Society of Corporate Secretaries & Governance Professionals
521 Fifth Avenue
New York, NY 10175
(212) 681-2000 – Fax (212) 681-2005

April 6, 2006

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

VIA E-MAIL (rule-comments@sec.gov)

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

Dear Ms. Morris:

The Society of Corporate Secretaries & Governance Professionals (the Society) is a professional association founded in 1946, serving approximately 2,600 issuers. Job responsibilities of our members include working with corporate boards of directors (and their audit, compensation and governance committees) and senior management regarding corporate governance and disclosure. Our members provide expertise to their corporations in securities laws, including proxy disclosures and in corporate governance, including interaction with shareholders about shareholder proposals and shareholders' concerns relating to executive compensation. The majority of Society members are attorneys.

This letter is submitted in response to the Commission's request for comment in connection with the Executive Compensation and Related Party Disclosure proposals. We appreciate the opportunity to comment. We agree that updates to these rules are appropriate and commend the staff for a thorough and thoughtful proposal.

Because the proposals are complex and our letter is lengthy, we identify the following overarching comments and concerns with the proposals. These comments and concerns, as well as many other comments to address specific concerns and questions raised in the proposal, are addressed more completely below.

- Based on our interaction with shareholders, we agree that an overhaul of the current proxy disclosure rules is appropriate. We support new rules that would increase transparency and assist the reader in focusing on total compensation for senior executives. And as we have in the past, we strongly support the plain English requirements.

- The compensation committee is the body responsible for setting executive compensation policy and for implementing the policy by choosing compensation elements and awarding the actual compensation. At the same time, we think there is much merit in the proposed content for the CD&A. Accordingly, we think the report of the compensation committee should be retained, and the guidance contained in the proposals for the content of the CD&A be adopted and applied to the compensation committee report.

- We believe the proposal worsens the current lack of distinction between compensation that has been paid or accrued in a definite amount, such as salaries, bonuses, and stock granted or vested with no pending conditions or contingencies, and compensation that is contingent, the value of which can not be known until some time in the future, such as stock options and performance-based awards. We think the distinction is meaningful and should be reflected in the disclosure rules. Two of the most meaningful differences are that the value of contingent compensation may be from zero to a much greater number, and that value cannot be known until some point in the future. Even those forms of contingent compensation, such as options, for which estimation models exist, are almost certain to produce different values when actually realized in the future. The proposed presentation of these values will result in duplicative and misleading disclosure. As you will see in our comments, we have offered several models that take into account these important distinctions, but also provide the greater transparency called for in the proposals.

- Multiple counting of the same compensation is inevitable under the proposals. As an example, deferred compensation and earnings on it will be disclosed in the year accrued in both the Summary Compensation Table and the Nonqualified Defined Contribution and Other Deferred Compensation Plans Table. The Aggregate Balance Column of that table will again reflect those amounts, as well as the previously-disclosed amounts from prior years. These aggregate amounts would include balances from years for which the named executive officer may not have even been an executive. The pension-related disclosures contain similar redundancies. An approach less wedded to disclosing every point in the life cycle of an element of compensation would result in more meaningful disclosure. We believe our comments include several alternatives that would provide the desired transparency without the redundancies and without as much likelihood of multiple counting.

- Unintended consequences will follow if these proposals are adopted as proposed. For example, some executives have had a practice of deferring compensation under programs that are available to employees well beyond the ranks of executive officers. Deferred compensation at many of these executive's companies is no more than a general obligation of the company and does not result in above-market investment returns to the individual. These executives, especially if they have had long careers with their companies, may have large deferred compensation balances and will now appear to be grossly overpaid compared to peers who followed a different "savings" path. We believe this effect of the proposals likely will pressure these executives to take funds out of deferred compensation and refrain from deferring compensation in the future. This will not mean that these executives are any the less well-paid. Rather, it will mean that they took their compensation currently to avoid having their deferred compensation savings balance counted in the proxy statement disclosures and, based on the mischaracterized amounts, being vilified in the press. This does not seem to us a proper goal or outcome of compensation disclosure.

- The complexity that will result from the proposed disclosures, including the many details resulting from multiple disclosures of the same compensation, may actually make it more difficult to understand total compensation, by providing an overload of information without a clear focus. We believe our comments help shape the proposed disclosures by eliminating some of the detail and redundancy, in order to better support the goal of compensation disclosure that is clear, thorough and understandable by all investors, not just compensation experts.

Our comments below follow the order taken in the Proposed Rule, and we are restating in bold those Requests for Comment to which we are responding.

II. Executive and Director Compensation Disclosure

A. Compensation Discussion and Analysis

We agree that many Compensation Committee reports could benefit from a more analytical approach, similar to the analytical discussion of financial results in the MD&A, which would result in more substantive, transparent disclosures. Our members understand from first hand interactions with shareholders that there is a strong desire in the investor community for such information. A number of our members have made meaningful advances in providing such information, and we anticipate that, as was the case with the plain English pilot program, the leaders in embracing the new disclosures would come from among our members.

- **Is there any significant impact by not having the report over the names of the compensation committee of the board of directors?**

Not having the compensation report over the names of the compensation committee makes it appear to be a report of management. This is inappropriate under good governance procedures, which call for the independent directors to make compensation decisions.

Making the report filed, rather than furnished is a cause for concern because it becomes subject to CEO and CFO certifications and responsibility to design processes to ensure its accuracy. Because the CEO and CFO do not participate in the process of the compensation committee's decisions about their compensation, this is not appropriate.

We agree that a transparent, substantive discussion by those responsible for setting policies for executive compensation is appropriate. We believe that the compensation committee of the board of directors is the only group of persons with all of the necessary facts and responsibilities to appropriately ensure the disclosures are accurate and complete. For that reason, the compensation report should be over the names of the compensation committee.

To facilitate a complete report, without overlapping requirements, we feel it appropriate to include the compensation committee disclosures in proposed rules 402(b) and 407(e) into a single report of the compensation committee.[1] A combined disclosure would avoid duplication that appears in the proposed rules: Proposed rule 407(e)(3), which asks for a narrative description of the registrant's processes and procedures for consideration and determination of executive compensation, appears to call for many of the same elements as contained in the proposed compensation discussion and analysis. For example, both proposed rule 402(b)(2)(xiii) and 407(e)(3)(ii) ask for the role of executive officers in determining compensation. It would be confusing and duplicative to have separate, narrative discussions regarding how compensation is determined under both proposed Item 7(d) of Schedule 14A (Directors and executive officers) and Item 8 (Compensation of directors and executive officers). While we would favor combining the disclosures of executive compensation into one rule, either under proposed rule 402(b) or 407(e), another alternative would be an instruction that the disclosures could be combined in the same section of the proxy statement.

- **Would any significant impact result from treating the Compensation Discussion and Analysis as filed and not furnished? A commenter that prefers furnishing over filing should describe any benefits that would be obtained by treating the material as furnished. In particular, such a commenter should describe those benefits in the context of the expected benefits of the Commission's decision in 1992 to treat the report of the Compensation Committee as furnished and should address whether and why those benefits were achieved or not achieved.**

Requiring the CD&A to be "filed" as part of the Form 10-K would make the CD&A subject to the Chief Executive Officer and Chief Financial Officer certifications under Rules 13a-14 and 15d-14. As discussed above, good governance practices dictate that those officers are excluded from compensation committee deliberations about their own compensation. As a result, they would not have the first hand knowledge needed to provide the certification, and expecting them to perform diligence with the compensation committee about the committee's decisions regarding their pay is not reasonable.

Under the listing requirements of the New York Stock Exchange, independent directors are responsible for determining Principal Executive Officer compensation and recommending the compensation of other executive officers to the board. The NASDAQ rules specify that independent directors determine the compensation of all executive officers and expressly require that the Principal Executive Officer be excluded from deliberations concerning his or her own compensation. It is a corporate governance prevailing practice which we believe most of our members companies follow, to exclude executive officers from deliberations concerning their own compensation.

Even if the CEO and CFO certifications were deemed not to cover the CD&A, we believe the CD&A should not be treated as "soliciting material" or as "filed," because of the increased litigation risk associated with doing so. Heightening the litigation risk associated with the CD&A-type disclosure will not yield better disclosure. We believe that many compensation committees will

[1] We suggest that the "Compensation Committee Interlocks and Insider Participation" section remain a separate disclosure under that heading.

believe it is prudent to take advice from litigation defense counsel in determining their additional risks of personal liability and this is not likely to facilitate the goal of more transparent, substantive disclosure. There is a risk that the CD&A will become excessively detailed, and not useful to investors as an "overview" of what is "most important" to an understanding of the detail presented elsewhere in the disclosure.

In fact, companies do not need to be threatened with litigation in order to feel motivated to explain their executive compensation programs. Shareholders are focused on executive compensation in ways that they were not in 1992. Several developments in recent years have intensified that focus and increased the power of shareholders to express their views. Those developments include: the governance changes mandated by the Sarbanes-Oxley Act of 2002, including the heightened independence standards for directors adopted by the New York Stock Exchange and NASDAQ; the new rules on accounting for share-based compensation (FAS 123R); the adoption by the New York Stock Exchange and NASDAQ of new stockholder approval requirements for equity compensation plans; the adoption of rules requiring disclosure of non-shareholder approved plans; the increased power and proliferation of proxy advisory firms; the publication of voting guidelines and mutual fund voting results; SEC enforcement actions; intense publicity relating to compensation excesses; the expansive use of vote "no" campaigns; the advent of majority voting in the election for directors; and last but not least, the expansion of executive compensation disclosure proposed by this Release. In response to these pressures and developments, as well as the urging of the SEC staff, many companies have increased the level of disclosure in their Compensation Committee Reports and throughout their proxy statements. This trend will accelerate as companies focus on the CD&A questions and helpful suggestions for presenting a readable and understandable story presented in the proposals.

Other parts of the SEC's proposal will only intensify the pressure on companies to offer meaningful disclosure within the CD&A. If the proxy statement includes, as proposed, an expanded Summary Compensation Table stating a single "Total Compensation" number for each named executive officer, other new or expanded tables, and detailed narrative describing each element of employment and post-employment compensation, compensation committees will feel sufficiently motivated to explain how and why the compensation decisions reflected in the proxy statement were made, even if the CD&A is not deemed "soliciting material" and "filed."

Also, like proposed item 407(d)(3) regarding the audit committee report, this report should be furnished, rather than filed. We see no basis to treat the reports of two board committees differently with respect to their respective areas of responsibility.

For all these reasons, we do not believe it is desirable or necessary to treat the CD&A as "soliciting material" or "filed."

4. **Proposed Elimination of the Performance Graph and the Compensation Committee Report**

- **Should we retain the Performance Graph?**

We agree with the Commission that the Performance Graph should be eliminated. When first implemented, the Performance Graph in the annual Proxy Statement was one of the few places that an investor could get comparative annual return performance data. Now, an investor is able to obtain comparative annual return data, free of charge, from many different Internet sites and is able to select the comparators that are most important to the investor. For this reason, the Performance Graph has outlived its usefulness.

B. Compensation Tables

1. **Compensation to Named Executive Officers in the Last Three Completed Fiscal Years – The Summary Compensation Table and Related Disclosure**

- **Should the Summary Compensation Table continue as it currently does to require disclosure of compensation for each of the company's last three fiscal years, or is only the last completed fiscal year necessary in light of the availability of historical data on compensation through the Commission's EDGAR system and other sources?**

We support the three-fiscal-year requirement for the tables. We believe investors find the availability of comparative data, without having to access other documents, helpful. Many of our members refer to the historical data in the compensation committee report. For example when discussing why pay went up or down, it is useful to refer to the chart rather than needing to include numerical detail.

- **Should we require all of the proposed disclosures discussed below in addition to those in the Summary Compensation Table, or does the Summary Compensation Table itself provide an adequate picture of compensation? Is there some other combination of the Summary Compensation Table with other proposed disclosures that would fulfill our objectives?**

We agree that investors want additional information and detail, as specified in the proposal. However, as discussed below, we have concerns that some of the specific proposed disclosures may be confusing and unnecessary. We advocate a two-table approach to total compensation, one that covers all aspects of pay earned during the year and a second that covers grants/awards made during the year and outstanding grants/awards that are contingent because performance periods have not been completed or vesting dates have not been reached. See Appendix One for our suggested formats. We also recommend that smaller public companies be allowed to use this two-table approach to compensation disclosure without having to provide the other compensation-related tables contained in the proposed rule. See our comments below under II.C.1.

a. Total Compensation Column

- **Should we include a requirement to disclose a total compensation amount?**

We agree that investors wish to see a total compensation amount, and we do not object to its disclosure. We believe that many compensation committees consider a total compensation amount annually and at the time any new component or any increase in compensation is considered.

