Indebtedness of Executive Officers and Principal Shareholders to a State Nonmember Bank and Its Correspondent Banks, and because the FDIC does not believe that the reports at issue contribute significantly to the effective monitoring of insider lending or the prevention of insider abuse, the FDIC is repealing its regulations at part 349.

**III. Exemption From Public Comment**

The Act repeals the specific statutory requirements for these reports. However, the FDIC retains authority under other provisions of law to collect information regarding insider lending by depository institutions. The FDIC does not believe these reports contribute significantly to the effective monitoring of insider lending or the prevention of insider abuse. Under these circumstances, providing prior notice and an opportunity for public comment on whether to repeal these rules would serve no useful purpose. As a result, under authority at 5 U.S.C. 553(b)(B), FDIC finds good cause to waive such procedures. Moreover, no Federal agency's or private sector entity's interest will be adversely affected by their repeal. Further, and for the same reason, FDIC finds good cause pursuant to 553(d)(3) to waive the requirement of a 30-day delay in effect for this rule. Thus, this rule is effective immediately.

*Regulatory Flexibility Act*

As prior notice and an opportunity for public comment are not required under 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act are inapplicable. Thus, no regulatory flexibility analysis is required and none has been prepared.

*Paperwork Reduction Act*

At the FDIC's request, the Office of Management and Budget (OMB) has deleted the collection of information associated with this rule (formerly approved by OMB under Control No. 3064–0023, ''Reports of Indebtedness of Executive Officers and Principal Shareholders to Correspondent Banks and to Own Bank,'' collected using FFIEC form 004). The reduction in paperwork burden imposed on the public resulting from the elimination of this collection of information will be 47,998 hours a year. The Federal Financial Institutions Examination Council (FFIEC) is providing notice to all affected parties that they will no longer need to provide this information to the agencies.

Also, as discussed above, section 601 of the Act eliminated the requirement that a bank include a separate report with its Call Report each quarter on any extensions of credit the bank has made to its executive officers since the date of its last Call Report. Accordingly, as of December 31, 2006, the FDIC will no longer require banks to provide the ''Special Report'' on loans to executive officers, which had been included after the final page of the Call Report forms in previous quarters. At the FDIC's request, OMB has approved this change in the Call Report. The resulting reduction in paperwork burden imposed on the public will be 5,247 hours a year.

*Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title II, Pub. L. 104–121) provides generally for agencies to report rules to Congress and the General Accounting Office (GAO) for review. The reporting requirement is triggered when a federal agency issues a final rule. The FDIC will file the appropriate reports with Congress and the GAO as required by SBREFA. The Office of Management and Budget has determined that the rule does not constitute a ''major rule'' as defined by SBREFA.

**List of Subjects in 12 CFR Part 349**

Reports, Public disclosure, Indebtedness of principal shareholders, Indebtedness of executive officers, State nonmember banks, Correspondent banks.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends title 12, chapter III of the Code of Federal Regulations under the authority of 5 U.S.C. 553 by removing and reserving part 349.

## PART 349—[REMOVED AND RESERVED]

Dated at Washington, DC, this 22nd day of December, 2006.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E6–22260 Filed 12–28–06; 8:45 am]

**BILLING CODE 6714–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 228 and 229

**[Release Nos. 33–8765; 34–55009; File No. S7–03–06]**

**RIN 3235–AI80**

### Executive Compensation Disclosure

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interim final rules with request for comments.

**SUMMARY:** The Securities and Exchange Commission is adopting, as interim final rules, amendments to the disclosure requirements for executive and director compensation. The amendments to Item 402 of Regulations S–K and S–B revise Summary Compensation Table and Director Compensation Table disclosure with respect to stock awards and option awards to provide disclosure of the compensation cost of awards over the requisite service period, as described in Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004) *Share-Based Payment* (FAS 123R). FAS 123R defines a requisite service period as the period or periods over which an employee is required to provide service in exchange for a share-based payment. The revised disclosure replaces disclosure in the Summary Compensation Table and Director Compensation Table of the aggregate grant date fair value of awards computed in accordance with FAS 123R. The amendments revise the Grants of Plan-Based Awards Table to add a column showing, on a grant-by-grant basis, the full grant date fair value of awards computed in accordance with FAS 123R. The amendments also revise the Grants of Plan-Based Awards Table to include information concerning repriced or materially modified options, stock appreciation rights and similar option-like instruments, disclosing the incremental fair value computed as of the repricing or modification date computed in accordance with FAS 123R. The amendments to the Director Compensation Table in Item 402 of Regulation S–K require footnote disclosure corresponding to the new Grants of Plan-Based Awards Table fair value disclosures. The amendments are intended to provide investors with more complete and useful disclosure about executive compensation. Disclosing the compensation cost of stock and option awards over the requisite service period will give investors a better idea of the compensation earned by an executive or

director during a particular reporting period, consistent with the principles underlying the financial statement disclosure; and retaining the requirement to disclose the grant date fair value will give investors useful information about the total impact of compensation decisions made by a company in a particular reporting period.

**DATES:** *Effective Date:* The amendments are effective December 29, 2006.

*Comment Date:* As discussed below, we are publishing interim final regulations. We will, however, consider any comments received on or before January 29, 2007 and will revise the interim final rule amendments to Item 402 of Regulations S–K and S–B if necessary.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/final.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–03–06 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–03–06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed/shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** David Lynn or Anne Krauskopf, at (202) 551–3500, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3010.

**SUPPLEMENTARY INFORMATION:** We are adopting amendments to Item 402 [1] of Regulations S–K [2] and S–B [3] as interim final rules.

## I. Background

On July 26, 2006, we voted to adopt revisions to our rules governing disclosure of executive compensation.[4] We intended these revisions to provide investors with a clearer and more complete picture of compensation to principal executive officers, principal financial officers, the other highest paid executive officers and directors.[5]

Two significant features of the amended disclosure rules were revisions to the Summary Compensation Table [6] and adoption of a new Grants of Plan-Based Awards Table.[7] Among other things, we revised the Summary Compensation Table to include a new ''Total'' column [8] that aggregates the total dollar value of each form of compensation quantified in the other columns. We also adopted a Director Compensation Table,[9] modeled on the revised Summary Compensation Table.

Under these rules, in order to calculate a total dollar amount of compensation in the Summary Compensation Table for a particular fiscal year, a dollar value for all equity awards—rather than the number of securities underlying an equity award—must be disclosed. We required this valuation to be based on the grant date fair value of the awards determined pursuant to FAS 123R. In particular, for both the Stock Awards and Option Awards columns,[10] we amended the rules to require disclosure of the aggregate grant date fair value of the awards computed in accordance with FAS 123R.[11] This approach provided for Summary Compensation Table and Director Compensation Table disclosure of these awards, consistent with the timing of option and stock awards disclosure that had applied in the Summary Compensation Table since 1992.[12]

The comments we received regarding the dollar amount for Stock Awards and Option Awards in the Summary Compensation Table reflected differing views. Some commenters expressed support for requiring companies to report the full grant date fair value in the fiscal year of the award because it would provide a more complete representation of compensation and would be more consistent with the purpose of executive compensation disclosure.[13] Others stated that we should require Summary Compensation Table disclosure of the proportionate

[1] 17 CFR 229.402 and 17 CFR 228.402.

[2] 17 CFR 229.10 *et seq.*

[3] 17 CFR 228.10 *et seq.*

[4] *Executive Compensation and Related Person Disclosure,* Release No. 33–8732A (Aug. 29, 2006) [71 FR 53158] (the ''2006 Executive Compensation Release''). These revisions became effective on November 7, 2006.

[5] The discussion that follows focuses on amendments to Item 402 of Regulation S–K, with references to differences from Item 402 of Regulation S–B where appropriate.

[6] Item 402(c) of Regulation S–K, which presents information for each of the company's last three completed fiscal years, and Item 402(b) of Regulation S–B, which presents information for each of a small business issuer's last two completed fiscal years.

[7] Item 402(d) of Regulation S–K.

[8] Item 402(c)(2)(x) of Regulation S–K and Item 402(b)(2)(x) of Regulation S–B.

[9] Item 402(k) of Regulation S–K and Item 402(f) of Regulation S–B. Each of these tables presents information for the last completed fiscal year.

[10] Items 402(c)(2)(v) and (vi) of Regulation S–K and Items 402(b)(2)(v) and (vi) of Regulation S–B require these columns in the Summary Compensation Table. Items 402(k)(2)(iii) and (iv) of Regulation S–K and Items 402(f)(2)(iii) and (iv) of Regulation S–B require these columns in the Director Compensation Table.

[11] 2006 Executive Compensation Release at Section II.C.1.c.i.

[12] See *Executive Compensation Disclosure,* Release No. 33–6962 (Oct. 16, 1992) [57 FR 48126] (the ''1992 Release''). Before the amendments adopted in the 2006 Executive Compensation Release, the Summary Compensation Table had required disclosure of the sum of the number of securities underlying stock options granted (including options that subsequently have been transferred), with or without tandem stock appreciation rights (SARs), and the number of free-standing SARs. The Summary Compensation Table also had required disclosure of the dollar value (net of any consideration paid by the named executive officer) of any award of restricted stock, calculated by multiplying the closing market price of the company's unrestricted stock on the date of grant by the number of shares awarded. Alternatively, restricted stock awards subject to performance-based vesting conditions could have been reported as long-term incentive plan (LTIP) awards in the separate Long-Term Incentive Plan Awards table, with vesting later reported in the Summary Compensation Table LTIP Payouts column.

