

December 19, 2006

New Securities Law Disclosures and Listing Standards for 2007

Over the past year, the Securities and Exchange Commission has adopted a number of new disclosure requirements and rules for public companies. Most notably, the SEC adopted sweeping, much-anticipated changes to the rules regarding disclosure of compensation paid to executive officers and directors of public companies and related person transactions. In addition, listed companies will be affected by recent technical changes to the listing standards of the New York Stock Exchange and the Nasdaq Stock Market.

Set forth below is a brief summary of new SEC disclosure requirements and other rules applicable to public companies for 2007, as well as a brief summary of amendments to the NYSE and Nasdaq listing standards.

SEC Rules—New Executive Compensation and Related Person Transaction Disclosure Rules¹

Subject	Discussion
<i>Changes to Executive Compensation Disclosure</i>	
Compensation Discussion and Analysis Section	The revised rules require a new narrative section called Compensation Discussion and Analysis, or CD&A, at the beginning of the executive compensation section. The CD&A section must discuss the material factors underlying a company's executive compensation policies and decisions. The SEC has identified six topics that must be discussed in the CD&A, as well as 15 additional items a company should consider addressing if those items are material to an understanding of the company's executive compensation policies and practices. In addition, the CD&A must include a narrative discussion

¹ For a more detailed discussion of the revised rules, see Covington & Burling LLP's client advisory, [New Executive Compensation Disclosure Rules](#) (August 23, 2006). See also Executive Compensation and Related Person Disclosure, SEC Rel. 33-8732A (Aug. 29, 2006) ("Executive Compensation Release").

Companies must comply with the revised rules in proxy, information and registration statements filed on or after December 15, 2006, as well as in Forms 10-K and 10-KSB in respect of fiscal years ending on or after such date. Companies are not required to restate information regarding executive compensation and related person transactions for prior years that was previously disclosed in accordance with the prior rules. So, for example, in the first year of adoption, the Summary Compensation Table need only include disclosure for the most recent fiscal year.

SEC Rules—New Executive Compensation and Related Person Transaction Disclosure Rules

Subject	Discussion
	of the company's stock option granting practices and procedures. ² The CD&A will be filed, not furnished. <i>(Item 402(b) of Regulation S-K)</i>
Compensation Committee Report	The revised rules require the compensation committee to report whether it has reviewed and discussed the CD&A with management and recommended including the CD&A in the company's proxy statement or annual report. As under prior rules, the names of the members of the compensation committee must appear below the report, and the report will be furnished, not filed. <i>(Item 407(e)(5) of Regulation S-K)</i>
Changes to Summary Compensation Table	<p>The Summary Compensation Table has been revised in a number of respects, including:</p> <ul style="list-style-type: none"> ◆ The named executive officers to be covered in the table are the principal executive officer, the principal financial officer and the three other most highly compensated executive officers whose compensation exceeds \$100,000. This is a change from prior rules, which defined the named executive officers to be the chief executive officer and the four other most highly compensated executive officers. <i>(Item 402(a)(3) of Regulation S-K and Instructions thereto)</i>³ ◆ The amount used to determine whether an officer is one of the three other most highly compensated executives is that officer's total compensation in the most recent fiscal year, minus the amount of above-market earnings on deferred compensation and changes in the actuarial present value of

² The SEC has provided interpretive guidance regarding the type of disclosures about option granting practices that is required in the new CD&A section. The guidance covers two general topics: (i) the timing of stock option grants, including in relation to release of material non-public information, and (ii) the setting of option exercise prices. See Executive Compensation Release at 23-27.

³ The SEC has also proposed requiring compensation disclosure with respect to the three most highly compensated employees, other than the named executive officers, whose compensation is greater than any of the named executive officers. The SEC has requested comment as to whether the disclosure should be limited to only those employees who have responsibility for significant policy decisions. See SEC Rel. 33-8735 (Aug. 29, 2006) and Executive Compensation Release at 90-98.

