SEC will examine faulty pay data

Boston Globe
By Todd Wallack
October 11, 2010

US securities regulators say they plan to look into dozens of cases in which publicly traded Massachusetts companies misstated how much their top executives earned over the past few years.

The inquiry by the Securities and Exchange Commission follows a report by The Boston Globe last week that 34 companies listed incorrect compensation figures, many involving errors of $10,000 or more, in annual reports they filed with the agency and with shareholders.

“We selectively review company disclosure, and where we find material errors we’ll raise the issue with the company,’’ said SEC spokesman John Nester. “Where errors are brought to our attention outside the review process, we’ll evaluate and address where appropriate.’’

Nester declined to comment on any of the specific companies or errors cited by the Globe.

Companies blamed the errors on typos, mistakes in addition, and other inadvertent blunders.

The SEC review comes amid a larger response by the government to the sizable paychecks that corporate chiefs reap, even when their companies do poorly. The agency is implementing new corporate and financial regulations mandated by Congress this past summer, including one that requires companies to let shareholders cast a vote — albeit a nonbinding one — on the compensation packages paid to top executives.

When President Obama first proposed the so-called “say-on- pay’’ resolution, many CEOs took the unusual step of publicly opposing it, saying it would let shareholders micromanage their companies. But such opposition paled in the face of public outcry over the lavish bonuses handed out at companies that contributed to the housing bubble or received bailout money from US taxpayers.

Congress subsequently included the measure in the massive financial overhaul law coauthored by US Representative Barney Frank, Democrat of Massachusetts.

“There’s a lot of public scrutiny on executive compensation,’’ said Ganesh Rajappan, cofounder of LogixData LLC, a Sacramento, Calif., data provider that tracks issues the SEC raises with companies over information they submit. LogixData found the number of companies that received letters from the SEC about their annual executive compensation and shareholder-vote reports had more than doubled in recent years.

But the letters focused on the way in which companies set and disclose executive compensation, rather than asking companies to correct erroneous figures.

“They are focused more on corporate governance and regulation of compensation than the actual math,’’ said Rajappan, who said he, too, has noticed misstated compensation figures in company filings.

Lynn Turner, a former chief accountant for the SEC, said it would be virtually impossible for the agency to catch compensation errors because of the sheer number of reports companies file; the SEC oversees roughly 35,000 entities, Turner said, many of which file numerous forms each year.

“They don’t have the resources to do that,’’ said Turner, now a senior adviser at LECG, a consulting firm. “In terms of priorities, that falls to the bottom.’’

But Turner also said the SEC has been increasingly lax about forcing companies to fix mistakes, which he feared encourages them to be less careful.

“You have, in essence, a mentality that ‘If the regulator isn’t going to make me change the numbers, I don’t have to worry about them,’ ’’ Turner said.

None of the Massachusetts companies contacted by the Globe said they planned to issue corrections. Federal regulations require companies to fix “material’’ errors in their financial reports, but opinions vary as to what qualifies as material.

The largest mistake identified by the Globe was by Verenium Corp., of Cambridge. In a report filed earlier this year, Verenium used an incorrect figure for the total compensation awarded to its general counsel for 2008 — about $629,000 — when in fact he was paid $1.1 million. It also had incorrect total compensation figures for several other executives.

Verenium said it will use the correct totals in next year’s report but won’t fix this year’s filing, since only certain figures were erroneous.

“The company does not believe any further action was warranted,’’ said James Levine, its chief financial officer. “The compensation components reported in the table were all correct — the errors were in select totals.’’

But a Harvard Law School professor, Lucian Bebchuk, said “there is a good chance’’ the SEC will order companies to correct significant errors, including Verenium’s.

Other companies that made mistakes include Kopin Corp., of Westborough, which misstated the pay for four executives by as much as $419,572 each. And SeaChange International Inc., of Acton, understated pay to a top officer by $200,000.

A SeaChange spokeswoman, Martha Schaefer said the company correctly reported the salary, bonus, and other types of pay for its executives. It just got one of the totals wrong. “We don’t feel it requires’’ a correction, Schaefer said. “All the material information’’ was in the report.

Kopin could not be reached for comment last week, but previously offered a similar explanation.

A Boston University law professor, Tamar Frankel, suggested regulators may also consider questioning the accountants who certified the figures or take a closer look at the companies that made serious errors.

She said they could also publicly warn companies they need to correct mistakes above a certain dollar amount, or tell the companies they could undergo additional scrutiny if they make repeated errors.