

# **Bear Market Takes a Bite Out of Incentive Compensation**

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## Agenda

- Shortfalls for Upcoming Equity Grants
- Setting 2009 Performance Targets
- Option Repricings/Exchanges
- Bonus “Clawbacks”
- EESA and Stimulus Legislation Compensation Restrictions on TARP Recipients
- Pending Legislation and Other Executive Compensation Mandates
- Compensation Disclosure
- Questions and Answers

## Shortfalls for Upcoming Equity Grants

- Many companies' pay plans are running out of shares to issue to employees
  - Equity compensation plans
  - Employee stock purchase plans
- Lower share prices, which are making it difficult for some companies to make equity grants at the targeted award value, complicate the issue
- Many old stock options are underwater (*i.e.*, the exercise price is greater than the FMV), but the shares still count as outstanding under the equity plan
- Some companies are having to refund contributions to employee stock purchase plans due to decreased share prices
- Shareholder approval for additional shares may be a hard sell for some companies
- Companies are seeking solutions to this quandary, and there are a number of possible alternatives to consider – none of which may be ideal

## Shortfalls for Upcoming Equity Grants

What are the Compensation Committee's objectives and concerns?

- Need to provide valuable incentives and link pay to performance
- Expectations for company performance and share price (both short-term and long-term)
- Management of shareholder dilution caused by stock incentives
- Making compensation decisions in context with current environment and closer scrutiny of executive compensation
- Industry and peer group performance relative to the company (e.g., how does company performance compare to peers and impact of current economic conditions on company and industry)
- Retention and motivation of key employees - assess actual and perceived value of outstanding equity awards and whether there is a need to differentiate among employees
- Attracting new talent

## Shortfalls for Upcoming Equity Grants

### Alternatives to Consider:

- Make similar size grants in terms of number of shares, but value may be substantially lower than historical average
- Make grants similar in value to prior years, but many additional shares may be required
- Adjust the grant levels by a fixed percentage
- If sufficient shares are not available, supplement compensation with additional cash compensation (possibly with a discretionary performance component)
- Use phantom equity that pays out in cash, but must consider accounting and tax impact
- Exchange of outstanding equity or repricing vs. keep outstanding equity “as is”
- Executives forego equity grants or take smaller grants to leave shares available for other employees – some companies have executives who are relinquishing old grants to make more shares available (without an exchange or repricing)
- Make more frequent grants (e.g., every 6 months), but not likely appropriate for all industries or performance objectives

## Shortfalls for Upcoming Equity Grants

- Consider timing of grants and whether shareholder approval needs to be obtained before annual grants can be made
  - Will securities rules and the plan document permit a conditional grant?
  - Will there be sufficient shares for future annual grants and incentive grants for new hire and retention purposes?
  - Have you run the ISS shareholder authorization test?
- Consider the appropriate mix of equity awards
- Consider likelihood of obtaining shareholder approval
  - RiskMetrics may recommend against an equity plan if there is a disconnect between CEO pay and company performance or the total cost of the equity plan is unreasonable
  - Dilution, burn rates, overhang percentages and shareholder alignment
  - Changes to equity plan or compensation practices that institutional shareholders may require
- Consider Section 162(m) and other tax consequences
- Consider accounting charges
- Review the plan document to ensure that it allows the desired alternative

## Setting 2009 Performance Targets

- Three Methods to Set Performance Targets:
  - Budgeted Performance
    - Issue of how much “stretch” to build into Board-approved budget
    - How does 2009 performance target align with Company’s 3-year business plan?
  - Incremental Growth
    - Setting year-over-year growth objectives
    - Can be used in industries where anticipated 2009 / 2010 growth is minimal or nonexistent
  - Peer Group
    - Measurement of relative Company performance against specific peer companies
    - Signifies philosophy of being “best in class” within a specific industry sector
- Under any method, incentive targets must balance shareholder expectations with what the Company is capable of achieving
- Requires Boards and senior management to acknowledge pressures on cash flow and business growth opportunities in light of return on capital expectations

