



## **SEC Issues New Disclosure Rules for Equity Compensation Plan Information**

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The SEC has adopted amendments to the Securities Exchange Act of 1934 disclosure requirements in order to make equity compensation plan information more accessible to investors. The amendments have three main requirements: (1) they require a new table to be included in (a) all annual reports filed on Forms 10-K and 10-KSB and (b) proxy and Schedule 14C information statements in years when a registrant is submitting a compensation plan for security holder action; (2) they require a registrant to identify and describe briefly, in narrative form, the material features of each equity compensation plan in effect as of the end of the last completed fiscal year that was adopted without security holder approval; and (3) they require a registrant to file with the SEC copies of their non-security holder-approved plans in which any employee (whether or not an executive officer or director of the registrant) participates, unless immaterial in amount or significance. The information collected will not be kept confidential. The amendments become effective on February 1, 2002. Registrants must comply with the new disclosure requirements for their annual reports on Forms 10-K or 10-KSB to be filed for fiscal years ending on or after March 15, 2002 and for proxy and information statements for meetings of, or action by, security holders occurring on or after June 15, 2002. The amendments have not been extended to foreign private issuers at this time.

### **I. Tabular Disclosure:**

The new table requires (See new Item 201(d)(1) of Regulation S-K and Regulation S-B):

- Two categories of equity compensation plans: (1) plans that have been approved by security holders and (2) plans that have not been approved by security holders.
  - With respect to each category, a registrant must disclose the number of securities to be issued upon the exercise, and the weighted-average exercise price, of all outstanding options, warrants and rights, as well as the number of securities remaining available for future issuance under the registrant's equity compensation plans.
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The table should appear in the following format:

**Equity Compensation Plan Information**

	(a)	(b)	(c)
Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of all outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders			
Equity compensation plans not approved by security holders			
Total			

Note:

- Registrants must provide the disclosure with respect to any equity compensation plan “in effect” as of the end of the registrant’s last completed fiscal year; a plan is considered to be “in effect” as long as securities remain available for future issuance under the plan, or as long as options, warrants or rights previously granted under the plan remain outstanding;
- A plan must be disclosed if it provides for the award of a registrant’s securities or the grant of options, warrants or rights to purchase the registrant’s securities;
- The above must be disclosed whether it is offered to an employee (including officers) of the registrant or to its parent, subsidiary or affiliate companies, or to any other person (such as directors, consultants, advisors, vendors, customers, suppliers or lenders) for compensatory purposes;
- Disclosure is to be provided regardless of whether the securities to be issued are authorized but unissued securities or reacquired shares;

- The disclosure requirements do not require plan-by-plan disclosure; rather, equity compensation plans may be aggregated, so long as the plans are separated into two broad categories—plans approved by security holders and plans not approved by security holders;
- The new rules permit a registrant to aggregate individual arrangements (i.e. an equity compensation plan applicable to a single person) and/or assumed plans (i.e. where a registrant assumes an equity compensation plan in connection with a merger, consolidation or other acquisition transaction) with information about other plans;
- The table must be included each year in a registrant's annual report on Form 10-K or 10-KSB and, additionally, in the proxy statement or information statement when the registrant is submitting a compensation plan for security holder action;
- Where action is being taken to amend an existing equity compensation plan, the table should include information about the securities previously authorized for issuance under the plan; a registrant should *not* include in the table the number of additional securities that are the subject of the plan amendment for which the registrant is seeking security holder approval;
- In situations where a registrant is required to include the new table in both its annual report on Form 10-K or form 10-KSB and in a proxy or information statement, the registrant may satisfy its Form 10-K or 10-KSB disclosure obligation by incorporating the required information by reference from its definitive proxy or information statement, if that statement involves the election of directors and is filed not later than 120 days after the end of the fiscal year covered by the Form 10-K or 10-KSB;
- At the present time, the new rules have not been extended to foreign private issuers.

## **II. Narrative Descriptions of Non-Security Holder-Approved Plans:**

- The amendments require a registrant to identify and describe briefly, in narrative form, the material features of each equity compensation plan in effect as of the end of the last completed fiscal year that was adopted without security holder approval (See new Item 201(d)(3) of Regulation S-B and Item 201(d)(3) of Regulation S-K);
- To satisfy the requirement that certain plans be described in narrative form (explained above), the SEC permits registrants to cross-reference the portion of their required SFAS 123 disclosure containing descriptions of their non-security holder-approved plans; the cross-reference should identify the specific plan or plans in the required SFAS 123 disclosure that have not been approved by security holders;
- The description(s) must be included each year in a registrant's annual report on Form 10-K or 10-KSB and, additionally, in the proxy statement or information statement when the registrant is submitting a compensation plan for security holder action.

### **III. Filing Copies of Non-Security Holder-Approved Plans:**

- Item 601(b)(10) of Regulation S-B and Item 601(b)(1) Regulation S-K have been amended to require registrants to file any equity compensation plan adopted without the approval of security holders in which any employee (whether or not an executive officer or director) participates, unless immaterial in amount or significance;
- With respect to an existing non-security holder-approved equity compensation plan subject to the new amendments that is in effect as of the date of the amendments and has not been filed previously, a copy of the plan must be filed as an exhibit to the annual report on Form 10-K or 10-KSB filed by the registrant for its first fiscal year ending on or after March 15, 2002 (the June 15, 2002 effective date relating to proxy and information statements is irrelevant for this purpose);
- A compensation plan assumed by a registrant in connection with a merger, consolidation or other acquisition transaction pursuant to which the registrant may make further grants or awards of its equity securities is considered a compensation plan of the registrant for purposes of this filing.

### **IV. Effective Date:**

- The amendments become effective on February 1, 2002.
- Registrants must comply with the new disclosure requirements for their annual reports on Forms 10-K or 10-KSB to be filed for fiscal years ending on or after March 15, 2002 and for proxy and information statements for meetings of, or action by, security holders occurring on or after June 15, 2002.

### **V. Full Text:**

- The full text of the final rule can be accessed at [www.sec.gov/rules/final/33-8048.htm](http://www.sec.gov/rules/final/33-8048.htm).

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