More Data on Pay at the Top Is Mandated

The SEC votes to require more-detailed, 'plain English' disclosure of executive compensation.

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WASHINGTON - Responding to investor demands for more sunlight on executive pay practices, the Securities and Exchange Commission on Wednesday ordered companies to begin providing new details on corporate compensation — including more data on stock option awards that are at the center of a widening scandal. The disclosure requirements, which will mostly take effect next year, are meant to give shareholders a "plain English" explanation of pay and benefits for top company officers. Corporate critics long have contended that too much of the information was hidden in fine print or obscured by vague language. "With more than 20,000 comments and counting, it is now official that no issue in the 72 years of the commission's history has generated so much interest," SEC Chairman Christopher Cox said before commissioners voted 5 to 0 to approve the overhaul. Under the new rules, companies for the first time will have to provide a bottom-line number for the total annual pay and benefits of each of their top five officers. The changes also will require more companies to disclose executive perks such as the value of corporate jet use and payment of country club dues. In addition, the SEC ordered companies to clarify the sorts of commitments made to pay chief executives when they depart because of a merger or other reasons. And firms will have to specify the cost of executives' retirement packages, an increasingly big-ticket item. Companies also will have to provide lengthy new details on stock option awards, including how awards are granted to executives and why particular award dates were selected. Options have come under intense scrutiny in recent months, amid revelations that many companies may have manipulated option grants to make them more lucrative for executives and other employees in the late 1990s and early 2000s, while hiding the details from investors. In at least a temporary victory for Hollywood, the SEC tabled a plan to require financial details on non-officers who make more money than a company's top executives.

That idea was opposed by entertainment companies, which said the proposal would harm them competitively and invade the privacy of Hollywood stars who aren't involved in management. The new disclosure rules, initially proposed by the SEC in January, are the first major alterations to compensation-reporting requirements since 1992. They come amid rising shareholder anger over executive pay levels in general, and allegations by corporate critics that recent trends in pay practices — such as the growth of stock-based awards and post-employment benefits — have made it more difficult for the public to keep track of exactly what a company pays out to current and former managers. "So much of what has gone on in the past has been an elaborate attempt to hide compensation and options and perks paid to executives," said Damon Silvers, general

counsel of the AFL-CIO, which has become an activist investor through its pension fund. "The comprehensive nature of this change is really welcome." The SEC made clear that it was interested only in boosting disclosure about compensation, not regulating the level of pay. "It's not the job of the SEC" to set pay, said Cox, a former Republican congressman from Orange County. Rather, the goal was to "give investors a much clearer picture of exactly how much they are paying the executives who work for them." The Business Roundtable, a group of major U.S. companies, said it was fully supportive of the changes the SEC ordered. One of the new requirements will be a simple tally sheet, to be published in annual proxy statements, that will include all of the elements of pay for the top five officers, added up to a bottom-line total for each officer that investors can compare with data from other companies.

The total will include the executive's salary, bonus and options, as well as the amount the company contributed to the officer's retirement plan that year. An executive's perks will have to be listed if their total value exceeds $10,000. The SEC lowered the threshold from the current $50,000, which will force more firms to reveal those details to shareholders. Some activist investors have been calling for greater clarity in executive-pay disclosure for years, complaining that proxy statements have become so complex that they require a Sherpa guide and a magnifying glass to come close to figuring out the total amount of money companies expend on executives. Although some shareholder advocates believe the new disclosures could help rein in compensation that has soared over the last decade, they said the changes the SEC had ordered could, at first, make pay appear to be rising even faster. "Paradoxically, it will seem as if pay levels are going up and there is an increase in performance-decoupled pay," said Lucian Bebchuk, a professor at Harvard Law School. "That's not because things are getting worse. We are just going to learn about things that have been bad for some time. They will come to the surface." Some analysts have worried that better disclosure could set off a new escalation of pay because executives would have more detailed knowledge than ever of what their counterparts were getting, and could demand that their boards match the best pay packages in their industry. But others believe that increased transparency will have the effect of keeping pay in check by holding compensation deals — and the directors who approve them — up to greater scrutiny. The SEC's call for significantly more disclosure about stock option awards comes less than a week after the agency charged three former executives of Brocade Communications Systems Inc. with securities fraud, for allegedly manipulating option awards from 2000 to 2004.

The charges were the first of what may be many cases the agency files. Cox said last week that the SEC was investigating more than 80 companies' past option practices. Options are the right to buy shares at a set price, or the exercise price, for a certain period of time. Normally, the exercise price is the stock's market price on the day of the grant. But regulators now suspect that perhaps hundreds of companies secretly manipulated grants to executives and other employees in the late 1990s and early 2000s by backdating the awards — in effect, cherry-picking grant dates to give the option recipient the lowest possible exercise price. Technology companies, heavy issuers of options, are at the forefront of the probe. SEC Commissioner Paul S. Atkins,

referring to greater disclosure of option data, said the new requirements "are not intended to rob boards of directors of their discretion in this area. We're not telling companies to use or not use options or dispense them in any particular way." On the issue of financial disclosure for highly paid employees who aren't company officers, the SEC said it would seek further public comment on the idea and focus only on employees who are in policy-making roles.

-Peterson reported from Washington. Kristof reported from Los Angeles.

Option details

Under new disclosure rules approved Wednesday by the Securities and Exchange Commission, companies will have to provide investors with many more details on stock option awards to executives. The SEC said it wanted company financial documents to contain an "enhanced narrative disclosure" about option programs, including answers to these questions:

- How do option-grant practices for executives compare with grants for lower-level employees?

- What role do executives, as opposed to company directors, have in deciding on the timing of option grants?

- Does the company have any program that times option grants in coordination with the public release of company information that could affect the market price of the stock?

- Does the company have any plan or practice under which the exercise price of option grants differs from the stock's market price on the day grants are awarded?

Source: Securities and Exchange Commission