However, the proposed approach to providing this information confuses two logically separate concepts and is almost certain to result in double counting. We believe a total that includes both earned amounts and contingent amounts may be misleading because the executive may never receive the contingent amounts.

Our first choice is for a two-table approach as discussed above and shown on Appendix One. As an alternative, we suggest two total numbers – "Total Earned Compensation" and "Total Contingent Compensation". We believe it is important for investors to understand the very real difference between compensation actually earned for the year and the estimated value of contingent compensation that may or may not be earned in the future. Compensation earned is concrete and readily ascertainable; contingent compensation is based on estimates that may prove to be vastly different from amounts ultimately realized, if at all, either because the amount is never received because performance/time hurdles are not met or because the value of the award decreased or increased over time. Two separate total columns would help make this distinction clear. The columns might be formatted as follows:

Name and Principal Position	Year	Salary ($)	Bonus ($)	Stock Awards Earned * ($)	Non-stock Incentive Awards Earned ($)	Other Compensation Earned ($)	Total Earned Compensation ($)	Option Awards ($)	Other Contingent Awards ($)	Total Contingent Compensation ($)

- **Will a total compensation number provide investors with meaningful information about compensation? If not, why? Would disclosure of a total compensation number result in any unintended consequences? If so, how can they be mitigated?**

As noted above, we think it would be preferable to have two summary compensation tables, one for amounts earned and a second for contingent amounts as illustrated in Appendix One. As an alternative, we favor two total columns: one for compensation earned, and one for estimated contingent compensation. Unless one of these alternatives is followed, we believe there is significant risk of investors over-estimating total compensation.

In addition, we believe that the total column (or columns) should be moved to the right of the relevant component numbers making up the total. This would be in keeping with the normal left-to-right presentation for tables. Also, we are concerned that if the total column precedes the individual components, investors and media will double-count the numbers.

In light of the significance of the total column (or columns) to investors, it is important that the numbers making up the total give a true picture of compensation for the year. As discussed below, we think that some of the items included in the columns as currently proposed would detract from that goal and should not be included in the summary compensation table.

- **Should total compensation be calculated in a different manner from that proposed? For example, with respect to stock-based and option-based awards, should exercise or vesting date valuations be used instead?**

We agree with the proposed valuation methodology for option-based awards and non-performance based stock awards. However, as discussed below, we believe that performance-based stock awards should be reported in the year earned, not the year granted. Adoption of our suggestion to split total compensation into two tables, one for earned compensation and a second for contingent compensation would eliminate this concern.

Separately, Prop Reg §402(c)(2)(ix)(E), Instruction 2, would require defined benefit plan benefits to be included in the All Other Compensation column of the Summary Compensation Table in the year paid, and thus included in total compensation for purposes of determining named executive officers. For the reasons described below, we believe this item should be eliminated from the All Other Compensation column entirely, or, at a minimum, be excluded from total compensation for purposes of the named executive officer determination.

Annual actuarial increases in defined benefit plan benefits are proposed to be included in the All Other Compensation column as they accrue, and the total amount of the benefits is proposed to be reflected annually in the Retirement Plans Potential Annual Payments and Benefits table ("Retirement Plan Table"). If the current Instruction 2 is left unchanged, the same benefits will be reported three times, and two separate instances will be included in the total compensation calculation for a year. Very few investors will understand the duplication, so issuers with defined benefit plans will appear to be providing greater compensation than they actually are.

Defined benefit plan payments represent benefits earned over a career that could span up to 40 years, not current compensation. The amounts paid out on retirement are unlikely to result from decisions made by the current Compensation Committee. The age and tenure of the executive will be significant determinants of the amount of these payments, with the result that, under the proposed Instruction, inclusion of an executive as a named executive officer may be driven more by age or tenure than by compensation decisions.

In addition, many issuers have lump sum and annuity payment options in their qualified or nonqualified pension plans, or both. If the proposed Instruction is left unchanged, former executive officers who receive a lump sum payment are virtually guaranteed to be included as a named executive officer in the year they retire, even if they received little or no other compensation that year, because the payment will represent benefits earned over their entire career with the issuer. This is in contrast to a similarly-situated former executive officer who takes an annuity, and might therefore not be included as a named executive officer. Furthermore, people who were never executive officers but who have large lump sum pension payouts due to long tenure may find themselves captured in the narrative section under §402(f)(2), which requires up to three additional employees' compensation to be disclosed if their total compensation was greater than the named executive officers. We think these results are unintended and would not serve the purposes of the compensation disclosure regime.

In short, disclosure of pension payments in the Summary Compensation Table will result in significant distortions in reported total compensation and in who is reported as a named executive officer.

b. Salary and Bonus Columns

- **Is the proposed presentation of deferred compensation in the Summary Compensation Table and related footnotes, along with the proposal outlined below, the best means for communicating the portion of compensation that is deferred?**

Yes.

- **Is the proposed change to Form 8-K to eliminate the delay in disclosing salary or bonus when they cannot be calculated as of the most recent practicable date appropriate?**

Yes.

c. Plan-Based Awards
i. Stock Awards and Option Awards Columns

- **Is the proposed presentation of stock awards that do not have option-like features in the Summary Compensation Table the best means for presenting restricted stock and similar awards?**

Yes, with the exception of performance-based stock awards, as discussed below.

- **Is FAS 123R the appropriate approach for valuing equity-based awards, including restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units, options, stock appreciation rights and other similar awards for purposes of Item 402 disclosure? If not, why not and what other valuation methods would be appropriate? Would any other valuation method provide the same comparability? If a different approach were used, would investors be confused by differences between the grant date fair value for financial reporting purposes and the value in the compensation tables?**

FAS 123R is the most appropriate valuation method for stock awards other than performance-based stock awards. Performance-based stock awards should be reported for the year earned, rather than the year granted, for these reasons:

1. Reporting compensation actually earned at the end of an award period is more accurate than reporting a hypothetical value at the beginning.
2. As proposed, the rules create an inconsistency in the Summary Compensation Table because non-stock incentive plan compensation is reported for the year earned while stock incentive plan compensation is reported in the year granted. This apples-and-oranges reporting would result in the Total column(s) not properly reflecting compensation earned based on performance, making it harder for investors to understand the link (or lack thereof) between pay and performance.
3. Reporting for the year earned also eliminates any question about the need to "true up" compensation amounts reported in prior years.
4. This approach would not result in "stealth compensation" because the grants of performance-based awards that do not pay out within the first year would be reported in the Grants of Performance-Based Awards table. Also the number of shares or units may not be determined until the end of the performance period. In this case an equity-based plan exactly mimics a long-term cash plan and should be treated the same way.

- **Should the expected term assumption used in computing the grant date fair value for financial statement purposes under FAS 123R also be used in measuring the value of an individual named executive officer's compensation for the purposes of Item 402? Or, should an expected term assumption used to determine an individual named executive officer's compensation be used if it differs from the expected term assumption used for FAS 123R purposes? Should companies use the full term rather than an expected term assumption for calculations for named executive officers? Would the complexity of such an approach for investors or the additional burden on companies outweigh any advantages, such as possible increase comparability among companies, of adjusting assumptions?**

Yes, the expected term assumption used in computing the grant date fair value under FAS 123R should also be used for measuring value under Item 402. The additional complexity and burden of adjusting assumptions outweighs any advantages.

- **Is the timing of reporting stock-based compensation in our proposals the best approach? Should stock-based compensation instead be reflected in Item 402 according to the same time schedule by which it is recognized for a company's financial statement reporting purposes?**

As noted above, we believe performance-based stock awards should be reported in the year earned. Otherwise, we agree with the proposal's approach to timing of reporting of stock-based compensation. In particular, we agree that, for stock options or other awards for which the grant value is includible in the Summary Compensation Table, the entire grant date fair value should be reported in the year of the grant, even if the compensation cost for financial reporting purposes is recognized over a period of years.

- **Should the valuation method and all of the assumptions regarding the valuation also be disclosed in the proxy statement when they are required to be disclosed, described and analyzed elsewhere in a document furnished to shareholders, including in the notes to the financial statements?**

No. This would lead to duplicative disclosures and information overload. We agree with the proposal's approach of cross-referencing the discussion in the financial statements.

- **We propose treating a modification of an award as a new award and requiring disclosure of the total grant fair value at the time of modification. Would it be more appropriate to require only disclosure of incremental compensation as is the approach under FAS 123R?**

It would be more appropriate to disclose only the incremental compensation as determined under FAS 123R. Reporting the entire amount would lead to double-counting of compensation.

- **Should we eliminate as proposed the current instruction allowing performance-based stock awards to be reported at the company's election as incentive plan awards? If not, please explain whether the availability of this election is helpful to and not confusing to investors.**

As noted above, we believe performance-based stock awards should be reported in the year earned, in the same manner as long-term incentive plan awards are reportable under the current rules. Ideally, such reporting would be mandatory to improve comparability. However, we would not object to allowing companies an election to report such awards either in the year granted or the year earned, as long as companies maintain a consistent approach.

Additional comment – dividends:

For unvested stock awards that are being reported in the year of grant, dividends (or dividend equivalents) should not be included in the Summary Compensation Table because they are taken into account under FAS 123R in determining the grant date fair value. Separate reporting of dividends would be double-counting.

Further, once stock is actually issued under stock awards, ordinary (i.e., non-preferential) dividends are simply an incident of stock ownership and should not be considered compensation for purposes of Item 402.

ii. Non-Stock Incentive Plan Compensation Column

- **Since there is not one clearly required or accepted standard for measuring the value at grant date of those cash awards that reflect performance contingencies, is our approach to include the amounts in the Summary Compensation Table when earned appropriate? Are there particular models or standards that would provide a basis for measuring the value of these types of awards at grant date that we should consider incorporating into our rules?**

The proposed approach is appropriate. However, there is one ambiguity that should be addressed in the final rules. If a non-stock incentive plan award is based on performance over one year or less, should it be reported in this column or in the bonus column? The clearest way to resolve this ambiguity would be to retain the current rules' approach of limiting the non-stock incentive plan column to awards based on performance over a period longer than one year.

- **Should earnings on outstanding awards be reported as proposed in the applicable award column or should they be reported in another way, such as in separate or different columns?**

The proposed approach is appropriate.

d. All Other Compensation Column

i. Earnings on Deferred Compensation

- **Should we require, as proposed, disclosure of all earnings on compensation that is deferred on a basis that is not tax-qualified or should we require disclosure only of above-market or preferential earnings? If the latter, please explain why such an approach is more useful or informative for investors than our proposed approach.**

For all compensatory items relating to deferred compensation, disclosure in the "All Other Compensation" column of the Summary Compensation Table is appropriate, with details provided in a footnote.

We agree that all company match contributions for the prior fiscal year should be disclosed. Our reasoning is that the match is compensatory. We believe that the appropriate measure is the additional amount accrued for the executive during the most recent fiscal year and not the historical balance to his account. This will permit a better comparison of other annual compensation provided to executives not only at the registrant but also with executives at other companies.

We agree that all guaranteed returns and above-market earnings on account balance type deferred compensation that accrued during the most recent fiscal year should also be disclosed where the return is based on a fixed rate of interest. Where the rate of return is based on a return on equity, e.g. a mutual fund or company's stock, the basis for such earnings should be described in a footnote (as in some years this may be a negative number). Again, our reasoning is that these funds are compensatory.

ii. Increase in Pension Value

- **Is the aggregate increase in accrued actuarial value the best measure for disclosing annual compensation earned under defined benefit and actuarial plans? If not, why? What other method should be used?**

We believe that the aggregate increase in accrued actuarial value should not be included in the All Other Compensation column or, at a minimum, should be excluded from total compensation for purposes of determining named executive officers. Increases in actuarial value are a poor measure of compensation for a number of reasons, and inclusion of these numbers is likely to distort disclosure of actual compensation delivered rather than improve it, and to distort proper identification of the named executive officers.

