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October 30, 1992

Client Seminar on New Proxy Rules

Dear Client:

The Securities and Exchange Commission has just adopted far reaching changes to its proxy rules and executive compensation disclosure requirements. These changes, coupled with the ever increasing institutional shareholder activism, could profoundly impact the way in which public corporations are governed.

To assist in understanding these developments, we have organized a half-day seminar to be held on December 2, 1992, under the direction of Harvey Pitt and Stephen Fraidin. The discussion will include an examination of the expanded disclosure requirements for executive compensation and how these requirements may affect substantive director conduct; alterations in practices in "routine" proxy solicitations; and the anticipated impact of the revised regulations on proxy contests.

Securities and Exchange Commissioner Mary Schapiro will present a luncheon address on the new rules; John Gavin of D.F. King will offer the proxy solicitor's vantage point; Peter C. Clapman of Teachers Insurance and Annuity Association - College Retirement Equities Fund will comment on the role of the institutional investor; and Ralph V. Whitworth, President of United Shareholders Association, will offer his unique insights. Richard Steinwurtzel and Gail Weinstein of our firm will also participate in this important program.

The seminar will run from 9:00 a.m. to 2:00 p.m. More detailed information about the program, including the location, will be forwarded shortly. If you or your colleagues would like to attend, please contact Sara Lynn Galasso at (212) 820-8000, extension 2166 by November 16, 1992. There is no fee to attend the program.

In the interim, we have enclosed our briefing memorandum which discusses the practical implications of these developments.

Sincerely yours,

Arthur Fleischer, Jr.

Arthur Fleischer, Jr.
Chairman

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TO OUR CLIENTS

Proxy Reform and Executive Compensation Reporting Requirements: A New Era of SEC Activism

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October 30, 1992

PROXY REFORM AND EXECUTIVE COMPENSATION REPORTING REQUIREMENTS: A NEW ERA OF SEC ACTIVISM

Introduction

The SEC's long-gestating proxy rule amendments and new executive compensation disclosure requirements create a new, and inevitably more hospitable, environment for corporate activists. These changes will require corporations and their managements to learn a new set of regulatory requirements and adopt innovative procedures in order to ensure proxy compliance, and in order to avoid the pitfalls of shareholder and regulatory criticism of inadequate compensation disclosure and ill-conceived compensation packages. While the SEC's broad proxy and reporting rulemaking powers were intended to address needed disclosures, there can be little doubt that these proposals will have a significant impact on corporate governance and will permit shareholder groups and institutional shareholders more effectively to express their concerns about management's performance, as well as its compensation.

The SEC claims its amendments will increase inter-shareholder communications, encourage effective proxy voting, reduce proxy rule compliance costs, and give shareholders meaningful information about management's compensation.[1] Whether these rule changes actually achieve all, or even any, of those goals remains to be seen, but it can be anticipated that one effect of these rules will be to establish complex new requirements that will stimulate fertile new fields for agency enforcement and shareholder litigation initiatives for years to come. If that expectation is realized, the costs of compliance with the Commission's proxy and compensation disclosure rules — at least for corporations (as opposed to shareholder-activists) — will actually increase, not decrease, particularly when the costs of the inevitable spate of adversarial proceedings is factored into the equation. Nonetheless, the proxy rule amendments are an attempt to quiet constant and sharp criticisms of the Commission's previous proxy rules, which were perceived by some as hamstringing shareholder activism, while the executive compensation disclosure amendments are part of the legacy SEC Chairman Breeden has sought to leave behind.[2] The new rules deserve careful consideration by corporate managements and shareholders alike.

Timing and Effectiveness of the Proposals

Typically, SEC rule changes are adopted prospectively, to enable those affected ample lead time to consider, evaluate, digest and inculcate new regulatory requirements. This approach has been particularly true in the past in the area of new substantive disclosure or reporting rules.

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[1] Securities Exchange Act Release No. 31326 (Oct. 16, 1992) (as revised) (the "Proxy Rule Amendments"); Securities Exchange Act Release No. 31327 (Oct. 16, 1992) (the "Executive Compensation Amendments").

[2] *See SEC Announces Initiatives on Executive Compensation*, 60 U.S.L.W. 2542 (Mar. 3, 1992).

