



JONES DAY  
**COMMENTARY**

## FINAL EXECUTIVE PAY PROPOSALS ADOPTED BY THE SEC

SEC commissioners met on July 26, 2006, to approve, in a 5-0 vote, the proposed comprehensive new rules relating to disclosure of executive compensation. The proposed rules, released in January, received more comments than any other proposal in the SEC's history. The new rules will become effective for the 2007 annual meeting season.

The final rules were adopted largely as proposed with the following significant exceptions:

- Given the recent attention to stock option timing issues, the SEC's new rules will require companies to explain their option grant practices and, in particular, whether option grants are specifically timed to the public release of company information and the circumstances involving grants where the exercise price does not match the market value of the stock on the date of grant.
- The so-called "Katie Couric clause," which requires companies to disclose the compensation of up to three additional employees who earn more than any individual classified as a "named executive officer," was not adopted. Instead, the SEC repropo-  
sed the rule in response to a large number of comments that objected to this proposal. The rule, as repropo-  
sed, would require disclosure only of compen-  
sation to executives who make significant policy decisions and would exclude professional athletes, entertainers, and salespeople. Further, this disclo-  
sure would apply only to companies with a market capitalization of more than \$700 million. Further SEC action is required to finalize this aspect of the rules.
- In determining the identity of the "named execu-  
tive officers," pension plan accruals and earnings on deferred compensation would be excluded. As proposed, pension plan accruals would be required to be disclosed in the Summary Compensation Table ("SCT"). However, in a change from the pro-  
posed rules, only preferential earnings on deferred compensation would be reported in the SCT. These amounts would be set forth in a separate column in the SCT.

- As proposed, a “total” compensation figure would be included for each named executive, but this column was moved to the far right of the SCT so that the numbers would add from left to right.
- The performance graph was reinstated but will not be tied to the executive compensation disclosures. The performance graph will now be required in 10-Ks and annual reports.

As expected, the following disclosure items were retained in the final rules:

- The “fair value” of equity awards, computed pursuant to FAS 123R, will be required to be disclosed in the SCT.
- The threshold level for disclosure of perquisites was retained at \$10,000.
- Estimated amounts that could be paid under severance and change-in-control agreements will have to be calculated and disclosed (based on year-end stock price and compensation).
- Companies will have to include the proposed “filed” narrative “Compensation Discussion and Analysis,” albeit supplemented by a new “furnished” compensation committee report.
- Companies will have to disclose performance-based awards in a tabular format but would not be required to disclose any factor, criteria, or performance-related or other condition to payout or vesting of a particular award that involves confidential commercial or business information, disclosure of which would adversely affect the company’s competitive position.

Companies will not be required to “restate” compensation disclosure for fiscal years prior to application of the rules. Thus, information in the tables would only be required for the most recent fiscal year, resulting in a phased-in implementation of the rule changes over a three-year period.

For further information on the executive pay rules, as proposed, please refer to the *Jones Day Commentary* titled “New Executive Pay Proposals” (March 2006).

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The foregoing is a highly condensed and generalized discussion of some key provisions of the final rules, as discussed by the SEC in its open meeting. The final rules are expected to be published by the SEC shortly and may differ from the rules as discussed herein.

## LAWYER CONTACTS

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