SEC Rules—New Executive Compensation and Related Person Transaction Disclosure Rules

Subject	Discussion
	<p>accumulated pension benefits during such year. Prior rules counted only annual salary and bonus. <i>(Instruction 1 to Item 402(a)(3) of Regulation S-K)</i></p> <ul style="list-style-type: none"> ◆ The revised rules require that Option/SAR awards be shown as a dollar amount based on grant date fair value determined under FAS 123(R), as opposed to the prior rules which required disclosure of the number of securities underlying the awards. <i>(Item 402(c)(2)(vi) of Regulation S-K)</i> ◆ New or reconfigured columns include an “all other compensation” column, a column showing above-market deferred compensation earnings and certain changes in the value of pension benefits, and a total compensation column. The revised rules include other changes that affect the Summary Compensation Table columns, including, as discussed below, changes related to the treatment of perquisites and other personal benefits. <i>(Item 402(c) of Regulation S-K)</i> ◆ The revised rules explicitly require a narrative description of any material factors necessary for an understanding of the Summary Compensation Table. <i>(Item 402(e) of Regulation S-K)</i>
Perquisites and Other Personal Benefits	<p>Under the revised rules, all perquisites must be included in the Summary Compensation Table once the aggregate annual value exceeds \$10,000. If the \$10,000 threshold is exceeded, each perquisite and personal benefit must be identified by specific type in a footnote. The new rules require each perquisite to be both identified and individually quantified if the amount of such perquisite exceeds the greater of \$25,000 or 10% of the aggregate amount of all perquisites for any named executive officer. Under the prior rules, perquisites for a named executive officer did not need to be included in the Summary Compensation Table unless they exceeded the lesser of \$50,000 and 10% of the officer's annual salary plus bonus and did not need to be individually identified and quantified unless they exceeded 25% of the total value of all perquisites for</p>

SEC Rules—New Executive Compensation and Related Person Transaction Disclosure Rules

Subject	Discussion
	the officer. (<i>Instruction 4 to Item 402(c)(2)(ix) of Regulation S-K</i>) ⁴
Expanded Disclosure of Termination and Change in Control Provisions	The revised rules call for specific disclosures about arrangements to provide payments to a named executive officer following or in connection with the resignation, severance, retirement, termination or change in responsibilities of the officer or a change in control of the company. Among other things, the revised rules require companies to disclose estimates of dollar amounts that would be required to be paid under such arrangements. In making such estimates, the company must disclose the material assumptions on which such estimates are based, and the rules provide that the company should assume that the triggering event occurs on the last business day of the most recent fiscal year and the relevant stock price is the company's stock price on such date. (<i>Item 402(j) of Regulation S-K</i>)
Other Important Changes	<p>Other important changes imposed by the revised rules include:</p> <ul style="list-style-type: none"> • The Option/SAR Grant Table required under the prior rules has been renamed the “Grants of Plan-Based Awards Table” and has been redesigned to provide additional detail about a broader range of plan-based awards. The table must cover all plan-based awards and must highlight any option grants with an exercise price below the closing market price on the date of grant. The revised rules explicitly require a narrative description of any material factors necessary for an understanding of the table. (<i>Items 402(d) and 402(e) of Regulation S-K</i>) • The Option Exercises Table has been renamed the “Option Exercises and Stock Vesting Table”

⁴ The SEC has provided interpretive guidance for determining what constitutes a perquisite. An item *is* a perquisite if it “confers a direct or indirect benefit that has a personal aspect,” regardless of whether it may be provided for some business reason or for the convenience of the company, unless it is “generally available on a non-discriminatory basis to all employees.” An item is *not* a perquisite or personal benefit if it is “integrally and directly related to the performance of an executive’s duties.” See Executive Compensation Release at 73-77.

SEC Rules—New Executive Compensation and Related Person Transaction Disclosure Rules

Subject	Discussion
	<p>and must now also include information about restricted stock awards that vested during the fiscal year. The table must also now show the value realized by the named executive officer upon exercise of options and vesting of restricted stock. <i>(Item 402(g) of Regulation S-K)</i></p> <ul style="list-style-type: none"> • The Pension Table has been substantially revised to require companies to disclose the actuarial present value of each named executive officer's accumulated benefit under each defined benefit plan in which the executive officer participates, as well as the number of years of credited service under each such plan. Each of these calculations is to be made using the named executive officer's current compensation and the same pension plan measurement date used by the company for financial statement reporting purposes. The Pension Table also must show any pension benefits paid to a named executive officer during the fiscal year. <i>(Item 402(h) of Regulation S-K)</i> • The revised rules require a new Non-Qualified Deferred Compensation Table that discloses contributions by named executive officers and the company under nonqualified defined contribution and other deferred compensation plans, as well as all earnings on deferred compensation and the aggregate balances at the end of the fiscal year under such plans. <i>(Item 402(i) of Regulation S-K)</i> • The revised rules require a new Director Compensation Table, with components substantially the same as those in the Summary Compensation Table. Only compensation for the last completed fiscal year must be disclosed. <i>(Item 402(k) of Regulation S-K)</i>