Separately, the SEC had commenced a study of executive compensation disclosure. As a first step, on February 13, 1992, Chairman Breeden presented a three-pronged initiative: (1) issuing staff no-action letters requiring companies to include in their proxy statements shareholder proposals concerning executive compensation (this step reversed a long-standing SEC staff position under Exchange Act Rule 14a-8); (2) preparing proposals to clarify and enhance disclosure of executive compensation in proxy materials and other SEC filings; and (3) proposing accounting changes to reflect the value of an executive's compensation package more accurately. As a second step, in June 1992, the SEC introduced multiple initiatives with respect to revised executive compensation disclosures. These proposals generated great public controversy, but have now been adopted.

Proxy Rule Amendments

Communications between Shareholders. A fair degree of controversy was generated over the proposal to exempt from the proxy rules certain communications *between* shareholders (other than management acting as such) that do not directly involve the solicitation of voting authority. The Commission's rules have consistently defined the term "solicitation" broadly to include any communication to security holders calculated to result in the procurement, withholding, or revocation of a proxy. Considering the expansive judicial and administrative interpretations given to this definition, often at the importuning of the SEC itself, shareholders are often counselled against so-called "mutual concern" communications designed to stimulate a discourse on issues without translating that concern into a specific authorization (at the time of the communication).

Bowing to the desires of institutional shareholders, and in a rare display of administrative candor, the SEC acknowledged that it was difficult for any person to know with certainty whether a communication will or will not be deemed to constitute a solicitation when it is later reviewed judicially or administratively. To provide that certainty, the SEC created a new "safe harbor" rule to exclude from its solicitation (*but not its antifraud*) rules communications between shareholders which do not solicit proxy voting authority, and which are sent by persons who have no material economic interest in the subject matter of the solicitation (other than a shareholder on a *pro rata* basis or as an employee). The proposal is expected to encourage a wide range of communications among institutional and other shareholder activists. The safe harbor is not available for the issuer, its management or anyone acting on their behalf. It is also not available for persons running for corporate office or opposing certain critical corporate transactions on which a shareholder vote will be taken and for which they are proposing alternative proposals.

The Proxy Rule Amendments, however, provide for the filing of a notice of any written solicitation with the SEC within three days after it is first sent or given to any security holder. No notice is required for (1) oral solicitations (other than scripts), (2) speeches in a public forum, (3) press releases, published statements or other broadcasts in a news media or other *bona fide* publication disseminated on a regular basis, *or* (4) written solicitations by persons beneficially owning $5 million or less of the securities subject to a solicitation. The antifraud provisions of

Public Access to Preliminary Proxy Materials. In the Proxy Rule Amendments, the SEC eliminated the non-public treatment of most proxy materials filed in preliminary form. This treatment of preliminary proxy statements parallels the treatment given to preliminary prospectuses or tender offers. In response to various comments, the SEC excepted preliminary proxy material disclosure with respect to most transactions encompassed by Item 14 of Schedule 14A from public access. This exception, however, excludes a "going private" or "roll-up" transaction. Confidential treatment will be granted automatically upon an appropriate marking of the filed materials. It will not depend upon the non-public status of the transactions.

Access to Shareholder Lists. Under former Exchange Act Rule 14a-7, when a shareholder requested a shareholder list from the registrant in the context of a registrant's solicitation, Rule 14a-7 vested the registrant with the discretion either to provide the list or to undertake to mail the shareholder's solicitation. As amended, and except for a "roll-up" or "going private" transaction, the registrant retains this discretion. If the registrant's solicitation relates to any such transaction, Rule 14a-7's shareholder list or mailing option shifts to the requesting shareholder. The SEC cited the extraordinary nature of those transactions, the common conflicts of interest of management, and heightened investor protection concerns as an adequate basis for this special treatment. Nonetheless, as corporate and legal commentators had asserted throughout this proceeding by questioning the SEC's authority to provide a federal right of access to shareholder lists, there is doubt as to the authority for this Rule 14a-7 amendment.

