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Managing executive compensation

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Canadian securities regulators have implemented major changes to executive compensation disclosure requirements that apply to any fiscal year ending on or after Dec. 31, 2008.

All Canadian reporting issuers -- including TSX Venture issuers -- will be required to disclose executive compensation in their annual information circulars

The changes require much greater transparency and public companies should be actively consulting with their lawyers and accountants to ensure they are properly prepared.

Here's an overview of the changes and a summary of what a public company will now be required to provide in terms of executive compensation disclosure:

New "total compensation" test to determine named executive officers Disclosure will now be required for all directors as well as the named executive officers ("NEOs"), which include the CEO, CFO and the three other most highly compensated officers, whose total compensation exceeded $150,000 for that financial year.

The determination of who the three executive officers are (other than the CEO and CFO) will now be determined by "total compensation" rather than the executives' salary and bonus. This may result in different individuals being identified as a company's NEO's than in previous years.

Total compensation consists of all compensation paid, payable, awarded, granted, given or otherwise provided to the NEO directly or indirectly. Companies should be certain to include: salary and bonus, benefits (excluding basic ones), gifts or perquisites, the fair value of share-based awards, option-based awards and non-equity incentive plan compensation, and any other types of discretionary or non-discretionary compensation.

And make note that engaging an NEO through an external management company will not change the requirement for total compensation disclosure for that NEO.

Extensive discussion and analysis required Executive compensation disclosure must now include a compensation discussion and analysis ("CD&A"). The CD&A requires a discussion and explanation of the significant elements of compensation, how decisions are made for each NEO's compensation, and what the compensation incentives are designed to accomplish and how they do so. As part of this disclosure, the CD&A must also provide comparative benchmarks to other named companies and explain how those comparative companies were selected.

For most reporting issuers, the CD&A also retains the requirement for a five-year performance graph, providing an illustration of total shareholder return over a five-year period. However, companies must now also discuss how the trend shown in this graph compares with the trend in executive compensation over the same period.

With such extensive compensation analysis now required, a company's compensation committee (if applicable) should review the disclosure in the CD&A before it is approved by the board of directors and released in the information circular.

New summary compensation table to provide clarity To provide a clearer picture of each NEO's compensation, companies must revise their summary compensation table, all elements of the table must be disclosed in dollar amounts and it must include a column showing the total dollar value of all compensation paid to each NEO.

Other compensation disclosure required In addition to the new rules relating to the CD&A and summary compensation table, there are several other disclosure requirements that apply to all issuers:

- Enhanced Termination, Change of Control and Retirement Benefits Disclosure.

Companies must make specific disclosure of potential payments to NEOs upon resignation, retirement, change in responsibilities, termination (whether voluntary, involuntary or constructive) or a change of control, and explain what circumstances would trigger those payments.

- Expanded Director Compensation Disclosure.

A summary table similar to that required for NEO's must now be included for directors and must include equity disclosure. This disclosure will only be for the financial year being reported.

- Incentive Plan Awards.

The new rules require disclosure of both outstanding, and vested, incentive plan awards for each NEO their amounts involved and their exercise prices.

Next steps With the broad changes to compensation disclosure advance preparation will be critical. Here are three steps that companies should take as part of their preparation process:

- Review the new disclosure rules with the compensation committee and board of directors to ensure everyone has an understanding of the new requirements.

- Review existing executive compensation disclosure practices and disclosure systems and consider what modifications need to be made to comply with the disclosure regimen.

- Allow for additional time to prepare executive compensation disclosure to permit thorough review and input from the compensation committee and board of directors.

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