## Setting 2009 Performance Targets

- Balancing short-term and long-term performance objectives
  - Many companies expected to focus more on short-term performance objectives, and compensation may shift accordingly
  - Reassess performance measures and targets for the current economic environment and business strategy
- Consider the degree to which performance should be measured on a discretionary basis
  - Shareholder perception and “say on pay” concerns
  - Section 162(m) impact
- Assess whether performance goals or measures encourage inappropriate risk taking

## Options Repricings / Exchanges

- As of 10/17/08, 90% of Fortune 500 CEOs' Options were Underwater\*
- As of December 2008, 72% of Fortune 500 Companies were Faced with Underwater Options\*
- The Underwater Option Problem
  - Loss of Employee Retention Value
  - Lack of Incentive for Future Performance
  - Decrease in Employee Morale

*\*From Equilar analysis*

## Options Repricings / Exchanges

- Addressing the Underwater Option Problem
  - Do Nothing—Wait for Market to Rebound
  - Grant New Options/Stock Awards Based Upon Current Market Prices
    - Consider Accelerated and/or More Frequent Grants
    - Dilution/Share Availability Issues
  - Offer to Repurchase Options for Cash (e.g., recent NVIDIA offer)
  - Simple Repricing—Unilaterally Reduce Exercise Price of Outstanding Options
  - Option Exchange Offer

## Options Repricings / Exchanges

- Eligibility/Participation
  - Which Options?
    - How Far Must They Be “Out of the Money”
  - Outside Directors?
  - Executive Officers and Other Senior Management?

## Options Repricings / Exchanges

- Structuring
  - Exchange Ratios
    - One-for-One Option Exchanges
    - Value-for-Value Option Exchanges
      - Modified Versions
        - » Tranches
  - Vesting and Other Terms of New Options
  - Options for Restricted Stock/RSUs
  - Simplicity/Communication Issues
  - Shareholder Approval Issues

## Options Repricings / Exchanges

- Shareholder Approval
  - NYSE/Nasdaq/NYSE Alternext US (AMEX)
    - Required Unless Plan Expressly Authorizes Repricings
  - OTC Bulletin Board/Pink Sheets/Private
    - No Shareholder Approval Requirement
  - Proxy Advisory Firms

## Options Repricings / Exchanges

- RiskMetrics Group Voting Policies
  - Recommend Votes Against Equity Plans that Permit Repricing without Shareholder Proposal
  - Recommend Against/Withhold Votes for Compensation Committee Members if Approve Repricing without Shareholder Approval
    - Even if Permitted under Plan
  - Case by Case Analysis for Repricing Proposals
    - Exclude Executive Officer and Directors
    - Include Only Options with Exercise Prices Above 52-Week High

## Options Repricings / Exchanges

- Tender Offer Rules (Rule 13e-4 and Regulation 14E)
  - Applicability
    - Simple Repricings
    - Exchange Offers
  - Disclosure/Filing Requirements
    - Schedule TO
    - SEC Review
  - Procedural Requirements
    - 20-Business Day Rule
    - Best Price/All Holders Rule
      - » SEC Exemptive Order

## Options Repricings / Exchanges

- Accounting Considerations
  - 123R
    - New Options/Stock Valued on Grant Date
  - No Variable Accounting
    - No Need for 6 Mos. And 1 Day Exchange Offers

## Options Repricings / Exchanges

- Tax Issues
  - Options vs. Restricted Stock/RSUs
  - ISOs
  - IRC §409A
  - IRC §162(m)

## Options Repricings / Exchanges

- International Considerations
  - Foreign Private Issuers
  - Foreign Participants
    - Tax Issues
    - Securities Law Issues
    - Labor/Employment Issues
  - Retention of Foreign Counsel

## Options Repricings / Exchanges

- Recent Pending Exchange Programs
  - Google
    - Schedule TO file 2/3/09
    - No Shareholder Approval
      - Plan specifically authorizes repricings
    - All Underwater Options
      - Except those held by Outside Directors and 3 Executive Officers
    - One-for One Option Exchange
    - Revised Vesting Schedules