SEC Rules—New Executive Compensation and Related Person Transaction Disclosure Rules

Subject	Discussion
<i>Changes to Related Person Transactions Disclosure</i>	
Disclosure of Transactions	<p>The revised rules streamline and modernize the related person disclosure requirements, focusing the disclosure determination more on a materiality analysis and less on bright line standards. As revised, the rules require a company to report information regarding any material direct or indirect interest that a director, executive officer or other related person has in a transaction involving more than \$120,000 in which the company is a participant during the last or proposed in the next fiscal year.⁵ Consistent with current interpretations, the materiality of an interest in a transaction will be determined on the basis of the significance of the information to investors in light of all of the circumstances, including the significance of the interest to the related person. (<i>Item 404(a) of Regulation S-K</i>)</p>
Key Definitions Revised	<p>The revised rules modify the following key definitions:</p> <ul style="list-style-type: none"> ◆ “Transaction” is to be interpreted broadly to include any financial transaction, arrangement or relationship or series of similar transactions, arrangements or relationships. This includes an employment relationship. (<i>Instruction 2 to Item 404(a) of Regulation S-K</i>) ◆ The definition of “related person” has been clarified to make express the SEC’s position that disclosure must be provided with respect to any person who was a “related person” <i>at any time</i> during the company’s last fiscal year, even if not a “related person” at year end. However, a person will only be considered a “related person” based on stock

⁵ In their first year of applicability, these new rules will capture transactions retroactively that occurred before November 7, 2006, when different standards pertained.

SEC Rules—New Executive Compensation and Related Person Transaction Disclosure Rules

Subject	Discussion
	<p>ownership if the person met the 5% ownership threshold at year-end.⁶</p> <ul style="list-style-type: none"> ◆ The definition of “immediate family member” has been expanded to include stepchildren, stepparents and any other person (other than a tenant or employee) sharing the household of a related person. (<i>Instruction 1 to Item 404(a) of Regulation S-K</i>)
Procedures for Approval of Related Person Transactions	<p>The revised rules require a company to disclose the material features of its policies and procedures for the review, approval or ratification of transactions with related persons that are reportable. A company must identify any reportable transactions since the beginning of its last fiscal year where review, approval or ratification were not required by such policies and procedures or where such policies and procedures were not followed. (<i>Item 404(b) of Regulation S-K</i>)</p>

SEC Rules—Other Disclosure Changes

Subject	Discussion
<i>Corporate Governance Disclosures</i>	<p>The SEC adopted additional disclosure requirements in the corporate governance area, most notably regarding the workings of the compensation committee, including, for instance, the role played by compensation consultants in determining the amount or form of executive and director compensation and the role of executive officers in setting compensation. The rules</p>

⁶ Under the revised rules, “related person” is generally defined to mean: (i) Any person who was in any of the following categories at any time during the specified period for which disclosure is required: (A) any director or executive officer of the registrant, (B) any nominee for director, or (C) any immediate family member of the foregoing, and (ii) any person who was in any of the following categories when a transaction in which such person had a direct or indirect material interest occurred or existed: (A) a beneficial owner of more than 5% of any class of the registrant’s voting securities (as disclosed in the registrant’s beneficial ownership table pursuant to Item 403(a)) or (B) an immediate family member of the foregoing. (*Instruction 1 to Item 404(a) of Regulation S-K*)