[13] See, for example, letters from California Public Employees' Retirement System; CFA Centre for Financial Market Integrity, dated April 13, 2006; Connecticut Retirement Plans and Trust Funds, dated April 10, 2006; Leo J. Burns; Governance for Owners USA, Inc.; Laborers International Union of North America; Nancy Lucke Ludgus; jointly, California Public Employees' Retirement System, California State Teachers' Retirement System, Co-operative Insurance Society—UK, F&C Asset Management—UK, Illinois State Board of Investment, London Pensions Fund Authority—UK, New York State Common Retirement Fund, New York City Pension Funds, Ontario Teachers' Pension Plan, PGGM Investments—Netherlands, Public Sector and Commonwealth Super (PSS/CSS)—Australia, RAILPEN Investments—UK, State Board of Administration (SBA) of Florida, Stichting Pensioenfonds ABP—Netherlands, UniSuper Limited—Australia, and Universities Superannuation Scheme—UK; State Board of Administration (SBA) of Florida; Teamsters Local 671 Health Services and Insurance Plan; Southwestern Pennsylvania and Western Maryland Area Teamsters and Employers Pension Fund; United Church Foundation, Inc.; Washington State Investment Board; and Western PA Teamsters & Employers Welfare Fund.

amount of an award's total fair value that is recognized in the company's financial statements for the fiscal year.[14] Some of these commenters expressed concerns that disclosing the full grant date fair value would overstate compensation earned related to service rendered for the year, and might confuse the discussion and analysis of compensation policies and practices.[15] Others stated that requiring immediate reporting of the full grant date fair value would not necessarily reflect the cost to the company or the benefit to the named executive officer or director, and that the actual amounts earned later could be substantially different.[16] For example, a performance-based stock award might never be earned, yet the entire grant date fair value of the award is required to be reported in the Summary Compensation Table in the fiscal year of grant.[17] Some commenters expressed concern regarding inconsistency with the presentation of non-equity incentive plan compensation,[18] which is reported when earned.[19]

Commenters also suggested that providing compensation disclosure that is consistent with the company's financial statements would make it easier for analysts and investors to analyze compensation for top executives.[20] One commenter noted particularly that the Financial Accounting Standards Board engaged in a thorough and extensive process before concluding that financial statements should reflect the compensation cost of the award proportionately over the vesting period.[21] Another commenter stated that the accounting rules shape decision-making on executive compensation.[22] Regarding identification of the most highly compensated executive officers, one commenter noted that reporting full grant date fair value would cause wide year-to-year swings in reported compensation when in fact the executive is earning a consistent level of compensation, and cause inconsistencies in the identification of named executive officers from year-to-year.[23]

Our comprehensive revisions also adopted the Grants of Plan-Based Awards Table to supplement and complement Summary Compensation Table disclosure of stock and option awards by disclosing, among other things, the number of shares of stock or units comprising or underlying the award. This supplemental table shows the terms of grants, including estimated future payouts for both equity incentive plans and non-equity incentive plans,[24] with separate disclosure for each grant.

## II. Discussion

Under FAS 123R, while the compensation cost is initially measured based on the grant date fair value of an award, it is generally recognized for financial reporting purposes over the period in which the employee is required to provide service in exchange for the award (generally the vesting period). When and where to disclose this compensation cost as executive compensation disclosure requires a careful balancing. In the 2006 Executive Compensation Release, we chose to require disclosure of the full grant date fair value as compensation when the grant is made. As we explained, on balance we chose that approach for the purpose of executive compensation disclosure for a variety of reasons, including that it informs investors of current actions regarding plan awards, and emphasizes the importance of the compensation committee's compensation decisions for the most recent fiscal year.

We recognize, however, that no one approach to disclosure of stock and option awards addresses all of the issues regarding disclosure of these forms of compensation. Upon further consideration, we have concluded that a combination of disclosure of the compensation cost associated with equity awards as that cost is recognized in the financial statements in the Summary Compensation Table, combined with disclosure of the grant date fair value of those awards on a grant-by-grant basis in the Grants of Plan-Based Awards Table, would provide a fuller and more useful picture of executive compensation than our recently adopted rules. Thus, we now adopt, as interim final rules, amendments that implement an approach to Summary Compensation Table disclosure of equity awards that provides disclosure of compensation cost of those awards over the requisite service period, as described in FAS 123R. Adopting the amendments as interim final rules—before issuers are required to comply with the recently adopted amendments—will avoid presentation of executive compensation disclosure in the first year that would be different in later years. Measuring compensation in this manner should provide investors with a clearer view of the annual compensation earned by executives and the annual compensation costs to a company, consistent with the timing of financial statement reporting. Measuring compensation in this manner also should eliminate the potential for distortion in identifying named executive officers based on a measure that reflects the full grant date fair value of awards, such as when a single large grant that will be earned by services to be performed over multiple years changes the composition of the named executive officers in the Summary Compensation Table.

In addition, we are revising the Grants of Plan-Based Awards Table to add a column showing the full grant date fair value of each award granted, computed in accordance with FAS 123R. This will provide investors a more complete perspective of the compensation decisions made with respect to the last completed fiscal year, and facilitate Compensation Discussion and Analysis disclosure of the company's policies and decisions regarding compensation awarded to, earned by, or paid to the named executive officers.[25] As a result of the amendments, investors will have more disclosure and ultimately a more complete picture of a company's

[14] See, for example, letters from the SEC Regulations Committee of the American Institute of Certified Public Accountants (''AICPA''); Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.; Chamber of Commerce of the United States of America (''Chamber of Commerce''); Computer Sciences Corporation; Deloitte & Touche LLP (''Deloitte''); Ernst & Young LLP (''E&Y''); Fenwick & West LLP (''Fenwick''); Foley & Lardner LLP (''Foley''); HR Policy Association; American Bar Association, Joint Committee on Employee Benefits; and KPMG LLP (''KPMG'').

[15] See letters from Chamber of Commerce and E&Y.

[16] See letters from Foley (noting that awards would be forfeited if the executive terminates employment before expiration of the vesting period) and WorldatWork.

[17] See letter from Compass Bancshares, Inc.

[18] See, for example, letters from The Corporate & Securities Law Committee and the Employment & Labor Law Committee of the Association of Corporate Counsel; Amalgamated Bank Long-View Funds; BDO Seidman, LLP (''BDO Seidman''); Council of Institutional Investors, dated March 29, 2006; IUE–CWA Pension Fund and 401(k) Plan; and Mercer Human Resources Consulting.

[19] Item 402(c)(2)(vii) of Regulation S–K and Item 402(b)(2)(vii) of Regulation S–B.

[20] See letters from AICPA; Chamber of Commerce; Deloitte; EY; and KPMG.

[21] See letter from Fenwick.

[22] See letter from Steven Hall & Partners. If this is the case, we would anticipate that this influence may be discussed in the Compensation Discussion and Analysis. See Item 402(b)(2)(xii) of Regulation S–K.

[23] See letter from Fenwick.

[24] Equity incentive plan and non-equity incentive plan are both defined in Item 402(a)(6)(iii) of Regulation S–K and Item 402(a)(5)(iii) of Regulation S–B.

[25] The Compensation Discussion and Analysis section is required by Item 402(b) of Regulation S–K. Instruction 2 to Item 402(b) provides, among other things, that the Compensation Discussion and Analysis should be of the information contained in the tables and otherwise disclosed pursuant to Item 402 of Regulation S–K.

compensation decisions. We believe that this approach will better fulfill the Commission's objective of informing investors of current actions regarding plan awards and compensation decisions, and that this disclosure ultimately will be easier for companies to prepare and investors to understand.

*A. Summary Compensation Table*

Under the amendments we adopt today as interim final rules, the dollar amount of compensation cost recognized over the requisite service period, as described in FAS 123R, will be the amount reported in the Stock Awards and Option Awards columns in the Summary Compensation Table.[26] Compensation cost will include both the amounts recorded as compensation expense in the income statement for the fiscal year as well as any amounts earned by an executive that have been capitalized on the balance sheet for the fiscal year. This amount will include compensation cost recognized in the financial statements with respect to awards granted in previous fiscal years and the subject fiscal year. The amendments revise the corresponding columns in the Director Compensation Table in the same way.[27]

We also amend the related instruction calling for a footnote disclosing all assumptions made in the valuation by reference to a discussion of those assumptions in the company's financial statements, footnotes to the financial statements, or discussion in Management's Discussion and Analysis,[28] and providing that the referenced sections are deemed part of the Item 402 disclosure, to also require footnote disclosure of awards that are forfeited.[29] Since the amendments correlate Summary Compensation Table disclosure of stock and option awards to the dollar amount recognized for financial statement purposes with respect to the fiscal year, the other related instruction, limiting the amount reported with respect to a repriced option or SAR to the FAS 123R incremental fair value,[30] is rescinded. As discussed below,[31] this information and the full grant date fair value disclosure formerly disclosed in the Summary Compensation Table is moved to the Grants of Plan-Based Awards Table, where it is required on a grant-by-grant basis.

