HR POLICY ASSOCIATION
The Association of Senior Human Resource Executives

April 10, 2006

VIA E-MAIL

Ms. Nancy Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-9303

RE: File Number S7-03-06
Proposed Amendments to Requirements for Executive Compensation and Related Party Disclosure

Dear Ms. Morris:

HR Policy Association ("HR Policy") is pleased to submit these comments in response to the U.S. Securities and Exchange Commission's proposed amendments to the rules governing the disclosure of information about executive officers' and directors' compensation in proxy and registration statements and certain related matters.[1] We believe that the Commission has taken a bold and important step toward providing more useful information to investors regarding these matters, but we have significant concerns about a number of aspects of the proposal. These comments make several recommendations designed to improve upon the proposals and thus help make disclosure of executive and director compensation as clear as possible.

HR Policy Association is a public policy advocacy organization representing the chief human resource officers of over 260 leading employers doing business in the United States. Representing nearly every major industry sector, HR Policy members have a combined U.S. market capitalization of more than $7.5 trillion and employ more than 18 million employees world wide. Our members are particularly interested in executive compensation disclosure because they are responsible for assisting boards of directors and board compensation committees in developing compensation programs for executives in an effort to recruit and retain the best talent. We believe that executive compensation should be clearly and fully disclosed in a comprehensive and understandable manner to give investors an accurate basis for evaluating the effectiveness of a company's executive compensation program.

I. Executive Summary

HR Policy supports the Commission's emphasis on full disclosure. We recognize that disclosure is the lens through which investors evaluate whether executive pay is truly aligned with performance and structured to maximize shareholder value. However, we are concerned with some aspects of the Commission's proposals that we believe may lead to more, rather than less investor confusion. As summarized below, our comments are intended to help refine the proposals and thus achieve their objective of greater transparency of executive compensation.

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Compensation Discussion and Analysis

- A discussion of the policies underlying executive compensation plans for the executive officers, which are typically the same plan, should suffice under the proposed principles-based disclosure system. If the Commission intended a specific discussion of the factors and criteria on which each executive officer's compensation was based, we recommend it be limited to the principal executive officer.
- The Compensation Discussion & Analysis should be a furnished, rather than filed document and remain under the "signature" of the board compensation committee instead of making it a company filing.
- The Commission should retain and strengthen the proposed instruction that companies are not required to disclose specific performance target levels, or factors or criteria involving confidential or commercial business information, which would have an adverse effect on the company.
- The performance graph should continue to be a requirement under the CD&A.

Summary Compensation Table

- As proposed, the Summary Compensation Table would provide a total number that mixes compensation earned and received in the current fiscal year with compensation granted and able to be earned in the current or future fiscal years. This will misrepresent the actual total compensation received, increase investor confusion, and frustrate the ability to track changes in performance-based pay.
- We recommend that the total number on the Summary Compensation Table consist of Salary and Bonus, Stock Awards and Option Awards both reported when they vest, and Long-Term Non-Stock Incentive Compensation when paid out. While we believe the amounts in the proposed "All Other Compensation" should be reported, most should not be included in a total compensation number.
- Alternatively, if the Commission does not believe it is appropriate to change how the elements are displayed, we recommend that the total compensation number be replaced by two columns, a "Compensation Actually Received" column and a "Compensation Opportunity to Earn" column.
- We urge the Commission not to include an estimate of the actuarial value of defined benefit pension plans in the "All Other Compensation" column because of its speculative and fluctuating nature.
- Only above-market earnings on nonqualified defined contribution and deferred compensation plans for employee contributions should be included in the Summary Compensation Table.
- We agree with the Commission's approach to expanded perquisite disclosure and urge the Commission to require such disclosure in a table, rather than in the footnotes.

Determination of Named Executive Officers

- We recommend that the top three most highly compensated executive officers be determined based on the total of salary, bonus, stock awards, option awards and non-stock incentive plan payouts, as we have proposed.

Disclosure of the Compensation of Nonexecutives

- We recommend that the Commission drop this proposal.

Retirement Plan Potential Annual Payments and Benefits Table

- Tax-qualified plans should not be disclosed on this table, thus simplifying and making it consistent with the disclosure of qualified defined contribution plans.
- Disclosure of nonqualified defined benefit plans should be limited to total accruals to date and as projected at normal retirement age, with appropriate narrative.

Nonqualified Defined Contribution and Other Deferred Compensation Plans Table

- HR Policy believes that companies should be required to disclose above market earnings on employee contributions or elective deferrals, and at most, company contributions to these nonqualified plans and all earnings on such contributions.

Other Post-Employment Payments

- HR Policy agrees that additional disclosure regarding The estimates for other post-employment payments would be highly speculative because of the nature of the assumptions regarding pay levels, long-term award status, tax rates, actuarial determinations, and change assumptions regarding pay levels

II. Background

The chief human resource officer (CHRO) in large companies plays a unique role in the development of the company's executive compensation programs that are reviewed, revised, and approved by the board compensation committee. In order to provide the Commission with a better understanding of this role, HR Policy has provided a brief description of it, as well as a summary of our philosophy on executive compensation disclosure.

