



## Overview of SEC Proxy Disclosure Rules

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### **SUMMARY OF SEC DISCLOSURES**

On July 26<sup>th</sup>, the SEC voted to approve final rules that amend previous proxy disclosure requirements for executive and director compensation. This overview includes the final amendments voted on and approved on that date. This memo is intended to be a summary of the subject matter as it is currently understood by Presidio Pay Advisors, Inc. and is neither legal advice nor should it be relied upon for legal advice. Any questions regarding the impact of the proxy disclosure rules on your company or unique situation should be directed to your legal counsel. Summary questions of a non-legal nature can be directed to Brandon Cherry at (415) 438-3402 or [brandon@presidiopay.com](mailto:brandon@presidiopay.com).

The complete disclosure rules, covering over 400 pages, can be downloaded from the SEC's website at: [www.sec.gov/rules/final/2006/33-8732.pdf](http://www.sec.gov/rules/final/2006/33-8732.pdf)

### **OUTLINE OF THIS DOCUMENT**

This document is meant to summarize key components of the new SEC disclosures limited to:

- The Compensation Discussion & Analysis disclosures
- The Compensation Committee Report
- The Summary Compensation Table
- The Grants of Plan-Based Awards Table
- The Narrative Disclosure to the Summary Compensation Table and the Grants of Plan-Based Awards Table
- The Outstanding Equity Awards at Fiscal Year-End Table
- The Option Exercises and Stock Vested Table
- The Director Compensation Table

This summary does not cover disclosure requirements for the Post-Employment Compensation (pension benefits, non-qualified deferred compensation, or other post-employment payments) and associated tables.

### **EFFECTIVE DATE**

*Summary.* Companies filing proxy statements on or after December 15, 2006 for fiscal years ending after December 15, 2006 will be required to file using these amended disclosure requirements.

### **NAMED EXECUTIVE OFFICERS**

*Summary.* The following are the Named Executive Officers (NEO) included in the new disclosures:

- Chief Executive Officer (CEO) and all individuals serving in this capacity during the prior fiscal year
- Chief Financial Officer (CFO) and all individuals serving in this capacity during the prior fiscal year
- Three most highly compensated executive officers other than the CEO and CFO
- Up to two additional officers who would have otherwise been included in the filing but no longer serve as an executive officer of the company at the end of the completed fiscal year

*Key Changes:* None



## **HIGHLY COMPENSATED EXECUTIVE OFFICERS**

*Summary:* Highly compensated executives will be determined by their total compensation in any given year. The included and excluded portions of total compensation as outlined by the SEC are listed below:

### Excluded

- Increase in pension value
- Preferential or above market earnings on non-qualified deferred compensation

### Included

- Base salary
- Bonus
- Stock awards (common share grants, restricted stock, stock units, etc.)
- Option awards (stock options, stock appreciation rights, etc.)
- Non-equity incentive plan compensation
- Other compensation including but not limited to the dollar value of life insurance premiums, benefits, perquisites, tax reimbursements, company payments to defined contribution plans, relocation payments

*Key Changes:* Historically only base salary and annual bonus were used to determine highly compensated executive officers.

## **COMPENSATION DISCUSSION AND ANALYSIS (CD&A)**

*Summary:* Companies must provide a more detailed discussion of their policies and practices related to executive compensation. This discussion should cover:

- The company's compensation philosophy including
  - Objectives of the compensation programs
  - What the programs are designed to reward
  - Each element of the compensation program
  - Why the company chooses each element of compensation
- How the company chooses the value/amount for each element of pay
- How each individual element fits into the larger total compensation program, objectives and the decisions made regarding other compensation elements
- Changes to executive compensation since the end of the last fiscal year (starting Nov. 7<sup>th</sup>)

In addition, the SEC outlines a series of policy issues that may be considered material to some companies. A full list of these can be found in the SEC disclosure provided above (p. 331 – 333). The following are some of the issues that may be considered material:

- The balance of long-term and short-term compensation
- The balance between cash and non-cash compensation
- The balance between various forms of long-term incentives
- Decisions regarding the administration and timing of awards
- What items of corporate performance are taken into consideration when setting plans
- How much discretion is allowed for in the plans and how the individual's performance impacts these plans
- Individual ownership percentages or ownership guidelines set by the company
- Whether the company has conducted any benchmarking and if so, the components of the benchmarking process
- The role of executives in determining compensation

*Key Changes:* The CD&A greatly increases the disclosures required and is considered a filed document. This distinction means it will be subject to the Sarbanes-Oxley certification requirements (similar to the Audit Committee Report). This means that the CEO and CFO must sign off on the CD&A ensuring that it contains no omissions or misstatements that are material to the company. This also makes the disclosures subject to federal securities laws.