For example:

- Actuarial values are likely to decrease in some years and increase in others, depending more on prevailing interest rates than changes in the underlying benefit payable. Reversals of interest rate trends could produce a large actuarial increase or decrease in a year when there was little or no change in the underlying benefit payable. At a minimum, the regulations should exclude actuarial increases in previously earned benefits relating to interest rate movement, or should allow offsetting decreases to be reflected in later years.
- Employee tenure is a key driver in determining the size of a pension accrual under most defined benefit plans. We believe it would be an unintended consequence for an executive's tenure to be an important driver in determining whether he or she is a named executive officer. At a minimum, any portion of the executive's accrual relating to more than the current year of service should be excluded.
- Age or, more accurately, the number of years until payment of the benefit is projected to commence is also an important factor in determining actuarial value. Two executives with identical benefits could have very different actuarial values based on differences in their ages or proximity to retirement. As a result, the determination of who is a named executive officer could be driven by the age of the candidates, rather than compensation decisions made with respect to them.
- Actuarial valuations are based on statistical trends and are presumed to be effective for measuring pension liability with respect to large groups of people. However, because they are based on statistical assumptions, they can be grossly erroneous when applied to an individual. To look at the extreme, for example, an actuarial valuation may predict that, based on an individual's projected retirement age, life span, etc., his or her annuity benefit has a value of millions, but if that individual dies before retirement, the annuity could yield nothing. Few investors will have the sophistication to appreciate how distorted these statistical predictions can be when applied to an individual.

In short, actuarial values are not a good measure of individual compensation being delivered because they are not designed to measure individual compensation and are too heavily impacted by factors, such as age and interest rates, that are not related to compensation decisions. We believe the supplemental Retirement Plan Table, disclosing annual pension benefits, provides a better, less distorted measure of the compensation being delivered and should be sufficient disclosure. Indeed, inclusion of both items provides duplicate disclosure that will be confusing to the average investor. The further inclusion of defined benefit plan payments in the All Other Compensation column causes triplicate disclosure in any year benefits are paid.

Furthermore, the determination of the actuarial increase in benefits during the most recent fiscal year is not a calculation that registrants normally determine. Without standardized actuarial assumptions and rules as to whether to take into account offsets for social security or other plan design offsets or whether for reporting purposes to categorize a cash balance pension plan as a defined benefit plan or a defined contribution plan, there will be large variance from company to company as to what is reported.

iii. Perquisites and Other Personal Benefits

- **Should all perquisites be required to be separately identified when the $10,000 aggregate threshold is exceeded, as proposed?**

No. We believe disclosure at that level is immaterial, and that the current rule that requires identification and quantification of each perquisite or other personal benefit exceeding 25% should be retained.

- **Is the greater of $25,000 or 10% of the total amount of perquisites and personal benefits the proper minimum below which perquisites and personal benefits should not be required to be separately identified and their value reported? Should there be a lower minimum, such as $10,000, or no minimum? Should the current minimum of 25% of the total amount be retained?**

We believe that the current rule that requires identification and quantification of each perquisite or other personal benefit exceeding 25% should be retained.

- **Should perquisites and personal benefits below the proposed threshold be separately identified by category, even if not separately quantified? Alternatively, is separate identification and quantification of all perquisites and personal benefits so significant to investors that no threshold should apply for either purpose?**

As noted above, we believe that the current rule requiring disclosure of the category and amount of each perquisite or personal benefit when it exceeds 25% of the aggregate should be retained.

- **We propose to retain the current standard for valuing perquisites and other personal benefits, based on the**

aggregate incremental cost to the company and its subsidiaries which has applied since 1983. We believe that this approach is consistent with the approach we are taking otherwise in valuing compensation, including in respect of share-based compensation. Nevertheless, we realize that there may be an issue whether the retail value of what is received by the executive officer, or director, rather than the aggregate incremental cost to the company, better measures the compensation provided by perquisites and other personal benefits. Therefore, we request comment as to whether we should require perquisites and other personal benefits to be valued based on the retail price of the item, or, if none, the retail price of a commercially available equivalent. In determining the commercially available equivalents, for example, for travel on the company's aircraft, the retail price of a commercially available equivalent would be the retail price to charter the same model aircraft. First-class airfare would not be considered equivalent to travel on a private aircraft.

- **Would the proposed valuation standard facilitate Item 402 compliance while providing meaningful compensation disclosure? Is there any other valuation methodology that is preferable for valuing perquisites and other personal benefits? If so, why?**

We agree that the use of incremental cost to value perquisites and personal benefits is the appropriate measure. We believe that the use of the retail price of a commercially available equivalent to value perquisites would be inconsistent with the approach taken by the Commission with respect to other aspects of compensation disclosure (e.g., the use of FAS 123R compensation cost to the company to value stock option awards). Perquisite valuation based upon the retail price would in most cases overstate the actual cost to the company of providing the perquisite and would, in some cases, raise difficult problems in application. For example, it is not possible to charter the type of aircraft that many companies use, so in those cases it will not be possible to obtain a retail price of a commercially available equivalent.

- **Should Item 402 include a definition of perquisites or other personal benefits? If so, how should perquisites or other personal benefits be defined? How can we assure that new perquisites will not be developed in a manner intended to avoid the definition and therefore disclosure? If such a definition is principles-based, what principles in addition to those described in this release should be considered?**

We do not believe that a bright-line definition of perquisites or other personal benefits is necessary, but request that the Commission provide additional or modified interpretive advice on the subject (see below).

- **We are providing interpretive guidance above regarding perquisites and personal benefits. Are there any areas regarding perquisites and personal benefits where we should consider providing additional or different interpretive guidance? Should any of our interpretive guidance be codified?**

In the release, the Commission indicates that an item is a perquisite if it confers a direct or indirect benefit that has a personal aspect, without regard to whether it may be provided for some business reason or for the convenience of the company. We believe that the Commission's interpretive position ignores the fact that items may have both a business aspect that is integrally and directly related to the business as well as a personal aspect. In those cases, we believe it is appropriate for the company to treat as a perquisite only the portion of the benefit that is personal. For example, for club memberships used primarily for business but also for incidental personal purposes, we believe the incremental cost of the personal use (such as personal meals and greens fees for personal golf rounds) should be disclosed as a perquisite.

Also, consistent with the current rules, we believe that relocation expenses incurred under a non-discriminatory relocation plan should not be considered perquisites as they clearly are business expenses and are exempted by being "generally available on a non-discriminatory basis to all employees". Those who receive relocation expenses from a company relocate as a condition of employment and because of the business need that they be located in proximity to the work site. We are not aware of companies paying relocation expenses when an executive moves for his or her own personal reasons.

Further, we request that the Commission reconsider its guidance that security provided during personal travel or at a personal residence always be considered a perquisite. In some cases, especially for multinational companies with locations in areas prone to kidnappings and other serious safety threats, the security risks to the executive officer are highest when away from the office on business or personal time. We suggest the final rule allow the company to determine whether personal security is a perquisite. In those cases where a company concludes it is not a perquisite, a reasonable requirement would be footnote disclosure that security is provided and is not considered a perquisite, with the rationale for the company's determination.

iv. Additional All Other Compensation Column Items

2. Supplemental Annual Compensation Tables

a. Grants of Performance-Based Awards Table

This supplemental table would include information regarding non-stock grants of incentive plan awards, stock-based incentive plan awards and awards of options, restricted stock and similar instruments under plans that are performance based.

If you adopt our recommendation described above and in Appendix One for a two-table approach to total compensation, one that covers all aspects of pay earned during the year and a second that covers grants/awards made during the year and outstanding grants/awards that are contingent, then this Grants of Performance-Based Awards Table would be duplicative and would not be required. Any detail deemed necessary could be footnoted under the "second" Summary compensation Table.

If you retain this Table, as a general matter, we note that most of the information in this supplemental table (grant date, number of shares granted, expiration date, and amount of underlying securities) is already disclosed in Section 16 reports and therefore available to investors on a more immediate basis. Taking that into consideration, we believe that this supplemental table could be revised so that it is more effective in supplementing the SCT and more easily understood by investors. We propose that the number of columns could be reduced by replacing columns (b), (c) and (d) with one column that would report the number of shares, units or other rights awarded and, if applicable, the number of shares underlying any such units or rights. We also recommend eliminating column (e), which would disclose the dollar amount for consideration paid for award, due to the rare circumstances in which an executive would have to pay for the award. Columns (h), (i) and (j) would remain in the table as proposed. This suggested approach would be consistent with the current form of the Long-Term Incentive Plans table (Item 402(e)). Finally, we believe investors may be confused when they compare the value in column (f) of the SCT to the numbers in columns (b), (c) and (d) of this supplemental table because the value in column (f) may include both performance-based awards and non-performance-based awards.

In one critical respect this supplemental table does not supplement any information in the SCT in that it would disclose the grant of non-stock incentive awards and the SCT would not have a corresponding disclosure until the year in which such awards are earned.

b. Grants of All Other Equity Awards Table

This supplemental table would include detailed information on each stock option and other stock-based award that is not performance based and require that the material terms of each award be described in a footnote.

Our comments to this supplemental table are similar to the ones we made above. Like the proposed disclosure in the other supplemental table, nearly all of the information sought to be disclosed here would already be disclosed in Section 16 reports and therefore available to investors on a more immediate basis. Accordingly, we believe that this supplemental table should simply report the number of underlying securities and the value as stated in the SCT. We also believe that this supplemental table may confuse investors rather than enhance their understanding when they compare the value in column (f) of the SCT to the numbers in this supplemental table because the value in column (f) may include both performance-based awards and non-performance-based awards. If, however, this supplemental table is adopted as is, then we recommend the order of the vesting and grant date columns be reversed, and information regarding the grant date fair value of shares and vesting schedules for options and other similar awards be included.

3. Narrative Disclosure to Summary Compensation Table and Supplemental Tables

- **Would the proposed disclosure of up to three employees who are not executive officers but earn more in total compensation than any of the named executive officers be appropriate in the narrative discussion? Should more disclosure be required regarding these employees and their compensation? Is this information material to investors? Will disclosure of this information, particularly in the case of smaller companies, cause competitive harm? Is**

disclosure of this information consistent with the overall goals of this proposal?

We strongly urge the Commission not to adopt any requirement to disclose compensation of any person who is not an executive officer of the registrant because the competitive harm this type of disclosure will cause to companies heavily reliant on human capital - such as the financial services, technology and entertainment companies - will far outweigh any perceived benefit from providing this information. As examples, entertainment companies may be forced to disclose information about compensation of celebrities, such as television hosts, which is not useful information to shareholders and could put the company at a disadvantage in future negotiations; technology companies may be forced to disclose information about compensation of highly paid engineers or marketing executives, which would expose them to job offers from competitors while providing information of no value to shareholders in making voting decisions; and financial services companies may be forced to disclose sensitive information about highly compensated asset managers, which would likely cause competitive harm in retaining such individuals while providing little useful information to shareholders. Providing the job functions of these employees will not ensure anonymity at all. This is a significant concern because certain highly-paid employees in these industries are often a source of significant revenues for companies that employ them.

Important to our analysis is that these employees do not fit the Rule 3b-7 definition of executive officer. Requiring companies to cite the compensation and job descriptions of these employees in a proxy statement will highlight the value of these employees and simplify the task of identifying these key employees or, where the identify is known, providing a road map to the compensation necessary to woo them to a new employer, thus enabling competitors to hire these employees away. Often the loss of a single key producer can provide significant financial harm to an area of business and present a real risk for companies. On the other hand, concerns shareholders may have about excessive pay for these types of employees would be misplaced because compensation for employees in this category - such as entertainers, scientists, or salespeople - is almost completely market driven. Thus, we believe that the competitive harm and invasion of privacy of the individual employees far outweigh any possible benefit to shareholders.

If the concern that prompted the addition of this proposal is a worry that some companies might not properly designate executive officers and thus avoid disclosure of compensation of officers that properly should be designated as named executive officers, we believe this issue should be addressed head on, through enforcement if necessary, rather than indirectly.

4. Exercises and Holdings of Previously Awarded Equity

a. Outstanding Equity Awards at Fiscal Year End

- **Will the proposed Outstanding Equity Awards at Fiscal Year-End Table provide material information for investors regarding the named executive officers' outstanding awards?**

We believe that the information provided under this table with respect to the number and value of stock options, restricted stock, restricted stock units and incentive plan award holdings at the end of the fiscal year would be material to investors. It is information that, for the most part, is required to be disclosed under current rules, and we agree that providing the information in one table would be useful to investors.

In our opinion, however, the proposed footnote disclosure for this table would not add to investors' understanding of the number and value of outstanding equity awards for the executives. In many cases grants and awards over multiple years will comprise the year-end total, which would lead to lengthy footnotes individually identifying expiration and vesting dates and breaking down each option award into exercisable and nonexercisable shares. This additional disclosure would be repetitive of information otherwise available to investors in the proxy statement for the year in which the awards were granted and on Forms 4 filed by the named executive officers.