SEC Rules—Other Disclosure Changes

Subject	Discussion
	also add new disclosure requirements with respect to director independence, as well as consolidating a number of existing corporate governance disclosure requirements in one place under a new item. (<i>Item 407 of Regulation S-K</i>)
<i>Disclosure Regarding Pledges of Stock Beneficially Owned by Officers and Directors</i>	In tandem with the amendments to executive compensation disclosure rules, the SEC amended the rules governing disclosure of beneficial ownership of stock. Now, in addition to the amount of its stock owned by a company's named executive officers, directors and director nominees, a company must disclose, by means of a footnote to its table of beneficial shareholders, the number of shares pledged as security by such persons. (<i>Item 403(b) of Regulation S-K</i>)
<i>Stock Performance Graph</i>	The revised executive compensation disclosure rules are intended to encourage a broader discussion than just that of the relationship of executive compensation to the performance of a company's stock. To reflect this intent, the revised rules separate the stock performance graph from the executive compensation disclosure by moving the graph to Item 201 of Regulation S-K. As such, it will only be required to be included in annual reports accompanying or preceding proxy statements for annual meetings at which directors will be elected. The stock performance graph will continue to be deemed furnished, not filed. (<i>Item 201(e) of Regulation S-K</i>)

SEC Rules—Form 10-K

<i>Accelerated Reporting</i>	The Form 10-K reporting deadline for large accelerated filers (other than foreign private issuers) will be further accelerated. For any fiscal year ending on or after December 15, 2006, any such filer must file its Form 10-K within 60 days (as opposed to 75 days) of its fiscal year end. Other reporting deadlines remain as they were in 2006.
------------------------------	--

SEC Rules—Form 10-K

Subject	Discussion
<p><i>Extension of Deadline for Auditor Attestation of Internal Control Report for Foreign Private Issuers that Are Accelerated Filers and for Non-Accelerated Filers</i></p>	<p>For foreign private issuers that are accelerated filers (but not large accelerated filers) and that file their annual reports on Form 20-F or 40-F, the compliance date for including the auditor's attestation report pursuant to Section 404(b) of the Sarbanes-Oxley Act and Rule 2-02 (f) of Regulation S-X was extended to fiscal years ending on or after July 15, 2007. Since such filers are currently required to include management's report on internal control beginning with fiscal years ending on or after July 15, 2006, this extension means that for the first year of compliance with Section 404, foreign private issuers that are accelerated filers would include only the management's report, not the auditor's report. (<i>SEC Rel. 33-8730A (Aug. 9, 2006)</i>)</p> <p>On December 15, 2006, the SEC extended the date by which non-accelerated filers, both domestic and foreign private issuers, must begin to comply with the auditor attestation requirement to their annual reports filed for fiscal years ending on or after December 15, 2008. (<i>SEC Rel. 33-8760 (Dec. 15, 2006)</i>)</p>
<p><i>Extension of Deadline for Management's Internal Control Report for Non-Accelerated Filers and Newly Public Companies</i></p>	<p>On December 15, 2006, the SEC extended the date by which non-accelerated filers must provide a management's assessment regarding internal control over financial reporting, under Section 404 of the Sarbanes-Oxley Act, to their annual reports for fiscal years ending on or after December 15, 2007. For the first year, such assessments are deemed furnished, not filed.</p> <p>The SEC also provided a transition period for newly public companies that prevents them from having to comply with the internal control over financial reporting requirements of Section 404 of the Sarbanes-Oxley Act in the first annual report filed after becoming an Exchange Act reporting company. Newly public companies relying on the transition period must include a statement in their annual report that the annual report does not include the management assessment report or the auditor attestation. (<i>SEC Rel. 33-8760 (Dec. 15, 2006)</i>)</p>

SEC Rules—Form 10-K

Subject	Discussion
<i>Change in Cover Page for Issuers with Nasdaq-Listed Securities</i> ⁷	On August 1, 2006, the Nasdaq Stock Market became a national securities exchange. As a result, companies with Nasdaq-listed securities must indicate on the cover page of Form 10-K that those securities are registered under Section 12(b) of the Exchange Act, rather than Section 12(g).

SEC Rules—Form 8-K

Subject	Discussion
<i>Changes to Form 8-K</i> ⁸	<p>As part of the new rules on executive compensation and related person transaction disclosure, the SEC made changes to Form 8-K that are intended to scale back somewhat the volume of Form 8-K filings related to management contracts and compensatory plans.</p> <p>The changes to Form 8-K include the following:</p> <ul style="list-style-type: none"> ◆ Item 1.01 (material definitive agreements) was amended to exclude compensation-related agreements and arrangements, which are now instead covered under an expanded Item 5.02. ◆ Revised Item 5.02 retains the requirement to file a Form 8-K to report the appointment or departure of directors and specified officers (i.e. principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or any person performing similar functions),

⁷ For a more detailed discussion of the changes associated with the Nasdaq Stock Market becoming a national securities exchange, see Covington & Burling LLP's client advisory, [Upcoming Changes to NASDAQ](#)[®] (June 27, 2006).

