THE NONQUALIFIED ADVISOR

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SEC Dissatisfied with Executive Compensation Reporting

In 2006, the SEC released new disclosures for executive compensation and benefits. The intent of the new requirements was to provide investors with a clearer, more complete picture of officer and director compensation.

This year, the SEC undertook a project to examine recent executive compensation disclosures for 350 public companies. The SEC was disappointed with the lack of analysis contained in the disclosures. In response to their review, the SEC released a report summarizing its findings and issued additional guidance clarifying its expectations. Two principal themes emerged in the SEC's report to the public:

1) The Compensation Discussion and Analysis (CD&A) should focus on *how* and *why* the company arrived at specific executive compensation levels and policies rather than provide detailed discussions of program mechanics.

2) The staff also indicated that the CD&A section should be written using plain English, and that tabular and graphical information should be organized and presented in way that can be understood by both a lay person and the professional.

The SEC offered prospective filers extensive guidance on future filings. See SEC Report for the report in its entirety. Key points are as follows:

Compensation Discussion & Analysis (CD&A) – In general, the CD&A section should be "shorter, crisper and clearer."

Compensation Philosophies – Employers should re-focus on how they analyzed compensation information and why it resulted in the compensation that was paid, and explain differences.

Benchmarks – When benchmarks are used, companies should disclose peer groups comparative analyses used and disclose the identity of the peers.

Performance Targets – The SEC expects disclosure of specific company and individual performance targets. Companies may feel they face competitive harm with this requirement; however, justifying the need to omit this information may be difficult.

Change in Control & Termination – Companies should disclose why they structured terms and provisions the way they did, and how potential payments may have influenced other decisions.