Among other things, the Commission clarified various registrant obligations under Rule 14a-7. For example, (1) a shareholder's written request need not reference Rule 14a-7, (2) a registrant must deliver, within five business days of a shareholder request, the list or a statement including the registrant's election to mail, the approximate number of record and beneficial holders, and the estimated mailing cost, and (3) a registrant must deliver a reasonably current list (if the registrant or shareholder (as the case may be) requests a recordholder list) of beneficial owners (a "NOBO/COBO list") if the registrant has obtained or obtains such a list for its own use. In this regard, the SEC affirmed that nothing in the Proxy Rule Amendments bars a direct solicitation of such owners so long as adequate disclosure is provided concerning the need for the recordholder to execute the form of proxy.

At the same time, the SEC also adopted the requisite shareholder certification (without a corresponding SEC filing) that any provided list will be used only for the intended purpose and will be kept otherwise confidential. The Commission, however, declined to adopt an amendment forcing a registrant to disclose whether (and why) the registrant has not satisfied a shareholder's request for a shareholder list.

Voting Results. Under former Item 4(c) of Form 10-Q and Form 10-K, disclosure of voting results to contested elections and other specific matters was limited to the number of affirmative and negative votes cast. The SEC, however, contended that shareholder interests have changed since Item 4(c) was adopted, and shareholders today have a greater need for

Nevertheless, in response to comments, the management nominees will not be listed on the soliciting shareholder's proxy. Rather, the insurgent will specifically list certain management nominees that it would ***not*** vote for and provide a space for the solicited shareholder to write the names of additional nominees with respect to whom they wish to withhold voting authority. Thus, under this approach, shareholders will be able to determine which management nominees will receive their votes by comparing the full management slate and the nominees that the soliciting shareholder holder will not endorse. The form of proxy will refer the solicited shareholder to management's solicitation for the names, background and qualifications of the management nominees.

Regan Rulemaking Proposal. The Commission declined to adopt a proposal submitted by Edward V. Regan, Comptroller of the State of New York, that would have required a registrant to include, as part of its annual proxy statement, statements by significant long-term shareholders with respect to their views on management's performance. The SEC declined to adopt this proposal because it believes that the other reforms provided for in the Proxy Rule Amendments have increased shareholder communication to the point where such a requirement is unnecessary. Perhaps more important to this result, this proposal was not widely or completely supported by shareholder groups or leading shareholder activists.

Practical Implications. The Proxy Rule Amendments have practical implications for every registrant and shareholder.

(1) Although the proxy statement, proxy card, and accelerated access to shareholder list amendments are not effective until November 22, 1992, there is not any transition period for ongoing solicitations and consequently the solicitation aspects of the Proxy Rule Amendments now apply. Given that relatively few registrants are holding annual or special meetings for the election of directors during the next month and that time period may be needed to digest the more than 100 pages of the proxy rule release, we expect little noticeable effect at first. Nonetheless, if a registrant is among the few within this window period, the registrant's shareholders are entitled to announce vote intentions, orally communicate their views to other holders, and circulate written solicitation materials (absent a proxy and subject to the Rule 14a-6(g) notice) to other shareholders.

(2) The next group of registrants affected by the Proxy Rule Amendments are those filing preliminary or definitive proxy or information statements on and after November 22, 1992. All of the new proxy statement, proxy card, and shareholder list provisions then apply. Since most registrants end their fiscal years on December 31, the bulk of the registrants and their shareholders will face these provisions next year.

every piece of written solicitation material and keep detailed records of any questionable oral inter-shareholder communications reported to it.

(5) As in part evidenced by recent spinoffs, restructurings, or other business reorganizations, boards have been actively seeking to enhance shareholder value. With the Proxy Rule Amendments, institutional investors have an important tool to press more forcefully for action on this front. Consequently, the pattern of these business developments should continue.

(6) The Proxy Rule Amendments should increase the likelihood of litigation over solicitation materials. Formerly, SEC staff advance *and* non-public review would have dulled the sharper edges of solicitation attacks or even thwarted particularly egregious materials *prior to* the distribution of these materials. That control mechanism (for better or worse) now is primarily in the hands of registrants and their shareholders and secondarily in the hands of the SEC's Division of Enforcement. For registrants and shareholders alike, the latter may be a less expensive, though less expedient, forum than the courts. Both should remember the SEC's enhanced enforcement authority under Section 21(d) (injunctive and money penalties) and Section 21C (cease and desist orders).