## Options Repricings / Exchanges

- Recent Pending Exchange Programs (cont'd)
  - Starbucks
    - Seeking Shareholder Approval
      - Definitive Proxy Statement filed 2/22/09.
    - Only Options with Exercise Prices Above 52-Week High
    - No Participation of Directors or Senior Leadership Team
    - Fair Value Option Exchange
    - New Vesting Schedules

## Options Repricings / Exchanges

- Recent Pending Exchange Programs (cont'd)
  - Isle of Capri Casinos
    - No Shareholder Approval
    - Only Meaningfully Underwater Options
    - Participation of Directors and Executive Officers
    - Exchange of Options for Restricted Stock (or in some cases cash)
    - Discounted Value Based Exchange Ratio

## “Clawbacks”

- Recoupment of amounts paid to executives or forfeiture of future compensation
- Genesis
  - Legally required under SOX, TARP, and Stimulus Legislation
  - Corporate policy due to corporate or shareholder initiatives
- Equilar 2008 Clawback Policy Report
  - Implementation of clawback provisions by Fortune 100 companies has been on the rise (17.6% in 2006 to 64.2% in 2008)
  - History of compensation subject to a clawback: initially cash bonuses, expanded to all performance-based compensation and equity awards. In 2008, more policies covered equity incentives than cash incentives
  - Most common clawback is a recoupment in the event of a financial restatement or ethical misconduct

## “Clawbacks”

- SOX Clawback
  - Applies to the CEOs and CFOs of publicly-traded companies
  - Compensation at risk includes bonuses, incentive pay, equity pay, and profits on sales of company stock received within 12 months of public release of financial information if such financial information is restated
  - Includes a culpability standard of misconduct that caused the financials to be restated
- TARP Clawback
  - Applies to CEOs of public and private companies that take bailout money. CEOs include CEO, CFO and three most highly compensated executive officers
  - Compensation at risk includes bonuses and incentive pay if payment was based on materially inaccurate financial statements or performance metrics
  - Recovery period is not limited and it does not require CEO culpability

## “Clawbacks”

Stimulus Clawback, similar to TARP Clawback, except

- Also applies to the next 20 most highly compensated employees
- Specifically adds retention awards as compensation subject to a clawback

## “Clawbacks”

### Stimulus Clawbacks are broader than SOX Clawbacks

- Stimulus Clawbacks
  - All CEOs and top 20 paid employees
  - All CPP participants
  - Financials or performance metrics with inaccuracies
  - Any bonus, incentive compensation, and retention award paid based on such inaccuracies
- SOX Clawbacks
  - Only CEO & CFO
  - Only public companies
  - Only accounting restatements
  - Only bonus, incentive or equity compensation paid during a 12 month period and any profits from the sale of securities during that period

## “Clawbacks”

Corporate Policy due to corporate or shareholder initiatives

- Can be a reactionary response to, or an attempt to preempt, any shareholder proposals to implement a clawback provision
- Clawbacks becoming a “best practice”
- Executives who are affected have opportunity to have a voice in setting the clawback policy

# “Clawbacks”

## Clawback Trends

- The government, shareholders and the company are initiating the addition of clawback provisions
- We anticipate the addition of Stimulus-like clawback provisions by companies that did not receive TARP funds
- The most common trigger continues to be restatement of financials, but expanding to misconduct
- The pool of executives subject to the clawback is expanding past the CEO and CFO

# “Clawbacks”

## Issues and Considerations

- Agreeing to the goal (e.g., to satisfy shareholder and/or company performance targets)
- Determining to whom the clawback should apply
- Choosing triggers:
  - Financial statements – material restatement that results in a negative change to results
  - Misconduct by the executive
  - Competing with the company
  - Poor company or executive performance

## “Clawbacks”

### Issues and Considerations (cont'd)

- Selecting compensation at risk
  - Generally excludes base compensation
  - Can include all other types of compensation
  - Compensation linked to performance is most common
  - Forfeiture versus recoupment
- Establishing the reach: 12-month lookback is common, but a lookback of up to 36-months is not unusual