- **Should the table include the value of out-of-the-money options and stock appreciation rights? Why or why not? If such instruments were included, how would the value be calculated and presented?**

The table should not include information on the value of out-of-the-money stock options and stock appreciation rights because these awards have no value to the executives at the point where they are out-of-the-money.

b. Option Exercises and Stock Vesting

- **In light of the proposed disclosure in the Summary Compensation Table of the grant date fair value of the awards, is separate reporting of the amounts realized upon exercise or vesting appropriate? Would it provide material information? Would separate reporting of the market value at exercise or vesting confuse users of financial statements and perhaps cause them to call into question the original grant date fair value estimates?**

We believe that requiring additional disclosure of amounts realized upon exercise or vesting of the awards in direct comparison to the values given the awards when they were granted would not be appropriate and would be confusing to investors. To illustrate, under the rules as proposed the grant date fair value of the awards would be disclosed in the year of grant, and this value would be a factor in the calculation of the executives' total compensation shown in the Summary Compensation Table for that fiscal year. These awards may vest and be exercised several years following the date of grant and initial valuation of this compensation element. The proposal to separately disclose at this later stage another value for the same awards side-by-side with the initial grant date values could cause confusion as to which amount represents the real value of the equity award. First, the grant date fair value disclosed in the year of the award is necessarily based on assumptions and factors not known with certainty as of the award date, so the comparison between this valuation and the value attributed based on actual market prices when the awards are exercised or vest may differ. Further, the side by side comparison may lead the reader of the information to believe that the actual exercise or vesting value is compensation on top of compensation even if an explanatory footnote were included with the tabular information. Finally, under the rules as proposed, the awards of restricted stock and RSUs would be valued as of the date of grant and again each fiscal year while the awards remain unvested. We do not believe that providing a further valuation of these awards upon vesting would be helpful.

- **Would the proposed separate column for grant date fair value previously reported for the same award eliminate potential confusion about the amount of compensation provided by options, SARs, stock and similar instruments?**

See above response.

- **Are other sources of this information, such as reports filed by officers and directors pursuant to Section 16(a) of the Exchange Act, adequate to inform investors of the information contained in the table?**

Information on options exercised and awards granted is publicly available for directors and executive officers throughout the year via the EDGAR system through their individual Form 4 reports. As these filings already report information on individual awards and exercises, as well as other transactions, we believe this source of information would be adequate to inform investors of amounts realized by executives on equity compensation through its final stage.

5. Post-Employment Compensation

a. Retirement Plan Potential Annual Payments and Benefits

- **Should any other information (including information that may be disclosed in the narrative) be included in the proposed table? Should any of the information we propose to require to be disclosed be excluded?**

This table represents the third location in which the same benefits are to be disclosed (the other two being the reporting of annual increases in actuarial value of the accrued benefit and defined benefit payments in the All Other Compensation column of the Summary Compensation Table). Because the Retirement Plan Potential Annual Payments and Benefits table represents the most accurate measure and thus the best disclosure of pension benefits, we believe it should be retained, but the final regulations should not require triplicate disclosure of the same item.

In addition, we believe it is not appropriate to include both normal and early retirement benefits in this table because only one will actually be payable, and investors may not understand the duplication. We recommend that only the normal retirement benefit (which generally will be the higher value) be shown in the table. We believe that also disclosing the early retirement benefit would not add materially to investors' understanding of executive compensation. If the Commission decides to include both values, then we recommend the early retirement benefit be disclosed in a footnote, but only after the executive is eligible to receive it.

- **Should this item require quantification of the aggregate actuarial value of a plan benefit as of the end of the company's last fiscal year without regard to whether the plan permits a lump sum distribution? If so, why? Alternatively, would this information provide meaningful**

disclosure only if the named executive officer currently is eligible to retire under the plan with a lump sum distribution?

As noted above, for several reasons actuarial values are not a meaningful measure of individual compensation decisions and should not be included in this disclosure. They are more likely to confuse than inform investors about the compensation being delivered to the executive.

b. Nonqualified Defined Contribution and Other Deferred Compensation Plans Table

- **In addition to the footnote required by the proposed instruction, are any other provisions necessary or appropriate to avoid "double counting" of previously reported compensation that will have been deferred?**

We believe the only way to avoid double counting is to not disclose the same compensation more than once. Employee contributions to a deferred compensation account will have been disclosed in the year earned (in the salary, bonus, or another column of the Summary Compensation Table), if the employee was then a named executive officer. Contributions made before becoming a named executive officer would not have been disclosed, but we do not think it is consistent with reasonable principles of executive compensation disclosure to reach back in time to disclose pre-executive officer compensation. To do so will distinguish inappropriately between similarly situated executive officers based on their deferral patterns, misleading the investor to conclude that one who deferred was compensated more than one who did not.

- **Should only above market or preferential earnings be included in the table? If so, why would such disclosure be more useful or informative to investors?**

As discussed above under II.B.1.d.i "Earnings on Deferred Compensation", we believe that only if a company contributes to an employee's deferred compensation account (sometimes done in the form of a match), guarantees a return or pays an above-market return, should those contributions and earnings be included in the All Other Compensation column of the summary Compensation Table.

- **Is any of the proposed new disclosure unnecessary? If so, please explain.**

We agree that shareholders are interested in understanding how deferred compensation arrangements work, particularly the benefits to the executive and the costs, if any, to the company. We believe a narrative description is appropriate, covering the program, and the limits on deferrals and how the payouts work. How investment earnings are earned in general could be described, for example, as similar to investment vehicles available under the company's 401(k), for example. Types of measures, rather than individual investment choices should be described. Only tax implications for the company should be described, as tax implications to the executives have no impact on shareholders. However, if the company provides a gross-up for taxes on deferred compensation, such an arrangement should also be described.

Disclosure of the balances deferred over a career would be redundant (since deferred amounts are included in the appropriate columns of the Summary Compensation Table in the year earned, where an executive is subject to disclosure; and compensatory earnings on deferred amounts would have been included in the All Other Compensation Column of the Summary Compensation Table). Accordingly, we do not favor disclosure of "total balances" in the deferred accounts on an ongoing basis in the proxy statement or disclosure of the actual distribution of these amounts upon the executive's departure from the company. Further, since these amounts are not subject to control of the Compensation Committee at the time of payout, but merely the mechanical operation of the deferred compensation plans, the payouts also should not be relevant to an investor's decision about the re-election of a Compensation Committee member to the Board. Should the Commission believe that investor interest is so great that the accrued balance or payout amounts must be disclosed, then we think a better alternative than proxy disclosure is disclosure in a Form 8-K upon an executive's departure to avoid double counting the amounts.

c. Other Potential Post-Employment Payments

General. The Proposal requires narrative disclosure, including quantification, of all compensation and benefits payable upon termination of a NEO's employment, change in a NEO's responsibilities, or a change in control. The Proposals significantly increase the level of disclosure required in connection with post-employment payments. We do not oppose increased disclosure, provided it is meaningful to investors. However, our overriding concern is that the proposed disclosures:

- do not allow for comparability between companies;
- are speculative in amount and therefore not meaningful; and
- place an annual heavy burden on issuers.

Change in Responsibilities. Proposed Item 402(k) of Regulation S-K refers to arrangements that provide for payments following termination, or a change in control, or a change in the NEO's responsibilities. We believe the proposed rule inadvertently omitted reference to a change of control when discussing changes in a NEO's responsibilities. The 402(k) disclosures should be triggered only by a change of responsibilities following a change of control.

Speculative Calculations. The Proposals require issuers to speculate as to:

- the change of control price to be paid for the shares;
- the NEOs salary and bonus at the time of the change of control or termination;
- the effective tax rates applicable to such payments;
- the marginal tax rates for NEOs;
- the actual costs for perks to be paid many years out; and

- the actual costs of benefits to which the NEOs may be entitled.

These assumptions will be reviewed in hindsight for reasonableness. We do not believe that such speculation provides the types of disclosures that would be meaningful to investors or that would provide comparability between issuers' disclosures.

We believe that the rules should specifically permit issuers to use a specific date (year-end) upon which all assumptions should be based. For example, the price paid for shares in a change of control could be based on the company's stock closing price at year end. In addition, the cost of perks and benefits could be calculated using year-end costs for such amounts. This type of added specificity to the Proposals would permit some level of comparison and eliminate the need for at least some of the layers of speculation on the part of issuers.

Triggers for Payments. The Proposal requires issuers to describe and explain the specific circumstances that would trigger payments. This will require a lengthy narrative description of details that are otherwise provided in the text of the agreements, which are required to be filed with the Commission. We can envision pages of disclosures that set forth detailed descriptions of the terms "cause" or "good reason." We suggest that issuers be required to make specific reference to the plan documents rather than to describe and explain the specific circumstances that would trigger payments.

Forward-Looking Safe Harbor. The Proposal indicates that these disclosures would be considered forward-looking information falling within the safe harbor for such disclosures. We believe that this is helpful; however, to take advantage of the safe harbor provisions, issuers would first be required to speculate on the amount of future payouts under these arrangements, and then to speculate on meaningful cautionary statements to avail themselves of the safe harbor. The addition of what will likely be an extensive list of cautionary statements will not be informative to shareholders and will likely become expansive boilerplate language diminishing the value of issuers' other cautionary statements. Such a safe harbor would not be required if the rule contained a specific requirement that year-end amounts be utilized for these calculations.

- **Should we, as proposed, eliminate the current $100,000 threshold for disclosure for compensatory plans or arrangements providing payments upon termination or change-in-control?**

Given the burdens of the proposed disclosure and the fact that the threshold, on an inflation adjusted basis, is significantly lower than when first adopted in 1992, we strongly urge the Commission to retain or increase the current threshold. Total payments less than $100,000 are not likely to be material to investors and we are not aware that investors have been concerned about the absence of disclosures caused by this threshold.

- **Should we require companies to provide quantitative disclosures as proposed? If not, how can there be assurance that investors can understand the significant amounts of compensation that may be involved?**

We believe that it will be enormously burdensome to require an annual quantification of estimated future payments under these arrangements for all NEOs. If quantification is required, we suggest that it be limited to the CEO, who is likely to have the most significant payouts. A narrative description of these arrangements could then be provided for the remaining NEOs.

Alternatively, we ask the staff to consider requiring these disclosures only at such time as new arrangements are put in place. At that time, issuer compensation committees are generally provided with these calculations, and we believe it is reasonable to require public disclosure of the amounts reviewed by the compensation committee.

Finally, we suggest that narrative disclosure only be required of any tax gross-up. A quantitative calculation frequently requires the use of outside experts and requires an investigation into the personal tax situation of executives. We urge the staff to limit disclosure of tax gross-up amounts to a narrative discussion.

6. Officers Covered

a. Named Executive Officers

- **Should the principal financial officer be specifically included as a named executive officer?**

We agree that the principal financial officer should be specifically included as a named executive officer. The principal executive officer and the principal financial officer together are responsible for establishing and maintaining disclosure controls and procedures and internal control over financial reporting. Given those key responsibilities, it is important for shareholders to know how these officers are compensated for a full understanding of their relationship with the relevant company.

- **Would the proposed named executive officers be those executive officers whose compensation is material to investors? Is only the compensation of the principal executive officer material? The principal executive officer and the principal financial officer?**

It may well be for a given company that only the compensation of the principal executive officer is material to investors; however, given the role of the principal financial officer, it is important that such person's compensation be disclosed. In addition, including the three other most highly compensated executive officers is reasonable in scope and strikes an appropriate balance between keeping investors informed and unduly burdening the company with excessive data gathering and disclosure. These are the employees that the companies' respective compensation committees would be most concerned with and such disclosure would provide a window into the corporate governance processes of the companies. This is important to shareholders who elect the directors.

- **Should Item 402 specifically require disclosure of the compensation of any other officers listed in Form 8-K Item 5.02? If so, which officers and why? If we were to require Item 402 disclosure regarding compensation of additional Item 5.02 officers, should we also require Item**

402 disclosure for two or three additional officers who receive the highest compensation?

Item 402 should not specifically require disclosure of the compensation of any other officers listed in Form 8-K Item 5.02. While these officers are important to a company, the key, certifying executive and financial officers are already covered. Given that this is compensation disclosure, it is more important to investors to know the extent of compensation to the highest paid executive officers rather than for instance how a principal accounting officer, who likely reports to the already listed principal financial officer, is compensated.

