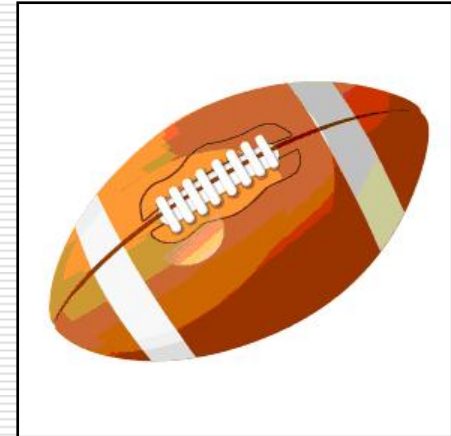


2010 PROXY PLAY-BY-PLAY



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Small Public Company Forum
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Today's Game

- Play-By-Play
- Color Commentary
- Gameplan
- Post-Game Press Conference



The Veteran



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Overview of New Proxy Disclosure Rules

- Effective Date
 - Effective for any fiscal year ended on or after 12/20/09
 - Amendments apply to proxy materials/disclosures (including 10-Ks) filed on or after 2/28/10
 - Transition rule interpretations – preliminary proxy statements
 - A la carte early adoption is permitted

Overview of New Proxy Disclosure Rules

- Topics
 - Compensation disclosure amendments
 - Governance disclosure amendments
- Smaller Reporting Companies
 - New requirements apply, except risk analysis of compensation practices

Other New Developments That Affect Proxy Season

- Broker discretionary voting - NYSE Rule 452
- New Form 8-K requirement
- Proxy Access Proposal
- See “ON Securities Cheat Sheet” for more detail

Compensation Policies and Risk Management Discussion

- Analyze policies and practices (not just executives) if risks “reasonably likely” to have a material adverse effect
- Requirement does *not* apply to smaller reporting companies
- **GAMEPLAN:** Smaller reporting companies should still consider impact on risk and possible voluntary disclosure or a risk factor
 - Especially in financial services industry or securities offerings

Revisions to Summary Compensation Table (SCT)

- Changes the amount of equity awards to named executives (NEOs) reported in SCT
- Old rule – for each year, report the amount expensed for each NEO
 - Amount for each year includes portions of the value of awards granted in various fiscal years
- New Rule – for each year, report the fair value of the equity awards granted to the NEO in that year
 - For performance awards, use dollar amount for most probable outcome (targeted level)

Revisions to SCT – Example

Stock Options – 3 Year Vesting

Year	Shares	Grant Date Fair Value	Expense/Yr. From Grant
2007	100,000	\$300,000	\$100,000
2008	0	-	-
2009	25,000	\$ 90,000	\$ 30,000

Restricted Stock –5 Year Vesting

Year	Shares	Grant Date Fair Value	Expense/Yr. From Grant
2007	0	-	-
2008	50,000	\$250,000	\$ 50,000
2009	0	-	-

Revisions to SCT – Example

Summary Compensation Table – Old Rules

	Year	Stock Awards	Option Awards
Brett Favre, CEO	2009	\$50,000	\$130,000
	2008	\$50,000	\$100,000

Summary Compensation Table – New Rules

	Year	Stock Awards	Option Awards
Brett Favre, CEO	2009	\$0	\$90,000
	2008	\$250,000	\$0

Revisions to SCT

GAMEPLAN:

- Plan for possibility that there may be changes in the “roster” of NEOs from year to year
 - A big equity grant will cause compensation levels to “bounce”

Enhanced Director and Nominee Disclosure

- For each director, disclose the particular experience, qualifications, attributes or skills resulting in board's conclusion that the person should serve as a director (Regulation S-K, Item 401(e))
 - No prescribed format
 - Still must disclose minimum qualifications of director-nominees under the nominating committee disclosure (Corporate Governance section)

Enhanced Director and Nominee Disclosure

GAMEPLAN:

- Define and refine your process for gathering information about nominees and directors (update D&O Questionnaires)
- Review and revise your “skills and qualifications” disclosure in light of your nominating committee disclosure (and charter)
- To avoid “skill comparisons”, think about a group-oriented approach and consider focusing on experience and skills derived from particular experience

Enhanced Director and Nominee Disclosure

- Disclose service on public company boards during prior five years (not just current boards) (Reg. S-K, Item 401(e))
- Disclose directors' involvement in expanded list of legal proceedings, during prior ten (not five) years (Reg. S-K, Item 401(f))
- Board diversity (Reg. S-K, Item 407(c))
 - Whether, and if so how, you consider diversity
 - Do you have a policy, and if so how do you implement and assess?