⁸ Companies must comply with the new Form 8-K disclosure requirements for triggering events that occur on or after November 7, 2006. See Covington & Burling LLP's client advisory, [New Executive Compensation Disclosure Rules](#) (August 23, 2006). See also the Executive Compensation Release.

SEC Rules—Form 8-K

Subject	Discussion
	<p>but extends the requirement to also report departures of all named executive officers.</p> <ul style="list-style-type: none"> ◆ Revised Item 5.02 expands the disclosures required upon the occurrence of a triggering event to include a brief description, not just of employment agreements, but also of any material plan, contract or arrangement to which a specified officer or director is party or in which he or she participates that is entered into or materially amended in connection with any such triggering event, or any grant or award to any such person (or modification thereto) under any such plan, contract or arrangement in connection with such triggering event. ◆ Revised Item 5.02 also requires the filing of a Form 8-K to report the adoption of any material new compensatory plan, contract or arrangement, or new material grant or award thereunder, and any material amendment to any such plan, contract, arrangement or award, for the principal executive officer, principal financial officer and any other named executive officer, whether or not in connection with the appointment or departure of such officers. Such grants and awards need not be disclosed, however, if they are materially consistent with the previously-disclosed terms of a plan, contract or arrangement, and such grants or awards are disclosed when Item 402 of Regulation S-K requires such disclosure.

Other SEC Rules and Guidance

Subject	Discussion
<i>Amendment to Tender Offer “Best Price” Rule</i>	The SEC’s tender offer “best price” rule requires that all shareholders be paid the same price in a tender offer. The SEC amended Rules 13e-4 and 14d-10 under the Exchange Act to clarify that the tender offer “best price” rule applies only with respect to the consideration

Other SEC Rules and Guidance	
Subject	Discussion
	<p>offered and paid for securities tendered in an issuer or third-party tender offer and not to the negotiation, execution or amendment of employment compensation, severance or other employee benefit arrangements. The amendments also include a safe harbor provision for compensation, severance and employee benefit arrangements where such arrangements are approved by independent directors. (<i>SEC Rel. 34-54684 (Nov. 1, 2006) and Exchange Act Rules 13e-4 and 14d-10</i>)</p>
<p><i>SEC Interpretive Guidance on Quantifying Financial Statement Errors</i></p>	<p>On September 13, 2006, the SEC issued Staff Accounting Bulletin 108 which provides interpretive guidance on how the effects of the carryover or reversal of prior year misstatements should be considered in quantifying a current year misstatement. According to the SEC, there have been two common approaches used to quantify such errors. Under one approach, the error is quantified as the amount by which the current year income statement is misstated. The other common approach quantifies the error as the cumulative amount by which the current year balance sheet is misstated. The SEC staff believes that companies should quantify errors using both a balance sheet and an income statement approach and evaluate whether either approach results in a misstatement that, when all relevant quantitative and qualitative factors are considered, is material. (<i>Staff Accounting Bulletin 108 (Sept. 13, 2006)</i>)</p>
<p><i>"E-Proxy" Rules</i></p>	<p>On December 13, 2006, the SEC approved amendments to the proxy rules that provide issuers with an alternative method for delivering proxy materials that is based on a "notice and access" model.⁹ Under the amendments, a company can satisfy its proxy delivery obligations by posting its proxy materials on a specific, publicly-accessible Internet website. The company must send a Notice of Electronic Proxy Materials to its shareholders informing them that the proxy materials are available and explaining how to access the materials.</p>

⁹ The SEC has also proposed to require public companies to offer a "notice and access" delivery model for all solicitations not related to a business combination transaction. See SEC Press Release 2006-209 (Dec. 13, 2006).

