

## Summer 2007 Regulatory Update

### **Surprise, Surprise. Two Unforeseen Regulatory Pronouncements.**

Recently, both the Securities and Exchange Commission (SEC) and the Internal Revenue Service (IRS) made disclosures about key aspects regarding their oversights of the evolving executive compensation environment.

#### **SEC – No Rule Changes for the 2008 Proxy Season**

This isn't a case where no news is good news. Rather, the decision not to issue new or amended rules regarding the recent compensation proxy disclosures is somewhat disturbing to Compensation Committees, attorneys, consultants and management teams who have struggled with preparing the landmark overhaul of shareholder communication regarding executive and director pay practices. While much of the new proxy rules are straightforward in terms of specific disclosures, much of the proxy requirements have been open to interpretation resulting in an unevenness of information being presented.

Close followers of the SEC's actions on this matter indicate that the SEC will be reviewing proxy statements for quality by looking at such things as "Is there clarity in the CD&A?" and "Is the CD&A written in plain English?" And, of course they will be calculating length and readability statistics. The SEC may want to examine their rules using the same microscope.

The SEC may issue some additional guidance and interpretations of the existing rules later this year.

#### **IRS – CFOs Excluded from Section 162(m) Incentive Plans Rules**

Section 162(m) of the Internal Revenue Code limits the corporate tax deduction paid to certain executive officers in excess of \$1 million. Under the tax rules, the executive were the CEO and the next most highly compensated officers. This definition was "linked" to the SEC's proxy disclosure rules.

The new SEC proxy disclosure rules use the terms principal executive officer (PEO) and principal financial officer (PFO) for inclusion in tables and then add the next three most highly compensated officers. The tax rules and the proxy rules were no longer in sync.

The IRS amended its rules so that it refers to a company's principal executive officer and the next three most highly compensated officers, other than the PEO and PFO. This clarifies that the CEO and the next three highest compensated officers still will be subject to Section 162(m), but the company's CFO, who would most likely be the PFO, would not be subject to the limitations of Section 162(m).