- **Are there any other specific executive officers, such as the general counsel or principal accounting officer, who should be specifically identified as named executive officers? If so, which officers and why?**

We believe that the only executive officers that need be specified are the principal executive officer and the principal financial officer. Unless other executive officers are among the three most highly compensated other than the principal executive officer and the principal financial officer, companies should not be required to disclose their compensation. We note that in many companies, the principal accounting officer is not a Rule 3b-7 executive officer.

- **Should we retain, as proposed, the current requirement that up to two additional individuals for whom disclosure would have been required but for the fact that they were no longer serving as executive officers at the end of the year be included in the disclosure?**

We agree that the current requirement that up to two additional individuals for whom disclosure would have been required but for the fact that they were no longer serving as executive officers at the end of the year should be retained. The benefit to shareholders is that they know that important executive compensation information would be disclosed fully, which could alleviate shareholders potential concerns about manipulation of the included executive officers.

- **Is the continuation of the current requirement for five named executive officers appropriate? Should that number be higher or lower?**

We agree that continuation of the current requirement for five named executive officers is appropriate. Such disclosure is beneficial and not excessive. The focus should naturally stay on what is important to investors rather than what may be merely interesting to some.

b. Identification of Most Highly Compensated Officers; Dollar Threshold for Disclosure

- **Are there any particular circumstances or categories of companies for which a measure other than total compensation should be applied to identify the most highly compensated executive officers? If so, what measure should be applied and why? Is $100,000 the correct disclosure threshold?**

The current rule, which is set forth in Instruction 1 to Item 402(a)(3), should be retained. The determination as to which executive officers are most highly compensated should be made by reference to total annual salary and bonus for the last completed fiscal year and not on the basis of total compensation. This would prevent the table from being skewed inappropriately by such items as pension benefits. The current rule is clear and precise and can be applied quickly by companies. The principal executive officer and the principal financial officer should be automatically included. The total annual salary and bonus calculation should determine who are the three other most highly compensated executive officers (since this is the core of the compensation determined by the current compensation committee), whereas one or more of these persons could be excluded on the basis of total compensation, thus eliminating perhaps the more important disclosure. Most companies would find re-characterization of compensation to exclude one or another executive from disclosure fraught with risk and thus would not be motivated to take such action.

It may be appropriate to increase the $100,000 threshold, given the time that has passed since that amount was set.

- **Should payments attributable to overseas assignments be included in determining the most highly compensated officers, given that the purpose of such payments typically is to compensate for disadvantageous currency exchange rates or high costs of living?**

Payments attributable to overseas assignments should not be included in determining the most highly compensated officers. These payments have the potential to obfuscate the more relevant disclosure. We believe the better comparison would be limited to salary and bonus, and would exclude such payments.

- **Are there any particular circumstances, such as commissions for executives responsible for sales, for which the "not recurring and unlikely to continue" standard should be retained?**

As there has been inconsistent interpretation of the "not recurring and unlikely to continue" standard, perhaps the standard could be narrowed or more particularly defined to match the appropriate interpretation and prevent non-disclosure of appropriate compensation, rather than entirely discarded.

7. Interplay of Items 402 and 404

- **In light of the amendments to Item 404 that we also propose, are there any circumstances for which the current exclusion from Item 402 disclosure for transactions reported under Item 404 should be retained? If so, why?**

In the spirit of avoiding double counting of compensation, we recommend that compensation be disclosed only once, under Item 402. Item 404 disclosure of the transaction giving rise to the compensation should be limited to the fact of the transaction, with a reference to the Item 402 disclosure for the amount. As indicated below in Part V.A.3, we do not believe that compensation of executive officers other than named executive officers should be disclosed under Item 404 (as proposed in Instruction 5.b to Item 404(a)).

8. Other Proposed Changes

- **Should relocation plans be required to be disclosed as compensation? Should group life, health, hospitalization and medical reimbursement also be included in reportable compensation? Can these plans be operated in a manner that may obscure compensation disclosure? Are there other plans or benefits that should be excluded from the disclosure requirements of Item 402? If so, why?**

Reimbursements under relocation plans are not compensatory and should not be disclosed as compensation. Rather, they reimburse employees for the costs of relocating at the employer's request, exactly like other business expenses that are reimbursable. If significant abuse of this disclosure requirement has occurred, we suggest that it could be corrected by requiring disclosure of any amounts that exceed the amount needed to reimburse an executive for his or her out-of-pocket costs of relocation, using the same standards as are applied to salaried employees generally.

We are not aware of group life, health, hospitalization and medical reimbursement plans obscuring compensation disclosure. Again, if significant abuse has occurred, we suggest that it could be corrected by requiring disclosure of the types of and extent of benefits provided in excess of those provided to salaried employees generally. We would be quite concerned on privacy grounds if health, hospitalization and medical reimbursements for an executive and his or her family were required to be disclosed, and assume that HIPAA would preclude such disclosure, in any event.

9. Compensation of Directors

- **Does the proposed table organize director compensation disclosure in a format that is easy to understand?**

We support the approach taken with respect to the proposed director compensation disclosure. The proposed table presents director compensation in a logical and easily understood format. As we have suggested with respect to the summary Compensation Table, we suggest that the "total compensation" column be moved to the far right of the table to help avoid double counting.

- **Do the proposed table and narrative disclose information that is material to an investor's analysis of director compensation? Should other tables be required, such as the Grants of Performance-Based Awards Table and the Grants of All Other Equity Awards Table?**

We believe that the proposed table, together with the narrative, will provide investors with the necessary information. We do not believe these other tables are necessary. We think it is easier for shareholders to understand total compensation if all components are presented on one table, as has been proposed. In particular, director compensation typically has fewer components than executive compensation, and directors seldom receive incentive pay so the additional tables are not necessary.

- **Should named executive officers who are also directors be omitted from the table, with any compensation for services**

as a director reported only in the Summary Compensation Table, as is currently the case? If so, should there be some indication of their status as directors and compensation related to their director service in the Summary Compensation Table, the Director Compensation Table, or both? Should the nature or extent of compensation to the chairman of the board of directors be presented differently from that of other directors?

We believe that it is rare for a director who is also an executive to receive additional compensation as a director or for any portion of his or her pay to be attributed to the service as a director. As a result, we believe it is not appropriate to include an executive who is also a director in the Director Compensation table. We also think all of the compensation of such a person should be reported in one place to avoid (1) confusion created by part of the pay being reported in the Summary Compensation Table for executive compensation and part of the pay being reported in the Director Compensation table, or (2) double counting if any portion of the pay is reported in both tables.

For directors who serve as non-executive chairmen or lead directors, we believe all compensation should be reported in the Director Compensation table and that any additional compensation for the position should be reported in the "All Other Compensation" column with a footnote specifying the amount.

- **With respect to disclosure of perquisites, should the director compensation apply the same $10,000 disclosure threshold as proposed for the Summary Compensation Table? Should separate identification and quantification apply to director perquisites?**

We believe that disclosure of perquisites provided to directors should be governed by the same rules applicable to the named executive officers, including the disclosure threshold.

- **Does the proposed table cover any forms of compensation that typically are not awarded to directors and therefore should be omitted? Should the requirements be modified to make it easier to capture forms of compensation, if any, that develop in the future?**

We do not believe that "non-stock incentive plan compensation" (as defined) is a common component of director compensation. Therefore, we suggest deleting the proposed column (f) from the table and including any such compensation in the "all other compensation" column with appropriate footnotes.

- **Does the proposed table omit any forms of compensation awarded to directors that should be specifically included or identified?**

We are not aware of any other forms of compensation awarded to directors that should be specifically included or identified in the table.

- **Should narrative disclosure regarding the company's policies and objectives with respect to director compensation and share ownership or retention policies**

accompany this table? Should it be included in the Compensation Discussion and Analysis?

We believe that it would be useful to investors to require narrative disclosure regarding the company's policy and objectives with regard to director compensation and share ownership or retention policies. Certain of our members already include this type of disclosure in response to investor questions or directors' desire for transparency.

At many member companies, director compensation is handled by the governance or nominating committee rather than the compensation committee, which handles executive compensation. The markets for recruiting directors often differ from the markets for recruiting executives, so the data used to make compensation decisions often differ, and frequently the committee handling director compensation may consult different outside advisors than the advisers consulted by the compensation committee regarding executive compensation. As a result, we strongly recommend that the disclosure about director compensation accompany the director compensation table, and that it would not be appropriate to include disclosure about director compensation in the Compensation Discussion and Analysis, which will cover executive compensation.

- **Would more specific footnote disclosure, as opposed to the proposed accompanying narrative, provide additional material information regarding director compensation? Should there be supplemental tables for directors, or should we require disclosure of the number of shares, units, options and other securities awarded to directors in addition to the grant date fair value of such awards?**

We believe that the proposed narrative disclosure is appropriate. We think it would also be useful to investors to require specific footnote disclosure of the number of shares, units, options and other securities awarded to directors in addition to the grant date fair value of such awards. We also believe that it would be appropriate to require footnote disclosure regarding perquisites to the same extent required for the named executive officers in the Summary Compensation Table.

C. Treatment of Specific Types of Issuers

1. Small Business Issuers

Among the many issuers represented by the members of our Society are a cross section of companies that fall into the classification of "Smaller Public Companies" established by the Commission's Advisory Committee on Smaller Public Companies, companies with market capitalization of less than $787 million. We concur with the Advisory Committee's conclusion in the Exposure Draft of its Final Report published March 3, 2006 that smaller companies are disproportionately and negatively impacted by regulatory changes that require additional internal and external resources and that impose greater demands on their boards of directors with increased risk exposure. We believe that, as discussed above, several of the proposals fall into that category. For example the proposals to make the compensation committee report filed rather than furnished, to add additional disclosures for NEO compensation, to lower the threshold for perquisite reporting, and to add disclosure that duplicates information already disclosed in Section 16 filings. As the Advisory Committee has pointed out, smaller companies squeeze profitability out of overhead because they face tough competition in the marketplace. As a result, both human and fiscal resources available to comply with regulations are scarce and regulations that increase marginal costs cut deeply into profitability. With profitability as the ultimate driver of shareholder value, we believe it is in shareholders' best interests when regulatory changes are made in such a way as to minimize the disproportionate penalty on smaller public companies.

The lessons of Sarbanes-Oxley Section 404 have taught us that the cost of compliance cannot be underestimated. As we have explained above, many of these regulations will create ongoing accounting and compliance burdens. They will increase the incremental cost of operating the board of directors: if the compensation committee report is filed and not furnished D&O insurance premiums may increase; the increased oversight and responsibility for the compensation committee will translate into higher committee fees and higher fees for independent compensation advisors. The proposals will increase the incremental cost of managing compliance: the added disclosure items will result in increased legal and accounting fees, the additional tracking if reporting thresholds are lowered will require additional time from internal resources that are already stretched thin or will require additional resources, and each of these new items will require an internal control mechanism further taxing internal resources and increasing audit fees. For example, the discussion above pointing out the additional complexity and burden of the FAS 123R valuation proposals for performance-based stock awards will be disproportionate for smaller public companies with limited resources. All of these will be sustained annual costs which in the case of smaller public companies will noticeably and adversely affect their cost structure, further erode their profitability and as a result erode shareholder value, for what in the case of these companies may be very little in the way of enhanced disclosure.

We would encourage the Commission to consider, as the Advisory Committee has recommended, scaling the disclosure thresholds if some of the more burdensome proposals, as pointed out above, are adopted. For example, while we agree that the CFO should in all cases be an NEO, we would encourage the Committee, if proposals are adopted to increase the number of individuals for whom compensation disclosure is provided, to consider exempting smaller public companies from those requirements. In our experience, and as noted by the Advisory Committee, decision-making is highly concentrated at smaller public companies. Adding individuals whose compensation may be above a threshold is likely to pull in sales and other operations personnel who by virtue of commission and other incentive plans are highly compensated but who are not key decision makers.

Similarly, we would encourage the Commission to consider, if the proposed compensation disclosure is expanded, only requiring smaller public companies to prepare a Summary Compensation Table, as in our experience it will generally capture and adequately portray executive compensation for the decision makers of these companies. As a practical matter, relatively few smaller public companies have the type of elaborate compensation plans that would require more detailed disclosure.