A. Overview of the CHRO's Role in the Executive Compensation Process

Disclosure of executive compensation information is required under the federal securities laws for reporting companies, and the chief human resource officer plays a vital supporting role working directly with the board compensation committee and its advisors (principally, any executive compensation consultant). In sum, the role of the chief human resource officer is to provide a bridge between the expert advice of the independent consultant and the strategy of the business for the compensation committee. The chief human resource officer does not recommend or advocate but instead provides perspective and a fuller understanding of the

succession planning, leadership development, and strategy of the company. For this reason, a cooperative relationship among the CHRO, compensation committee, and the committee's advisors is essential to ensuring that the committee's decisions are based on the most complete and best available information.

HR Policy applauds and encourages the increased attention and diligence that compensation committees have applied to the executive compensation function in recent years. As new and more rigorous board practices have developed, the role of the CHRO has become even more important in helping the compensation committee understand the company's compensation philosophy, allowing it to develop a program that reflects that philosophy, and in providing timely and accurate information so that the committee can make any adjustments it believes necessary. HR Policy's Board of Directors strongly believes that in evaluating our comments, it is important that the Commission understand the role the CHRO plays in the compensation committee's oversight of a company's executive compensation program.

The chief human resource officer works directly with the compensation committee chair and develops much of the briefing materials used during compensation committee meetings, based on the chair's direction. It is typical that the CHRO assist the chair in preparing for committee meetings, including helping to develop alternatives and anticipate questions from other committee members. In many companies, the CHRO attends much of the compensation committee meeting to answer questions on the company's strategy, except for the periods when the committee meets in executive session.

In addition, the chief human resource officer may work closely with the advisors to the compensation committee, particularly any executive compensation consultant, by providing the consultant with information facilitating the design of competitive compensation plans that support the company's overall pay philosophy. While this process differs for each company, the CHRO's role may range from helping a consultant to understand the company's perspective on the market for talent and ensuring that any consultant and the compensation committee understand how different aspects of the company's business operate, to promoting greater alignment between corporate objectives and incentive targets. Even where the compensation committee works closely with an independent compensation consultant, the CHRO plays a prominent role by helping to ensure the executive compensation program fits with the overall company pay philosophy and practices.

In one of the chief human resource officer's most sensitive roles, he or she often is asked to serve as a liaison between the compensation committee and the chief executive officer in helping the committee define and set the CEO's pay package. This role has led some in the corporate governance field to argue that the CHRO is beholden to the CEO and thus should not be a part of the executive compensation process. This argument often overlooks that the CHRO also has a responsibility to the compensation committee, and especially its chair, to provide objective information and impartial assessments of how the CEO's compensation package fits within the company's overall compensation program and corresponds to his or her performance objectives. Many of the recent improvements in corporate governance, including the diligence with which the compensation committee reviews and analyzes the information presented and the increased

prevalence of executive sessions with an independent executive compensation consultant, further provide a check on the process of developing a fair and reasonable compensation package for the CEO.

We note that the revised corporate governance requirements in proposed section would require companies to disclose the role of the executive officers "in determining or recommending the amount or form of executive and director compensation."[2] We support disclosure of the CHRO's role in providing information to the compensation committee and any outside advisor as part of these requirements as a way of demonstrating that the role supports support sound governance practices in the formulation of executive compensation.

Finally, the chief human resource officer often is responsible for explaining the company's executive compensation program to shareholders, proxy advisory services, and the media. Discharging this responsibility requires a thorough understanding of the company's compensation philosophy, business strategy, and the basis for its executive pay plans. In essence, it requires the CHRO to articulate some of the very information that the Commission is proposing that companies disclose in the Compensation Discussion and Analysis.

Rather than serving a parochial interest or merely acting as an advocate for the company, the chief human resource officer plays an important part in the formulation and development of its executive compensation program. The compensation committee has the ultimate responsibility for a company's executive compensation program, and any independent executive compensation consultant provides the committee with the necessary pay data and insights into industry best practices. However, the company's senior HR officer has a prominent role in ensuring that the philosophy on which the program is built is consistent with and integrated into the company's overall compensation strategy. Thus, the perspective of the chief human resource officers is helpful in the debate over how to improve the transparency of executive compensation.

B. Disclosure Philosophy

HR Policy believes that this rulemaking affords the Commission a unique opportunity not only to reshape the content of executive compensation disclosure, but also to provide greater understanding of the compensation-setting process that should give investors and other stakeholders an accurate picture of the bases for specific compensation decisions. We recognize that disclosure is the lens through which investors evaluate whether executive pay is truly aligned with performance and structured to maximize shareholder value. We firmly believe that the clearer the explanation of a company's pay rationale, the more understanding and the less skepticism that is generated among inside and outside stakeholders.

However, meaningful disclosure does not require the detailing of every aspect of every executive compensation contract, plan, and arrangement. HR Policy firmly believes that where executive compensation plans have embedded competitive or strategic information into the plans' formulas, these specifics should not be disclosed. Further, we believe that in general, short-term or long-term incentive formulas should not be disclosed in advance of the performance period. Summarizing performance criteria and levels achieved after the end of the

performance period will provide investors and other interested parties with the necessary information to determine whether pay and performance are linked.

