

American Federation of Labor and Congress of Industrial Organizations



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June 7, 2006

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

Re: Executive Compensation and Related Party Disclosure
File Number S7-03-06

Dear Ms. Morris:

I am writing on behalf of the AFL-CIO to supplement our letter of April 5, 2006, commenting on the Securities and Exchange Commission's ("SEC") proposed executive compensation and related party disclosure rule. Over the past several months, there has been growing investor concern about backdating of executive stock options at below-market value strike prices. Two-dozen companies are reportedly under investigation by the SEC or the Justice Department for stock option backdating.

Decisive regulatory action is needed to address stock option backdating, and we support the SEC's enforcement efforts. By any reasonable standard, stock option backdating is unfair to shareholders who do not have the ability to retroactively purchase shares of stock at past market lows. The stock option backdating scandal shares many similarities to the after-hours trading of mutual funds, where favored insiders received preferential terms that were hidden from public investors.

Stock option backdating appears to have violated a variety of legal and regulatory requirements. Backdated stock options should have been expensed under Statement of Financial Accounting Standard 123, and may not have been tax deductible under Section 162(m) of the Internal Revenue Code. Executives who signed false financial statements as a result of this practice may have violated numerous criminal and civil provisions of the Sarbanes-Oxley Act. Moreover, if executives backdated their stock options without approval of the Board of Directors, this practice would amount to a breach of fiduciary duty under state law, with possible federal disclosure implications. Stock option backdating may have also violated the proxy disclosure rules.

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The retroactive granting of stock options to senior executives is clearly material to their value, and this practice should have been divulged to shareholders under the existing proxy disclosure rules. While the Sarbanes-Oxley Act now requires that option grants be reported within two days, shareholders should be told if any previous option grants were backdated. I urge the Commission to issue a Staff Legal Bulletin to guide companies on the proper disclosure of any outstanding backdated stock options.

We also urge the Commission to amend its proposed rulemaking on executive compensation disclosure to address stock option grant procedures and controls. The most troubling aspect of stock option backdating is that Boards apparently relinquished responsibility for setting option grant dates to executives. In effect, option backdating opens the door to executive self-dealing. Companies should describe what role, if any, executives play in their stock option grant decision-making process.

Board policies on executive stock options should be made more transparent. For example, companies should disclose the grant date in addition to the expiration date of senior executives' stock options. Companies should disclose if stock options are granted on a predetermined schedule or if they are granted on an ad-hoc basis. Companies should also disclose if they have adopted safeguards to prevent improper insider trading, such as requiring Board pre-approval, requiring advanced notice of stock option exercises, or limiting executives' ability to hedge their option-related risks.

The stock option backdating scandal underscores the need for effective disclosure of executive compensation. In recent months, shareholders of the companies under investigation for stock option backdating have lost approximately \$35 billion in market value. The AFL-CIO urges the Commission to diligently pursue its enforcement efforts against individual companies that have been implicated for improperly backdating executive stock options and to adopt new disclosure rules that will give investors the information they need to curb this deplorable practice.

Sincerely,


Richard L. Trumka

RLT/me
opeiu #2, afl-cio

cc: Chairman Christopher Cox
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