

# General Counsel Update

DAVIS POLK & WARDWELL

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## Conflicting Media Reports of CEO Compensation: A Primer

Proxy season is upon us, which means it's time for business journalists to fill up slow news days by writing articles on CEO compensation. The headlines follow the familiar formula: “[Your CEO] Made \$\_\_ Million in 2007.” Despite the SEC's efforts to bring more transparency and comparability to compensation disclosure, some major media outlets put their own spin on the totals, sometimes yielding surprising and confusing results. In one recent case the Dow Jones Newswires reported that a CEO had received a total of \$26 million in annual compensation while Associated Press reported \$53 million. In another case, the Wall Street Journal reported \$69 million, while the Associated Press reported \$54 million and Reuters reported almost \$100 million. What's going on here?

Be aware—and make sure that your corporate communications teams are aware—that the AP and Reuters use their own methodologies for calculating “total” CEO compensation rather than taking the totals from the summary compensation table in the proxy statement.

According to AP, its “calculation of total pay includes salary, bonus, incentives, perks, above-market returns on deferred compensation and the estimated value of stock options and awards granted during the year.” Translated, this means that AP takes the “grant date fair value” column in the Grants of Plan-Based Awards table, and then adds the following columns from the summary compensation table:

- Salary
- Bonus
- Non-equity incentive plan compensation
- Non-qualified deferred compensation earnings  
(disregarding the amount related to changes in the present value of pension benefits)
- All other compensation

In ignoring the stock and option values in the summary compensation table, AP in essence follows the method prescribed by the SEC rules initially adopted in August 2006, meaning that it reports the full accounting value of the year's grants in a lump sum, even if the grants vest over a multiyear service period. (The SEC in December 2006 determined that the value of such grants should instead be reported as they are expensed in the company's financial statements.) Reuters appears to follow a similar method, and in addition sometimes includes the amounts of options exercised or stock vested in their total calculation. In contrast, the Wall Street Journal (Dow Jones Newswire) generally appears to report the total from the summary compensation table, though it tends to highlight certain compensation elements and to focus on changes from the prior year.

Given the broad reach of these sources, the result can be mass confusion downstream, as analysts and other journalists, and their readers, seek to reconcile conflicting totals. Corporate communications teams should be prepared to explain the company's determinations of CEO compensation. You may also want to alert the CEO and the compensation committee to the possibility of varying totals being reported.

Please call your Davis Polk contact if you'd like to discuss these issues.

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