As discussed in more detail below, HR Policy supports the Commission's emphasis on full disclosure; however, we are concerned with some aspects of the proposals that, we believe, may lead to more, rather than less, investor confusion. For example, the inclusion of annual accruals under defined benefit plans as part of total compensation often will create anomalies in reporting based on factors related to plan design or executive age and tenure rather than performance. In addition, companies are likely to use different methods to calculate the increase in actuarial value, thereby frustrating comparability. Instead of improving clarity, we believe the proposed requirement merely will muddy the waters, especially for investors trying to understand the link between pay and performance. We understand the Commission's desire to enhance disclosure of executive retirement benefits, but believe that including this item in a total compensation number does not enhance transparency or understanding. The comments that follow strive to help refine the Commission's proposals and thereby achieve the objective of greater transparency regarding a company's executive compensation program.

III. Compensation Discussion and Analysis

The Commission has proposed replacing the current Board Compensation Committee Report (BCCR) with a new Compensation Discussion and Analysis (CD&A) that is modeled after the Management Discussion and Analysis disclosure.[3] Generally, HR Policy supports this change. While many large companies have done an excellent job of providing investors with information about their executive compensation policies, their processes for making compensation decisions, and the bases for the pay packages of their chief executive officers, some have not. At least one commentator has noted that the limited guidance in the current rules on the necessary scope and content of the BCCR may be, in part, responsible for this.[4] We believe that the proposed "principles-based" structure of the CD&A, as well as the additional guidance on the topics that it must address, should ensure that these discussions will be more robust and comprehensive and, correspondingly, more useful to investors. However, we further believe that additional clarification is necessary to balance the goal of full disclosure with the usefulness of the information to investors and the potential length of the discussion. In evaluating the form and content of the CD&A, we have the following specific comments:

A. Specific Compensation Discussion

It is unclear whether the CD&A is to include a specific discussion of the factors and criteria upon which each named executive officer's disclosed compensation was based or whether, as under the current rules,[5] such a discussion is limited to the principal executive officer. If the Commission intends a specific discussion of the factors and criteria upon which each named executive officer's disclosed compensation was based , we recommend that this discussion be limited to, at most, the company's principal executive officer.

In general, the philosophy and practices related to CEO pay set the tone for the pay practices applied to the other executive officers. To require such detailed information for each named

executive officer would essentially require written individual performance assessments for each one. This would potentially overwhelm investors with too much information of little use and be disruptive to the dynamics of the company's management team. We believe that a discussion of the policies underlying the executive compensation plans for the executive officers, which are typically the same plan, should suffice under the principles-based disclosure method, with differences in applicable formulae, terms, or criteria among named executive officers noted as part of that programmatic disclosure.

B. Retain Status as a Furnished Document

We do not agree with the Commission's proposal to treat the CD&A as a "filed" rather than a "furnished" document for liability purposes. In the preamble to the proposing release, the Commission notes that the BCCR's furnished status has not facilitated a more open and robust discussion of executive compensation policies and practices.[6] We note that, in the law review article cited by the Commission in connection with its discussion of "boilerplate" disclosure, the author indicates that, at least in part, the lack of more open discussion is because "the SEC has not provided a clear roadmap for companies to follow."[7] While we have expressed our concerns about the level of detail that would be required in the CD&A, we believe that with further refinement, the additional guidance that the Commission is proposing to provide companies in preparing this discussion (the six questions contained in proposed Item 402(b)(1) and the examples provided in proposed Item 402(b)(2)) should lead to greater clarity and reduce the type of "boilerplate" discussion that is not helpful to investors.

In our view, treating the CD&A as a filed document would subject this report to full liability under federal securities laws, without significantly enhancing the quality of the compensation discussion. Rather, we believe that, if anything, this change will drive companies (even those that are now providing what would be considered enhanced disclosure under the current rules) to scale back their discussions to minimize liability risks and avoid controversy. In a recent informal survey of our members, 68 percent supported treating the CD&A as a furnished document, essentially confirming our belief. In our view, the proposed structure of the CD&A, as well as the guidance on potential material topics for discussion, will have a more significant impact on the quality of disclosure than changing the report's status from "furnished" to "filed."

If the Commission nevertheless decides to treat the CD&A as a filed document, we recommend that it should expressly exempt the CD&A from being covered by the CEO/CFO certifications requirements of Exchange Act Rules 13a-14 and 15d-14. We believe this is essential to avoiding the problems discussed in Subsection C below involving the responsibilities of the certifying executives and the compensation committee. In our view, such an exemption is necessary to avoid the inevitable conflict that will arise if these executive officers are required to attest to the compensation committee's decisions and actions. In order to provide the required certifications, the CEO and CFO will have to make certain inquiries of the compensation committee about executive compensation matters, including those involving their own compensation, and, in the case of the CFO, decisions relating to his or her peers. This will create difficult situations and could disrupt the operation of the compensation committee. In some instances, it may inhibit or otherwise influence the committee's decisions, because the CEO and

CFO would effectively have leverage over the committee. We believe that such an inadvertent effect would e detrimental to the company and not in the best interests of investors.

C. Maintain Compensation Committee Accountability

In addition to keeping the CD&A as a furnished document, we recommend that the Commission retain the "signature" requirement of the current rules for the CD&A rather than making it a company filing. In other words, we recommend that the CD&A be presented over the names of the members of a company's board compensation committee (or, in its absence, the board committee performing equivalent functions or the entire board of directors). While the requirement may be largely symbolic from a liability standpoint, it clearly has focused the attention of the compensation committee on the preparation and content of this disclosure, as well as reinforced the committee's obligations and accountability to the company's shareholders. By making the CD&A a company filing subject to full liability under the securities laws, the proposals essentially would require management to implicitly certify that the compensation committee had followed its stated process and general principles when setting executive compensation. We believe that this message should come from the compensation committee itself.