(7) If SEC staff comments immediately are made publicly available (as is expected), and registrant or insurgent responses to such comments likewise are made publicly available, there may be an opportunity for affected parties to insert themselves *earlier* into that process with a view toward persuading the SEC staff in one direction or another. Likewise, litigants may attempt to use such materials to their advantage. Nonetheless, given the limited precedential nature of SEC staff comments, and the fact that soliciting parties tend to be responsive to the SEC staff, it is unclear whether this change in the process will be meaningful.

(8) Litigation over shareholder lists should lessen. Proxy procedures, however, will remain the subject of intense negotiation and litigation in contested elections.

(9) The effect of amended Rule 14a-4(d), and the ability of an insurgent seeking minority representation (for example, one out of three director positions) to retain registrant nominees, is unclear. While some corporate commentators contended that a director nominated by the registrant and elected by shareholders in this context would not serve, that result should not follow where the registrant's nominees retain a majority of the entire board of directors. Thus, it is conceivable that the amended Rule 14a-4(d) may work (albeit awkwardly from a shareholder's perspective).

- Option/SAR grants.
- LTIP payouts.
- Other compensation (*e.g.*, severance, termination or change of control payments exceeding $100,000, earnings on deferred compensation, registrant contributions to plans, and compensatory split-dollar insurance payments).

Option/SAR Tables. Items 402(c) and 402(d) prescribe two tables for the CEO and four other named executives. The former concerns aggregated option/SAR exercise information. The latter concerns grants in the last completed fiscal year, is accompanied by required disclosure of performance criteria and other material terms, and contains a valuation.

LTIP Awards. Item 402(e) requires a registrant to prepare a table disclosing awards under stock-based plans and non-stock price-based plans. Required disclosures include estimated payouts.

Pension Benefits. Item 402(f) provides disclosure of estimated post-retirement benefits under pension and other defined benefit or actuarial plans.

Director Compensation. No substantive change was made concerning director compensation disclosure. Charitable awards or director legacy programs, however, are subject to new disclosures.

Employment Agreements. Under Item 402(h), a narrative disclosure of all employment arrangements exceeding a $100,000 threshold is required.

Board Compensation Committee Report. Under Item 402(j), a board's compensation committee is required to issue an annual report. In the SEC's view, such increased disclosure is consistent with the directors' obligations, under state law as fiduciaries, to administer the interests of shareholders through effective monitoring of executive compensation.

In addition, the compensation committee's report must be made over the name of each committee member's name. Any board action modifying or requesting in any material way any committee recommendation or action applicable to the last completed fiscal year must be described. The report, however, need not reflect discussions among the committee members.

Performance Graph. Under Item 402(l), a registrant is required to provide a line graph which would compare the company's cumulative total shareholder return with two indices over a five-year period. Item 402(l) requires a performance indicator of the overall stock market (*e.g.*, S&P 500 for registrants which are part of the S&P 500) *and* a published industry index or

(1) Registrants and shareholders alike should benefit from the streamlining, shortening, and focusing of the ***former*** executive compensation disclosure requirements.

(2) In each substantive category, the SEC generally came down in favor of shareholder demands for ***new*** disclosures. While the SEC attempted to protect registrants from liability in respect of the three "experimental" amendments (*i.e.*, the Performance Graph, the Board Compensation Committee Report ("Compensation Report"), and the Board Report on Repricing of Options/SARs ("Option/SAR Report")),[7] registrants still must address these new disclosure requirements.

(3) Registrants should carefully approach the above three amendments from a potential liability viewpoint. First, such requirements have the potential to be misleading to the reader. For example, under S-K Item 402(l), a registrant that is a company within the Standard & Poor's 500 Stock Index must use that Index ***and*** one other index composed of (1) a published industry or line-of-business index, (2) peer issue(s) selected in good faith ***or*** (3) issuers with similar market capitalization(s). A registrant's choice can be easily criticized at a later date if it picked a more positive index over a less positive alternative index. Therefore, registrants should evaluate all possible other indices, and be certain there are objective reasons for a selection *or* an exclusion. This evaluation should recur periodically.