## “Clawbacks”

### Issues and Considerations (cont'd)

- Calculating the amount of the clawback
  - Pay based on financial results (e.g., excess of amount actually paid over amount that should have been paid)
  - Equity compensation (e.g., cancellation of outstanding awards; return of restricted stock; return of profits from sales)
- Appointing an enforcer
  - Discretionary or automatic application of the clawback
  - Independent Board members are generally in the best position to enforce because they are the least likely to be conflicted

## “Clawbacks”

### Best Practices

- The affected group understands the clawback policy goal, triggers and calculation
- The policy is specific and clearly defined
- The policy is included in a written agreement signed by the executive
- For misconduct triggers, any misconduct is detailed in, and supported by, the executive’s personnel files
- All public disclosure documents, executive agreements, and internal policies and handbooks reflect a consistent clawback policy

## Emergency Economic Stabilization Act of 2008

*Section 111 established executive compensation limits on financial institutions participating in the Capital Purchase Program (“CPP”) under the Troubled Asset Relief Program (“TARP”)*

- Treasury Interim Final Rule under TARP effective October 2008 (31 CFR Part 30)
- IRS Notice 2008-94 provides guidance under new Internal Revenue Code Section 162(m)(5), which applies by contract to CPP institutions
- Other guidance issued for financial institutions participating in programs for systemically significant failing institutions and auction purchases

## Stimulus Legislation

### **H.R. 1 – American Recovery and Reinvestment Act of 2009** (signed by President Obama on February 17, 2009)

- Amends (and entirely replaces) EESA Compensation Provisions (Section 111)
- Applies to ALL recipients of financial assistance under TARP
- Applies as long as institution has TARP financial assistance (common stock warrants are disregarded)
- Provides opportunity of immediate repayment to current participants (subject to banking regulators approval)
- Treasury to draft implementing regulations
- Effective date of various provisions uncertain at this point
- Ambiguity and uncertainty of application

# Stimulus Legislation

## Stimulus Legislation (Amends Section 111 of EESA)

- No limitation on total compensation
- IRC Section 162(m)(5) applies: \$500,000 limitation and elimination of exclusion of performance-based compensation
- “Appropriate standards for executive compensation and corporate governance” during period of financial assistance which include:
  - limits on incentives for Senior Executive Officers (SEOs) to take “unnecessary and excessive risks” that threaten the value of such recipient
- Recovery of any bonus, retention award, or incentive compensation paid to a SEO and any of the next 20 most highly-compensated employees based on statements of earnings, revenues, gains, or other criteria that are later found to be materially inaccurate
- Prohibition of any golden parachute payment to a SEO or any of the next 5 most highly-compensated employees of the TARP
- Golden parachute defined as any payment for departure from a company for any reason

## EESA TARP (Section 111)

- No limitation on total compensation
- Same
- Same
- Limited to SEOs, does not reference retention award
- Limited to SEOs, golden parachute defined as under 280G (less than 3x annual salary)

# Stimulus Legislation

## Stimulus Legislation (Amends Section 111 of EESA)

- Prohibition of paying or accruing any bonus, retention award, or incentive compensation except long-term restricted stock which:
  - does not fully vest while TARP financial assistance is outstanding;
  - limited to 1/3 of the total amount of annual compensation
  - subject to terms and conditions adopted by Treasury
- Bonus prohibition applies based on amount of financial assistance:
  - <\$25,000,000 only highest paid employee
  - < \$250,000,000 at least the 5 most highly paid employees\*
  - <\$500,000,000 CEOs and at least 10 next most highly paid employees\*
  - >\$500,000,000 CEOs and at least 20 next most highly paid employees\*

*\* Treasury may increase employee number for any participant based on public interest*