It is our belief that inserting the company (or, more specifically, its principal executive officer and principal financial officer) into the compensation-setting process runs counter to both best practices and current corporate governance trends. The board compensation committee has assumed ownership for the preparation of the BCCR. Compensation committees are meeting more often and spending more time scrutinizing, discussing, and revising executive compensation arrangements. These practices have been endorsed and incorporated into the corporate governance standards adopted by the New York Stock Exchange.[8] The NYSE standards require that the compensation committee charter expressly provide for producing a board compensation committee report on executive officer compensation to be included in a listed company's annual proxy statement or annual report on Form 10-K.[9]

Investors currently view the BCCR as their primary window into the compensation committee and the compensation-setting process. The proposals would disrupt the now-accepted relationship between investors and directors. For these reasons, we see no compelling reason to abandon this requirement and specifically urge the Commission to retain it.

D. Implementation of Principles-Based Framework

As noted above, we support the principles-based approach taken in the proposals that would require companies to respond to specific questions when preparing their CD&A. However, to ensure that the discussion provides meaningful disclosure for investors, we believe that certain aspects of these questions should be clarified. While it is important that the CD&A address the objectives, elements, and design of a company's executive compensation program (at least as it pertains to the named executive officers), it should not be expected that a company will necessarily revise its discussion significantly each year. This is particularly true where the company's executive compensation program does not change significantly over time.[10]

In addition, we recommend that the Commission modify the proposals to eliminate any provision that suggests that a company must provide negative disclosure (for example, what a company's executive compensation program is designed not to reward). Such a requirement would appear to suggest that a company identify everything that it could have – but did not – design its program to achieve. The open-ended nature of this and similar requirements may cause companies to provide excessive information about potential executive compensation strategies, but it will not produce meaningful or useful disclosure. In fact, it may have the effect of inhibiting compensation committee discussions if the committee is somehow required to discuss each alternative plan or design feature in the CD&A that is considered in the course of structuring the company's program.

E. Performance Targets

We recommend that the Commission confirm more specifically in the final rules that a discussion of the general performance criteria or measures (for example, market share, customer profitability or return on capital) that the company is using or intends to use in connection with its performance-based compensation plans and arrangements, is sufficient to satisfy the intended level of disclosure in the CD&A. This is far preferable to the disclosure of the precise quantitative or qualitative metrics that may apply. Further, we strongly urge the Commission to retain the proposed instruction to the CD&A that would excuse companies from having to disclose specific performance target levels as well as the factors or criteria involving confidential commercial or business information, the disclosure of which would have an adverse effect on the company.[11]

We understand that some commenters have requested that the final rules require companies to publicly disclose target levels for specific quantitative and qualitative performance-related factors considered by the compensation committee in setting executive pay.[12] To counter confidentiality concerns, they have suggested that, where disclosure at the beginning of a performance cycle is problematic, the disclosure be made after the completion of the performance period.[13] While we understand investors' desire for such information, we believe that any such requirement would have a significant adverse effect on companies. First, while the performance cycles for most performance-based awards range from one to three years, frequently a company's business strategy is implemented over a longer time frame. A company may use the same performance targets and target levels throughout that time period. Thus, it may not be practical (and may be potentially harmful) to disclose the performance targets at the completion of a single performance period without revealing confidential strategic information. Second, such a requirement may have the perverse effect of causing companies to revert to more standard performance measures (such as earnings-per-share and total shareholder return) rather than performance measures tailored to their specific business objectives to avoid having to reveal strategic information to their competitors.

F. Retain Performance Graph

The Commission is proposing to eliminate the Performance Graph in connection with adopting the CD&A. We recommend that the Commission reconsider this decision and retain the performance graph in its present form. Investors have grown accustomed to the presentation of this information as part of a company's executive compensation disclosure. While it may be possible for investors to access similar information via the Internet and elsewhere, we believe that many, if not most, individual investors are unlikely to have the ability to do so, at least without a significant amount of effort. Requiring that companies continue to provide a performance graph ensures that all investors have access to this basic comparative information. In addition, we believe that the graph reinforces the linkage between corporate performance and a company's executive compensation program, one of the primary objectives of the CD&A.

Should the Commission decide to retain the Performance Graph, we recommend that it retain the current provision that, where presented, the Performance Graph will not be considered "soliciting material" or to be "filed" with the Commission or subject to Regulation 14A or 14C, or to the liabilities of Section 18 of the Securities Exchange Act of 1934. Further recommend that there be an exception to the extent the company specifically requests that such information be treated as soliciting material or specifically incorporates it by reference into a filing under the Securities Act of 1933 or the Exchange Act.

IV. Summary Compensation Table

HR Policy believes that the Summary Compensation Table is the centerpiece of a company's executive compensation disclosure. As such, it provides investors with a detailed overview of each element of compensation of a company's senior policymakers. While we recognize that investors have a strong interest in the inclusion of an annualized total compensation number as part of the table, we believe that, as currently formulated, the proposed revisions to the Summary Compensation Table will lead to a counterproductive and confusing presentation of total compensation. When surveyed, HR Policy members disagreed with the Commission's proposed total compensation format. The areas that most concerned them involved the proposals on the methodology to be used in calculating the disclosable value of stock options, the inclusion of the incremental increase in defined benefit plan accruals, and earnings on nonqualified deferred compensation.

