NIC Inc. and Executives Settle With the SEC Regarding Charges of Non-Disclosure of Perquisites

NIC Inc. ("NIC"), a Kansas-based company that manages government websites, and its former CEO, current CEO and former CFO have agreed to pay a combined $2.8 million to settle charges by the Securities and Exchange Commission ("SEC") that they failed to disclose to investors more than $1.18 million in perquisites that were paid to former CEO, Jeffery Fraser, from the years 2002 through 2007.[1] NIC, Fraser, current CEO Harry Herington and former CFO Eric Bur have agreed to settle the case without admitting or denying the allegations.[2] Of the combined settlement amount, Fraser is responsible for paying $1,184,246 in disgorgement, $358,844 in prejudgment interest, and a $500,000 penalty. He has also agreed to be permanently barred from serving as an officer or director of a public company. NIC agreed to pay a $500,000 penalty and to hire an independent consultant to recommend appropriate improvements to policies, procedures, controls and training regarding the payment of expenses, handling of whistleblower complaints and related party transactions.

According to the SEC's complaint, which was filed on January 12, 2011, the undisclosed perquisites provided to Fraser included:

- over $4,000 per month to live in a Wyoming ski lodge;
- monthly cash payments to Fraser for purported rent for a Kansas house owned by an entity Fraser set up and controlled;
- vacations for Fraser, his girlfriend and his family;
- Fraser's flight training, hunting, spa, skiing, and health club expenses;
- computers and electronics for Fraser and his family;
- a leased Lexus SUV;
- commuting costs for Fraser from his Wyoming home to his Kansas office; and

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[1] *See* SEC v. NIC Inc., Jeffery S. Fraser, Harry H. Herington, and Eric J. Bur, U.S. District Court, District of Kansas, Civil No. 11-02016, *available at* http://www.sec.gov/litigation/complaints/2011/comp21809-nic.pdf. Settlement of the charges remains subject to approval by the U.S. District Court for the District of Kansas. It should be noted that the SEC also filed related charges against current CFO, Stephen Kovzan, but no settlement has thus far been reached between the parties. *See* SEC v. Stephen M. Kovzan, U.S. District Court, District of Kansas, Civil No. 11-2017, *available at* http://www.sec.gov/litigation/complaints/2011/comp21809-kovzan.pdf. *See also* NIC Inc. Form 8-K, filed January 13, 2011, *available at* http://www.sec.gov/Archives/edgar/data/1065332/000101410811000003/nic-form8k_jan122011.htm; SEC Charges Government Website Provider and Four Executives With Failure to Disclose CEO Perks (January 12, 2011), *available at* http://www.sec.gov/news/press/2011/2011-8.htm.

[2] *See* Form of Final Judgment as to NIC Inc., Jeffery S. Fraser, Harry H. Herington, and Eric J. Bur (filed as exhibit 99.2 to the NIC Inc. Form 8-K, filed January 13, 2011), *available at* http://www.sec.gov/Archives/edgar/data/1065332/000101410811000003/ex992toform8k_jan122011.htm; Consent of Defendant NIC Inc. (filed as exhibit 99.1 to the NIC Inc. Form 8-K, filed January 13, 2011), *available at* http://www.sec.gov/Archives/edgar/data/1065332/000101410811000003/ex991toform8k_jan122011.htm.

- other day-to-day living expenses, such as groceries, liquor, tobacco, nutritional supplements, and clothing.

Among other items, the complaint alleged that NIC and Fraser falsely represented in public company filings until 2005 that Fraser worked virtually for free, and in 2006 and 2007, they continued to materially understate Fraser's perquisites.[3] The complaint further alleged that although NIC reported that it had paid over $1.3 million to rent private planes from an entity controlled by Fraser, it failed to disclose that it had paid an additional $1 million to other people and entities to fly and operate the planes for Fraser. In addition, the complaint alleged that Fraser routinely charged personal living expenses on NIC credit cards and submitted expense vouchers, falsely claiming that these items were business-related, in order to obtain reimbursement. Fraser also allegedly sought reimbursement for certain expenses that he had not incurred. And, according to the complaint, NIC and the charged executives failed to take corrective action after they had become aware of the expense reporting problems. Such circumvention of NIC's internal controls and policies may have contributed to the size of the penalties exacted against NIC and the charged executives in the settlement.

Although the situation at NIC provides an egregious example, the enforcement action taken underscores the SEC's view of the importance of adequate disclosure of perquisites by registrants.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; John Schuster at 212.701.3323 or jschuster@cahill.com; Glenn Waldrip at 212.701.3110 or gwaldrip@cahill.com; or Abigail Darwin at 212.701.3240 or adarwin@cahill.com.

3 According to NIC public filings for those years, Fraser received $1 in salary in 2002 and 2003 and $5,500 in 2004 and 2005.