

April 10, 2006

Ms. Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

File No. S7-03-06
Proposed Rule: Executive Compensation and Related Party Disclosure
Release Nos. 33-8655; 34-53185; IC-27218

Dear Ms. Morris:

The SEC Regulations Committee of the American Institute of Certified Public Accountants (AICPA) is pleased to respond to the Securities and Exchange Commission's (the "SEC" or the "Commission") request for comments on its proposal, *Executive Compensation and Related Party Disclosure* (the "Proposed Rules"). The AICPA is the largest professional association of certified public accountants in the United States, with more than 340,000 members in business, industry, public practice, government and education. The AICPA SEC Regulations Committee consists of representatives of registered public accounting firms (small, medium and large), as well as members from industry, academia and the analyst community. Although the Proposed Rules cover various disclosures related to executive and director compensation, related party transactions, and other matters, we have focused our comments specifically on the executive compensation disclosures.

Summary Comments

The Committee is fully supportive of the Commission's objective to provide investors with clear, complete and transparent information regarding executive compensation. We believe, however, that the best way to achieve this objective is to align the amount and timing of the compensation reported in the Summary Compensation Table with the manner in which compensation cost is reported in the financial statements.

In particular, we believe that the disclosures relating to executive compensation (including amounts for share-based compensation and pensions/postretirement benefits) should be presented on the same basis as they are presented in the registrant's financial statements. Analysts and investors will be making decisions based on the full complement of information provided to them, including operating results in the financial statements and compensation amounts in the proxy disclosures. We believe that some of the most potentially effective analysis to be made by investors would relate compensation for top executives to the information reported in the financial statements. To present important quantitative data on two different bases would make such analysis difficult, if not impossible.

The financial statements - and the accounting principles that underlie those financial statements - are the starting point for financial analysis. We do not believe that investors would be well-served by the dichotomy created by two entirely different compensation reporting frameworks: one for proxy disclosures and one for the financial statements.

Specific Comments

Share-Based Compensation

Under the Proposed Rules, the Stock Awards and Option Awards columns of the Summary Compensation Table would present the entire grant date fair value of an award as compensation in the year in which the grant is made. The fair value would be measured pursuant to FASB Statement No. 123(Revised), *Share-Based Payment* ("Statement 123R"). We concur with the approach of utilizing the guidance in Statement 123R to compute the fair value of these awards, so as not to confuse investors by using valuation techniques in the compensation tables that differ from those used for financial reporting purposes. However, unlike financial reporting, the Proposed Rules would require reporting of the full amount of the award as compensation in the year the award is granted. We believe a better basis for proxy disclosure would be to report compensation in the year it is earned. Not only would this approach more appropriately reflect the executive's actual compensation for the year, the compensation reported in the table would mirror the compensation reported in the financial statements. Accordingly, we believe that the proxy requirements for reporting share-based compensation should follow both the measurement and recognition methods that are used for financial reporting purposes. The entire grant date fair value of an award could be presented in the respective Supplemental Annual Compensation Table (i.e., either the Grants of Performance-Based Awards table or the Grants of All Other Equity Awards table) in the year of grant.

We would also observe that reporting the entire grant date fair value of a share-based award in the year the grant is approved is inconsistent with the presentation of cash payments in the Summary Compensation Table. The salary and bonus columns present compensation that is earned each year, regardless of the year in which the employment contract or bonus plan establishing those amounts was approved. Further, we are concerned by a reporting scheme which produces potentially anomalous results solely based on the compensation currency. For example, a registrant could elect to provide its officers a cash bonus that is earned over five years or grant nonvested shares that vest over five years. Both awards could have similar grant date fair values and be accounted for similarly for financial reporting purposes. Only the currency – cash versus shares – differs. However, in the Summary Compensation Table, the cash bonus would be reported over five years whereas the shares would be reported in one year.

Other anomalies would arise in situations in which the same fair value of share-based compensation is granted to an executive in successive years, but the vesting schedule for each award is different. Under the Proposed Rules, it would appear that the annual amount of compensation has remained the same but in fact the compensation earned by the executive differs significantly: a grant of 100,000 shares with a fair value of \$100,000 that vests over 10 years is not at all the same as a grant of 100,000 shares with a fair value of \$100,000 that vests immediately.

