

## **Executive Compensation and Related Person Disclosure Transition Questions and Answers**

*These questions and answers represent the views of the staff of the Division of Corporation Finance with respect to questions we have received regarding issuers' transition to compliance with the amendments and new rules adopted by the Securities and Exchange Commission in the Executive Compensation and Related Person Disclosure rulemaking. The questions and answers are not rules, regulations, or statements of the Commission. Further, the Commission has neither approved nor disapproved these questions and answers.*

**Note:** For ease of discussion, we refer to the recent Executive Compensation and Related Person Disclosure rulemaking (Securities Act Release No. 8732A) as the “Executive Compensation rulemaking,” we refer to the disclosure requirements and related rules adopted in the Executive Compensation rulemaking as the “new rules” and we refer to the disclosure requirements and related rules that were changed in the Executive Compensation rulemaking as the “old rules.”

### ***Effective Date of the New Rules***

#### ***Question 1***

**Question:** What is the effective date of the new rules adopted in the Executive Compensation rulemaking and what are the relevant compliance dates?

**Answer:** The new rules become effective on November 7, 2006. Companies must comply with the amended requirements of Form 8-K for triggering events occurring on or after November 7, 2006. Required compliance with the other new rules is discussed in Section VII of the release. The questions and answers that follow address optional early compliance. Early compliance is not permitted with regard to any of the new rules, including the amended Form 8-K rules, prior to the effective date of November 7, 2006.

### ***Early Compliance with the New Rules***

#### ***Question 2***

**Facts:** Company X has a September 30, 2006 fiscal year end and files its annual report on Form 10-K on December 14, 2006.

**Question:** Is Company X permitted to comply with the new rules in that annual report on Form 10-K?

**Answer:** Yes. Company X could either: (1) comply with the new rules; or (2) comply with the old rules. If Company X chooses to comply with the new

rules, its Form 10-K would include a Summary Compensation Table under the new rules with only the last year of compensation, as the new rules' transition provision provides that a company will not be required to restate compensation or related person transaction disclosure for fiscal years for which the company previously was required to apply the old rules.

### *Question 3*

**Facts:** Company X has a September 30, 2006 fiscal year end and files its annual report on Form 10-K on December 14, 2006. Following the guidance provided in Question 2, Company X chooses to comply with the new rules in that Form 10-K.

**Question:** May Company X comply with certain of the new rules in its Form 10-K, or must it comply with all of the new rules in that Form 10-K (for example, is Company X permitted to comply with new Items 402 and 407 of Regulation S-K and old Item 404 of Regulation S-K)?

**Answer:** Company X must comply with all of the new rules in the Form 10-K.

### *Question 4*

**Facts:** Following the guidance in Questions 2 and 3, Company X complied with all of the new rules in the Form 10-K for the fiscal year ended September 30, 2006, and is now filing its Form 10-K for the fiscal year ended September 30, 2007.

**Question:** Is Company X required to include disclosure in the Summary Compensation Table that complies with the new rules for both fiscal 2006 and fiscal 2007?

**Answer:** Yes. Company X provided the disclosure under the new rules for fiscal 2006, so that disclosure would need to be provided along with the disclosure for fiscal 2007. The new rules' transition provision which provides that a company will not be required to restate compensation or related person transaction disclosure for fiscal years for which the company previously was required to apply the old rules does not permit the omission of information that has already been disclosed in compliance with the new rules.

### *Question 5*

**Facts:** Company Y has a September 30, 2006 fiscal year end and files a Form S-1 on December 14, 2006 to register its initial public offering under the Securities Act.

**Question:** Is Company Y permitted to comply with the new rules in that registration statement on Form S-1?

**Answer:** Yes. As in Question 2, Company Y could either: (1) comply with the new rules; or (2) comply with the old rules.

### *Question 6*

**Facts:** Company Y has a September 30, 2006 fiscal year end and files a Form S-1 on December 14, 2006 to register its initial public offering under the Securities Act. Following the guidance provided in Question 5, Company Y chooses to comply with the new rules in that Form S-1.

**Question:** May Company Y comply with certain of the new rules in its Form S-1, or must it comply with all of the new rules in that Form S-1 (for example, is Company Y permitted to comply with new Items 402 and 407 of Regulation S-K and old Item 404 of Regulation S-K)?

**Answer:** Company Y must comply with all of the new rules required in the Form S-1.

### *Question 7*

**Facts:** Company Z has a December 31, 2006 fiscal year end and files a Form S-1 on December 14, 2006 to register its initial public offering under the Securities Act. Company Z complies with the old rules in its filing on Form S-1. After the end of its fiscal year but prior to effectiveness of the registration statement, Company Z amends its Form S-1.

**Question:** Will Company Z be required to comply with the new rules in that amendment to its Form S-1?

**Answer:** Yes. The Summary Compensation Table filed by Company Z in the amendment would need to only contain one year of disclosure, even though the table that complied with the old rules in the original filing included the 2005 disclosure.

### *Question 8*

**Facts:** Following the guidance in Questions 5 and 6, Company Z files a Form S-1 to register its initial public offering under the Securities Act on December 14, 2006 and complies voluntarily with the new rules for the disclosure regarding its fiscal year ended December 31, 2005. After the end of its fiscal year ended December 31, 2006 but prior to effectiveness of the registration statement, Company Z amends its Form S-1.

**Question:** Will Company Z be required to include disclosure for both fiscal 2005 and fiscal 2006 under the new rules in that amendment to its Form S-1?

**Answer:** Yes. In this regard, it is important to note that registration statements for initial public offerings are required to contain only one year of compensation disclosure in the Summary Compensation Table, unless the information for prior periods has been disclosed previously. Since the fiscal 2005 disclosure that complied with the new rules was included in the registration statement, the amendment that Company Z files after the end of the fiscal year must contain two years of disclosure, and in this situation the disclosure for both fiscal years would comply with the new rules.

*Question 9*

**Facts:** Company A has a September 30, 2006 fiscal year end and files a Form S-1 on March 15, 2007 to register its initial public offering under the Securities Act.

**Question:** Is Company A permitted to comply with the new rules in that registration statement on Form S-1?

**Answer:** Yes. As in Questions 5 and 6, Company A could either: (1) comply with the new rules; or (2) comply with the old rules.