**COMPENSATION COMMITTEE REPORT**

*Summary.* This report must include:

- A list of Compensation Committee members
- Acknowledgement that the Compensation Committee reviewed the CD&A and discussed the CD&A with management
- A statement the Compensation Committee recommends disclosing the CD&A in the 10-K and proxy

*Key Changes:* New to disclosure

**NARRATIVE DISCLOSURES**

*Summary.* The new SEC disclosure rules require a plain English narrative for both the Grants of Plan-Based Awards Table and the Summary Compensation Table and any material factors necessary to understand the tabular disclosures. This narrative may include, but is not limited to:

- Terms of an executive’s employment agreement
- Repricings or modifications of equity based awards
- Formulas relating to determining performance of equity-based awards or the pricing of the awards
- Vesting schedule of awards from the Grant of Plan-Based Awards Table

*Key Changes:* New to disclosure

**SUMMARY COMPENSATION TABLE**

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)	Option Awards (\$)	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation (\$)	Total (\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Principal Executive Officer									
Principal Financial Officer									
A									
B									
C									

*Summary.* The summary compensation table will require three years of historical data in ten columns (a) through (j) with all compensation data presented in dollars to the nearest dollar:

Column (a)  
- **Name & Principal Position**

Column (b)  
- **Year**

Column (c)  
- **Salary**  
*Key Changes:* None

Column (d)  
- **Bonus**  
*Key Changes:* None



## SUMMARY COMPENSATION TABLE (CONT'D)

### Column (e)

- **Stock Awards** include awards that derive their value from a company's equity securities or permit the company to issue equity (restricted stock, phantom shares, etc.) as a means of settlement. These awards will be disclosed as the fair value of the awards on the date of grant as determined by FAS 123R.

*Key Changes:* Disclosed only as a fair value dollar amount along with the assumptions used in the FAS 123R valuation

### Column (f)

- **Option Awards** includes stock options and awards with option-like features (i.e. stock appreciation rights) whose reward is tied to the performance of the company stock, regardless of whether the award is settled in stock or cash. These awards will be disclosed as the fair value of the awards on the date of grant as determined by FAS 123R.

*Key Changes:* Disclosed only as a fair value dollar amount along with the assumptions used in the FAS 123R valuation

### Column (g)

- **Non-Equity Incentive Plan Compensation** includes all incentive plan awards not included in Columns (e) and (f). These are non share-based plans that compensate for performance (financial or otherwise) over a specified period not accounted for under FAS 123R. These can include annual cash bonuses or short-term incentives. A bonus or short-term incentive would be disclosed in this column if the outcome to the relevant performance target is substantially uncertain at the time the performance target is established and communicated to the executive.

*Key Changes:* New to disclosure. Note that disclosures in this column are also required to be disclosed in the Grants of Plan-Based Awards Table.

### Column (h)

- **Change in Pension Value and Non-Qualified Deferred Compensation Earning** includes the aggregate dollar increase in actuarial value to the Named Executive Officer of all defined benefit and actuarial plans (including supplemental plans) accrued during the year and earnings on nonqualified deferred compensation.

*Key Changes:* New to disclosure

### Column (i)

- **All Other Compensation** includes the aggregate of perquisites and benefits including but not limited to the dollar value of severance or termination payments, tax payments made on behalf of an executive, life insurance premiums, benefits, perquisites, tax reimbursements, company payments to defined contribution plans, and relocation payments. Those benefits and perquisites that exceed \$10,000 must be identified in footnote disclosure, and those that exceed \$25,000 or 10% of total perquisites and other personal benefits, must be identified and its individual value must be disclosed in column (i).

*Key Changes:* Disclosure thresholds for footnote identification were formerly the lesser of \$50,000 or 10% of the total of annual salary and bonus. The disclosure requirements for identification and quantification were only on those individual perquisites or benefits that totaled 25% or more of the total amount for each named executive officer.