As proposed, the table would combine compensation elements that are essentially not equivalent. For example, the amounts disclosed in the Salary and Bonus columns would reflect compensation that is *actually earned* by the named executive officers during the covered fiscal years. However, the amounts disclosed in the Stock Awards and Option Awards columns would reflect compensation that is *potentially available to be earned* in the fiscal year granted and subsequent years. Typically, these awards represent long-term compensation that is to be earned over several years if certain specified contingencies (which may be either service- or performance-based) are satisfied. Thus, it is misleading to include the total grant date fair value of these compensation elements in the table.

Further, the amounts disclosed in the Non-Stock Incentive Plans Award column would reflect amounts that have been determined, but potentially not received. Like a restricted stock award, often the receipt of these amounts may be subject to the satisfaction of further contingencies before payout. Thus, under the proposals, these amounts would be disclosed as current compensation, even though they may never be received by the named executive officers.

Finally, several of the items that would be disclosed in the All Other Compensation column would not involve annual compensation that has been actually earned by the named executive officers, such as the increase in the actuarial value of defined benefit pension plans and accruals under defined contribution and nonqualified deferred compensation plans.

In our view, combining all of these disparate compensation elements into a single total compensation figure would misrepresent the actual total compensation of the named executives officers for the covered years, leading to investor confusion. It would also result in invalid comparisons between companies, frustrate investors' ability to track changes in pay related to performance, and possibly lead to the "double counting" of compensation. Consequently, instead of the current formulation, we recommend that the Commission revise the proposed changes to the Summary Compensation Table to provide for the consistent and equivalent presentation of information in the table's columns.

We believe that the Summary Compensation Table should report compensation only as it is actually earned or vested, depending on the nature of the compensation. Thus, while annual compensation (such as salary and bonus) would continue to be reported as proposed, long-term incentive compensation would only be reported as awards are earned during the year (for example, as restricted stock awards, stock options, and stock appreciation rights vest, and non-stock incentive plan awards are paid out). This would provide a more accurate picture of the compensation earned by each named executive officer during a covered fiscal year, as it would require disclosure of compensation that is actually received by the NEOs as well as compensation that is earned as of the vesting date. This approach answers one of the criticisms regarding disclosure of options and related equity as of the exercise date, because executives decide when to exercise stock options and SARs and receive the unrealized gain at their discretion. In addition, this disclosure would verify the pay-for-performance relationship in the company's executive compensation program and provide for more effective investor oversight of whether the program is properly aligned with the company's business performance.[14]

Alternatively, if the Commission does not believe that it is appropriate or feasible to change how compensation elements are reflected in the various columns of the Summary Compensation Table, we recommend that the single Total Compensation column be replaced with two complementary columns: (1) a "Compensation Actually Received" column that would include the amounts shown in the columns titled Salary, Bonus, and All Other Compensation as defined in subsection A below (essentially, the amounts earned and received during a covered fiscal year) and (2) a "Compensation Opportunity to Earn" column that would include the amounts shown in the columns titled Stock Awards, Option Awards, and Non-Stock Incentive Compensation earned but not paid out during the fiscal years covered (essentially, reflecting

amounts that will either change in value or may never be received, depending on the outcome of future contingencies).

We believe that this bifurcated approach better acknowledges the fundamental differences between the compensation elements included in the Summary Compensation Table. Investors would be able to combine these two columns if they find such a total compensation figure is useful to their analysis of the company's executive compensation program, but the company would not be required to present these different elements in a single number.

In addition to this overall recommendation, we have several additional comments on the proposed changes to the Summary Compensation Table.

A. All Other Compensation Column

We agree with the Commission's decision to combine the current Other Annual Compensation and All Other Compensation columns in the revised Summary Compensation Table. In our experience, the distinctions with respect to the compensation elements that were to be reported in each column were often misunderstood by companies and frequently led to inaccurate reporting and loss of comparability between companies.

While a single column for all compensation elements that are not properly reported in any other column is appropriate, we are concerned that the inclusion of the items reflected in this column in the Total Compensation column would distort the determination of the actual annual compensation of the named executive officers. As discussed elsewhere in our comments, several of the elements that would be reported in this column, such as the increase in the actuarial value of defined benefit plans, earnings on nonqualified defined contribution and deferred compensation accounts, and severance and change-in control payments, should not be considered in determining the three most highly-compensated name executive officers. In addition, these elements do not constitute compensation in the conventional sense because they do not equate to the amounts that a company is paying to its senior executives in connection with their performance on behalf of the company. Instead, they are service-based. Accordingly, while we do not object to the disclosure of these amounts, we urge the Commission to exclude than from the determination of Total Compensation.

B. Defined Benefit Plan Disclosure

We are not in favor of including an estimate of the increase in the actuarial value of defined benefit pension plans in the All Other Compensation column. We believe that any such disclosure is potentially misleading because of its speculative nature. Each estimate would be dependent on the specific terms and conditions of the company's defined benefit pension plans and the individual characteristics of the named executive officer (*i.e.*, age and tenure). In addition, the assumptions used in calculating these amounts would impact the resulting values dramatically, depending on each particular situation. For example, depending on the specific plan design, the discount rate selected, and the participant's plan status (whether he or she is vested or unvested in the promised benefit), the actuarial value generated will vary significantly, and, in some instances, even result in a negative number. We are concerned that many investors

would lack the understanding necessary to place these values into their proper context and that the supplemental disclosure that would be necessary to explain these values and properly contextualize them would be lengthy, highly technical, and of questionable value to investors.

