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Via Electronic Mail

October 23, 2006

Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F. Street, NE
Washington, D.C. 20549-9303

Re: Executive Compensation Disclosure
File No. S7-03-06; Release Nos. 33-8735, 34-54380; IC-27470

Dear Ms. Morris:

The Capital Markets Committee (the "Committee") of the Securities Industry Association ("SIA")[1] welcomes the opportunity to respond to the request of the Securities and Exchange Commission (the "Commission") for additional comments on the Commission's proposed disclosure requirement regarding the total compensation and job description of up to an additional three highly compensated employees who earn more than any of the named executive officers. This proposal was originally presented in the Commission's release entitled "Executive Compensation and Related-Party Disclosure" (the "Proposing Release") dated January 27, 2006, but was not included in the final rules adopted on July 26, 2006.

Introduction

In its comment letter, dated April 10, 2006 (the "Initial Letter"), on the Proposing Release, the Committee expressed its belief that the Commission should not adopt its proposed requirement relating to disclosure of compensation paid to highly compensated employees who are not executive officers. In the Initial Letter, the Committee noted that (i) the Commission had not identified any coherent rationale for its proposed requirement, (ii) imposing such a requirement would be inconsistent with the policy principles underlying the requirement that issuers disclose

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[1] The Securities Industry Association brings together the shared interests of approximately 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (including investment banks, broker dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93 million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated $236.7 billion in domestic revenue and an estimated $340 billion in global revenues. (More information about SIA is available at: www.sia.com.)

information relating to compensation and (iii) the provision would have significant adverse practical consequences and, in addition, be exceedingly expensive and difficult to administer.

In a release dated September 8, 2006 (the "Additional Comment Request"), the Commission has requested additional comment on this proposed disclosure requirement. In particular, the Commission has requested comment as to whether its proposal should be modified to apply only to large accelerated filers and require disclosure only with respect to employees who have responsibility for significant policy decisions within the company, a significant subsidiary of the company or a principal business unit, division or function of the company.

The Committee believes that this modified proposal is as flawed as the initial proposal and would, furthermore, be inconsistent with the Commission's current rules regarding disclosure of information regarding employees. The Committee continues to believe that the Commission should not adopt any disclosure requirement relating to compensation paid to employees who are not executive officers.

The Commission Still Has Not Articulated a Compelling Rationale For the Proposed Disclosure Requirement

As the Committee noted in the Initial Letter, the Commission's rules on compensation disclosure have for many years been limited to executive officers and directors. If adopted, the proposal would be a sharp departure from this long-standing practice. The Commission should not take such a step without clearly articulating a compelling rationale for such a change.

The Additional Comment Request, however, includes no such rationale. In the Initial Letter, the Committee noted that the only rationale identified in the Proposing Release for such a disclosure requirement was that it would provide shareholders with information about "the use of corporate assets to compensate extremely highly paid employees in a company." Nowhere in the Proposing Release, however, did the Commission explain why disclosure regarding the use of corporate assets to compensate extremely highly paid employees in a company requires greater prominence than the use of corporate assets for any number of other important corporate purposes.

The Additional Comment Request similarly lacks any compelling rationale for the proposal. In the Additional Comment Request, the Commission states that it is "concerned" about disclosure with respect to compensation paid to employees whose total compensation for the last completed fiscal year was greater than that of one or more of the named executive officers ("NEOs"). It goes on to say that providing compensation disclosure with respect to any such employees who exert significant policy influence at the company, at a significant subsidiary of the company or at a principal business unit, division or function of the company may be "important information" for investors seeking a fuller understanding of a company's compensation program. Finally, the

Commission states that knowing the compensation and job positions of these highly compensated policy-makers should "assist in placing in context and permit a better understanding of the compensation structure of the named executive officers and directors."

Nowhere, however, is there an explanation of why this information should be considered "important" enough to require disclosure. The Commission's suggestion that such information is necessary in order to place NEO compensation in "context" would seem to be, for a number of reasons, an insufficient justification for the proposed requirement. First, this additional information would tell investors nothing about the incentives or integrity of the issuer's executive officers. As described below and in the Initial Letter, this, historically, has been the theoretical basis for requiring any form of compensation disclosure. Second, the need for additional contextual information regarding NEO compensation would seem to be minimal given the Commission's recent extensive changes to Item 402 of Regulation S-K. Third, the required information would be presented in a haphazard manner. The "context" would be provided only in those instances in which the issuer happened to have an individual with policy-making responsibility who had higher total compensation than one of the issuer's NEOs. This would very much be subject to change from year to year. For example, investors may have this "context" in a year in which there is a change in the principal financial officer (such that the total compensation for both the incoming and outgoing principal financial officers is presented on a partial year basis and is therefore lower than it would otherwise be), but not have that information in the next year. Finally, even in those situations in which the disclosure would be required, it would be of extremely limited use in terms of providing "context" for a deeper understanding of NEO compensation. This is because, at most issuers, the variable portion of NEO compensation is tied primarily to company-wide performance whereas the variable portion of the compensation paid to employees who are not responsible for policy-making at the issuer level is tied to their own results or the results of their business units. In many instances in which a non-NEO's compensation would be required to be disclosed, it would be because that individual (or the business unit in which he or she worked) had enjoyed a particularly successful year. The compensation of these individuals is generally based on factors that are completely independent of the factors on which the compensation of NEOs is determined. As such, disclosure regarding their compensation is of extremely limited value as a comparison point for understanding NEO compensation.