Second, while the SEC made clear that such information "need" not be included in such filings as a registration statement, that judgment is not binding upon an underwriter or its counsel, a disappointed investor asserting a Securities Act claim, or a court. Is it now material information to an investor to know that a registrant's cumulative total shareholder return underperformed a group of peer issuers?

Third, aspects of these new requirements are vague and potentially troubling. S-K Item 402(k) requires the Compensation Report to include a "specific discussion of the relationship of the registrant's performance to the CEO's compensation." While the SEC made clear that disclosure of ***individual*** member's reasons are not

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[7] In S-K Items 402(a)(8) and (a)(9), the SEC excluded the Performance Graph and Compensation Report from Section 18 of the Exchange Act, deemed such material not to be "soliciting material" for Regulation 14A or 14C purposes, and permitted their exclusion from any Securities Act or Exchange Act filing (other than a proxy or information statement relating to the election of directors). Similarly, S-K Item 402(a)(8) authorizes the Option/SAR Report's exclusion from any such filing. The general liability provisions of the Securities Act and the Exchange Act, however, continue to apply to all three and, as a practical matter, the SEC's exceptions may have limited benefit.

Since shareholders still may not solicit a proxy without a definitive proxy statement, it is doubtful that the Proxy Rule Amendments will convert institutional activism into election contests across the board. The ability to commence a solicitation prior to the delivery of a proxy statement, better access to shareholder lists or mailings, and more flexibility on the use of solicitation materials, however, should give institutional shareholders the coordinated ability to act as a critical player in the event an insurgent commences a proxy contest. Consequently, the Proxy Rule Amendments encourage a new hard look at this form of a control contest.

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October 29, 1992

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

October 26, 1992

SEC ADOPTS FUNDAMENTAL CHANGES AFFECTING SHAREHOLDER COMMUNICATIONS

The SEC, as expected, has adopted a series of new rules which will revamp, and have a significant impact on, the proxy process in general and shareholder communications in particular. Proposed in June* and adopted substantially as proposed,** the new rules are effective as of October 22, 1992, although compliance will generally not be required until 30 days thereafter.

I. Executive Summary

The new proxy rules, taken as a whole, will significantly increase the ability of shareholders -- especially institutional holders -- to influence the proxy process and corporate governance matters, and will make it more important than ever that companies maintain a proactive shareholder relations program.

The principal changes will:

- Make it easier for persons to communicate with shareholders and solicit their votes -- and permit persons not seeking their own proxies to conduct such activities without any public notice or filing requirements, except for written communications furnished by shareholders owning at least $5 million in market value of the company's stock.

- Permit shareholders to announce publicly how they are voting and to provide the reasons for their decision, generally without being subject to the proxy rules -- including the anti-fraud provisions of Rule 14a-9.

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* Release No. 34-30849; IC-18803 (June 24, 1992) (the "Proposing Release").

** Release No. 34-31326; IC-19031 (October 16, 1992) (the "Adopting Release").

their views concerning the performance of the company and its officers and directors.

SEC Chairman Breeden has stated that the new rules mark "a watershed for corporate governance" and are "designed to enable shareholders to communicate with each other and the board without unnecessary interference or costs." In particular, the new rules will alter dramatically the tactics and strategies used in contested solicitations and can be expected to have a significant impact on the proxy voting process for more routine matters, including Rule 14a-8 shareholder proposals. The new rules are likely to result in:

- Increased communication among institutional and other shareholders which, in many instances, will not be subject to public filing requirements.

- Increased leverage by institutional holders in their efforts to negotiate Rule 14a-8 shareholder proposals with companies.

- More active solicitation efforts by proponents of shareholder proposals, including solicitations targeted at special groups or subsets of shareholders.

- Greater and more aggressive shareholder activity, including increased use of the proxy process and more attempts to gain minority board representation.

- More free-wheeling, aggressive arguments being presented to shareholders in contested solicitations (including Rule 14a-8 shareholder proposals) resulting from the substantial deregulation of the proxy process.