## EESA TARP (Section 111)

- No limitation on bonus, retention award, or incentive compensation

# Stimulus Legislation

## Stimulus Legislation (Amends Section 111 of EESA)

- Exception for bonus under written employment agreements existing at 2.11.09, subject to interpretation of validity by Treasury
- Prohibition of any compensation plan that would encourage manipulation of the reported earnings to enhance employee compensation
- Compliance certification of CEO and CFO filed with 10-K (or with Treasury if private company)
- Board Compensation Committee comprised entirely of independent directors shall meet at least semiannually to discuss and evaluate risks to the company of employee compensation plans (For private companies that received less than \$25,000,000 under TARP, full board can perform these duties)

## EESA TARP (Section 111)

- Closing certification of CEO (under CPP Securities Purchase Agreement), proposed annual CEO certification under January 2009 Treasury interim final rules which have not gone effective
- Treasury October interim final rules and FAQs required Compensation Committee annual review of CEO incentive compensation arrangements with senior risk officers and a confirmatory statement of review in the proxy statement

# Stimulus Legislation

## Stimulus Legislation (Amends Section 111 of EESA)

- The Board shall adopt a companywide policy regarding excessive or luxury expenditures, as identified by the Treasury, which may include excessive expenditures on—
  - entertainment or events;
  - office and facility renovations;
  - aviation or other transportation services; or
  - other activities or events that are not reasonable expenditures for staff development, reasonable performance incentives, or other similar measures conducted in the normal course
- Annual nonbinding shareholder approval of compensation of executives disclosed in proxy statement. This does not preclude inclusion of any other shareholder compensation proposals. The SEC shall issue final rules by 2.17.10

## EESA TARP (Section 111)

- No provision
- No provision

## Stimulus Legislation

### Stimulus Legislation (Amends Section 111 of EESA)

- Treasury shall review bonuses, retention awards, and other compensation paid to CEOs and next 20 most highly-compensated employees prior to the date of enactment of the Stimulus
- If Treasury determines payments were inconsistent with the purposes of Section 111, TARP or otherwise contrary to the public interest, Treasury shall negotiate reimbursement to US government of compensation or bonus from employer and employee

### EESA TARP (Section 111)

- No provision

# Stimulus Legislation

## **Stimulus Legislation (Amends Section 111 of EESA)**

- TARP funds may be repaid without restriction provided primary federal banking regulator does not object; common stock warrants to be cashed out at current market price
- Treasury shall issue implementing regulations

## **EESA TARP (Section 111)**

- Preferred Stock may not be redeemed during the first 3 years, except with the proceeds from a sale of common or qualifying preferred stock for cash proceeds of at least 25% of the issue price of the Senior Preferred. After the third anniversary of the date of this investment, the Preferred Stock may be redeemed, in whole or in part, at any time and from time to time. All redemptions of Preferred Stock shall be subject to the approval of the primary federal bank regulator. Following the redemption in whole of the Preferred Stock held by Treasury, the institution shall have the right to repurchase any other equity securities held by Treasury

## Pending Legislation

### **Other Compensation Legislation Related to TARP Recipients**

- H.R. 384 — TARP Reform and Accountability Act of 2009 (Rep. Frank)
- H.R. 807 - Amendment to Emergency Economic Stabilization Act of 2008 (Rep. Bilirakis)
- H.R. 851 – Executive Compensation and Corporate Governance Act of 2009 (Rep. Giffords)
- H.R. 857 – Limit Executive Compensation Abuse Act (Rep. Moore)

## Compensation Disclosure Considerations

### Items to consider in preparing your CD&A:

- **Base salary**
  - Freezes or cutbacks
  - Justification for increases, if poor performance last year
- **Annual incentive plans:**
  - Changes to annual incentive performance metrics
  - Interim performance assessments and target resets
  - Use of discretionary awards when targets were not met
  - Cutbacks of awards otherwise earned

## Compensation Disclosure Considerations

### Items to consider in preparing your CD&A:

- **Long-term incentive plans:**
  - Shifts in the mix of long-term equity incentives
  - Changes to LTI performance metrics
  - Changes to performance periods
  - Why awards were paid out even if poor performance in 2008
- **Impact of precipitous stock price declines on equity award policies**
  - Award types and award mix
  - Number of shares awarded
  - Dilution and burn rate considerations
- **Risks an executive might be incentivized to take to meet performance targets**