We also revise the instruction to the Summary Compensation Table Salary and Bonus columns regarding salary or bonus forgone at the election of a named executive officer in favor of receiving a non-cash form of compensation.[32] Reporting such forgone amounts in the Stock Awards or Option Awards columns after salary or bonus is earned is inconsistent with the original terms of the award that would have compensated the named executive officer in cash. Accordingly, the revised instruction requires the forgone amount to be reported in the Salary or Bonus column, with footnote disclosure of the receipt of non-cash compensation that refers to the Grants of Plan-Based Awards Table where the stock, option or non-equity incentive plan award elected is reported.

Under FAS 123R, the classification of an award as an equity or liability award is an important aspect of the accounting because the classification will affect the measurement of compensation cost recognized in each financial statement reporting period. Awards with cash-based settlement, certain repurchase features, or other features that do not result in an employee bearing the risks and rewards normally associated with share ownership for a specified period of time are classified as liability awards under FAS 123R. For an award classified as an equity award under FAS 123R, the compensation cost recognized is fixed for a particular award and, absent modification of the award, is not revised with subsequent changes in market prices or other assumptions used for purposes of the valuation. In contrast, liability awards are initially measured at fair value on the grant date, but for purposes of recognition in the financial statements are then re-measured at each financial statement reporting date through the date the awards are settled under FAS 123R. Under the amendments to the Summary Compensation Table and Director Compensation Table, these re-measurements of liability awards will be reflected in executive compensation disclosure, providing a more comprehensive measure of liability awards over time.

FAS 123R requires a company to aggregate individuals receiving awards into relatively homogenous groups, for example, executives and non-executives, with respect to exercise and post-vesting employment termination behaviors for the purpose of determining expected term assumption used for computing the grant date fair value. The rules we adopt today as interim final rules, like the recently adopted amendments, are not intended to change the method used to value employee stock options for purposes of FAS 123R or to affect the judgments as to reasonable groupings for purposes of determining the expected term assumption required by FAS 123R. Where a company uses more than one group, the measurement of grant date fair value for purposes of Item 402 will be derived using the expected term assumption for the group that includes the named executive officers (or the group that includes directors for purposes of the Director Compensation Table).

In determining the amount recognized, FAS 123R requires a company to estimate at the grant date the number of awards that ultimately will be earned. Those estimates are revised each period as awards vest or are forfeited. The interim final rules that we adopt today are not intended to change the method a company uses to estimate forfeitures under FAS 123R. However, under the amendments, the compensation cost disclosed for Item 402 purposes will not include an estimate of forfeitures related to service-based vesting conditions. Compensation cost for awards containing service-based vesting conditions [33] will be disclosed assuming that a named executive officer will perform the requisite service to vest in the award. If the named executive officer fails to perform the requisite service and forfeits the award, the

[26] Items 402(c)(2)(v) and (vi) of Regulation S–K and Items 402(b)(2)(v) and (vi) of Regulation S–B.

[27] Items 402(k)(2)(iii) and (iv) of Regulation S–K and Items 402(f)(2)(iii) and (iv) of Regulation S–B.

[28] Item 303 of Regulation S–K [17 CFR 229.303].

[29] Former Instruction 1 to Item 402(c)(2)(v) and (vi) of Regulation S–K and former Instruction 1 to Item 402(b)(2)(v) and (vi) of Regulation S–B. Each of these instructions is redesignated as the Instruction to the respective Item.

[30] Former Instruction 2 to Item 402(c)(2)(v) and (vi) of Regulation S–K and former Instruction 2 to Item 402(b)(2)(v) and (vi) of Regulation S–B. With respect to the Director Compensation Table, we correspondingly amend the Instruction to Item 402(k) of Regulation S–K and the Instruction to Item 402(f) of Regulation S–B to reflect this rescission. We also make a technical correcting amendment to the Instruction to Item 402(k) of Regulation S–K so that it also applies Instructions 1 and 5 to Item 402(c)(2)(ix). These two instructions regarding the All Other Compensation column address the treatment of non-equity incentive plan awards and earnings and earnings on stock and options, and accrued amounts under termination or change in control plans or arrangements, respectively.

[31] See Section II.B.

[32] Instruction 2 to Item 402(c)(2)(iii) and (iv) of Regulation S–K and Instruction 2 to Item 402(b)(2)(iii) and (iv) of Regulation S–B. Compensation that is within the scope of FAS 123R, and hence reportable in the Stock Awards or Option Awards columns, is specified by Paragraph 4 of FAS 123R.

[33] As defined in Appendix E of FAS 123R, a service condition is ''a condition affecting the vesting, exercisability, exercise price, or other pertinent factors used in determining the fair value of an award that depends solely on an employee rendering service to the employer for the requisite service period. A condition that results in the acceleration of vesting in the event of an employee's death, disability, or termination without cause is a service condition.''

amount of compensation cost previously disclosed in the Summary Compensation Table will be deducted in the period during which the award is forfeited.[34]

Under the interim final rules, compensation cost for awards containing a performance-based vesting condition [35] will be disclosed in the Summary Compensation Table only if it is probable that the performance condition will be achieved. If the achievement of the performance condition is not probable at the grant date but becomes probable in a subsequent period, the proportionate amount of compensation cost based on service previously rendered will be disclosed in the Summary Compensation Table during the period in which achievement of the performance condition becomes probable. Likewise, if the achievement of a performance condition was previously considered probable but in a later period is no longer considered probable, the amount of compensation cost previously disclosed in the Summary Compensation Table will be reversed during the period in which it is determined that achievement of the performance condition is no longer probable.[36]

In summary, if an award with service or performance-based conditions ultimately vests, the amount cumulatively recognized in the Summary Compensation Table over a period of years should equal 100% of the grant date fair value of the equity award or the total fair value at the date of settlement for a liability award. The amount cumulatively reported in the Summary Compensation Table for awards with service or performance-based conditions that do not vest will be zero. On this basis, the amount cumulatively reported for equity awards with graded vesting will equal 100% of the grant date fair value of the portion of the award that vests. For example, if 20% of an award to the principal executive officer vests in each of the five years following the grant and the principal executive officer leaves the company after the fourth year of service, 80% of the award's grant date fair value will be reported cumulatively in the Summary Compensation Table over those four years of service.[37]

In some cases, correlating disclosure in the Stock Awards and Option Awards columns to the financial statement recognition timing could result in a negative number. For example, a negative number would result if the value of awards forfeited in a fiscal year by a named executive officer exceeds the value of other awards recognized in the Summary Compensation Table for that same named executive officer. Such a negative number will be disclosed in the relevant column and affect the calculation of ''total'' for purposes of determining who is a named executive officer. In addition, there could be instances when compensation cost is recognized in the financial statements under FAS 123R in the year before the award is granted. This occurs when an employee is rendering services in exchange for an award, but a grant has not occurred because the terms of the award have not yet been finalized. There also could be instances where a grant has been made, but compensation cost is not recognized in the financial statements. This occurs when an award has a performance condition that is not considered at the date of grant to be probable to vest.[38]

Under FAS 123R, an award granted to a retirement eligible employee who is entitled to retain the award at retirement generally is not considered to have a substantive service requirement. This is because the employee can keep the benefit of the award without performing services, regardless of the stated vesting terms. In this circumstance, the full grant date fair value of the award is recognized in the company's financial statements in the year of grant. Thus, the interim final rules do not effect significant change from the former requirements for computing Stock Awards and Option Awards disclosure for retirement eligible executives.

The amendments do not revise the instruction regarding the determination of the most highly compensated executive officers for purposes of identifying named executive officers other than the principal executive officer and principal financial officer.[39] This determination will continue to be based on total compensation, reduced by the sum of the increase in pension values and nonqualified deferred compensation above-market or preferential earnings reported in column (h) of the Summary Compensation Table, subject to a $100,000 threshold. However, the amendments to the Stock Awards and Option Awards disclosure may reduce potential fluctuations in total compensation resulting from year-to-year differences in equity awards, as a commenter suggested.[40] Consequently, a company's identification of named executive officers may be more consistent from year-to-year, facilitating investors' ability to track year-to-year changes in compensation for the same persons.

*B. Grant of Plan-Based Awards Table*

Under the interim final rules, the grant date fair value information with respect to equity awards to named executive officers is moved to the Grants of Plan-Based Awards Table and expanded to include grant-by-grant information. As described above, this should provide investors a more complete perspective of the compensation decisions made with respect to the last completed fiscal year and facilitate Compensation Discussion and Analysis disclosure of the

[34] This approach to forfeitures was suggested in the letter from BDO Seidman.