- More shareholders -- especially large institutions -- publicly announcing their intentions with respect to a matter to be voted upon, together with the reasons for their vote.

at any time during the solicitation the power to act as proxy and do not furnish or otherwise request a consent or authorization for delivery to the company. This exemption, however, would not apply to certain persons, including those who:

(i) are affiliates or associates of the company, or officers or directors of the company engaging in a solicitation financed by the company*,

(ii) are nominees for election as a director,

(iii) are required to file a Schedule 13D, unless a Schedule 13D has been filed and it does not disclose an intent to, or reserve the right to, engage in a control transaction or a contested solicitation for the election of directors,

(iv) are receiving compensation from a person not eligible for this exemption which is related to the solicitation of proxies,

(v) have a "substantial interest" in the subject matter of the solicitation as a result of which such persons will receive a benefit from a successful solicitation not shared pro rata with the other holders of the same class of securities, or

(vi) are soliciting against a merger, recapitalization, reorganization or other extraordinary transaction recommended by a company's board if such person is proposing or intends to propose an alternative transaction with itself or its affiliates.

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* Unlike the Proposing Release which flatly precluded officers and directors from relying on this exemption, the rules as adopted permit officers and directors to rely on the exemption provided that they are soliciting at their own expense and are not otherwise engaging in the company's solicitation.

new rules eliminate the requirement that proxy materials be filed in preliminary form, other than proxy statements and proxy cards.*

Accordingly, soliciting materials used in proxy contests, such as "fight" letters and newspaper advertisements, which have typically been subject to careful scrutiny by the SEC prior to their dissemination, are no longer subject to prior SEC review. Solicitation materials, however, will continue to be subject to the anti-fraud provisions of Rule 14a-9 and the applicable filing requirements for definitive materials under the proxy rules.**

The new rules permit companies and persons, including those who are not eligible for the new exemption discussed above, to commence solicitations following the filing and distribution of a preliminary proxy statement, provided that no proxy card is furnished until shareholders receive a definitive proxy statement. The SEC did not adopt a proposal that would have permitted solicitations in all situations prior to the furnishing of a proxy statement as long as no proxy card was furnished and certain background information was provided. The existing pre-proxy statement solicitation rules (which are generally limited to contested situations) remain in effect.

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* The existing exemption pursuant to which companies do not file their proxy statement in preliminary form in the case of a "routine" shareholders' meeting will continue to apply.

** The Adopting Release states that "the most cost-effective means to address hyperbole and other claims and opinions viewed as objectionable is not government screening of the contentions or resort to the courts. Rather, the parties should be free to reply to the statements in a timely and cost-effective manner, challenging the basis for the claims and countering with their own views." This reflects the SEC's increasing reliance on self-policing and may suggest that SEC involvement, either by post-dissemination comments or enforcement actions, will be confined to egregious situations.

fied by name on the insurgent's proxy card without such nominee's consent, except for those persons whom the insurgent is seeking to exclude from the board. In addition, the new rules have added a requirement that the insurgent's proxy statement and proxy card must clearly state that the management nominees might refuse to serve on the board if the insurgent's slate were elected. This new rule is intended to make it more practical for an insurgent to propose a partial slate, and permits the insurgent to specify which management nominees the insurgent candidates are running against.

VI. Access to Shareholder Lists

The SEC has essentially retained the rules as currently in effect, so that companies may elect to distribute a shareholder's proxy materials instead of furnishing a shareholder list. New Rule 14a-7 will, however, require a company to mail these materials with "reasonable promptness", regardless of when the company intends to mail its own proxy materials. Consistent with the Proposing Release, the new rules only require a company to provide a shareholder list in the event it has disclosed an intent to engage in a roll-up or a going private transaction. The new rules will require a company to provide information such as a NOBO list if the company has obtained or obtains such a list prior to the vote. The new rules also will require a company, to the extent requested, to provide information with respect to subsets of shareholders so that the shareholder may solicit on a targeted basis. The SEC did not adopt a proposal which would have required companies to disclose in their proxy statements any refusals to provide a shareholder list.