C. Nonqualified Deferred Compensation Disclosure

We do not agree with the Commission's proposal to include all earnings on nonqualified defined contribution and deferred compensation accounts in the Summary Compensation Table. We do not believe that the earnings on a named executive officer's contributions to such arrangements constitute "compensation" from the company that should be combined with true compensatory items. Amounts an executive defers into a nonqualified deferred compensation plan represents, in effect, a loan from the executive to company. I most cases returns are market based in recognition of this fact. Thus, at best, the disclosure in this area should be limited to earnings on company contributions to such arrangements and, in the case of employee contributions, "above-market" or "preferential amounts" as under current rules.

D. Perquisite Disclosure

We agree with the Commission's decision to require expanded disclosure of executive perquisites and other personal benefits. While these amounts typically do not represent a significant portion of an executive's individual compensation package, investors believe that this information is important in evaluating the performance of the compensation committee, and provides insight into a company's overall executive compensation philosophy. The level of detail that is contemplated by the Commission's proposals will add a significant administrative burden for companies, but, by providing full transparency, investors can judge the extent of perquisites and the amount spent on them. The proposed detail will also assist investors in evaluating whether a company's perquisites practices are limited and reasonable.

To facilitate easier understanding of this highly detailed information, we recommend that the Commission require that the disclosure of perquisites and other personal benefits received by the named executive officers be provided in a tabular format. We believe that a tabular presentation will simplify compliance and promote comparability between named executive officers and between companies.

V. Determination of Named Executive Officers

HR Policy does not support the Commission's proposal to base the determination of which executive officers are the most highly compensated on the Total Compensation column as it is presently formulated in the Summary Compensation Table. Certain items that would be required to be taken into account in determining total compensation could produce anomalies in reported compensation for one or more executive officers in a given fiscal year. For example, a long-service executive officer who has accumulated a large nonqualified deferred compensation account over the years may generate earnings on his or her account balance that, when added to his or her other compensation, would cause his or her total compensation to exceed that of other executive officers. This would result even though the other executive officers are receiving

greater amounts of annual and long-term compensation. In addition, variations in accrual patterns under defined benefit pension plans may result in an executive officer reporting in a given year a significant increase in the actuarial value of his or her pension benefits. When added to his or her other compensation, these amounts would cause him or her to become a named executive officer over colleagues that are otherwise more highly-compensated.

In our view, as the Commission has proposed, using total compensation to determine named executive officer status would lead to an unwelcome degree of variability in the named executive officer group from year to year, to the detriment of investors. While some change in the named executive officers group is expected, one of the strengths of the current disclosure system is the continuity in the information provided annually about a company's senior policymakers. The proposal would disrupt this continuity by allowing one-time transactions and/or compensation anomalies to govern the determination of a company's most highly-compensated executive officers in a given fiscal year. In addition, the proposals would have the effect of requiring companies to monitor in detail the total compensation of all of their executive officers, not just their most senior policymakers, throughout the year for disclosure purposes. This would create an additional administrative burden on most companies to ensure compliance.

For these reasons, we recommend that the Commission exclude the amounts included in the All Other Compensation column of the Summary Compensation Table from the determination of which executive officers are the most highly compensated for disclosure purposes. In other words, we recommend that this determination be based solely on salary, bonus, and long-term incentive compensation (essentially, the amounts reflected in the Stock Awards, Option Awards, and Non-Stock Incentive Plan columns of the Summary Compensation Table) as we have proposed them.

VI. Disclosure of Total Compensation for Non-Executives

HR Policy does not support the proposal that would require companies to disclose the total compensation and job description of up to three non-executive employees whose total compensation exceeds that of any of the named executive officers. First, we do not understand the underlying policy rationale for such a requirement. Currently, Item 402 of Regulation S-K requires disclosure of information on executive and director compensation to assist shareholders in understanding a company's executive compensation policies and practices and to evaluate the performance of the company's board of directors.[15] Information on the total compensation of non-executive employees is not relevant to this inquiry. These individuals typically neither formulate company policy nor do they make strategic decisions that affect the company's business on par with executive officers.

In addition, even though a company would not be required to identify these employees by name, in many instances the disclosure of their total compensation and job description would be sufficient to enable third parties (especially the company's competitors) to determine their identities and seek to lure them away from the company. In certain industries, companies may have one or more key employees who are integral to key aspects of the company's business. The proposed disclosure may lead to competitive harm by enabling competitors to target these

employees for recruitment. Employees in sales, technology and engineering, and the fashion and marketing fields would be particularly vulnerable. Moreover, the public dissemination of this information may lead to internal problems for the company as other employees compare their compensation against that of their higher compensated peers.

Finally, companies will incur a significant burden to identify the group of employees who are potentially subject to this disclosure and to monitor their total compensation. This will be particularly true for companies with global operations who will face additional complexities as they attempt to accommodate the compensation practices and requirements in multiple foreign countries.