[35] As defined in Appendix E of FAS 123R, a performance condition is ''a condition affecting the vesting, exercisability, exercise price or other pertinent factors used in determining the fair value of an award that relates to both (a) an employee's rendering service for a specified (either explicitly or implicitly) period of time and (b) achieving a specified performance target that is defined solely by reference to the employer's own operations (or activities). Attaining a specified growth rate in return on assets, obtaining regulatory approval to market a specified product, selling shares in an initial public offering or other financing event, and a change in control are examples of performance conditions for purposes of this Statement. A performance target also may be defined by reference to the same performance measure of another entity or group of entities. For example, attaining a growth rate in earnings per share that exceeds the average growth rate in earnings per share of other entities in the same industry is a performance condition for purposes of this Statement. A performance target might pertain either to the performance of the enterprise as a whole or to some part of the enterprise, such as a division or an individual employee.''

[36] Disclosing stock and option awards as they are recognized for financial statement reporting purposes may not mirror the timing of disclosure of non-equity incentive plan compensation. Because there is not one clearly required or accepted standard for measuring the value at grant date of non-equity incentive plan awards that reflects the applicable performance contingencies, as there is for equity-based awards under FAS 123R, we have not included such a value in the Summary Compensation Table disclosure. Instead, non-equity incentive plan compensation is disclosed in the Summary Compensation Table in the year when the relevant specified performance criteria are satisfied and the compensation earned, whether or not payment is actually made to the named executive officer in that year. See Item 402(c)(2)(vii) of Regulation S–K, Item 402(b)(2)(vii) of Regulation S–B and 2006 Executive Compensation Release at Section II.C.1.c.ii.

[37] This example of graded vesting assumes an award with service-based vesting conditions only, where the company has elected the straight-line attribution method pursuant to paragraph 42 of FAS 123R.

[38] Footnote 25 of FAS 123R provides that whether vesting is probable for this purpose is determined based on the standard set forth in Financial Accounting Standards Board Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* (FAS 5), at paragraph 3, which defines probable as ''the future event or events are likely to occur.''

[39] Instruction 1 to Item 402(a)(3) of Regulation S–K and Instruction 1 to Item 402(a)(2) of Regulation S–B.

[40] See letter from Fenwick.

company's policies and decisions regarding named executive officers' compensation.[41]

The amendments revise the Grants of Plan-Based Awards Table to add column (*l*), showing the full grant date fair value of each equity award, computed in accordance with FAS 123R.[42] Presenting this information on a grant-by-grant basis is consistent with the presentation of other information in the Grants of Plan-Based Awards Table. This presentation should continue to provide investors a clear picture of the value of options when granted, including in-the-money awards.[43] The table will continue to disclose the number of shares underlying an award and other details regarding the award.[44] To conform the presentation for directors, we amend the Director Compensation Table in Item 402 of Regulation S–K to require footnote disclosure of the grant date fair value of each equity award computed in accordance with FAS 123R.[45] Under the amendments, grant date fair value information is not required regarding equity awards to named executive officers or directors of companies covered by Item 402 of Regulation S–B, which does not include a Grants of Plan-Based Awards Table.[46] This differential treatment of small business issuers is consistent with other aspects of Item 402 of Regulation S–B, which in general recognizes that the executive compensation arrangements of small business issuers typically are less complex than those of other public companies and that satisfying disclosure requirements applicable to other public companies may impose unwarranted burdens on small business issuers.[47]

The interim final rules further amend the Grants of Plan-Based Awards Table to include information concerning repriced or materially modified options, stock appreciation rights and similar option-like instruments, disclosing the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R.[48] Consistent with the presentation of other information in the Grants of Plan-Based Awards Table, this disclosure will be made on a grant-by-grant basis. The Director Compensation Table in Item 402 of Regulation S–K also is amended to require footnote disclosure of the same information.[49] Consistent with FAS 123R, this disclosure does not apply to any modification that equalizes the fair value of an award before and after the modification, such as a modification made pursuant to an antidilution provision that requires adjustment in the event of a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs. Similarly, this disclosure does not apply to a repricing that occurs through a pre-existing formula or mechanism in the terms of the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, as the adjustment feature would have been reflected in the grant date fair value of the award.[50] As described in the 2006 Executive Compensation Release, disclosure also will be provided in the Compensation Discussion and Analysis and the narrative disclosures for the Summary Compensation Table and Grants of Plan-Based Awards Table,[51] as appropriate, regarding awards granted in connection with repricing transactions.[52]

## III. Administrative Law Matters and Request for Comments

The Administrative Procedure Act generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.[53] This requirement does not apply, however, if the agency ''for good cause finds * * * that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.'' [54]

The Commission, for good cause, finds that notice and solicitation of comment regarding the amendments to Item 402 of Regulations S–K and S–B is impracticable, unnecessary and contrary to the public interest. First, the subject matter of the amendments already was subject to extensive public comment in connection with the 2006 Executive Compensation Release, and the Commission has considered those comments thoroughly in adopting these interim final rules.

Second, compliance with the Item 402 amendments adopted in the 2006 Executive Compensation Release is required for proxy and information statements filed on or after December 15, 2006 that are required to include Item 402 disclosure for fiscal years ending on or after December 15, 2006, and for Forms 10–K and 10–KSB for fiscal years ending on or after December 15, 2006.[55] This compliance schedule affects all public companies with a calendar year fiscal year that are required to file proxy or information statements, which we estimate to number approximately 12,190, excluding investment companies. Submitting the amendments to notice and further opportunity for public comment would generate considerable

[41] See general discussion in Section II above.

[42] Item 402(d)(2)(viii) of Regulation S–K. Disclosing the value of the equity award in this table resembles the approach taken in the Option/SAR Grants Table previously required by Item 402(c) of Regulation S–K as adopted in the 1992 Release. That table required disclosure of either (a) the present value of the grant at grant date under any option-pricing model, or (b) the potential realizable value of each option or freestanding SAR grant assuming annualized appreciation rates of 5% and 10%, and 0% for awards where the exercise or base price was below the market price of the underlying security at the date of grant. In their comment letters, AICPA, E&Y and KPMG recommended presenting full grant date fair value in a supplemental table. In light of our previous decision to report the full grant date fair value in the Summary Compensation Table, we did not follow this recommendation in the 2006 Executive Compensation Release.

[43] As noted in the 2006 Executive Compensation Release at Section II.C.1.c.i, disclosing grant date fair value will give investors a clearer picture of the value of any in-the-money awards.

[44] Item 402(c)(2)(ix)(G) of Regulation S–K and Item 402(b)(2)(ix)(G) of Regulation S–B require disclosure in the Summary Compensation Table, All Other Compensation column of the dollar value of any dividends or other earnings paid on stock or option awards when those amounts were not factored in the grant date fair value for the stock or option award. Item 402(k)(2)(vii)(I) of Regulation S–K and Item 402(f)(2)(vii)(I) of Regulation S–B require corresponding disclosure in the Director Compensation Table. These Items are amended to reflect that the grant date fair value no longer is required to be reported in the Stock Awards or Option Awards columns, and in the case of Regulation S–K, must be reported in the Grants of Plan-Based Awards Table with respect to named executive officers.

[45] Instruction to Item 402(k)(2)(iii) and (iv).

[46] Instead, Item 402(c) of Regulation S–B requires narrative disclosure to the Summary Compensation Table. Item 402(c)(4) includes among the examples of material factors necessary to an understanding of the Summary Compensation Table for which narrative disclosure should be provided the material terms of each grant, including but not limited to the date of exercisability, any conditions to exercisability, any tandem feature, any reload feature, any tax-reimbursement feature, and any provision that could cause the exercise price to be lowered.

[47] See 2006 Executive Compensation Release at Section II.D.1.

[48] Instruction 7 to Item 402(d) of Regulation S–K. Disclosure of repriced awards was proposed for the Grants of All Other Equity Awards Table, on which the Grants of Plan-Based Awards Table is based in part. *Executive Compensation and Related Party Disclosure,* Release No. 33–8655 (Jan. 27, 2006) [71 FR 6542] at Section II.B.2.b. In light of previously adopting Summary Compensation Table disclosure of the FAS 123R incremental fair value of these awards, we did not adopt disclosure of these awards in the Grants of Plan-Based Awards Table in the 2006 Executive Compensation Release. See the 2006 Executive Compensation Release at Section II.C.2.

[49] Instruction to Item 402(k)(2)(iii) and (iv).

[50] Instruction 7 to Item 402(d) and Instruction to Item 402(k)(2)(iii) and (iv), which conform to Instruction 1 to Item 402(e)(1).

[51] Item 402(e)(1)(ii) of Regulation S–K and Item 402(c)(2) of Regulation S–B.

[52] 2006 Executive Compensation Release at Section II.C.3.a.

[53] See 5 U.S.C. 553(b).

[54] *Id.*

[55] 2006 Executive Compensation Release at Section VII.

uncertainty regarding the executive compensation disclosure standards to apply as these companies prepare their proxy statements. Given that the amendments affect not only the calculation of total compensation for each named executive officer, but also the identification of the named executive officers (other than the principal executive officer and principal financial officer) based on highest total compensation, such uncertainty could impose extensive burdens and costs. In effect, submitting the amendments to notice and further opportunity for public comment could compel calendar year-end companies to prepare two different sets of executive compensation disclosures because they would not know which version of Item 402 ultimately would apply on the date the proxy or information statement must be filed.

