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July 20, 2006

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

Re: Update to Comments Previously Provided for Executive Compensation and Related Party Disclosure (Ref. S7-03-06)

Dear Ms. Morris:

I am writing on behalf of the State Board of Administration (SBA) of Florida to express our views on stock option grant practices and supplement our prior comments submitted on April 10, 2006, related to the SEC's proposed executive compensation disclosure rule.

The SBA manages the Florida Retirement System (FRS), the fourth largest public pension plan in the United States, with assets totaling approximately $120 billion reflecting the service of 920,000 beneficiaries and retirees. The SBA Trustees are Governor Jeb Bush, Chief Financial Officer Tom Gallagher, and Attorney General Charlie Crist. The SBA commends the SEC on the option backdating investigations and strongly supports the adoption of additional disclosures and rules that would discourage and prevent the manipulation of future stock option grants. We believe it is imperative that the Commission investigate fully all instances where there is evidence of backdating and take strong action against all participating parties, including management, individual directors and legal counsel in those circumstances where improper behavior is discovered.

As a major institutional investor, the SBA has a vested interest in reforming corporate governance practices in the United States, and we have followed the unfolding revelations about stock option manipulations closely. As we noted in our prior letter to the SEC, we believe that poorly structured pay packages may harm shareowner value by wasting owners' money, diluting ownership and creating inappropriate incentives that may damage a company's long-run performance. Through additional option and equity grant disclosures proposed below, shareowners would be better equipped to monitor the boards of directors and hold them accountable for poor compensation practices.

Backdating or pre-emptive timing of options and other equity instruments increases the fair value of those grants by a significant amount. Although the spread between the artificially lower exercise price of a backdated option and the moving stock price can certainly diverge and ultimately generate a "worthless" option grant, the arbitrary adjustment to the options' exercise

price nonetheless provides a material increase to the potential value of backdated options. Over time, the probability of a payout and the payout itself both increase in direct proportion to the difference made by backdating. Given that stock prices generally increase over the typical four to seven year vesting timeframe, the marginal increase in the options' value has a very high probability of increasing executive compensation. For these reasons, the SBA routinely votes against executive compensation plans that allow discounting of options (i.e., exercise prices less than 100% of the stock's price on the date of grant). The practice of backdating in effect enables companies to issue discounted options without seeking shareholder approval. We would ask that the Commission ensure shareholders will have the information they need surrounding such events, in the form of enhanced disclosures, to monitor these important compensation practices.

Although the SBA does not attempt to micro-manage board decision making, the improper granting of stock options—either through backdating of grants and measurement dates or timing grants prior to positive news announcements in a practice known as "springloading"—is completely inappropriate and destroys the very incentive elements that proponents of options have long touted. In those circumstances where grant dates preceded board approval and internal controls were deficient to prevent the transactions, senior executives (as insiders) benefit at the expense of all other shareowners. Backdating of stock options has had other related negative consequences on firm's accounting practices (with several financial restatements) and has highlighted what can only be described as a shocking level of ineptitude by compensation committees at the firms involved. In sum, these corrupt practices have shed a great deal of light on the recent historical compensation practices of U.S. companies—both pre and post implementation of the Sarbanes-Oxley Act of 2002—and appear to have been widespread.[1]

The SBA encourages the Commission to consider potential amendments to the proposed disclosure rule as well as other disclosures and actions in response to these issues. We suggest the following enhancements to the compensation disclosure proposal, requiring that companies disclose all of the following:

- Dates for all prior-year compensation committee meetings in the proposed Compensation Discussion and Analysis (CD&A) as well as individual director attendance;

- Dates on which compensation committees approved share-based awards on an on-going basis through 8-K filings and then recapped for the fiscal year in the annual proxy statement;

- Effective grant dates for all share-based awards if different than the approval dates above, on an on-going basis through 8-K filings and recapped for the fiscal year in the annual proxy statement. The SBA continues to support the Commission's proposed disclosure of the grant date for stock or option awards in the Supplemental Annual Compensation Tables;

- Require the compensation committee to determine and disclose if any effective grant dates were selected to take advantage of pending release of material information about the

[1] In their research titled "What fraction of stock option grants to top executives have been backdated or manipulated?", Erik Lie of the Tippie College of Business at the University of Iowa and Randall Heron of the Kelley School of Business at Indiana University estimate that 29.2 percent [or 2,270] of the examined companies had backdated or otherwise manipulated option grants to top executives. The authors examined 39,888 stock option grants to top executives at 7,774 companies dating from January 1, 1996, to December 1, 2005.

company, including the discretion (if any) allowed for executives to select or recommend grant dates;

- Require the disclosure of the adoption (or lack thereof) of a comprehensive policy regarding equity grants, including specific components of the policy, including grant-date timing, methodologies for establishing strike prices, the roles of responsible parties related to key steps in establishing and administering equity grants, and fundamental compliance procedures for the policy's enforcement.

The SBA also suggests that the Commission review the rules relating to the granting of share-based compensation awards with particular attention on the timing of such grants before or after 8-K filings. The Commission may wish to develop some mechanism for oversight and disclosure of option grants that appear to benefit from the release of 8-K or other positive material information. The SBA views such awards as de facto insider trading, and we believe the Commission should ensure shareholders are protected from insiders using private information to their personal advantage.

As well, we believe the Sarbanes-Oxley Act has strengthened the reporting requirements under Section 16(a) of the Exchange Act and timely filing thresholds have been an impediment to backdating practices since their implementation in August 2002[2]. However, in some instances the Form 4 filings are not being made in a timely manner.[3] The SBA suggests the Commission consider increasing enforcement action and penalties for non-compliance with the current two business-day filing requirement.

We value the opportunity to express input on corporate governance issue and fully support the Commission's efforts to improve the quality of the information investors receive about executive compensation. If you have any questions or would like further information, please contact Michael McCauley, Director of Investment Services & Communications, at (850) 413-1252, or me.

Sincerely,

Coleman Stipanovich
Executive Director

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[2] The study by Erik Lie and Randall Heron concludes that before the Sarbanes-Oxley (SOX) Act went into effect on August 29, 2002, 23 percent of unscheduled grants had been backdated, whereas subsequent to the new SOX imposed two day disclosure requirement, only 10 percent of unscheduled grants had been backdated.

[3] The study by Erik Lie and Randall Heron found that 23% of all companies studied had failed to make timely filings of equity awards via Form 4 disclosure (i.e. within two business days of grant). The authors estimate that 19.9 percent of post-SOX option grants that were filed late had been backdated.