Other SEC Rules and Guidance

Subject	Discussion
	<p>That notice must be delivered, using existing permitted methods, at least 40 days before the shareholders' meeting. The notice must be written in plain English and contain a prominent legend with the following information:</p> <ul style="list-style-type: none"> ◆ the date, time and location of the shareholders' meeting; ◆ the availability of the proxy materials at a specified Internet website address; ◆ a toll-free telephone number and e-mail address where a shareholder can request paper copies of the proxy materials¹⁰; and ◆ a clear and impartial description of the matters to be considered at the meeting. <p>A proxy card may not accompany the notice; however, a company may send a paper proxy card accompanied by another copy of the notice 10 days or more after sending the initial notice. Persons soliciting proxies other than an issuer may also rely on the same "notice and access" model for delivery of proxy materials. While such persons may limit their solicitation to shareholders who have not previously requested paper copies of the proxy materials, paper copies of the materials must be sent upon request.</p> <p>The amendments will take effect on July 1, 2007. Companies are not permitted to use the "notice and access" model before that date.</p> <p><i>(SEC Press Release 2006-209 (December 13, 2006))</i></p>

¹⁰ If requested by a shareholder, an issuer must send a copy (in paper or by e-mail, as requested) of the proxy materials within three business days. A shareholder may make a permanent election to receive all proxy materials in paper or by e-mail with respect to future proxy solicitations conducted by the company.

NYSE — Amendments to Listing Standards

Subject	Discussion
<i>Delivery of Annual Reports</i>	<p>The NYSE eliminated its requirement that annual reports be physically delivered to shareholders. Instead, a listed company must simultaneously post on its corporate website the company's annual report on Form 10-K, 20-F, 40-F or N-CSR when it is filed with the SEC. Companies must also post on their websites a prominent undertaking that they will deliver a paper copy of their complete audited financial statements free of charge to any shareholder who requests it. Companies must also issue a press release simultaneously with their website posting stating that their annual report has been filed with the SEC. (<i>Section 203.01 of the NYSE Listed Company Manual; SEC Rel. 34-54344 (Aug. 21, 2006)</i>)</p> <p>Note that under Rule 14a-3 under the Exchange Act, U.S. public companies continue to be required to mail a "glossy" annual report to shareholders. Once the new e-proxy rules discussed above become effective, companies will have the option of delivering their annual report (along with other proxy materials) to their shareholders through an Internet website. Until then, the elimination of the requirement that annual reports be physically delivered to shareholders is only relevant to foreign private issuers, which are not subject to Rule 14a-3.</p> <p>The amendments to the listing standards also eliminated the requirement that foreign private issuers (i) distribute to shareholders at least a summary annual report, (ii) provide a full annual report to shareholders upon request, and (iii) contact a NYSE representative to determine whether the proposed use of the summary annual report meets the NYSE's requirements. (<i>Section 103.00 of the NYSE Listed Company Manual; SEC Rel. 34-54344 (Aug. 21, 2006)</i>)</p>
<i>Other Annual Report Requirements</i>	<p>The NYSE eliminated the requirements that a company inform the NYSE if it is unable to file its annual report with the SEC in a timely manner and that a company notify the NYSE prior to the filing deadline if it will not file its annual report with the SEC on time. The NYSE also eliminated its requirements that annual financial statements be independently audited and prepared in</p>

NYSE — Amendments to Listing Standards

Subject	Discussion
	accordance with GAAP since SEC rules contain these same requirements. (<i>Section 203.01 of the NYSE Listed Company Manual; SEC Rel. 34-54344 (Aug. 21, 2006)</i>)
<i>Other Changes</i>	The NYSE amended its listing standards to reduce markedly the need to provide information to the NYSE that is available on EDGAR. ¹¹ In addition, the NYSE amended its listing standards to provide that all listed companies are now required to maintain a website. The NYSE also amended its rules to consolidate and summarize the reporting requirements for interim financials. The revised rules require that any company with common equity securities listed on the exchange that is required to file interim financial statements with the SEC must issue an interim earnings press release as soon as its interim financial statements are available. (<i>Sections 203.02, 204.00 and 303A.14 of the NYSE Listed Company Manual; SEC Rel. 34-54344 (Aug. 21, 2006)</i>)

Nasdaq — Amendments to Listing Standards and Rules

Subject	Discussion
<i>Changes to Nasdaq's Director Independence Standards</i> ¹²	Nasdaq amended its definition of "independent director" to align the Nasdaq rule with the corresponding rule of the NYSE. The Nasdaq rule now precludes a finding of director independence if a director accepts any <i>compensation</i> from the company or its affiliates in excess of \$60,000 ¹³ during the prescribed time period.