Adopting the amendments as interim final rules also will substantially benefit investors by minimizing any inconsistency between the measure used for disclosure in the Summary Compensation Table of Stock Awards and Option Awards in the first year of compliance and the measure used in later years. Avoiding such potential inconsistency will facilitate year-to-year comparability of the compensation disclosed for individual named executive officers and directors.

The Administrative Procedure Act also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[56] This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.[57] For the same reasons as it is waiving notice and comment, the Commission finds good cause to make the amendments effective as interim final rules upon publication of this release in the **Federal Register**.[58] The compliance dates for the interim final rules will be the same as the compliance dates for the amendments to Item 402 of Regulations S–K and S–B that were adopted in the 2006 Executive Compensation Release.[59]

Although the Commission is dispensing with prior notice of proposed rulemaking, the Commission is interested in receiving written comments on the interim final rules within 30 days after publication of this release in the **Federal Register**. The Commission will consider those comments and make changes to the amendments if necessary.

- Do the amendments result in disclosure that is easier or more difficult for investors to understand? Do the amendments facilitate or complicate company compliance? For example, does presenting the compensation costs of stock and option awards over the requisite service period, as described in FAS 123R, for each individual named executive officer increase compliance costs?
- Does correlating the Summary Compensation Table and Director Compensation Table disclosure to the recognition of the compensation cost of stock and option awards over the requisite service period, as described in FAS 123R, with full grant date fair value disclosure for named executive officers and directors of non-small business issuers only, provide investors with a clearer and more useful presentation of compensation for the subject fiscal year than disclosure of aggregate grant date fair value in the Summary and Director Compensation Tables? Are there other approaches that would provide a better presentation of compensation?
- Should footnote or narrative disclosure be required to identify the remeasurement of liability awards? If so, what level of detail should we require?
- Under the interim final rules, the compensation cost disclosed for Summary Compensation Table and Director Compensation Table purposes does not include an estimate of forfeitures related to service-based vesting conditions. Is this deviation from FAS 123R needed to present meaningful executive compensation disclosure? If not, why not? Does this deviation make it easier or harder for companies to prepare the disclosure and for investors to understand it?
- Correlating disclosure in the Stock Awards and Option Awards columns to an approach that provides disclosure of compensation cost of those awards over the requisite service period could result in a negative number. In this circumstance, the negative number will be disclosed and will affect the calculation of ''total'' for purposes of determining who is a named executive officer. Instead, should the same approach be followed as for disclosure of the aggregate change in actuarial present value of the named executive officer's accumulated benefit under all defined benefit and actuarial plans, where a negative number is disclosed in a footnote but not reflected in the applicable column and not subtracted for purposes of computing the total?[60]
- Does applying a recognition-based measure for Summary Compensation Table disclosure of equity awards result in any circumstances where, in disclosing a named executive officer's potential payments upon termination or change-in-control,[61] there would be a disclosure gap regarding the remaining value of outstanding awards (as adjusted for any acceleration of vesting) that has not yet been recognized?
- Does spreading out disclosure of equity award compensation over the period that the cost is recognized for financial reporting purposes result in less variability in the amount of total compensation reported from year-to-year?
- If the amendments result in fewer year-to-year fluctuations in the list of named executive officers, will such increased consistency result in more meaningful disclosure to investors?
- The interim final rules revise Summary Compensation Table disclosure of salary or bonus forgone at the election of a named executive officer under which stock, equity-based or other forms of non-cash compensation have instead been received by the named executive officer to require this compensation to be disclosed in the salary or bonus column, as applicable. Should this compensation be disclosed this way? Are there any other items of disclosure that should be revised in light of adopting a recognition-based approach to Summary Compensation Table and Director Compensation Table disclosure of equity-based compensation?
- Will Grants of Plan-Based Awards Table disclosure of the grant date fair value on a grant-by-grant basis improve investors' understanding of the value of awards, including in-the-money grants?
- For companies subject to Item 402 of Regulation S–K, is footnote disclosure in the Director Compensation Table of the grant date fair value of each equity award necessary to investors' understanding of director compensation?
- Under the interim final rules, disclosure of the full grant date fair value of equity awards and disclosure of the incremental fair value for repriced or materially modified awards no longer will be required for named executive officers and directors of small business

[56] See 5 U.S.C. 553(d).

[57] *Id.*

[58] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become immediately effective notwithstanding the requirements of 5 U.S.C. 801 (if a Federal agency finds that notice and public comment are ''impractical, unnecessary, or contrary to the public interest,'' a rule ''shall take effect at such time as the Federal agency promulgating the rule determines.'')

[59] See 2006 Executive Compensation Release at Section VII.

[60] Instruction 3 to Item 402(c)(2)(viii) of Regulation S–K.

[61] This disclosure is required by Item 402(j) of Regulation S–K and Item 402(e) of Regulation S–B.

issuers. Are these results appropriate? Should this disclosure also be required, on either an aggregate or grant-by-grant basis by Regulation S–B companies, either as a footnote or in the narrative disclosure to the Summary Compensation Table? [62] As a footnote or in narrative disclosure to the Director Compensation Table? [63]

• In circumstances where compensation cost with respect to an award is first recognized in the financial statements in the year before the award is granted, should disclosure in the Grants of Plan-Based Awards Table also be required in the year before the award is granted to eliminate potential inconsistency between these tables? What modifications would be required to reflect that the terms of the award have not yet been finalized?

• Should footnote or narrative disclosure be required to identify in the Grants of Plan-Based Awards Table and the Regulation S–B narrative disclosure to the Summary Compensation Table equity awards with performance conditions that are not considered probable of achievement and therefore are not reflected in the Summary Compensation Table disclosure? If so, what level of detail should we require?

## IV. Transition Guidance

Because FAS 123R became effective for companies in 2006, it did not apply to stock and option awards that were granted in earlier years. Consequently, we are providing transition guidance for application of the Summary Compensation Table and Director Compensation Table amendments to disclosure of awards that were granted before 2006, including both equity awards that are not yet vested and liability awards that are not yet settled.[64] In this regard, we are requiring companies to utilize the FAS 123R modified prospective transition method [65] for Item 402 disclosure purposes, without regard to whether they have adopted that method for financial statement reporting purposes.[66] Under the modified prospective transition method, a proportionate share of the grant date fair value determined under Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation*, of equity awards that are outstanding at the date FAS 123R was adopted will be recognized in the financial statements over those awards' remaining vesting periods, if any. Liability awards that are outstanding at the date FAS 123R was adopted will be recognized in the financial statements until those awards are settled, based on the fair values of those awards at each financial statement reporting period under FAS 123R as well as the portion of the awards that have vested. The same approach will apply for presentation of the corresponding information in the Summary Compensation Table and Director Compensation Table for fiscal 2006 and later fiscal years.

## V. Paperwork Reduction Act

### *A. Background*

The interim final rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[67] We are submitting these to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act. [68] The titles for the collection of information are: [69]

(1) ''Regulation S–B'' (OMB Control No. 3235–0417);

(2) ''Regulation S–K'' (OMB Control No. 3235–0071);

(3) ''Form SB–2'' [70] (OMB Control No. 3235–0418);

(4) ''Form S–1'' [71] (OMB Control No. 3235–0065);

(5) ''Form S–4'' [72] (OMB Control Number 3235–0324);

(6) ''Form S–11'' [73] (OMB Control Number 3235–0067);

(7) ''Regulation 14A [74] and Schedule 14A'' [75] (OMB Control Number 3235–0059);

(8) ''Regulation 14C [76] and Schedule 14C'' [77] (OMB Control Number 3235–0057);

(9) ''Form 10'' [78] (OMB Control No. 3235–0064);

(10) ''Form 10–SB'' [79] (OMB Control No. 3235–0419)

(11) ''Form 10–K'' [80] (OMB Control No. 3235–0063);

(12) ''Form 10–KSB'' [81] (OMB Control No. 3235–0420); and

(13) ''Form N–2'' [82] (OMB Control No. 3235–0026).

We adopted all of the existing regulations and forms pursuant to the Securities Act of 1933 (''Securities Act'') [83] and the Securities Exchange Act of 1934 (''Exchange Act''),[84] except for Form N–2, which we adopted pursuant to the Securities Act and the Investment Company Act of 1940 (''Investment Company Act'').[85] These regulations and forms set forth the disclosure requirements for annual [86] and current reports, registration statements, proxy statements and information statements that are prepared by issuers to provide investors with the information they need to make informed investment decisions in registered offerings and in secondary market transactions, as well as informed voting decisions in the case of proxy statements.

The amendments adopted as interim final rules are intended to provide investors a fuller and more useful picture of executive compensation. In particular, they are intended to provide a more complete perspective of the compensation decisions made with respect to the last completed fiscal year, facilitate Compensation Discussion and Analysis disclosure of the company's policies and decisions regarding named executive officers' compensation, and provide investors with a clearer view of the annual compensation earned by executives and directors and the annual compensation costs to a company consistent with the timing of financial statement reporting.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collection of information. An agency may not conduct or sponsor, and a

[62] Item 402(c) of Regulation S–B.

[63] Item 402(f)(3) of Regulation S–B.

[64] Under the amendments, the adjustments to update the cumulative compensation costs recognized for certain awards that a company might have in the year that FAS 123R initially is adopted will not be included in the Summary Compensation Table disclosure for that year.

