyder@bsk.com
Natalie H. Weiskotten	nweiskotten@bsk.com
Courtney A. Wellar	cwellar@bsk.com
Matthew N. Wells	mwells@bsk.com
Philip J. Zaccheo	pzaccheo@bsk.com

In Tech Valley, call 518-533-3000 or e-mail:

Gregory J. Champion	gchampion@bsk.com
---------------------	-------------------