VII. Other Amendments

The new rules also encompass certain other changes which impact all companies, even in the absence of a Rule 14a-8 proposal or a counter-solicitation. These new rules will:

- Require proxy cards to provide for a separate vote on each matter, rather than "bundling" related, but separable, matters. This is intended to allow shareholders to

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

October 26, 1992

SEC ISSUES FINAL DISCLOSURE RULES ON EXECUTIVE COMPENSATION

On October 16, 1992, the SEC, after substantial public comment, issued a Release* prescribing new rules (the "Final Rules") governing the disclosure of executive compensation. The Final Rules streamline the disclosure requirements originally proposed by the SEC last June (the "Proposed Rules")** and afford considerable relief from some of the more troublesome and onerous features of the Proposed Rules. Nevertheless, the Final Rules represent a radical change, both in terms of content and format, from the previously applicable disclosure rules with respect to executive compensation.

Among the more significant features of the Final Rules are the following:

- Effective Date/Transition Rules. Although the Final Rules became effective on October 21, 1992, compliance is mandatory only for (i) proxy and information statements filed with the SEC on or after January 1, 1993 or with respect to fiscal years ending on or after December 15, 1992, and (ii) new registration statements or periodic reports filed on or after January 1, 1993.*** Specific transition rules (discussed below) also have been adopted with respect to certain portions of the Final Rules.

- Tabular Presentation. Consistent with the approach taken in the Proposed Rules, dis-

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* Release No. 33-6962; 34-31327 (October 16, 1992).

** Release No. 33-6940; 34-30851 (June 23, 1992).

*** Small business issuers are exempt from certain portions of the Final Rules. Moreover, these issuers need not comply with the Final Rules except with respect to filings made on or after May 1, 1993.

"All Other Compensation."* Included in these latter two columns will be change in control and other termination payments, contributions to defined contribution plans, tax gross-up payments and certain perquisites.**

- Stock Options and SARs. The Final Rules reduce from five to two the number of tables required to provide information with respect to stock options and stock appreciation rights ("SARs"). An "Option/SAR Grants Table" will set forth in separate columns (i) the number, exercise price and expiration date of stock options and SARs granted to each of the named executives during the last fiscal year, (ii) the options and SARs granted in the last fiscal year to each such executive, expressed as a percentage of all option and SAR grants in such year*** and (iii) either the projected "spread" associated with options and SARs granted to each such executive in the last fiscal year,

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* Under the transition rules, no reporting is required under these two columns for any fiscal year ending before December 15, 1992. Small business issuers may phase in the entire summary compensation table over a three-year period.

** Perquisites are required to be reported for a particular executive officer only if the dollar value thereof exceeds the lesser of 10% of the annual salary and bonus required to be reported for such executive officer or $50,000 (representing an increase from the $25,000 threshold applicable under the former rules). Each perquisite that accounts for more than 25% of the total perquisites for any named executive must be identified by type and amount.

*** This column replaces a separate table that, under the Proposed Rules, would have included considerably more information regarding the percentage allocation of stock options and SARs among various employees and groups of employees.

during the last fiscal year. The separate "Stock Price-Based" and "Non-Stock Price-Based" tables called for by the Proposed Rules have been consolidated and the separate "Restricted Stock" table has been eliminated.* Moreover, in lieu of a new and detailed beneficial ownership table which the Proposed Rules would have required, the Final Rules require that the management security ownership information called for by Item 403(b) be expanded to include each of the named executives.

- Report of Compensation Committee. In a significant modification of the Proposed Rules, the Final Rules limit the scope and potential legal consequences of the required Compensation Committee report. Specifically, the Final Rules require that the proxy statement contain a report** of the Compensation Committee discussing (1) the Committee's policies applicable to the compensation of executive officers, including the relationship of corporate performance to executive compensation, (2) the Committee's rationale for the CEO's compensation, including the factors and criteria upon which the CEO's compensation was based, and (3) a specific discussion of the relationship of corporate performance to the CEO's compensation, including each measure of performance,

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* Awards of restricted stock the vesting of which is based upon performance-related factors may be reported as a long-term incentive award, rather than being reported as a restricted stock award in the summary compensation table. If reported as a long-term incentive award, the restricted stock must be reported in the summary compensation table as a long-term incentive payment upon vesting.