[65] Under the modified prospective transition method in FAS 123R, the accounting for new awards and awards that are modified, repurchased or cancelled after the standard's effective date must apply the provisions of FAS 123R.

[66] Consequently, for companies that have not adopted the modified prospective transition method for financial statement reporting, the tabular compensation disclosure may not match financial statement disclosure during the transition period.

[67] 44 U.S.C. 3501 *et seq.*

[68] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[69] The paperwork burden from Regulation S–K is imposed through the forms that are subject to the requirements in those Regulations and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience we estimate the burdens imposed by Regulation S–K to be a total of one hour.

[70] 17 CFR 239.10.

[71] 17 CFR 239.11.

[72] 17 CFR 239.25.

[73] 17 CFR 239.18.

[74] 17 CFR 240.14a–1 *et seq.*

[75] 17 CFR 240.14a–101.

[76] 17 CFR 240.14c–1 *et seq.*

[77] 17 CFR 240.14c–101.

[78] 17 CFR 249.210.

[79] 17 CFR 249.210b.

[80] 17 CFR 249.310.

[81] 17 CFR 249.310b.

[82] 17 CFR 239.14 and 274.11a–1.

[83] 15 U.S.C. 77a *et seq.*

[84] 15 U.S.C. 78a *et seq.*

[85] 15 U.S.C. 80a–1 *et seq.*

[86] The pertinent annual reports are those filed on Form 10–K and Form 10–KSB.

person is not required to respond to, a collection of information unless it displays a currently valid control number.

The information collection requirements related to annual and current reports, registration statements, proxy statements and information statements are mandatory. However, the information collection requirements relating exclusively to proxy and information statements will apply only to issuers subject to the proxy rules. There is no mandatory retention period for the information disclosed, and the information disclosed will be made publicly available on the EDGAR filing system.

*B. Summary of Information Collections*

The amendments will affect existing disclosure burdens for affected filings as follows:

- The dollar value reported in the Stock Awards and Option Awards columns of the Summary Compensation Table and Director Compensation Table is revised to disclose the compensation cost of those awards over the requisite service period, as described in FAS 123R, but will not reflect the estimate for forfeitures related to service-based vesting used for financial statement reporting purposes;
- The Stock Awards and Option Awards columns of the Summary Compensation Table and Director Compensation Table are revised to require footnote disclosure of forfeitures during the last completed fiscal year;
- The Grants of Plan-Based Awards Table is revised to require disclosure of the grant date fair value of each individual equity award, computed in accordance with FAS 123R, and the Item 402 of Regulation S–K Director Compensation Table is revised to require footnote disclosure of the same information; and
- The Grants of Plan-Based Awards Table is revised to require disclosure of any option or SAR that was repriced or otherwise materially modified during the last completed fiscal year, including the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R, and the Item 402 of Regulation S–K Director Compensation Table is revised to require footnote disclosure of the same incremental fair value information.

*C. Paperwork Reduction Act Burden Estimates*

For purposes of the Paperwork Reduction Act, we estimate no annual incremental increase in the paperwork burden for companies to comply with our amended collection of information requirements. We base this estimate on the fact that the revised approach is substantially the same as the approach companies already apply when complying with financial reporting requirements, most of the information that will be required to be disclosed will be collected to comply with financial reporting requirements, and any necessary modifications will not impose additional burdens compared to the burdens associated with applying the currently required disclosure. We also base this estimate on the likelihood that the revised approach will make companies' identification of named executive officers more consistent from year-to-year, thereby possibly reducing the burden of tracking the compensation of all executive officers in order to determine which executive officers are the most highly compensated.

*D. Request for Comment*

We invite comment on this estimate and its assumptions. We request comment in order to: (a) Evaluate whether the collections of information are necessary for the proper performance of our functions, including whether the information will have practical utility; (b) evaluate the accuracy of our estimate of the burden of the collections of information; (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (d) evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology.[87]

## VI. Cost-Benefit Analysis

*A. Background*

We are adopting, as interim final rules, amendments to our rules governing disclosure of executive compensation. The amendments adopted as interim final rules are intended to provide investors a fuller and more useful picture of executive compensation. In particular, they are intended to provide a more complete perspective of the compensation decisions made with respect to the last completed fiscal year, facilitate Compensation Discussion and Analysis disclosure of the company's policies and decisions regarding named executive officers' compensation, and provide investors with a clearer view of the annual compensation earned by executives and directors and the annual compensation costs to a company consistent with the timing of financial statement reporting.

*B. Summary of Amendments*

Under the amendments adopted as interim final rules, a measure based on the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R will become the measure for reporting in the Stock Awards and Option Awards columns in the Summary Compensation Table and the Director Compensation Table. However, this measure does not include an estimate of forfeitures related to service-based vesting conditions, and the amendments require footnote disclosure of awards forfeited during the last completed fiscal year. The new measure, which is included in total compensation disclosed in the Summary Compensation Table, could affect the determination of most highly compensated executive officers for purposes of identifying named executive officers other than the principal executive officer and principal financial officer.

Under the interim final rules, the Grants of Plan-Based Awards Table is amended to add a column showing the grant date fair value of each equity award computed in accordance with FAS 123R, and information for repriced options, stock appreciation rights and similar option-like instruments, including the incremental fair value computed as of the repricing or modification date in accordance with FAS 123R. The interim final rules also amend the Director Compensation Table in Item 402 of Regulation S–K to provide footnote disclosure of the same grant date fair value and incremental fair value information.

*C. Benefits*

Basing Stock and Options Award disclosure in the Summary Compensation Table and Director Compensation Table on the amount recognized for financial statement purposes, as required by the interim final rules, will provide investors with a fuller and more useful picture of executive compensation. Measuring compensation in a manner more consistent with FAS 123R recognition will provide investors with a clearer view of the annual compensation costs to a company. The amended presentation in some circumstances will reduce the possibility of overstating compensation related to service rendered for the year that could result from disclosing the full grant date fair value, particularly with respect to liability awards, which are subject to

[87] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

remeasurement, and will better reflect the possibility that some awards may be forfeited. Potentially reducing the variability in the identity of named executive officers from year-to-year may result in compensation disclosure that is more meaningful to investors due to the ability to track year-to-year changes in the same executive's compensation.

For companies subject to Item 402 of Regulation S–K, grant date fair value information is moved to the Grants of Plan-Based Awards Table, where it is presented on a more comprehensible grant-by-grant basis. This should provide investors a more complete perspective of the compensation decisions made with respect to the last completed fiscal year and facilitate Compensation Discussion and Analysis disclosure of the company's policies and decisions regarding named executive officers' compensation. Amending the Director Compensation Table in Item 402 of Regulation S–K to provide footnote disclosure of the same grant date fair value and incremental fair value information also will present this information on a more comprehensible grant-by-grant basis. Conforming Summary Compensation Table disclosure of equity-based awards to the timing mandated for the company's financial statements, together with the fair value disclosure in the Grants of Plan-Based Awards Table, will provide more disclosure, potentially making it easier for investors and analysts to analyze compensation for top executives.

Although difficult to quantify, disclosure under the amendments will benefit investors in terms of the transparency, completeness and accessibility of executive compensation disclosure. Making Summary Compensation Table and Director Compensation Table disclosure of stock and option awards more comparable to the approach used for financial accounting recognition purposes will make executive compensation disclosure more transparent by providing investors a clearer picture of annual compensation costs. Moving grant date fair value information to the Grants of Plan-Based Awards Table, where it is presented on a more comprehensive grant-by-grant basis, and requiring the same disclosure in a footnote to the Director Compensation Table, makes this disclosure more complete and accessible for investors in companies that report under Item 402 of Regulation S–K. To the extent that the amendments facilitate Compensation Discussion and Analysis disclosure of the company's policies and decisions regarding named executive officers' compensation, investors will obtain a more complete perspective of the compensation decisions made with respect to the last completed fiscal year.

*D. Costs*

In our view, the amendments to the executive compensation disclosure rules adopted as interim final rules do not significantly increase the costs of complying with the Commission's rules. In order to implement the amendments, companies will need to incur costs to revise their disclosure controls. However, we believe that these costs will be incurred principally on a transitional basis as companies and their advisors determine how best to compile and report information in response to the amended disclosure requirements. We base this view on the fact that the amended approach for Summary Compensation Table and Director Compensation Table disclosure is substantially the same as the approach companies already apply when complying with financial reporting requirements, most of the information that will be required to be disclosed will have been collected to comply with financial reporting requirements, and any necessary modifications will impose minimal additional costs compared to the costs associated with applying the formerly required disclosure. We also base this view on the likelihood that the amended approach will make companies' identification of named executive officers more consistent from year-to-year, thereby possibly reducing the costs of tracking the compensation of all executive officers in order to determine which executive officers are the most highly compensated.

The amendments also may generate costs if they affect the compensation practices of companies or executives' preferences with respect to executive compensation. Under the amendments, the Item 402 of Regulation S–B Summary Compensation Table and Director Compensation Table no longer will provide the full grant date fair value of equity awards to named executive officers. Similarly, neither of these tables will provide disclosure of the incremental fair value of awards that are repriced or materially modified. To the extent that the loss of this information will reduce the value of executive compensation disclosure to investors, the amendments could impose costs on investors.