III. Proposed Revisions to Form 8-K and the Periodic Report Exhibit Requirements

A. Proposed Revisions to Items 1.01 and 5.02 of Form 8-K

The Society strongly supports the view that the proxy statement for the annual meeting should be the primary disclosure medium for compensation of directors and named executive officers, in conjunction with the exhibits filed with periodic reports. We support deleting the standards of Item 601(b)(10) of Regulation S-K from Item 1.01 of Form 8-K, and moving all compensation-related disclosure to Item 5.02 of Form 8-K.

We note that proposed Item 5.02c)(3) would require compensation disclosure related to the specified officers who are not the PEO, PFO or a named executive officer, and strongly believe that this disclosure should be limited to the traditional officers for whom compensation-related disclosure is required. Certain of the specified officers, particularly the principal accounting officer, are unlikely to ever become named executive officers, and it is inappropriate to require compensation disclosure for them.

- **Is there a particular benefit to receiving information regarding employment compensation on a current basis rather than annually or quarterly? What information is material in that regard?**

We believe that compensation information is most meaningful and relevant in connection with the annual meeting of shareholders, when shareholders consider the election of directors. If unquestionably material compensation is to be disclosed outside of the proxy statement, we agree that it should be disclosed currently.

- **Is disclosure of material information about executive and director compensation and related person transactions avoided if comprehensive disclosure of compensation and related party transactions only occurs annually? Should we also require quarterly disclosure of material changes to information required by Items 402 and 404 in each company's Form 10-Q?**

Disclosure of material compensation is not avoided by annual, comprehensive disclosure. We do not support quarterly disclosure of material changes to Item 402 and Item 404 information because it would result in over disclosure, and would be very burdensome from a cost basis. One example is that companies would be required to make quarterly actuarial judgments, with many companies paying for the outside actuarial support. We believe the cost and burdens of the disclosure would outweigh any benefit.

- **Would a quarterly update of material changes to Item 402 and Item 404 disclosure provide meaningful disclosure to investors that they cannot get through other sources? If not, why?**

No.

- **Would quarterly updates eliminate the need for most of the current disclosure about executive and director compensation transactions provided under Item 1.01 of Form**

8-K? Should the information we propose to require under Item 5.02(e) of Form 8-K only be required quarterly?

Quarterly updates would considerably reduce the reporting burden for many companies while providing information to shareholders within a timeframe that is still reasonable.

- **Should we require disclosure of all amendments to the plans, contracts and arrangements encompassed by our proposed disclosure requirements under Item 5.02(e) of Form 8-K? Only material amendments?**

Disclosure of all amendments would result in Form 8-K filings for mundane, administrative matters as well as material matters, resulting in over disclosure with no meaningful benefit to investors.

B. Proposed Extension of Limited Safe Harbor under Section 10(b) and Rule 10b-5 to Item 5.02(e) of Form 8-K and Exclusion of that Item from Form S-3 Eligibility Requirements

- **Should we extend the Section 10(b) and Rule 10b-5 safe harbor and the Form S-3 safe harbor to all of Item 5.02 or just the provision proposed?**

We support extension of both safe harbors to all of Item 5.02 because the risk of liability for failure to file timely, and the burden of losing Form S-3 eligibility, are disproportionately large negative consequences to the failure to timely file an Item 5.02 Form 8-K.

C. General Instruction D to Form 8-K

- **Is it appropriate to allow a company to omit the Item 1.01 heading in a Form 8-K disclosing any other item?**

We believe that consolidating the compensation-related disclosures under Item 5.02 of Form 8-K would eliminate many situations requiring filings under multiple items. In addition, if the proposal were to be adopted to permit omission of the Item 1.01 heading, we believe that the EDGAR header should still identify Item 1.01 when a Form 8-K contains substantive disclosure required by Item 1.01. We have some concern that omitting the Item 1.01 heading may lead to mistaken omission of the EDGAR header information. Given this, and given that it is possible to solve the "multiple items" drafting complexity by cross references within the Form 8-K, we suggest not amending General Instruction D to allow omission of the Item 1.01 heading. An alternative approach would be to create a safe harbor for non-compliance with Form 8-K due to inadvertent exclusions of captions.

IV. Beneficial Ownership Disclosure

- **Should directors' qualifying shares continue to be excluded? If so, explain why that information is not material.**

We agree that the beneficial ownership disclosure for directors should total all the issuers' securities beneficially owned by directors, including directors' qualifying shares.

V. Certain Relationships and Related Transactions Disclosure

A. Transactions with Related Persons

1. Broad Principle for Disclosure

- **Should we recast Item 404(a) as a more principles-based disclosure requirement as proposed? Why or why not?**

The proposal to make Regulation S-K Item 404 into a more principles-based disclosure requirement would eliminate much unnecessary complexity and confusion. In that regard, a more straightforward disclosure requirement is welcome. The Proposing Release reflects a creative rethinking of the disclosure requirements related to related party transactions. However, we believe that further guidance and a clarification that registrants could apply a bifurcated threshold for disclosure are necessary as discussed below. We are also concerned that, without further guidance, careful companies may over-disclose, thereby burying the disclosure of significant transactions and relationships and unnecessarily disqualifying directors (1) from service on the compensation committee pursuant to Rule 16b-3(b)(3)(C) or, (2) under the November 23, 2005 changes proposed by the NYSE to Section 303A of the Listed Company Manual (the "NYSE proposed changes"), from service as an independent director on the Board of Directors or the nominating committee, compensation committee and/or audit committee of a NYSE-listed company.

- **In recasting Item 404(a) as a more principles-based disclosure requirement, should we eliminate all of the current instructions, not only the ones we propose eliminating? Are there any concepts in the instructions to Item 404(a) that we propose to eliminate that should be retained? As a result of eliminating the instructions to Item 404(a), would there be any categories of transactions which would have an unclear disclosure status? Although the analysis required for any particular transaction would be fact-specific, should we provide further guidance or examples regarding the disclosure status of particular types of direct or indirect interests?**

We note that certain duplicative or fact-specific instructions, as well as all of the related telephone interpretations are proposed to be eliminated. We do not believe that there are any other instructions that should be eliminated. Rather, particularly in light of the lower numerical threshold for potential disclosure and the inclusion of disclosure requirements of current Item 404(b) in proposed Item 404(a), you should retain the ordinary course concepts embodied in several of the instructions that you propose to eliminate, including Instructions 7A and 7C to Item 404(a), modified as indicated below. Alternately, you should provide clarification in the adopting release that it would be an appropriate application of a principle-based analysis for a registrant to conclude that a related party does not, absent extraordinary circumstances, have a material interest in ordinary course transactions.

Instruction 7A to current Item 404(a) embodies a conclusion that the terms of a transaction are not likely to be influenced by the related parties and are thus not material where "the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority." The same exclusion, based on the same premise, is built into current Instruction 2A to Item 404(b). We believe this concept is critical to the reasonable functioning of proposed Item 404(a), and should be retained. In addition, a more general exclusion like the one in Instruction 2 to Item 404(c) (relating to indebtedness) for "other transactions in the ordinary course of business" should be incorporated into the exception. The current proposal would only provide such an exclusion in the case of debt.

As important, we believe that registrants should not be required to disclose ordinary course transactions that are not subject to any preferential terms, particularly if the disclosure threshold is kept at $120,000, without the ability to apply a sliding scale alternative we suggest below. As an example, the CEO of Company A whose presence on the board of Company B might necessitate disclosure if Company B had purchased over $120,000 worth of office supplies from Company A in the ordinary course of business would not be likely to have been aware of the arrangement, much less a decision-maker in the transaction. Since the transaction would be ordinary course, it would not, as a practical matter, be identifiable and approved in advance by the appropriate committee (which would trigger further disclosure under proposed Item 404(b)). The proposal makes it clear that the *payment* terms for transactions in the ordinary course of business would not be discloseable as debt, but the wording leaves open the possibility that the supply arrangement itself might have to be disclosed under the broader definition of "transaction." The specific inclusion of an ordinary course exception in one part of Item 404(a) could be read to mean that it would not be available in other contexts covered by Item 404(a). Although Company B would generally conclude that the CEO of Company A does not have a material interest in this ordinary course supply contract, obviating the need for disclosure under Item 404 (a), disclosure of the arrangement might nonetheless come in through the back door as a result of proposed Item 407(a)(3)(requiring disclosure of arrangements not otherwise disclosed that were considered in the independence determination). Although the CEO of the supply company would still theoretically be independent under the applicable trading market definition if the transaction is only included pursuant to Item 407, we have already seen that registrants may be less willing to take advantage of the business expertise that active executives can bring to a board if they have to consider sifting through and explaining ordinary course supply contracts to justify the independence of the executive.

Where the disclosure requirements are unclear, registrants may be reluctant to risk being second-guessed with the benefit of hindsight. Yet, if the disclosure is over-inclusive, directors will needlessly be disqualified from serving on the compensation committee because, unless the registrant can prove that the transaction was not "required" to be disclosed, the director will not be a "non-employee" director under Rule 16b-3(b)(3)(C).

In addition, under the NYSE proposed changes (see proposed Section 303A.02(a)), a company must disclose either (1) that the director has no relationship with the listed company (other than being a director and/or a shareholder) or (2) that the director has only immaterial relationships with the listed company. The listed company must then disclose any immaterial relationships and the basis for the Board's decision that the immaterial relationship does not preclude a determination of independence or disclose the standard set by the Board for relationships that are categorically immaterial. The NYSE proposed changes state that any relationship required to be disclosed under Item 404 of Regulation S-K may *not* be considered categorically immaterial. Accordingly, under the proposed changes to Item 404 and the NYSE proposed changes, if companies are forced to become overly-conservative and over-disclose under Item 404 to avoid being second-guessed later, directors previously considered independent under the NYSE standards could lose their independence as a result of ordinary course business transactions with the company that are disclosed under Item 404. It would be unfortunate if the pool of potential directors had to be reduced to otherwise unemployed individuals with small stock portfolios. Accordingly, we strongly recommend an "ordinary course of business" exclusion. If you believe that a registrant would normally have the flexibility to read such an exclusion into the principle-based theory of the proposed revisions, then that should be made clearer.

We also believe the Rule will function better if you retain Instruction 7C to Item 404(a) which permits the omission of information regarding an interest that arises "solely from the ownership of securities of the registrant and such person receives no extra or special benefit not shared on a pro rata basis." It should be clear that it is not necessary to disclose that a 5% shareholder received over $120,000 in dividends on the same terms as all other shareholders. The amount of such dividends paid to a 5% shareholder can be deduced from the required Item 403 disclosure.

- **Is it appropriate to adjust the threshold for disclosure to $120,000? Should there be no threshold? Should the threshold also operate on a sliding scale (for example, the lower of $120,000 or 1 % of the average of total assets for the last three completed fiscal years or the lower of $120,000 or a percentage of annual corporate expenses) to capture smaller transactions for smaller companies? Explain whether a higher or lower threshold, or no threshold, would result in more effective disclosure.**

Registrants should have the flexibility to apply a bifurcated disclosure threshold, as is currently the case. The proposal to set $120,000 as the disclosure threshold for all relationships is too low for a large company, particularly if it is not clear (as suggested above) that ordinary course transactions should be excluded from the analysis altogether. While $120,000 may be an appropriate threshold for direct payments to an individual and any entities in which the individual has a non-passive 10% interest (a "Type A" relationship), it is totally inappropriate for the situation in which a director of the registrant is an executive officer of another entity (currently covered by Item 404(b)) (a "Type B" relationship).

We note that in the case of small business issuers, the proposal contemplates a sliding scale threshold (intended in that case to capture *smaller* transactions) that would be set at the *lower* of $120,000 or 1% of assets or expenses. We believe that in the case of companies that are not small business issuers, the threshold for disclosure of a Type B relationship should be the *greater* of $120,000 or a percentage of consolidated gross revenues of the recipient. The percentage could be as low as 2% to coordinate with the NYSE standard. In the case of non-SBIs, the measure should be based on consolidated gross revenues of the recipient (rather than the measure suggested for small business issuers) in order to coordinate with the measure that must be evaluated under the NYSE and NASDAQ independence standards. This sliding scale would more appropriately set the materiality threshold for Type B transactions and relationships at a number that is proportional to the size of the company.

Our suggestion that disclosure of Type A and Type B relationships be bifurcated, as well as applying a sliding scale to the Type B relationships would coordinate with the NYSE and Nasdaq standards companies must use in any event to evaluate independence.