** The Final Rules delete the requirement of the Proposed Rules that such report be signed by each Committee member. Rather, the Final Rules provide that the report be submitted "over the name of" each such member.

port of the Compensation Committee explaining in reasonable detail any such repricings and the bases therefor and (ii) a table setting forth a ten-year summary of all repricings affecting options or SARs held by any executive officer, presented separately for the CEO and each executive officer. In a departure from the Proposed Rules, the Final Rules do not require these disclosures in the case of other material amendments to options or SARs. The Release indicates that these additional disclosures do not apply to repricings effected on or before October 21, 1992.

- Company Performance Graph. The Final Rules require proxy statement disclosure to include a line graph comparing the cumulative total return to the company's shareholders over a period of five years,* assuming reinvestment of dividends, to the cumulative total return of the S&P 500 Stock Index** and either (1) a published industry or line-of-business index, (2) a peer group index constructed in good faith by the company or (3) if a peer group cannot be reasonably identified, a group consisting of issuers with similar market capitalizations.

- Certain Relationships of Committee/Board Members. The Final Rules virtually eliminate the additional disclosures which would

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* This mandatory five-year period reflects a change from the Proposed Rules, which required a minimum period of five years but would have permitted the use of a longer period.

** The Final Rules modify the Proposed Rules by providing that if the company is not included in the S&P 500 Stock Index, this comparison may instead be made to another broad equity market index that includes companies whose equity securities are traded on the same exchange (or NASDAQ) as the company's equity securities or which are of comparable market capitalization to the company.

Rules expand upon the interlocks identified in the Proposed Rules and no longer relate solely to cross-memberships on Compensation Committees. However, the Final Rules require disclosure of the above-described relationships only to the extent such relationships continue to exist on or after January 1, 1993, thus affording companies an opportunity to focus on the effect of these provisions prior to the end of 1992.

- Shareholder Approval of Compensation Plans. The Final Rules retain the simplified disclosure required by the Proposed Rules in connection with proxy statements that solicit shareholder approval of one or more compensation plans. Specifically, the Final Rules eliminate (i) the extensive disclosure previously required for plans with respect to which shareholder approval is not being solicited and (ii) the detailed disclosure for the prior three years for those plans with respect to which shareholder approval is solicited.

In light of the applicability of the Final Rules to the 1993 proxy season (as well as to other 1993 filings), and the substantial changes which are mandated by the Final Rules, it is important that companies become familiar with the Final Rules and take actions which may be necessary to facilitate compliance. Specifically, companies should begin to:

- prepare the required compensation tables, including the gathering of historical compensation data and information with respect to recent awards and option exercises;

- consider the relative merits of utilizing the "potential realizable value" or the "grant date value" method in connection with the disclosure of recent stock option grants;

- consider the various alternatives available with respect to presentation of the Company Performance Graph, including in particular,

CORE COMPENSATION TABLES
AND SUMMARY EXPLANATORY NOTES

October 15, 1992

II. OPTION/SAR GRANTS TABLE

Option/SAR Grants in Last Fiscal Year

	Individual Grants				Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term 3/		Alternative to (f) and (g): Grant Date Value
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(f)
Name	Options/ SARs Granted (#) 1/	% of Total Options/ SARs Granted to Employees in Fiscal Year	Exercise or Base Price ($/Sh) 2/	Expiration Date	5% ($)	10% ($)	Grant Date Present Value ($)
CEO							
A							
B							
C							
D							

1/ Footnote any other material term. Repriced options treated as new grants.

2/ Footnote description of any standard or formula that may adjust exercise or base price.

3/ Based on actual option term and annual compounding. Add 0% column if exercise or base price below market at grant.

4/ Columns (f) and (g) not applicable to small business issuers.

III. OPTION/SAR EXERCISES AND YEAR-END VALUE TABLE

Aggregated Option/SAR Exercises in Last Fiscal Year, and FY-End Option/SAR Value

(a)	(b)	(c)	(d)	(e)
			Number of Unexercised Options/SARs at FY-End (#)	Value of Unexercised In-the-Money Options/SARs at FY-End ($)
Name	Shares Acquired on Exercise (#)	Value Realized ($) 1/	Exercisable/ Unexercisable	Exercisable/ Unexercisable 1/
CEO				
A				
B				
C				
D				

1/ Market value of underlying securities at exercise or year-end, minus the exercise or base price.