Because this proposal will provide information that is of little value to investors and will impose an unwarranted burden on companies, we request that the Commission withdraw this proposal.

VII. Retirement Plan Potential Annual Payment and Benefits Table

HR Policy supports the Commission's efforts to enhance the disclosure of executive retirement benefits. The information required under current rules has been too vague and confusing to be helpful to investors. Moreover, companies have had difficulty applying the current rules to their retirement programs, often leading to disparate and inconsistent disclosures. Nonetheless, we are concerned that, as proposed, the Retirement Plan Potential Annual Payments and Benefits Table may be burdensome to prepare and difficult for investors to interpret. Accordingly, we recommend that the Commission make the following changes to the table.

A. Eliminate Tax-Qualified Plan Disclosure

As proposed, companies would be required to provide the required disclosure on a plan-by-plan basis. Because many companies offer multiple nonqualified defined benefit pension plans for their executives (such as "excess" plans and supplemental executive retirement plans), this will lead to a lengthy table with multiple entries for each named executive officer. To offset some of this detail, we recommend that the Commission expressly exclude a company's tax-qualified defined benefit pension plan from the table. This would not only simplify the table, but also harmonize this disclosure with that proposed for defined contribution plans, where tax-qualified defined contribution plans are not subject to disclosure with substantial supporting narrative.

B. Limit Disclosure to Current Benefits Accumulated Currently and at Normal Retirement

While we believe that it is important for investors to understand the benefits that are potentially payable to named executive officers under the company's defined benefit pension plans, the proposals would require an undue amount of detail that will be difficult for companies to prepare. In addition, because of the wide range of plan structures and benefit arrangements, the proposals would lead to information that will be difficult for investors to understand unless they are intimately familiar with retirement benefits or have access to expert assistance. We

recommend that the Commission simply require companies to provide the accrued benefit payable to each named executive officer under each disclosable plan in the form of a single life annuity (i) as of the end of the last completed fiscal year and (ii) at normal retirement age. This information should be readily available to companies or easily calculable. In addition, this approach will better promote comparability between named executive officers and between companies.

VIII. Nonqualified Defined Contribution and Other Deferred Compensation Plans Table

In view of our comments on nonqualified deferred compensation under the Summary Compensation Table above, HR Policy questions the need for a separate Nonqualified Defined Contribution and Other Deferred Compensation Plans Table. Most of the information that would be required by this table duplicates information that would be included in the Summary Compensation Table. While the proposals appear to anticipate this concern by requiring that a company explain the extent to which amounts reported in this table have been previously disclosed, we do not believe that this requirement adequately offsets the potential for investor confusion and "double-counting" of disclosed amounts. In addition, as previously discussed, we believe that employee contributions under a company's nonqualified deferred compensation program and "at-market" earnings on those amounts do not represent compensation that should be subject to disclosure. At most, we believe that companies should be required to disclose (i) company contributions to nonqualified defined contribution plans and nonqualified deferred compensation plans, (ii) all earnings on such contributions, and (iii) "above-market" earnings (if any) on employee contributions or elective deferrals to such plans. Because we are recommending that this information be included in the All Other Compensation column of the Summary Compensation Table, we see no need to repeat the information in a separate table. Consequently, we request that the Commission withdraw this proposal.

However, if the Commission decides that a table for nonqualified deferred compensation is desirable, we recommend limiting the table to the amounts discussed above and not to include employee contributions or elective deferral amounts, earnings (other than above-market earnings) on employee contributions and elective deferrals, and withdrawals.

IX. Other Post-Employment Payments

HR Policy has concerns about the scope of the proposed disclosure of potential severance and change-in-control payments. We support a requirement to disclose and explain the material terms and conditions of any contract, plan, agreement, or arrangement that would provide for any payments to a named executive officer in connection with any termination of employment (including a constructive termination) or a change in control of the company. However, we are skeptical of the benefit to investors of requiring an estimate of the potential amounts that may be payable under each of these scenarios.

Under the proposals, where a company treats each termination scenario differently (which is often the case), the company would be required to provide six or more estimated amounts for each named executive officer. In addition, and most significantly, these estimates would

necessarily be predicated on assumptions about pay levels, long-term incentive award status, tax rates, actuarial determinations, and, in the case of a change-in-control, transaction terms that would be, at best, highly speculative. Thus, companies would be required to expend considerable effort to formulate the assumptions necessary to generate these estimates and to construct the presentation of this information, including the required supplemental narrative, to fully describe these assumptions and how they might be altered. In addition, the result would be misleading to investors because they would attribute a degree of certainty to the narrative that would not be justified, even though it will be based on substantial speculation about future events, equity values, and other variables.

Moreover, we doubt that investors would benefit from such voluminous and often complex information. It is our experience that such estimates would be highly sensitive to even minor changes in the assumptions upon which they are based. Consequently, the estimates would need to be supplemented by an extensive narrative explanation of these assumptions. For these reasons, the greatest share of respondents to the HR Policy survey agreed that additional disclosure about the severance arrangements was acceptable, but that disclosure of a total number was not. Accordingly, we recommend that the Commission not adopt this aspect of the proposal.

Given the speculative nature of the estimates involved in the Other Post-Employment Payments table, if the Commission requires companies to quantify the estimated annual payments and benefits that would be provided to the named executive officers in each covered scenario, we urge the Commission to treat such amounts as furnished rather than filed. Regardless of how the remainder of executive compensation disclosures under the final release are treated, these amounts should not become the basis for liability under the Exchange Act.