The dichotomy between the Proposed Rules and the financial reporting framework is also apparent when share-based awards are modified. The Proposed Rules would require that share-based awards that are modified during the last fiscal year be disclosed in the Summary Compensation Table based on the total fair value of the modified award. Not only is this approach inconsistent with modification accounting under Statement 123R for financial reporting purposes, but it also may result in misleading information to investors. For example, if an award is slightly modified from one year to the next, nearly the same fair value would be presented in the Summary Compensation Table in both years. That presentation suggests

that the executive received the full amount of both awards in both years. In fact, what the executive received was limited to the initial award and any incremental value resulting from the modification. We believe modifications of previously granted share-based compensation should be reflected in the proxy statement disclosure of executive compensation based on the incremental value resulting from the modification, in the year that it is earned. This is consistent with the guidance in Statement 123R for financial reporting purposes.

Yet another anomaly arises if the executive never vests in the shares awarded. Under Statement 123R, no expense is recorded for share awards that are forfeited. Further, the accounting model requires that compensation expense reflect appropriate estimates of forfeitures.

In order to align the amount and timing of the compensation reported in the Summary Compensation Table with the manner in which compensation cost is reported in the financial statements, we believe an estimate of forfeitures should be included for the amounts reported in the Summary Compensation Table. Statement 123R requires that an entity aggregate individual awards into relatively homogenous groups. Accordingly, we believe the forfeiture rate used for the Summary Compensation Table should be the forfeiture rate for the group that includes the named executive. Similar to the guidance in Statement 123R, the cumulative effect on current and prior periods of a change in the estimated amount of forfeitures (either as a change in the estimate for the homogenous group or the actual outcome for the named executive) should be recognized in the Summary Compensation Table in the period of change. Furthermore, if the Commission, as proposed, requires the entire grant date fair value of an award be presented as compensation in the year in which the grant is made, we believe there should be clear disclosures if those awards are subsequently forfeited. Such disclosure could be accomplished by reporting any forfeitures within the Option Exercises and Stock Vested table.

Statement 123R also requires that certain share-based awards to employees be classified as liabilities. Most often, liability classification reflects the fact that a share-based award could be cash-settled. For financial reporting, liability awards are initially measured at grant date fair value, but are then remeasured subsequently at each reporting date to current fair value. In some cases, the fair value will increase (higher liability to the company, higher payout to the executive); in other cases the fair value will decline (lower liability to the company, lower payout to the executive). Under the Proposed Rules, the grant date fair value of a liability award is included in the Stock Awards and Option Awards columns of the Summary Compensation Table, but the effect of the remeasurement of liability awards in future periods is not. Here again, we believe that it would be appropriate to align the reporting of executive compensation between the financial statements and the proxy disclosures.

Pensions/Postretirement Benefits

The Summary Compensation Table requires disclosure in the All Other Compensation column of amounts related to the "aggregate increase in actuarial value...of all defined benefit and actuarial plans (including supplemental plans)" accrued during the year. We believe that the term "actuarial value" is unclear and should be clarified in the final rules. This is not a defined or commonly used term, and, as a result, we believe this language would be open to a broad range of interpretation. We recommend that the final rules include more specificity as to the requirements for this disclosure. For example, the final rules could require disclosure of the service cost, interest cost and amortization of prior service cost for each named individual as calculated in accordance with the provisions of FASB Statement No. 87, *Employers' Accounting for Pensions*.

We also note that the term "actuarial pension plans" is not defined. It is therefore unclear whether postretirement healthcare benefits meet the requirements for disclosure. The proposed instructions state that disclosure is required for all plans that provide for "the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans and supplemental employee retirement plans", but excluding defined contribution plans. We believe that this does not adequately explain the Commission's intent for the registrant to include or

exclude postretirement healthcare benefits as would be covered by the scope of FASB Statement No. 106, *Employers' Accounting for Postretirement Benefits Other Than Pensions*. We recommend that the final rules and related instructions clearly specify whether these types of plans are or are not to be included in the required disclosures.

We believe that the amount disclosed in the Item 402 executive compensation disclosures for pension and postretirement costs should be the amount of expense recorded by the registrant in the financial statements related to each individual. If a separate calculation is required, we believe that the separate calculation for Item 402 disclosure purposes should be based on the same assumptions used for financial statement purposes. The registrant should provide a narrative explanation if there are cases where the use of the same assumptions is not practicable.

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The AICPA SEC Regulations Committee appreciates the opportunity to comment on the release. We would be pleased to discuss these comments with you at your convenience.

Sincerely,

/s/ John E. Wolfson

John E. Wolfson
Chair
AICPA SEC Regulations Committee

cc: Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Cynthia A Glassman
Commissioner Annette L. Nazareth
Mr. John W. White
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