## Compensation Disclosure Considerations

### Questions to consider in preparing your CD&A:

- How did economic conditions impact your decisions regarding base salary?
  - The global financial and credit crisis has presented challenges for many companies, including us. Our Compensation Committee has frozen salaries at 2008 levels for executive officers until business conditions improve.
  - In response to increased losses, we instituted cost reduction efforts in November 2008, including voluntary reductions in base compensation of our executive officers. [Our CEO] reduced his base compensation from \$\_\_\_\_\_ to \$\_\_\_\_\_, while [our COO] reduced his base compensation from \$\_\_\_\_\_ to \$\_\_\_\_\_. The Compensation Committee may decide to restore base salaries to their prior levels later in 2009, if our financial performance improves.

## Compensation Disclosure Considerations

### Questions to consider in preparing your CD&A:

- How did economic conditions impact your decisions regarding base salary?
  - The global financial and credit crisis has presented challenges for many companies, including us. Our Compensation Committee reviewed the performance of our peer companies in 2006 and 2007 (the last available data) and the salaries paid to comparable executive officers at our peer companies. The Committee determined that our NEOs' base salaries and total compensation were significantly below the median base salaries and total compensation of our peer companies, while our company significantly outperformed our peers in 2006 and 2007. The Committee also reviewed the company's performance during 2008, including the challenges faced by our NEOs. In light of these factors, and to retain our highly talented and experienced executive team, the Committee granted base salary increases to our NEOs for 2009 to bring their salaries to a level comparable with the median of the base salaries paid by our peer companies for similar positions in 2007.

## Compensation Disclosure Considerations

### How did economic conditions impact your decisions regarding bonuses?

- Even if performance goals were achieved, the Committee has discretion to decrease (but not increase) bonuses under our Bonus Plan. For fiscal 2008, our CEO recommended that the bonuses otherwise earned under the Bonus Plan, including his own bonus, be reduced as part of our efforts to reduce costs in the face of the ongoing financial crisis and weakening global economy. The Committee accepted this recommendation and used its discretion to reduce the bonus of each NEO.
- Because not all the performance goals were met, the actual bonuses paid to the NEOs for 2008 were below targeted amounts. The bonuses were further reduced as described in the prior paragraph, resulting in actual bonuses that, on average, were \_\_% of the target bonus amounts. [Describe goals met and those not met.] See the Summary Compensation Table for the specific bonus amounts paid to our NEOs under the Bonus Plan.

## Compensation Disclosure Considerations

### How did economic conditions impact your decisions regarding bonuses?

- The 2008 performance objectives included a number of strategic and qualitative objectives that reflect our fundamental short-term goals. These objectives were achieved. The performance objectives also included a financial objective – the achievement of EPS of \$\_\_\_\_. We failed to meet this goal because of an unprecedented increase in oil and other energy-related costs that more than doubled our raw materials costs and caused our financial results to be below our annual guidance. EPS for the year fell short of the goal for payment of minimum bonus amounts. Accordingly, no bonuses were paid to the NEOs under our Annual Bonus Plan.

## Compensation Disclosure Considerations

### Were bonuses awarded after performance goals were not met?

- Following its determination that no bonuses could be paid under the Annual Bonus Plan, the Compensation Committee evaluated the performance of our NEOs during 2008 and nonetheless awarded each a discretionary cash bonus to recognize his significant and numerous contributions to the company and strong leadership during the difficult times of 2008. In particular, the Committee considered each officer's significant contributions to achieving the following:
  - A smooth CEO leadership transition
  - The development and implementation of a new corporate vision, strategy and organizational structure
  - Our overall performance in light of the steep and continual rise in raw material costs
  - A strong health, safety and environmental record
  - Marked improvement in our new business development activities demonstrated by the license agreement for the commercialization of our [key technology] and successful expansion of the use of our new products
- The amount of each award was based primarily on the NEO's performance, the level of his responsibilities, and internal equity considerations. The Committee also considered the bonuses paid to each NEO for 2006 and 2007, and competitive market data from our peer group of companies and compensation surveys.