- **In Item 404(a), should we require a company to be "involved" rather than to be "a participant" in transactions subject to disclosure?**

The proposed revisions would require disclosure if the company is a "participant" rather than, as is currently the case, a "party". You ask whether the scope of the rule should be further broadened to cover circumstances in which the company is "involved" in a transaction. We assume that the intent is to capture situations in which the company has a sufficient role in a transaction to be able to influence the terms of the transaction in which case disclosure might be merited. We do not think Item 404(a) disclosure should be triggered by mere involvement in a transaction and believe that the term "participant" is also too vague and potentially over inclusive. Suppose, for example, Company A has a 30% investment in Company B but does not control it. Company B engages in a transaction with Company C. Company A takes no part in the negotiations, has no information about the transaction and receives no benefit other than as a shareholder of Company B. Is it a "participant" or "involved" in the transaction? Disclosure should only be triggered in circumstances where the registrant had the ability to determine the terms of the transaction; otherwise, disclosure would not provide meaningful information about the company. In our experience, if a registrant is going to benefit from a contract, it makes sure that it is a party to the contract so that it can enforce its rights under the contract.

If you have a specific concern, we believe it would be better to address it directly, rather than using new, vague terminology. If the intent is to elicit disclosure of guarantees, then that should be explicitly spelled out. If you use the term "participant", you should clarify that a company is only a participant if it is "sufficiently active in the transaction to have influenced the terms".

a. Indebtedness

- **Is our proposal appropriate in light of the prohibition on personal loans to officers and directors in the Sarbanes-Oxley Act?**

It does not appear that any of the loans prohibited by Section 402 of the Sarbanes-Oxley Act would escape disclosure under proposed Item 404(a).

- **Should we combine the related person and indebtedness disclosure requirements in paragraphs (a) and (c) of Item**

404? As a result of combining these disclosure requirements, would there be categories of indebtedness transactions for which disclosure would be required that should not be required or for which disclosure would not be required that should be disclosed?

The proposed combination of the related person and indebtedness disclosure requirements in paragraphs (a) and (c) of Item 404 into proposed Item 404(a) appears to work well. One effect is that the circumstances under which a director could be disqualified from serving on a Rule 16b-3 committee would be expanded so that disqualification would result from any required disclosure of indebtedness. It is not clear that this would pose any problems, except that it might not be clear how a director could have an indirect material interest in the indebtedness of another natural person, as discussed below.

- **Should the disclosure requirements for indebtedness be extended to significant shareholders?**

If the disclosure of indebtedness requirements is extended to significant shareholders, you should distinguish between shareholders who have acquired their 5% position through open market transactions and shareholders who have acquired their position through private transactions with the registrant. The type of institutional shareholder eligible to report on Schedule 13G pursuant to Rule 13d-1(b) or the passive investor eligible to report on Schedule 13G pursuant to Rule 13d-1(c) has a very different relation with the registrant that the 5% holder who acquired his or her position through private placements with the company. It is much harder (and it may be impossible) to obtain information from the former (and their immediate family members) as compared to the latter. We believe the differences between these types of shareholders merit a different disclosure outcome. Since registrants are permitted to rely on Schedule 13 filings with respect to Item 403 disclosure, they should also be permitted to rely on Schedule 13 filings for Item 404 disclosure (in which case the disclosure requirements of Schedules 13G and D should be expanded as appropriate).

b. Definitions

- **Should the same categories of people be covered by the disclosure requirements currently in paragraphs (a) and (c) of Item 404? Specifically, are there any persons who would be defined as "related persons" for whom indebtedness disclosure should not be required or are there any additional persons who should be covered?**

As indicated above, we question the necessity and feasibility of extending certain of the disclosure requirements to institutional and passive 5% shareholders.

- **The proposed changes to Item 404 would require disclosure of indirect interests in indebtedness of related persons. Should they?**

In the case where the borrower is an entity, it might not be difficult to determine who would be deemed to have an indirect interest in that indebtedness. However, in the case of a borrowing by an individual, it is not clear how someone else could have a material indirect interest in that debt, unless they were a guarantor. We recommend that disclosure should not be required except when the related person is a guarantor.

- **Should disclosure be required regarding portions of a period during which a person did not have the relationship giving rise to the disclosure requirement? Is it appropriate, as we propose, to exclude significant shareholders and their immediate family members from this approach?**

We believe disclosure should not be required regarding portions of a period during which a person did not have the relationship giving rise to the disclosure requirement. Disclosure of transactions involving persons who are not significant shareholders at the time of the transaction should definitely not be required, particularly when, as discussed above, they are institutional and passive Schedule 13G filers.

It is not clear whether the transaction that makes someone a 5% holder would be required to be disclosed. This would only be relevant if the transaction involved a purchase from the registrant (since the registrant would not otherwise be a participant), but perhaps it should be clarified.

- **Should we expand the definition of "immediate family member" as proposed? Specifically, are there any categories of people that should be added to, or removed from, the proposed definition?**

In the proposed definition of immediate family member, unless the term "sharing the same household" applies to each of the enumerated relationships (as is the case under Section 16), we think the definition is too broad, especially if our other recommendations are not accepted. As a practical matter, the executive officer or director typically does not know of the activities of any adult relatives not sharing the same household. This is particularly true of adult step-relatives. Relationships with step relatives in particular do not tend to be very close and any transactions in which they might be involved are not determinable without extensive, difficult and intrusive research. We believe that the remoteness of these relationships minimizes the likelihood that transactions by a these relatives would influence any decision-making. If, in fact, a director is aware of a significant relationship between the step or other adult relative who does not share his home and the registrant, that would be disclosed and evaluated in the independence determination. Therefore, we believe that the definition of "immediate family member" should be limited to family sharing the same home as the related person. In any event, step-relatives that do not share the same home as the related person should definitely be excluded.

- **In 2002 we issued a release regarding MD&A disclosure. At that time, we noted the possible need for related party disclosure in circumstances additional to those specified in Item 404. Are there any circumstances that fall within the MD&A requirements that should also be covered by Item 404 where disclosure currently is not required, or would not be required under the rule proposals?**

The concern expressed in the 2002 MD&A release was that there might be circumstances where someone who did not fit within the definition of a "related party," such as a former member of management, who might nonetheless be in a position to negotiate more favorable terms with the registrant than the terms that clearly independent parties would be able to negotiate. We believe that the possibility of this does not merit an extension of the definition of "related party," given the extended time period (of up to 15 months from the beginning of one fiscal year to the time that proxy statement disclosure is prepared), during which transactions involving a director or executive officer would be subject to disclosure under the proposal. The burden of obtaining information on related parties (and their immediate family members) beyond that time outweighs the benefits of any additional disclosure.

- **Is there any reason to change the current meaning of amount involved in transactions involving leases, which we propose to retain?**

No.

2. Disclosure Requirements

- **Should Item 404 require specific disclosure of the person determining the registrant's purchase or sale price for registrant purchases or sales of assets not in the ordinary course of business?**

There should not be a specific requirement to disclose who determined the purchase price of a transaction because such disclosure would be meaningless in the vast majority of cases. It is not clear what situations such a disclosure requirement would be intended to capture that would not otherwise be captured under general Rule 10b-5 concepts. Generally, the purchase or sale price is not determined or mandated by any single individual, but is determined through internal group discussions at the corporation and through further negotiations with the other party to the transaction. In addition, if a transaction is not in the ordinary course of business it is generally approved by the Board of Directors, so no one person would have "determined" the price, no matter who took the lead in negotiating the terms on behalf of the company.

- **Should Item 404 require disclosure of Section 16(b)-related indebtedness? Why or why not?**

Section 16(b) liability does not involve the sort of "indebtedness" that should be disclosed pursuant to Item 404. The obligation to disgorge short-swing profits under Section 16(b) does not arise as a result of borrowing money from the registrant. In fact the registrant is not even a participant in the transactions that lead to the liability. If the registrant *were* involved, the liability would not arise in the first place since the transaction would likely be exempt from matching pursuant to Rule 16b-3.

3. Exceptions

- **Does proposed Item 404(a) simplify and clarify the requirements currently contained in paragraphs (a) and (c) of Item 404?**

Yes.

- **Would the proposed rule clarify the situations in which compensation would be reportable under Item 404? Are there any categories of compensation for which it would be unclear whether disclosure would be required under proposed Item 404?**

The proposed treatment of compensation is much clearer than current Item 402(a)(5) and General Instruction 1 to current Item 404. It does not appear that there are any categories of compensation for which the disclosure treatment would be unclear.

- **We propose to exclude from the "amount involved" disclosure requirements indebtedness due for purchases subject to usual trade terms, ordinary business travel and expense payments, and ordinary course business transactions as is currently the case. Is this exclusion appropriate? Why or why not?**

Item 404 should continue to exclude from the "amount involved" indebtedness due for purchases subject to usual trade terms, ordinary business travel and expense payments, and ordinary course business transactions as is currently the case. Transactions that are subject to the usual trade terms do not reflect terms that are only available because of special related party status. As indicated above, we believe that this exception should be more broadly applied and should not be limited to indebtedness.

- **Does proposed Instruction 8 to Item 404(a), which indicates that a person having the specified positions or relationships with a person that engages in a transaction with the company shall not be deemed to have an indirect material interest in the transaction, provide sufficient guidance for determining whether disclosure is necessary in the circumstances identified in the instruction?**

Yes. If you do not agree to make the ordinary course of business exception or the alternate sliding scale threshold explicit, we have a concern with the scope of this instruction. Since this instruction clearly says that being only a director of the two companies in the transaction does not mean you have a material interest in the transaction between the two companies, this provision could be read very conservatively to imply that a director of Company A *does* have a material interest in a transaction between Company A and Company B if the director of Company A is also an executive officer of Company B. Under your principles-based analysis this should not be the case so it might be useful to provide more specific guidance, (as in current General Instruction 9 of Item 404(a)) so that it is clear that a director is an executive officer of the other party to a transaction, he does not *necessarily* have a direct or indirect material interest in the transaction merely as a result of his office.

- **Should the potential exclusions contemplated in the current instructions to Item 404(a), including current Instruction 6 (excluding remuneration transactions for services when the person's interest arises solely from a ten percent equity ownership interest) and current Instruction 8.C.**

(excluding transactions where the interest arises from an equity or creditor interest in another person and the transaction is not material to the other person) be retained or expanded?

Current Instruction 6 to Item 4(a) and the equity interest portion of Instruction 8.C appear to be covered appropriately by proposed Instruction 8.a.ii, which should be retained. If the interest of the related person is merely as a creditor of the other party, disclosure should not be required if the transaction is "ordinary course".

B. Procedures for Approval of Related Person Transactions

- **Should we require disclosure regarding the review, approval or ratification of related person transactions? Should the rule include the proposed requirements? Are there other types of information that are material that should be included in the description of the approval process?**

We believe that most companies already require review, approval or ratification of transactions in which a related party has a material interest by independent directors (usually the audit committee). We note that NASDAQ companies are required to have their audit committee approve each transaction required to be disclosed under Item 404 and NYSE companies are encouraged to do the same.

- **Should we require disclosure of transactions required to be reported under Item 404(a) where a company's policies and procedures did not require review or were not followed?**

A company should not be required to detail ordinary course transactions that would not normally be required to be approved by the Board.

D. Corporate Governance Disclosure

- **Should the disclosure requirements proposed to be consolidated in Item 407 continue to remain separate? If so, why? Is the proposed location of this consolidated disclosure appropriate, including the proposed options for disclosing independence definitions?**

While we support the proposal to consolidate corporate governance disclosures in one location, we note our suggestion to combine the CD&A and compensation committee disclosures into one section either under proposed rule 402(b) or 407(e), as discussed above in our comments to the CD&A section.

- **Are there independence standards that would be preferable to the ones referenced in proposed new Item 407?**

We support the identification of independent directors under the corporate governance disclosures of Item 407 and the proposal that listed issuers identify the listing standards applicable to the registrant in determining independence as required by proposed rule 407(a)(1)(i). We also believe that it is appropriate, as required by proposed rule 407(a)(1)(ii), for non-listed issuers to identify independence standards of a national securities association that they would follow in determining whether or not directors are independent. Since these self-regulatory organizations (SROs) have well-developed independence standards for their listed companies, we believe it is useful to identify the relevant SRO in the registrant's discussion of director independence.

To streamline disclosures, we believe that the proposed rule should clarify that it is sufficient to identify the listing standards applicable to the registrant in determining independence, without separately listing all the independence tests used in its independence determination. Such a clarification would obviate the need to repeat verbatim in the registrant's publicly-filed documents independence standards that are already made publicly available by the SROs.