Enhanced Director and Nominee Disclosure

GAMEPLAN:

- Update D&O Questionnaires to account for new disclosure requirements
- Consider how you define “diversity” for your board (rule doesn’t define)
- Consider whether you have a policy (or should you have one?)
- If you believe you don’t have a policy, square this with any statements about diversity in your nomination disclosure

Compensation Consultant Conflicts

- Disclosure applies to compensation consultants with a role in determining or recommending compensation
 - Consultant to the Compensation Committee, or if none, consultant to management – with exceptions
- If the consultant also provides additional non-executive compensation consulting services, AND fees for those services are over \$120K, disclose the amount of the non-executive compensation consulting services and other information

Compensation Consultant Conflicts

- If disclosure is required, were “other services” recommended by management/approved by Committee?

GAMEPLAN:

- Gather info – “other” services by consultant and its affiliates to company and its affiliates

Board Leadership Structure

- Amendment aimed at obtaining straightforward disclosure about leadership structure (Reg. S-K, Item 407(h))
 - Does Company have combined CEO and Chairman roles?
 - If combined, is there a “lead director” who is independent?
 - Why is the chosen leadership structure appropriate for registrant?
- What is the extent of board’s role in risk oversight?

Elimination of Broker Discretionary Voting in Election of Directors

- NYSE Rule 452 – applies to all public companies, because it governs NYSE-member brokers voting shares in public companies
- Effective for all shareholder meetings held on or after January 1, 2010
- For street-name accounts, brokers can no longer vote shares for directors without instructions from beneficial owner

Elimination of Broker Discretionary Voting in Election of Directors

- Will mean lower percentage vote from retail investors, who are more likely to vote for management director slate
- Smaller companies – probably little practical impact – directors are elected by a plurality
 - However, director embarrassment if a low vote is received in favor
- Affects quorum for the meeting if there are no other “non-controversial” matters on the ballot – not a problem if ratifying auditors

Voting Results on Form 8-K

- New Item 5.07, effective 2/28/10 – no real surprise
- Eliminates 10-Q and 10-K reporting items
- S/H voting results must be reported within four business days (from end of meeting)
- Contested or difficult situations – Timely 8-K with preliminary voting results (amended 8-K within four days of final results)
- Missing the deadline could affect Form S-3 eligibility (short-form registration)

Proxy Access Proposal

- Proposed Rule 14a-11, proposed June 2009 – other versions were proposed in the past
- SEC re-opened comment period in Dec. 2009; targeting adoption in early 2010, and several governance reform proposals in Congress would require adoption
- For non-accelerated filers, right would be granted to holders who have for at least one year beneficially owned at least 5% of the outstanding stock
- Right to nominate directors and have them included in management's proxy statement – up to 25% of the board positions, first come, first served
- Also, proposed amendment to Rule 14a-8 – SEC would allow shareholder proposals to vote to require future shareholder access

Say-on-Pay

- Possible requirement to have a non-binding shareholder vote to approve compensation
- TARP recipients were required to adopt Say-on-Pay starting in 2009
- Many companies have had shareholder proposals to require Say-on-Pay in future years
- Corporate reform legislation in Congress would require Say-on-Pay
 - E.g., current House bill on compensation reform (H.R. 3269) would require Say-on-Pay for all public companies six months after date of final SEC rules

The Final Gameplan – Getting Over the Goal Line

- Consider compensation risk disclosure
- Calculate new SCT numbers – any new named executives?
- Gather “skills and qualifications” info
- D&O Questionnaires
 - Prior Boards
 - Expanded legal proceedings – 10 years

The Final Gameplan – Getting Over the Goal Line

- Consider Board diversity policy
- Gather consultant info on “other” services
- Draft leadership and risk oversight disclosure
- Broker voting
 - Review previous voting results to determine possible impact
 - Always ratify appointment of auditors

Post-Game Press Conference



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