## Compensation Disclosure Considerations

### **If your company's stock price has fallen, has this impacted your compensation decisions?**

- We also considered the drop in our stock price and its effect on the Company's long-term incentive grants. The impact of a lower share price generally results in more options and restricted shares being granted to plan participants. We reviewed the resulting number of shares required to meet our long-term incentive target values and determined that number was within a reasonable range and therefore made no changes to our target award values.

## Compensation Disclosure Considerations

### **If your company's stock price has fallen, has this impacted your compensation decisions?**

- The Committee reviewed the current negative economic conditions affecting our businesses and our stock price, which has declined recently in line with the stock performance of our industry group. As part of this review, the Committee noted that payouts under our Long-Term Incentive Plan are based on cumulative performance during the 3-year period ending December 31, 2008, and that in 2006 and 2007, our company had significantly exceeded the EPS targets for those years. Although our performance in 2008 was less than the 2008 target, nevertheless, the cumulative 3-year target had been achieved and, thus, the Long-Term Incentive payouts had been properly earned.
- Because each year's performance is part of the LTI calculations for 3 consecutive performance periods, fiscal 2008 performance will be included in the calculations for the 2 LTI performance periods ending in fiscal 2008 and 2010.
- Based on these considerations, the Committee determined that the 2008 LTI payouts for our company's performance over the 3-year performance period from 2006-2008 is appropriate, despite current economic conditions and our lower stock price.

## Compensation Disclosure Considerations

**Did you do anything differently this year?**

**Have you decided to do anything differently for next year?**

- For fiscal 2009, in order to reduce the cost of our equity program while still providing meaningful equity awards, we currently expect to lower our target value for equity awards from the 75th percentile to a range of between the 50th and 75th percentile of our peer group.
- For 2009, the Committee has considered the current unprecedented economic conditions, the volatility and instability of the financial markets, and commentaries that these conditions are likely to remain throughout 2009. The Committee considered that establishing specific levels of financial performance would be extremely difficult, if not impossible, in light of the protracted worldwide economic turmoil. In light of these circumstances, the Committee determined that it would not be practicable to set realistic performance goals for 2009 until a reasonable level of stability has returned, which is likely to be after the March 31, 2009 deadline for setting performance goals that comply with deductibility requirements under Section 162(m) of the Internal Revenue Code. Thus, the Committee has decided that annual bonuses, if any, to be awarded for performance in 2009 will be at the Committee's discretion, based on the company's performance and the individual NEO's performance during this turbulent period.

## Compensation Disclosure Considerations

### Have you implemented a process to make sure that your senior executives are not incentivized to take excessive risks?

- The “excessive risk assessment” has become a new “process requirement” that companies are expected to address in discussing their incentive compensation arrangements.
- Items to discuss:
  - Whether the Compensation Committee considers risk issues in designing incentive compensation arrangements
  - If it has not done so in the past:
    - Will it do so in the future; or
    - Does it believe that formal risk assessments are not necessary in light of the nature of existing incentive compensation arrangements
  - If the Committee considers risk assessments in designing the incentive compensation arrangements, how does the company mitigate (or plan to mitigate) inappropriate risk-taking

## Compensation Disclosure Considerations

### **Have you implemented a process to make sure that your senior executives are not incentivized to take excessive risks?**

- Because the Compensation Committee selected Operating Profit Before Taxes as the performance measure for determining the incentive payments for our NEOs, we do not believe that our executive compensation is structured to promote inappropriate risk taking by our executives. We believe that our focus on Operating Profit Before Taxes encourages management to take a balanced approach that focuses on corporate profitability.
- The Committee believes that various elements of this program effectively achieve the objective of aligning compensation with performance measures that are directly related to the company's financial goals and creation of shareholder value without encouraging executives to take unnecessary and excessive risks.

**Q and A**

**Questions and Answers**

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