*E. Request for Comment*

- We solicit quantitative data to assist our assessment of the benefits and costs of the revised disclosure requirements.
- What, if any, additional work and costs are involved in collecting the information necessary to comply with the amendments? What are the types of costs, and in what amounts? In what way can the amendments be modified to mitigate the costs?
- Does identification of named executive officers based on the portion of equity compensation earned during the fiscal year result in more meaningful identification of named executive officers than under the former method based on the aggregate grant date fair value of awards?
- Will the interim final rules have an effect on companies' choice of compensation packages, or executives' preferences with respect to equity awards?
- Assuming the interim final rules are retained, what are the costs in the first year of compliance versus subsequent years?
- We solicit comments on the degree to which companies already collect the information that the amendments will require to be disclosed.

## VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Exchange Act Section 23(a)(2) [88] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Securities Act Section 2(b),[89] Exchange Act Section 3(f) [90] and Investment Company Act Section 2(c) [91] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

We have also discussed other impacts of the amendments adopted as interim final rules in our Cost-Benefit, Paperwork Reduction Act and Final Regulatory Flexibility Act Analyses. The amendments to Regulations S–K and S–B are intended to make executive compensation disclosure more consistent with financial statement disclosure, which should promote

[88] 15 U.S.C. 78w(a)(2).
[89] 15 U.S.C. 77b(b).
[90] 15 U.S.C. 78c(f).
[91] 15 U.S.C. 80a–2(c).

efficiency. The amendments should enhance investors' understanding of how corporate resources are used, and enable shareholders to better evaluate the actions of the board of directors and executive officers in fulfilling their responsibilities. In particular, measuring executive and director compensation in a manner more consistent with financial accounting recognition, along with disclosure of the grant date fair value of equity awards on a grant-by-grant basis, should provide investors with a fuller and more useful picture of executive compensation. This would include a clearer view of a company's compensation decisions and the annual compensation costs to a company.

The amendments may have the effect of reducing the likelihood of inconsistencies in the identity of named executive officers from year-to-year. To this extent, the number of executives for whom competitors could potentially gain insights with respect to a company's executive compensation practices through the required disclosure over a period of years may be reduced. However, we do not expect the incremental effect of the amendments overall to affect competition materially.

In adopting the amendments, we have considered their effect on capital formation and believe that the amendments will have little effect on capital formation.

We request comment on whether the amendments will promote efficiency, competition, and capital formation or have an impact or burden on competition. Commenters are requested to provide empirical data and other factual support for their views, if possible.

## VIII. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to revisions to the rules and forms under the Securities Act and Exchange Act, adopted as interim final rules, that will provide investors with a presentation of compensation for the fiscal year that is more comparable to the approach used for financial accounting purposes.

### *A. Need for the Amendments*

Since the enactment of the Securities Act and the Exchange Act, the Commission has on a number of occasions explored the best methods for communicating clear, concise and meaningful material information about executive and director compensation. Recently, the Commission adopted comprehensive amendments to improve the clarity and completeness of executive compensation disclosure.[92] The interim final rules principally modify two aspects of those comprehensive amendments: modifying the timing of reporting option and stock awards in the Summary Compensation Table and Director Compensation Table so that it is more comparable to financial accounting recognition; and, in Item 402 of Regulation S–K, requiring Grants of Plan-Based Awards Table reporting of the full grant date fair value of equity awards and information regarding option, SAR and similar option-like awards that are repriced or materially modified during the fiscal year, and Director Compensation Table footnote disclosure of the same information. The overall goal of the amendments is to increase the transparency and completeness of executive compensation disclosure by providing investors a fuller and more useful picture of executive compensation. In particular, they are intended to provide a more complete perspective of the compensation decisions made with respect to the last completed fiscal year, facilitate Compensation Discussion and Analysis disclosure of the company's policies and decisions regarding named executive officers' compensation, and provide investors with a clearer view of the annual compensation earned by executives and directors and the annual compensation costs to a company consistent with the timing of financial statement reporting.

### *B. Significant Issues Raised by Public Comment*

As summarized in Section I above, several commenters expressed the view that Summary Compensation Table disclosure of equity awards should be presented on a basis that is generally consistent with financial statement reporting. We have taken these comments into account in adopting the amendments that would apply to small entities.

### *C. Small Entities Subject to the Amendments*

For purposes of the Regulatory Flexibility Act, Securities Act Rule 157[93] and Exchange Act Rule 0–10(a)[94] define an issuer to be a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. These are the types of entities that we refer to as small entities in this section.

We believe that the amendments will affect small entities that are operating companies. We estimate that there are approximately 2,500 issuers, other than investment companies, that may be considered small entities. Under Rule 0–10 under the Investment Company Act,[95] an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. We believe that the amendments will affect small entities that are investment companies. Specifically, we believe that the amendments will affect small entities that are business development companies.[96] We estimate that there are 53 business development companies that qualify as small entities.

### *D. Reporting, Recordkeeping, and Other Compliance Requirements*

We note that small business issuers,[97] which is a broader category of issuers than small entities, in certain circumstances may provide the executive compensation disclosure specified in Item 402 of Regulation S–B, rather than the corresponding disclosure specified in Item 402 of Regulation S–K.

The amendments adopted as interim final rules will affect small business issuers as follows:

- The dollar value reported in the Stock Awards and Option Awards columns of the Summary Compensation Table and Director Compensation Table is revised to disclose the compensation cost of those awards over the requisite service period, as described in FAS 123R, but will not reflect the estimate for forfeitures related to service-based vesting used for financial statement reporting purposes; and
- The Stock Awards and Option Awards columns of the Summary Compensation Table and Director Compensation Table are revised to require footnote disclosure of forfeitures during the last completed fiscal year.

Because Item 402 of Regulation S–B does not include the Grants of Plan-Based Awards Table, the amendments to Item 402 of Regulation S–B do not include the following disclosures that

[92] See the 2006 Executive Compensation Release.

[93] 17 CFR 230.157.

[94] 17 CFR 240.0–10(a).

[95] 17 CFR 270.0–10.

[96] Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act. 15 U.S.C. 80a–2(a)(48).

[97] Item 10 of Regulation S–B (17 CFR 228.10) defines a small business issuer as a registrant that has revenues of less than $25 million, is a U.S. or Canadian issuer, is not an investment company, and has a public float of less than $25 million. Also, if it is a majority owned subsidiary, the parent corporation also must be a small business issuer.

are required for named executive officers and directors by the amendments to Item 402 of Regulation S–K:

- Disclosure of the grant date fair value of each individual equity award, computed in accordance with FAS 123R; and
- Disclosure of the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R, of any option or SAR that was repriced or otherwise materially modified during the last completed fiscal year.

As a result, the amendments to Item 402 of Regulation S–B do not result in the same level of incremental increase in costs or burdens to small businesses as do the amendments to Item 402 of Regulation S–K.

*E. Agency Action To Minimize Effect on Small Entities*

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

1. Establishing different compliance or reporting requirements which take into account the resources available to smaller entities;

2. The clarification, consolidation or simplification of disclosure for small entities;

3. Use of performance standards rather than design standards; and

4. Exempting smaller entities from coverage of the disclosure requirements, or any part thereof.

We have considered different changes to our rules and forms to achieve our regulatory objectives, and where possible, have taken steps to minimize the effect of the rules on smaller entities. The amendments are unlikely to have a significant impact on smaller entities because their principal effect is to make Summary Compensation Table and Director Compensation Table disclosure of stock and option awards more comparable to the financial statement presentation of those compensation items. The amendments do not affect the abbreviated format of the Regulation S–B Summary Compensation Table, which requires disclosure with respect to the principal executive officer and two most highly compensated executive officers for the small business issuer's last two completed fiscal years. Because Item 402 of Regulation S–B does not include a Grants of Plan-Based Awards Table, the amendments to that table do not apply.

*F. General Request for Comments*

We solicit written comments regarding this analysis. We request comment on whether the amendments adopted as interim final rules could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

**IX. Statutory Authority and Text of the Amendments**

We are adopting rule amendments pursuant to Sections 3(b), 6, 7, 10, and 19(a) of the Securities Act, as amended, Sections 12, 13, 14, 15(d) and 23(a) of the Exchange Act, as amended, Section 38 of the Investment Company Act, and Section 3(a) of the Sarbanes-Oxley Act of 2002.

**List of Subjects**

*17 CFR Part 228*

Reporting and recordkeeping requirements, Securities, Small businesses.

*17 CFR Part 229*

Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

## PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 1. The authority citation for part 228 continues to read in part as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 2. Section 228.402 is amended by revising Instruction 2 to Item 402(b)(2)(iii) and (iv), paragraphs (b)(2)(v), (b)(2)(vi) and the Instructions to Item 402(b)(2)(v) and (b)(2)(vi), paragraph (b)(2)(ix)(G), paragraphs (f)(2)(iii), (f)(2)(iv) and (f)(2)(vii)(I), and Instruction to Item 402(f) to read as follows:

**§ 228.402 (Item 402) Executive compensation.**

* * * * *

(b) * * *

(2) * * *

*Instructions to Item 402(b)(2)(iii) and (iv).*

* * * * *

2. Small business issuers shall include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer under which stock, equity-based or other forms of non-cash compensation instead have been received by the named executive officer. However, the receipt of any such form of non-cash compensation instead of salary or bonus must be disclosed in a footnote added to the salary or bonus column and, where applicable, referring to the narrative disclosure to the Summary Compensation Table (required by paragraph (c) of this Item) where the material terms of the stock, option or non-equity incentive plan award elected by the named executive officer are reported.