Should the Commission decide to adopt a requirement that companies quantify the estimated annual payments and benefits that would be provided to the named executive officers in each covered scenario, we recommend that it also require that this information be provided in a tabular format. We believe that investors would benefit from the presentation of these estimates in a table. It would be easier to understand and facilitate comparability between executives and between companies. In addition, compliance would be less burdensome for companies if they have a standard format to follow for presenting the required disclosure. Such a table should include the potential payouts for each named executive officer for each potential termination of employment event (including a change-in-control of the company) where the executive is entitled to receive a severance payment or benefit that is not available or provided to all employees generally.

X. Director Compensation

HR Policy supports the proposal to provide director compensation information in a tabular format. We note that, over the past two years, a significant number of companies have begun to present the amounts received by non-employee directors under a company's standard fee arrangements in a table. We believe that all companies should present their director pay

information in this manner both to provide clarity about these compensation arrangements and to promote comparability between companies.

XI. Compliance Burden

The Commission has requested comments regarding the additional compliance burden, both in terms of the additional time necessary to comply and the additional costs of outside advisors, required to comply with the proposed disclosure requirements. It bears mention that this reporting and administrative burden would add to the already substantial reporting obligations that the Sarbanes-Oxley Act of 2002 and related pronouncements have imposed on companies.

In evaluating the compliance burden that would result from the proposals, it appears that the Commission has significantly underestimated the time and expense that companies would incur in preparing the new disclosure. As part of HR Policy's informal survey on the proposals, when members were asked whether they would incur more than 90 hours of internal time required to prepare the additional disclosures, more than three- quarters (83 percent) of the respondents said it would take more time, with one-third (34 percent) indicating that it would take significantly more time. When asked whether companies would incur more than $9,000 in fees to external advisors to assist in the new disclosures under the proposals, an even higher number (89 percent) indicated that outside help would cost more, with 55 percent of all respondents indicating that it would cost significantly more.

XII. Conclusion

We appreciate the opportunity to comment on the proposals, and would be pleased to discuss any questions the Commission may have with respect to this letter. Any questions about this letter may be directed to Timothy J. Bartl, Assistant General Counsel and Vice President, Corporate Relations at (202) 789-8692.

Respectfully submitted,

/S/

Jeffrey C. McGuiness
President

Endnotes

[1] Securities and Exchange Commission, Executive Compensation and Related Party Disclosure, Release Nos. 33-8655, 34-53185, 71 Fed. Reg. 6,541 (Feb. 8, 2006) (proposed rule).
[2] *Id*. at proposed section § 229.407(e), 71 Fed. Reg. at 6621; *Id*. at proposed section 229.402(b)(2)(xiii), 71 Fed. Reg., at 6,611 (the role of executive officers in determining executive compensation).
[3] *Id.* at proposed section 229.402(b), 71 Fed. Reg. at 6610.
[4] Martin D. Mobley, Compensation Committee Reports Post-Sarbanes-Oxley: Unimproved Disclosure of Executive Compensation Policies and Practices, 2005 Colum. Bus. L. Rev. 111, 125 (2005).
[5] Executive Compensation Disclosure, Exchange Act Release No. 33- 6962, 57 Fed. Reg. 48,126, 48,138 (Oct. 21, 1992) (codified at 17 C.F.R. §§ 228, 229, 240, 249), Item 402(k). Executive Compensation Disclosure; Securityholder List & Mailing Requests, Exchange Act Release No. 33-7009, 58 Fed. Reg. 42,882 (Aug. 12, 1993) (codified at 17 C.F.R. §§ 228, 229, 240 (2004)).
[6] Executive Compensation and Related Party Disclosure, 71 Fed. Reg. at 6,546.
[7] Martin D. Mobley, Compensation Committee Reports Post-Sarbanes-Oxley: Unimproved Disclosure of Executive Compensation Policies and Practices, 2005 Colum. Bus. L. Rev. 111, 125 (2005); *see also* Executive Compensation and Related Party Disclosure, 71 Fed. Reg. at 6,546 n.55 (citing Mobley article).
[8] NYSE Listed Company Manual, §303A.5 (Compensation Committees), Nov. 3, 2004.
[9] *Id.*
[10] For example, executive compensation programs may be comprehensively reviewed every two-to-three years or in conjunction with a substantial shift in corporate strategy.
[11] Executive Compensation and Related Party Disclosure, proposed instruction (4) to item 402(b); 71 Fed. Reg. at 6,611.
[12] *See, e.g*., Comment Letter From Ann Yerger, Executive Director, Council of Institutional Investors, Mar. 29, 2006, at 2, *available at* http://www.sec.gov/rules/proposed/s70306/s70306-74.pdf.
[13] *Id*. *See also* Comment Letter From Paul Hodgeson, Senior Research Associate, Executive and Board Compensation, The Corporate Library, Mar. 27, 2006, at 7-8.
[14] The discussion of amounts in the "All Other Compensation" column is discussed in subsection A below.
[15] Executive Compensation Disclosure, Exchange Act Release No. 33- 6962, 57 Fed. Reg. 48,126, 48,138 (Oct. 21, 1992) (codified at 17 C.F.R. §§ 228, 229, 240, 249), Item 402(k).