### Column (j)

- **Total** is the sum of columns (c) through (i)

*Key Changes:* New to disclosure



**GRANTS OF PLAN-BASED AWARDS TABLE**

Name  (a)	Grant Date  (b)	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares of Stock or Units  (i)	All Other Option Awards: Number of Securities Underlying Options  (j)	Exercise or Base Price of Option Awards (\$/Share)  (k)
		Threshold (\$) (c)	Target (\$) (d)	Maximum (\$) (e)	Threshold (#) (f)	Target (#) (g)	Maximum (#) (h)			
Principal Executive Officer										
Principal Financial Officer										
A										
B										
C										

*Summary.* Companies must disclose each grant of an award made to a Named Executive Officer on this table. The primary columns are (a) through (k):

Column (a)

- **Name of the Named Executive Officer**

*Key Changes:* None

Column (b)

- **Grant Date** is the date the equity-based award is issued. If the date on which the Compensation Committee, a board member or the full board took action on the award is different than the grant date, a new column between (b) and (c) must be inserted to disclose such date.

*Key Changes:* An additional column must be added to present the date the action was taken by the board or Compensation Committee related to the award.

Column (c) through (e)

- **Estimated Future Payouts Under Non-Equity Incentive Plan Awards** is the dollar amount of non-equity incentive plans granted in the fiscal year assuming performance conditions are met at the threshold, target and maximum levels.

*Key Changes:* New to disclosure

Column (f) through (h)

- **Estimated Future Payouts Under Non-Equity Incentive Plan Awards** is number of shares of stock or shares underlying options to be paid out or vested upon satisfying any conditions under equity incentive plans, or the range of payouts in stock or shares under option for an award (threshold, target and maximum).

*Key Changes:* New to disclosure

Column (i)

- **All Other Stock Awards** is the number of shares of stock granted in the fiscal year that are not required to be disclosed in columns (f) through (h).

*Key Changes:* New to disclosure

Column (j)

- **All Other Option Awards** is the number of securities underlying options granted in the fiscal year that are not required to be disclosed in columns (f) through (h).

*Key Changes:* New to disclosure

Column (k)

- **Exercise or Base Price of Option Awards** is the per share or base price of options granted in the fiscal year. Where this price is less than the market price for the underlying security on the date of grant, an additional column must be added to disclose the market price for the underlying security.

*Key Changes:* New to disclosure



**OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END TABLE**

Name  (a)	Option Awards					Stock Awards			
	Number of Securities Underlying Unexercised Options - Exercisable (#) (b)	Number of Securities Underlying Unexercised Options - Unexercisable (#) (c)	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#) (d)	Option Exercise Price (\$) (e)	Option Expiration Date (f)	Number of Shares or Units of Stock That Have Not Vested (#) (g)	Market Value of Shares or Units of Stock That Have Not Vested (#) (h)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#) (i)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (\$) (k)
Principal Executive Officer									
Principal Financial Officer									
A									
B									
C									

*Summary.* This table is designed to disclose information specific to unexercised options, unvested stock, and equity incentive plan awards for each NEO outstanding at the end of the last fiscal year:

Column (a)

- **Name of the Named Executive Officer**

*Key Changes:* None

Column (b)

- **Number of Securities Underlying Unexercised Options – Exercisable** is the number of securities underlying unexercised options that are exercisable and not reported in column (d). This disclosure must be made on an award-by-award basis.

*Key Changes:* New to disclosure

Column (c)

- **Number of Securities Underlying Unexercised Options – Unexercisable** is another award-by-award disclosure to identify the number of securities underlying unexercised options that are unexercisable and not reported in column (d).

*Key Changes:* New to disclosure

Column (d)

- **Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options** is an award-by-award disclosure identifying the number of shares underlying unexercised options awarded under any equity incentive plan that have not been earned.

*Key Changes:* New to disclosure

Column (e)

- **Option Exercise Price** is the exercise or base price for each award disclosed in columns (b) - (d).

*Key Changes:* New to disclosure

Column (f)

- **Option Expiration Date** is the expiration date for each award disclosed in columns (b) – (d).

*Key Changes:* New to disclosure

Column (g)

- **Number of Shares or Units of Stock That Have Not Vested** is the total number of shares of stock that have not vested and that are not reported in column (i).