(v) For awards of stock, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (e));

(vi) For awards of options, with or without tandem SARs, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (f));

*Instruction to Item 402(b)(2)(v) and (vi).* For awards reported in columns (e) and (f), disregard the estimate of forfeitures related to service-based vesting conditions. Include a footnote describing all forfeitures during the year, and disclosing all assumptions made in the valuation. Disclose assumptions made in the valuation by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

* * * * *

(ix) * * *

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value for the stock or option award; and

* * * * *

(f) * * *

(2) * * *

(iii) For awards of stock, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (c));

(iv) For awards of stock options, with or without tandem SARs, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (d));

* * * * *

(vii) * * *

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts

were not factored into the grant date fair value for the stock or option award; and

* * * * *

*Instruction to Item 402(f).*

In addition to the Instruction to paragraph (f)(2)(vii) of this Item, the following apply equally to paragraph (f) of this Item: Instructions 2 and 4 to paragraph (b) of this Item; the Instructions to paragraphs (b)(2)(iii) and (iv) of this Item; the Instruction to paragraphs (b)(2)(v) and (vi) of this Item; the Instructions to paragraph (b)(2)(vii) of this Item; the Instruction to paragraph (b)(2)(viii) of this Item; the Instructions to paragraph (b)(2)(ix) of this Item; and paragraph (c)(7) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (f) of this Item that correspond to analogous disclosures provided for in paragraph (b) of this Item to which they refer.

## PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 3. The general authority citation for part 229 is revised to read in part as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38, 80av39, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Section 229.402 is amended by revising Instruction 2 to Item 402(c)(2)(iii) and (iv), paragraphs (c)(2)(v) and (c)(2)(vi), the Instructions to Item 402(c)(2)(v) and (c)(2)(vi), and paragraph (c)(2)(ix)(G), revising the Grants of Plan-Based Awards Table in paragraph (d)(1), removing ''and'' at the end of paragraph (d)(2)(vi), removing the period at the end of paragraph (d)(2)(vii) and adding ''and'' in its place, adding paragraph (d)(2)(viii) and Instruction 7 to Item 402(d), revising paragraphs (k)(2)(iii), (k)(2)(iv), the Instruction to Item 402(k)(2)(iii) and (iv), and revising paragraph (k)(2)(vii)(I) and Instruction to Item 402(k), to read as follows:

**§ 229.402 (Item 402) Executive compensation.**

* * * * *

(c) * * *

(2) * * *

*Instructions to Item 402(c)(2)(iii) and (iv).*

* * * * *

2. Registrants shall include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer under which stock, equity-based or other forms of non-cash compensation instead have been received by the named executive officer. However, the receipt of any such form of non-cash compensation instead of salary or bonus must be disclosed in a footnote added to the salary or bonus column and, where applicable, referring to the Grants of Plan-Based Awards Table (required by paragraph (d) of this Item) where the stock, option or non-equity incentive plan award elected by the named executive officer is reported.

(v) For awards of stock, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (e));

(vi) For awards of options, with or without tandem SARs, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (f));

*Instruction to Item 402(c)(2)(v) and (vi).* For awards reported in columns (e) and (f), disregard the estimate of forfeitures related to service-based vesting conditions. Include a footnote describing all forfeitures during the year, and disclosing all assumptions made in the valuation. Disclose assumptions made in the valuation by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

* * * * *

(ix) * * *

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (*l*) of the Grants of Plan-Based Awards Table required by paragraph (d)(2)(viii) of this Item; and

* * * * *

(d) * * *

GRANTS OF PLAN-BASED AWARDS

| Name | Grant date | Estimated future payouts under non-equity incentive plan awards | | | Estimated future payouts under equity incentive plan awards | | | All other stock awards: Number of shares of stock or units (#) | All other option awards: Number of securities underlying options (#) | Exercise or base price of option awards ($/Sh) | Grant date fair value of stock and option awards |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Threshold ($) | Target ($) | Maximum ($) | Threshold (#) | Target (#) | Maximum (#) | | | | |
| (a) | (b) | (c) | (d) | (e) | (f) | (g) | (h) | (i) | (j) | (k) | (l) |
| PEO | | | | | | | | | | | |
| PFO | | | | | | | | | | | |
| A | | | | | | | | | | | |
| B | | | | | | | | | | | |
| C | | | | | | | | | | | |

(2) * * *

(viii) The grant date fair value of each equity award computed in accordance with FAS 123R (column (*l*)). If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise or base price of options, SARs or similar option-like instruments previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means (''repriced''), or otherwise has materially modified such awards, the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R, with respect to that repriced or modified award, shall be reported.

*Instructions to Item 402(d).*

* * * * *

7. Options, SARs and similar option-like instruments granted in connection with a repricing transaction or other material modification shall be reported in this Table. However, the disclosure required by this Table does not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

* * * * *

(k) * * *

(2) * * *

(iii) For awards of stock, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (c));

(iv) For awards of stock options, with or without tandem SARs, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (d));

*Instruction to Item 402(k)(2)(iii) and (iv).* For each director, disclose by footnote to the appropriate column: the grant date fair value of each equity award computed in accordance with FAS 123R; for each option, SAR or similar option like instrument for which the registrant has adjusted or amended the exercise or base price during the last completed fiscal year, whether through amendment, cancellation or replacement grants, or any other means (''repriced''), or otherwise has materially modified such awards, the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R; and the aggregate number of stock awards and the aggregate number of option awards outstanding at fiscal year end. However, the disclosure required by this Instruction does not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

* * * * *

(vii) * * *

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value for the stock or option award; and

* * * * *

*Instruction to Item 402(k).* In addition to the Instruction to paragraphs 402(k)(2)(iii) and (iv) and the Instructions to paragraph (k)(2)(vii) of this Item, the following apply equally to paragraph (k) of this Item: Instructions 2 and 4 to paragraph (c) of this Item; Instructions to paragraphs (c)(2)(iii) and (iv) of this Item; the Instruction to paragraphs (c)(2)(v) and (vi) of this Item; Instructions to paragraph (c)(2)(vii) of this Item; Instructions to paragraph (c)(2)(viii) of this Item; and Instructions 1 and 5 to paragraph (c)(2)(ix) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (k) of this Item that correspond to analogous disclosures provided for in paragraph (c) of this Item to which they refer.

Dated: December 22, 2006.

By the Commission.

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 06–9932 Filed 12–26–06; 2:29 pm]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 9308]**

**RIN 1545–BF75**

## Reporting Rules for Widely Held Fixed Investment Trusts

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of the temporary regulations.

**SUMMARY:** This document contains final regulations amending § 1.671–5 which provides reporting rules for widely held fixed investment trusts (WHFITs). These final regulations clarify and simplify reporting for trustees and middlemen of non-mortgage widely held fixed investment trusts (NMWHFITs). These final regulations also provide temporary safe harbor reporting rules for widely held mortgage trusts (WHMTs) that are outside the WHMT safe harbor. The preamble to these regulations also provides that trustees of WHFITs are to indicate on the Form 1041, ''U.S. Income Tax Return for Estates and Trusts,'' filed for a WHFIT's 2006 calendar year that the return is a final return.

**DATES:** *Effective Date:* These regulations are effective December 29, 2006.

*Applicability Date:* For date of applicability see § 1.671–5(n).

**FOR FURTHER INFORMATION CONTACT:** Faith Colson, (202) 622–3060 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in these final regulations has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1540. The collection of information in these final regulations is in § 1.671–5. This information is required to be reported to beneficial owners of trust interests to enable them to correctly report their share of the items of income, deduction, and credit of the WHFIT in which they have invested. This information is also required to be reported to the IRS to enable the IRS to verify that trustees and middlemen are accurately reporting information to beneficial owners of trust interests and that beneficial owners are properly reporting their ownership of a trust interest.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

The estimated annual burden per recordkeeper varies from 1 to 4 hours, depending on individual circumstances, with an estimated average of 2 hours. Comments concerning the accuracy of this burden estimate should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

This document contains amendments to 26 CFR part 1. On January 24, 2006, the Internal Revenue Service (IRS) and the Treasury Department published the WHFIT reporting rules in the **Federal Register** (TD 9241) (71 FR 4002) under § 1.671–5 (WHFIT reporting rules). On August 3, 2006, in response to comments received subsequent to the publication of the WHFIT reporting rules, the IRS and the Treasury Department published final and temporary regulations (TD 9279) (71 FR 43968) (temporary regulations) as well as proposed regulations that, in part, cross-referenced the temporary regulations (71 FR 43998) (proposed regulations) (REG–125071–06) in the **Federal Register**. No public hearing was requested or held with respect to the temporary or proposed regulations.