

SEC Issues Guidance on Perquisites and Personal Benefits That Is Applicable for the Current Proxy Season; Proposes Related Rule Changes for Future Proxy Seasons

February 21, 2006

On January 17, 2006, the Securities and Exchange Commission proposed a major overhaul of the executive compensation disclosure requirements. Release Nos. 33-8655; 34-53185; IC-27218. In the proposing release the SEC has also provided interpretive guidance as to what constitutes a perquisite or other personal benefit that is required to be disclosed. This guidance is applicable for the current proxy season and therefore should be followed when drafting this year's annual meeting proxy statement.

While the SEC has not created a definition of what constitutes a perquisite, the SEC has said that the concept should not be interpreted artificially narrowly to avoid disclosure. Among the factors to be considered whether an item is a perquisite are the following:

- An item is not a perquisite if it is integrally and directly related to the performance of the executive's duties.
- An item is a perquisite if it confers a direct or indirect benefit that has a personal aspect, without regard to whether it may be provided for some business reason or the convenience of the company, unless it is generally available on a non-discriminatory basis to all employees.

The concept of a benefit that is integrally and directly related to job performance is intended to be a narrow one. It may extend to cover such items as:

- Office space at a company business location;
- A reserved parking space that is closer to business facilities but not otherwise preferential; or
- Additional clerical or secretarial services devoted to company matters.

It does not extend to cover items that facilitate job performance such as:

- Company-provided aircraft, yachts or other watercraft;
- Commuter transportation services;
- Additional clerical or secretarial services devoted to personal matters; or
- Investment management services.

The fact that a company determines that an expense is for the benefit or convenience of the company for tax or other purposes is not dispositive of whether or not the item is a perquisite for disclosure purposes.

The SEC has provided a non-exclusive list of items requiring disclosure as perquisites including:

- Club memberships not used exclusively for business entertainment purposes;
- Personal financial or tax advice;
- Personal travel using vehicles owned or leased by the company;
- Personal travel otherwise financed by the company;
- Housing and other living expenses, including but not limited to relocation assistance and payments for the executive or director to stay at his or her personal residence;
- Security provided at a personal residence or during personal travel;
- Commuting expenses, whether or not provided for the company's convenience or benefit; and
- Discounts on the company's products or services.

The SEC has made clear that the following items would not be perquisites:

- Travel to and from business meetings;
- Other business travel;
- Business entertainment;
- Security during business travel; and
- Itemized expense accounts the use of which is limited to business purposes.

The SEC has also provided the following guidance as to whether or not two items that have been widely discussed are perquisites:

- A company policy that for security purposes an executive and/or his or her family must use company aircraft or other company means of travel for personal travel or must use company or company-provided property for vacations does not affect the conclusion that the item provided is a perquisite.
- The aggregate incremental cost to the company and its subsidiaries is the proper measure of perquisites. The amount attributed to such benefits for federal income tax purposes is not the incremental cost for purposes of the SEC disclosure requirements unless it otherwise constitutes such incremental cost.

Finally, companies should be aware that the SEC is proposing several major changes to the disclosure of perquisites in the annual meeting proxy statement “to improve disclosure and facilitate computing a total amount of compensation.”

- The proposed changes would require disclosure of perquisites unless the aggregate amount of such compensation is less than \$10,000 for an individual (changed from the current requirement of the lesser of \$50,000 or 10% of the total of annual salary and bonus).
- The proposed changes would require footnote disclosure, if the proposed \$10,000 threshold is reached, of the identity of each perquisite, and if any perquisite is valued at the greater of \$25,000 or 10% of total perquisites, the value of each such perquisite (changed from the current requirement to disclose and quantify perquisites if they exceed 25% of the amount of perquisites disclosed).
- The proposed changes would require disclosure of the value of perquisites received by any director, if the aggregate value is \$10,000 or more.

As a result of this guidance issued by the SEC, companies should re-examine their compensation disclosures to ensure that all appropriate items are being classified as perquisites and that the required disclosure is being provided. Companies should also keep in mind how the SEC is proposing to change the disclosure requirements with regard to future disclosures and how this may impact future proxy statements.

If you have any questions regarding the compensation disclosures, including with regard to perquisites and other personal benefits, we would be pleased to discuss them with you. For more information, please contact any of the attorneys listed below or any other member of our corporate and securities group. If you would prefer to receive distributions electronically and are not receiving them that way now, please send your e-mail address to mnoonan@mayerbrownrowe.com.

Edward S. Best.....	+1.312.701.7100	Lawrence R. Hamilton	+1.312.701.7055	Elizabeth A. Raymond	+1.312.701.7322
Michael T. Blair	+1.312.701.7832	Robert A. Helman	+1.312.701.7020	Laura D. Richman	+1.312.701.7304
James B. Carlson	+1.212.506.2515	Michael L. Hermesen	+1.312.701.7960	David A. Schuette	+1.312.701.7363
Robert E. Curley	+1.312.701.7306	James J. Junewicz	+1.312.701.7032	Frederick B. Thomas	+1.312.701.7035
Scott J. Davis	+1.312.701.7311	Kenneth E. Kohler	+1.213.229.9567	Mark R. Uhryuk	+44.207.246.6217
Jeffrey I. Gordon	+44.20782.8585	William S. Moss III	+1.713.546.0503	James R. Walther	+1.213.229.9597
Robert F. Gray	+1.713.546.0522	Philip J. Niehoff	+1.312.701.7843	Robert J. Wild	+1.312.701.8561

Copyright © 2006 Mayer, Brown, Rowe & Maw LLP. This Mayer, Brown, Rowe & Maw LLP publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek specific legal advice before taking any action with respect to the matters discussed herein.

Mayer, Brown, Rowe & Maw is a combination of two limited liability partnerships, each named Mayer, Brown, Rowe & Maw LLP, one established in Illinois, U.S.A., and one incorporated in England.

BERLIN • Dorotheenstraße 35 • 10117 Berlin ❖ BRUSSELS • Avenue des Arts 52 • 1000 Brussels • +32.502.5517 ❖ CHARLOTTE • 214 North Tryon Street • Charlotte, North Carolina 28202-2137 • +1.704.444.3500 ❖ CHICAGO • 71 South Wacker Drive • Chicago, Illinois 60606-4637 • +1.312.782.0600 ❖ COLOGNE • Kaiser-Wilhelm-Ring 27-29 • 50672 Cologne • +49.221.577.1100 ❖ FRANKFURT • Bockenheimer Landstrasse 98-100 • D-60323 Frankfurt am Main • +49.69.79.41.0 ❖ HOUSTON • 700 Louisiana Street • Houston, Texas 77002-2730 • +1.713.221.1651 ❖ LONDON • Principal Office • 11 Pilgrim Street • London EC4V 6RW • +44.20.7248.4282 ❖ LOS ANGELES • 350 South Grand Avenue • Los Angeles, California 90071-1503 • +1.213.229.9500 ❖ NEW YORK • 1675 Broadway • New York, New York 10019-5820 • +1.212.506.2500 ❖ PALO ALTO • Two Palo Alto Square • 3000 El Camino Real • Palo Alto, California 94306-2112 • +1.650.331.2000 ❖ PARIS • 41 Avenue Hoche • 75008 Paris • +33.1.53.53.43.43 ❖ WASHINGTON • 1909 K Street, N.W. • Washington, D.C. 20006-1157 • +1.202.263.3000 ❖ INDEPENDENT CORRESPONDENTS: Jáuregui, Navarrete y Nader, S.C. • Mexico City ❖ Studio Legale Tonucci • Bucharest, Florence, Milan, Padua, Rome, Tirana