*Key Changes:* New to disclosure

Column (h)

- **Market Value of Shares or Units of Stock That Have Not Vested** is the aggregate market value of shares of stock that have not vested and not reported in column (j).



*Key Changes:* New to disclosure

## **OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END TABLE (CONT'D)**

### Column (i)

- **Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested** is the total number of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned, and if applicable the number of shares underlying any such unit or right.

*Key Changes:* New to disclosure

### Column (j)

- **Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested** is the aggregate market or payout value of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned.

*Key Changes:* New to disclosure



**DIRECTOR COMPENSATION TABLE**

Name	Fees Earned or Paid In Cash (\$)	Stock Awards (\$)	Option Awards (\$)	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value and Non-Qualified Deferred Compensation Earnings	All Other Compensation (\$)	Total (\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A							
B							
C							
D							
E							

*Summary.* The new table provides detailed information on compensation of each director individually unless all directors are paid exactly the same. Narrative disclosure is also mandatory and should discuss individual components of compensation.

Column (a)

- **Name** of each director unless the director is also a NEO.

*Key Changes:* New to disclosure

Column (b)

- **Fees Earned or Paid in Cash** is the aggregate dollar amount of all fees earned or paid in cash for services as a director including annual retainers, committee fees, and meeting fees.

*Key Changes:* New to disclosure

Column (c)

- **Stock Awards** is the aggregate grant date fair value of stock awards calculated using FAS 123R.

*Key Changes:* New to disclosure

Column (d)

- **Option Awards** is the aggregate grant date fair value of options calculated using FAS 123R.

*Key Changes:* New to disclosure

Column (e)

- **Non-Equity Incentive Plan Compensation** is the value of all earnings for services performed during the fiscal year for non-equity incentive plans and all earnings on any outstanding awards.

*Key Changes:* New to disclosure

Column (f)

- **Change in Pension Value and Nonqualified Deferred Compensation Earnings** is the above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans.

*Key Changes:* New to disclosure.

Column (g)

- **All Other Compensation** includes all compensation that could not properly be reported in columns (b) – (f), including

- Perquisites, personal benefits, gross-ups or other reimbursements for tax payments
- Termination or retirement payments, insurance premium payments, dividends or other earnings paid on stock or option awards

*Key Changes:* New to disclosure

Column (h)

- **Total** is the dollar value of all compensation for the fiscal year reported in columns (b) - (g).

*Key Changes:* New to disclosure



**OPTION EXERCISES AND STOCK VESTED TABLE**

Name  (a)	Option Awards		Stock Awards	
	Number of Shares Acquired on Exercise (#) (b)	Value Realized on Exercise (\$) (c)	Number of Shares Acquired on Vesting (#) (d)	Value Realized on Vesting (\$) (e)
Principal Executive Officer				
Principal Financial Officer				
A				
B				
C				

*Summary.* This table discloses exercises of stock options, SARs, and similar instruments and each vesting of stock, including restricted stock, restricted stock units, and similar instruments during the last fiscal year for each NEO. These disclosures can be presented in aggregate for each NEO.

Column (a)

- **Name of the Named Executive Officer**

*Key Changes:* New to disclosure

Column (b)

- **Number of Shares Acquired on Exercise** is the number of securities for which the options were exercised.

*Key Changes:* New to disclosure

Column (c)

- **Value Realized on Exercise** is the aggregate dollar value realized upon exercise of options.

*Key Changes:* New to disclosure

Column (d)

- **Number of Shares Acquired on Vesting** is the number of shares of stock that have vested.

*Key Changes:* New to disclosure

Column (e)

- **Value Realized on Vesting** is the aggregate dollar value realized upon vesting of stock.

*Key Changes:* New to disclosure

**ABOUT PRESIDIO PAY ADVISORS**

Presidio Pay Advisors provides companies with thoughtful, independent, strategic advice and support on a wide range of compensation issues. Our collective expertise is comprehensive, encompassing the diverse array of human resources, finance, accounting, regulatory, and shareholder perspectives.

We assist with the competitive assessment, design, implementation and communication of:

- Total Compensation Strategy
- Annual Cash Incentives
- Long-Term Equity and Cash Incentives
- Employee Agreements
- Severance and Change-In-Control Arrangements