We ask the Staff to consider omitting Item 407(a)(2), the disclosure of the issuer's own definitions for determining whether directors are independent. Those definitions for listed issuers are necessarily more stringent than the standards required by the SROs and are typically used as categorical standards by NYSE-listed companies to obviate, as discussed in the commentary to NYSE Rule 303A.02(a), disclosure of each immaterial relationship considered by the board in determining independence. As discussed in the NYSE commentary, the listed issuer must disclose these categorical standards (or explain each relationship determined not to be material), and the issuer still must discuss any relationship for directors determined to be independent that does not fit within the categorical standards. Adding an additional requirement to the SEC rules that companies disclose such independence standards on their web sites or attach them to their proxy statements adds an extra compliance layer that is duplicative (for companies that follow the NYSE standard) and not particularly helpful (since it does not enhance discussion of independence standards other than what is already required).

- **Should companies that are not listed on a national securities exchange or on an inter-dealer quotation system of a national securities association be able to reference their own standards of independence that they have adopted, or should those companies be required to refer to established listing standards as proposed?**

We believe companies that are not listed should be able to reference their own standards of independence.

- **Should we require as proposed a description of transactions considered (other than those that would be reported under proposed Item 404(a)) when determining if the independence standards were met?**

We do not believe that a description of transactions considered is helpful disclosure regarding director independence, because those relationships that meet the independence tests of the SROs and would not be disclosed under Item 404(a) are not material relationships with the company. A list of immaterial relationships is burdensome to compile and not particularly useful to investors. In addition, disclosure of immaterial transactions considered may have one of the following effects on disclosure:

- NYSE-listed companies that adopted more stringent categorical standards may rescind them, if having such standards no longer obviates their requirement to discuss consideration of immaterial relationships considered by the board in determining independence, or

- If the proposed rule is modified so that categorical standards may be adopted and disclosed in lieu of discussion of such immaterial relationships, then all companies are effectively governed by a rule substantially similar to the NYSE rule, even if they are listed on other exchanges.

We believe that independence tests should follow the rules of the SROs that have promulgated them, and that disclosure should be governed accordingly.

As discussed above, the 404 standards need to be reasonable and spelled out. The danger of a "principles based" approach is that careful companies will over disclose and disqualify almost everyone from service on the compensation committee. It is a good governance practice, currently engaged in by many companies, to discuss whatever can be identified in regard to a director, no matter how trivial, in reviewing independence status. It would be ludicrous to disclose every minute bit of information under 404, both because it would result in meaningless disclosure but because the disclosure itself would disqualify nearly every director from service on the compensation committee. This rule would also discourage voluntary disclosure in the proxy statement since the disclosure itself would apparently result in disqualification. Another obvious consequence would be to have companies exclude anything regarded as trivial and sensibly not a disqualifying transaction from its independence discussion. This cannot be the desired result.

- **Is there any reason why we should not eliminate the requirement that companies provide disclosure in their proxy statements regarding directors who have resigned or declined to stand for re-election?**

We believe it would be appropriate to eliminate that requirement since shareholders will not be acting on any ballot item related to those former directors.

- **Are there circumstances in which disclosure should not be required under proposed Item 407(a)? Should disclosure not be required for a director who is no longer a director at the time of filing any registration statement or report? Should disclosure not be required if information is being presented in a proxy or information statement for a director whose term of office as a director will not continue after the meeting to which the statement relates?**

We can envision circumstances under which disclosure should not be required under proposed Item 407(a), such as that relating to former directors since shareholders will not be acting on any ballot item related to those former directors.

- **Should we also move the disclosure required by Rule 10A-3(d) (under which companies must disclose whether they have relied on an exemption from the audit committee independence requirements of Rule 10A-3) to proposed Item 407?**

It appears logical that the disclosure required by Rule 10A-3(d) be moved to proposed Item 407.

- **Should the audit committee charter disclosure requirement be changed to be consistent with the nominating committee charter disclosure requirements? Should the compensation committee charter disclosure requirement be the same? Should there be any changes to the proposed compensation committee disclosure requirements?**

We support the Staff's proposal that disclosure requirements regarding committee charters should be consistent among the board's key committees. If the audit committee charter is posted on the company's public web site (and company discloses the web site address), there should be no need to include that charter separately as an exhibit to the proxy statement.

With respect to compensation committee disclosure requirements, we believe that it would be helpful to clarify that issuers need not provide separate narrative discussion of the compensation committee's scope of authority and ability to delegate authority under proposed Items 407(e)(3)(i)(A) and (B) if such authorities are included in the publicly disclosed compensation committee charter. Summarizing charter provisions would be repetitive and not particularly helpful, and there is no reason to require such summaries separately of compensation committees.

- **Are there any disclosure requirements regarding compensation consultants that we should add to or delete or change from the proposal?**

While it may be helpful to disclose whether or not the compensation committee had access to or consulted with compensation consultants, proposed Item 407(e)(3)(iii) is overly broad and may serve as a disincentive to use independent consultants on certain matters. Consultants may be used, for example, to assess appropriate compensation for a specific business function or to assess the appropriateness of an employment offer in a competitive situation. Disclosure of the compensation committee's instructions and directions in these contexts could cause competitive harm, or it may devolve into granularity that is of little use to understand the compensation committee's processes and procedures for determining executive compensation. Compensation committees may refrain from engaging consultants rather than face the possibility of such disclosure. In addition, compensation consultants may be unwilling to consult with management to obtain information needed in particular assignments if such consultations resulted in public disclosure. We believe that proposed Item 407(e)(3)(iii) would in fact be strengthened by deleting disclosure requirements with respect to the compensation committee's instructions and directions to the compensation consultants and the identification of executive officers consulted in carrying out an assignment.

E. Treatment of Specific Types of Issuers

1. Small Business Issuers

As discussed above, any proposal that creates more principles-based disclosure and eliminates unnecessary complexity and confusion is in the best interest of shareholders and will ease the burden on smaller public companies. We note that for these companies, more guidance in the form of Instructions, FAQs and other vehicles will help them avoid the need to rely heavily on expensive outside advisors.

We note, as we explained above, the proposals for expanded Item 404 disclosure that will require inquiries of third parties who are only remotely associated with the issuer will create a disproportionate burden for smaller public companies. We encourage the Commission to focus on relationships that are direct or that are ascertainable. We also encourage the Commission to focus on relationships that go beyond the ordinary course of business or that are unquestionably material. If ordinary course or immaterial transactions must be disclosed, the tendency particularly in smaller public companies may be for the boards to become involved where normally they would not and need not, to ensure that every transaction required to be reported is "properly" approved. As explained above, these activities drive expenses up. While the incremental effect of each of these compliance activities is small, the aggregate effect is significant and disproportionately erodes smaller public company shareholder value.

We agree that posting committee charters on the issuer's website is an excellent practice. From the smaller public company standpoint, we believe that public website posting is the ideal form of disclosure because it is quick and easy to accomplish with relatively no associated cost. To require additional disclosure or summaries of information that is fully disclosed would eliminate the benefit and once again create an annual expense to draft, proof, review, and print.

As discussed above, we do not believe that enhanced disclosure about the inner workings of the compensation committee's consultations with independent consultants will significantly benefit investors. In our experience with smaller public companies, the consultants often consult with both management and the committee, which is more efficient from a cost standpoint. As discussed above, increased disclosure likely would have a chilling effect on the relationship with management and force management to seek a separate consulting relationship eliminating any efficiencies. Additional disclosure also might create an environment where compensation committees seek independent analysis and advice on every decision they make, regardless of materiality, further increasing the cost. The potential competitive harm discussed above could be even more significant for the smaller public company where the disclosure might provide too much transparency into sensitive discussions. Shareholders should want to know that the compensation committee is seeking advice from competent and independent advisors, but not the details of the nature of those discussions.

F. Conforming Amendments

2. Rule 16b-3 Non-Employee Director Definition

The interpretive letters over the years said that for purposes of the Rule 16b-3(b)(3)(C) definition, a director's interest in a transaction required to be disclosed under 404(a) had to be "material" (and one from which he derives a "special benefit") to disqualify the director from meeting the definition of "non-employee". To conform with the materiality threshold of the disclosure requirement and these prior interpretations, the wording of Rule 16b-3(b)(3)(C) should be modified by adding the word "material" ("does not possess a material interest in any other transaction for which disclosure would be required pursuant to Rule 404(a) . . ").

VI. Plain English Disclosure

- **Will the plain English requirements discussed above be sufficient to discourage boilerplate and promote clear, more user-friendly Exchange Act reports and proxy or information statements? If not, how should we revise the requirements?**

Yes.

- **Are there differences between proxy statements and Exchange Act reports which would require different requirements in order to accomplish the objectives of plain English? If so, what are the different requirements and how should the different requirements be addressed?**

No.

- **In addition to the proposal, should we require that information provided under proposed Items 402, 404 and 407 in other filings, such as Form S-1, be written in plain English?**

Yes.

- **Since only portions of the disclosure under proposed Item 407 would be required to be included in Exchange Act reports, should we specifically require that all Item 407 disclosure be in plain English? If so, how should we impose this requirement?**

We favor plain English in all filings.

- **Should we require that all or portions of proxy or information statements be in plain English? If so, should a plain English requirement apply to disclosure provided by anyone who solicits a proxy with a proxy statement, or should it be limited to just companies making a solicitation of their shareholders? Should shareholder proposals under Exchange Act Rule 14a-8321 or financial statements and related disclosures under Item 13 of Schedule 14A be excluded from any plain English requirements applicable to proxy statements? Would a plain English requirement under the proxy rules have the potential to increase disputes, including possible litigation, that could inappropriately delay or frustrate the conduct of solicitations and shareholder meetings or otherwise interfere with the proper operation of the proxy rules?**

We favor plain English in all filings. Our members were leaders in the plain English pilot program and our experience has been that the litigation fear did not materialize when plain English was used in filings under the Securities Act of 1933 or the MD&A. Many of our members already use plain English in the proxy statement.

VII. Transition

These rules are complex, and issuers with the best intentions may struggle to provide the intended new disclosures. We encourage the staff to be available for interpretive questions on a real time basis during the 2007 proxy season (such as an 800 number that is not funneled to voice mail), to publish interpretations and clarifications on a real-time basis on the Commission's website and to publish findings on what was good/lacking no later than October 2007, to facilitate the rapid production of the new disclosures.

Thank you for the opportunity to comment on this proposal. Please do not hesitate to contact us if you have any questions.

Cordially,

Securities Law Committee
Society of Corporate Secretaries and Governance Professionals

By: Pauline A. Candaux, Chair

cc: Lydia Beebe, Chair, Corporate Practices Committee
Carol Hayes, Chair, Listing Standards Committee
Cary Klafter, Chair, Public Affairs Committee
William Mostyn, Society Chair-Elect
David Smith, Society President
Susan Ellen Wolf, Society Chair

APPENDIX ONE

Compensation Realized in Fiscal Year

Name & Position	Year	Salary	Annual Bonus	Cash Payout of Long-Term Contingent Bonus	Non- Performance Based Stock Received ($)	$ value of Stock Received on Satisfaction of Vesting or Performance Hurdles	Option Value Realized ($)	All Other Compensation	Total

Any necessary explanation.

Explanation of All Other Compensation

Name (a)	Perquisites and Other Personal Benefits (b)	Earnings on Company Contributed Deferred Compensation (c)	Tax Reimburse - ments (d)	Discounted Securities Purchases (e)	Payments/ Accruals on Termination Plans (f)	Increase in SERP Pension Actuarial Value (g)	Insurance Premiums (h)	Other (i)

Explanation.

Contingent Compensation
Awarded [and Outstanding] in Fiscal Year

(Note: These amounts will appear in the Compensation Realized table when actually realized. Shareholders should be aware that to add these amounts to those in the Compensation table would result in double counting awards.)

Name & Position	Stock Option Awards # $		Performance Shares or Units # $		Target Amount Under All Other Incentive Plans		Total Contingent $

Indicate performance periods, vesting schedules, etc. in footnotes.
Add necessary explanation re Black-Scholes, etc.

Retirement, Termination and Deferred Compensation

Name & Position	Annual Benefit if Retired on Dec. 31, ___	Annual Benefit if Retired at Normal Retirement Age Under Plan	Value of Termination Pay if Terminated On Dec. 31, ___	Value of Termination Pay at Likely Future Date	Value of Company Contribution to Deferred Compensation Plan and Earnings on Company Contribution in Fiscal Year

Add necessary explanation.