¹¹ Specifically, the NYSE now only requires companies to provide it with the following: (i) one hard copy of materials necessary to support a listing application, (ii) six hard copies of proxy materials, (iii) one hard copy of any filings made on Form 6-K that are not required to be filed on EDGAR, and (iv) one hard copy of a notice to shareholders with respect to any proposed amendments to the company's charter, as well as a certified copy of the amended charter along with a letter of transmittal indicating the sections amended since the previous filing of amendments or amended documents.

¹² For more detailed information on director independence standards under the Nasdaq and NYSE rules, see Covington & Burling LLP's client advisory, [Considering Director Independence](#) (September 6, 2006).

¹³ Nasdaq has proposed to increase the threshold from \$60,000 to \$120,000. (*SEC Rel. 33-54797 (Nov. 20, 2006)*)

Nasdaq — Amendments to Listing Standards and Rules

Subject	Discussion
	<p>Under the prior Nasdaq rule, a director of a listed company would not be considered independent if the director accepted more than \$60,000 in <i>payments</i> from the company during the relevant time period.</p> <p>Nasdaq also revised various other provisions of its corporate governance standards, including by amending several provisions to conform more closely with the NYSE's corporate governance standards. Among the changes is a clarification that employment by a director as an executive officer on an interim basis will not disqualify that director from being considered independent following such employment, provided that the interim employment did not last longer than one year.</p> <p><i>(Nasdaq Rule 4200(a)(15) and IM-4200 and 4350; SEC Rel. 34-54583 (Oct. 6, 2006) and SEC Rel. 34-54333 (Aug. 18, 2006))</i></p>
<p><i>Modification of Cure Period for Non-Compliance with Director Independence Requirements</i></p>	<p>Nasdaq modified the cure period available to a listed issuer that loses an independent director or audit committee member. Nasdaq Rule 4350 requires each listed issuer to have a majority of independent directors on its board and an audit committee that consists of at least three independent members. The rule provides a cure period for an issuer that fails to comply with the majority independent board requirement, either because a vacancy arises on the board or because a board member ceases to be independent for reasons outside the member's reasonable control, as well as for an issuer that fails to comply with the audit committee composition requirement because a vacancy arises or because a member ceases to be independent for reasons outside the member's reasonable control. Under the prior rule, the cure period lasted until the earlier of the company's next annual shareholders' meeting or one year from the date of the event that caused the non-compliance. The revised rule provides that if the annual shareholders' meeting occurs no later than 180 days following the event that caused the compliance failure, the issuer will instead have 180 days from the date of the event to regain compliance. The modification is designed to prevent certain anomalous</p>

Nasdaq — Amendments to Listing Standards and Rules

Subject	Discussion
	results that occurred under the prior rule (e.g., a company would have almost a year to regain compliance if a director resigned from the audit committee just after the company's annual meeting, whereas a company would have only days or weeks to regain compliance if a director resigned from the audit committee just before the annual meeting). (<i>Nasdaq Rule 4350</i> ; <i>SEC Rel. 34-54421 (Sept. 11, 2006)</i>)

Conclusion

The weight of new disclosure requirements in 2007 relates to accelerated filing schedules and new executive compensation and related person transaction disclosures. From a practical standpoint, companies will need to adapt processes and operations to accommodate the challenges of new timing and information gathering presented by the new rules. This will mean that companies must review their information systems and other elements of disclosure controls and procedures in order to assure collection, analysis and compilation of data necessary for the new disclosures. Just as importantly, this will also mean that companies will need to reach for a new level of coordination amongst management, particularly those responsible for disclosure, benefits, financial reporting and accounting matters, and directors, particularly compensation committees.

*David B.H. Martin
David H. Engvall
Carey S. Roberts
Frank S. London*

This information is not legal advice. Readers should seek specific legal advice before acting on subjects mentioned herein.

If you have any questions concerning this material, please contact the following members of our Securities Practice Group:

Bruce Bennett	212.841.1060	bbennett@cov.com
Edward Britton	+44.(0)20.7067.2119	ebritton@cov.com
Bruce Deming	415.591.7051	bdeming@cov.com
David Martin	202.662.5128	dmartin@cov.com

Covington & Burling LLP is one of the world's preeminent law firms known for handling sensitive and important client matters. This advisory is intended to bring breaking developments to our clients and other interested colleagues in areas of interest to them. Please send an email to unsubscribe@cov.com if you do not wish to receive future advisories.

© 2006 Covington & Burling LLP. All rights reserved.