The Committee acknowledges again, as it did in the Initial Letter, that some segments of the public and press have a great deal of curiosity regarding amounts paid to highly compensated individuals. With respect to employees who are not executive officers, however, the Committee still does not believe that the benefit of providing this disclosure, which is tenuous at best, outweighs its cost. Therefore, the Committee again requests that no provision relating to disclosure of non-executive officer compensation be adopted.

Adoption of this Requirement Would be Inconsistent with the Policy Justifications for Requiring Disclosure Regarding Compensation

In the Initial Letter, the Committee traced the history of the requirement that executive officer compensation be disclosed. It noted that the Commission's traditional justification for requiring disclosure about how policy-makers are compensated is that such information was important in allowing investors to evaluate an issuer and its securities, particularly given that policy-makers will sometimes have a hand in setting their own compensation. Disclosure of this sort provides critical information regarding the integrity and incentives of those individuals who set policy for the issuer.

No such purpose would be served by requiring disclosure regarding employees who are not executive officers. Employees who are not executive officers by definition do not have a policy-making function with respect to firm-wide strategic imperatives and business initiatives. Disclosure of their compensation provides investors with no information regarding the integrity of management or the course that it is likely to set for the issuer.

The Commission modified the proposal so that disclosure would be required only with respect to employees who have significant policy influence at the company, at a significant subsidiary of the company or at a principal business unit, division or function of the company. This modification does not address this fundamental criticism of the proposal. Disclosure of the total compensation paid to any employee who is not a policy-maker *at the issuer level* provides investors with no information regarding those individuals entrusted with establishing the course that the issuer is to follow. Compensation for such individuals is, furthermore, nearly always outside of the direct purview of the Board of Directors or its Compensation Committee. Information regarding total compensation paid to non-executive officers is therefore of no more use to investors than would be information regarding the issuer's expenditures on machinery, real estate, raw materials or anything else needed to run a business. There is no good reason for the Commission to require that compensation paid to employees who are not executive officers be disclosed and the Committee again requests that the Commission not do so.

Adoption of the Proposal Would Have Significant Adverse Practical Consequences

The Committee also continues to be concerned that significant adverse practical consequences could result from the imposition of this requirement. These concerns, which were also discussed in the Initial Letter, are relevant even if the Commission adopts the modified version of the proposal articulated in the Additional Comment Request. The potential adverse consequences include:

> ***Loss of Talent.*** The securities industry is comprised of a large number of institutions, including publicly-traded domestic companies, private entities such as hedge funds,

foreign private issuers, and U.S. subsidiaries of foreign entities. The principal asset of most companies in the industry is human capital. As a result, the competition for talented employees in the industry is fierce.

Domestic public companies are the only industry participants who will be subject to the Commission's proposed new disclosure requirement. They will be placed at a competitive disadvantage to domestic private companies, foreign private issuers and U.S. subsidiaries of foreign entities in at least two ways. First, the total compensation paid to an additional group of their highly compensated employees will now be known to all of their competitors, but they will not have comparable information regarding the compensation paid to employees of their competitors who are not publicly-traded domestic companies. These competitors will therefore have a distinct informational advantage in honing compensation offers that target talented employees. Second, employees who would be subject to this disclosure requirement may prefer and ultimately decide (based on both privacy and personal security concerns) to work in an environment in which their compensation is not readily discernible from a public filing. To the extent that this were to occur, the Commission's proposal could have the perverse effect of harming shareholders by contributing to a loss of talent at domestic public companies. It would also provide an additional reason for companies to choose to avoid the public capital markets in the United States.

Disruption of Internal Pay Scales. Disclosure of the total compensation paid to an additional class of highly compensated employees is likely to have a disruptive effect on the internal pay structures at companies that are required to make this disclosure. Once compensation paid to this additional class of employees is disclosed, that compensation will inevitably become a benchmark used in negotiations regarding the compensation to be paid to other highly compensated employees. This, in turn, could lead in many instances to an increase in an issuer's total compensation costs, which would, again perversely, ultimately harm shareholders.

Cost. In the Additional Comment Request, the Commission noted that no commenter supplied cost estimates regarding its proposal to require disclosure regarding compensation paid to non-executive officer employees. The Committee believes that the most substantial costs to affected companies will be those identified above. These are not susceptible of easy quantification, but could be quite significant.

As for out-of-pocket or opportunity costs, these will obviously differ widely depending on an issuer's size, organizational complexity and particular circumstances. For all large accelerated filers, though, significant internal costs would have to be incurred to review their entire organizational chart and determine whether there are any employees who fit within the new category of employee (i.e., employees who are not executive officers but

> who nevertheless have significant policy-making responsibility) that the new rules would create. In addition, the Committee expects that substantial outside counsel costs would be incurred by issuers in determining whether particular employees fit within the new category. These costs would not likely diminish over time, as in many instances the employees who are the most highly compensated will not be constant on a year-over-year basis. Although it is impossible to identify these potential outside counsel costs with precision, it appears that they would be substantial, running in many cases into the tens of thousands of dollars.

Adoption of the Proposal Would be Inconsistent with the Structure of the Commission's Rules Regarding Disclosure of Information Regarding Specific Employees

The Committee also notes that adoption of this proposed disclosure requirement would be inconsistent not only with the Commission's historical rules regarding executive compensation disclosure, it would also be inconsistent with the entire structure of disclosure requirements relating to specific employees. As currently constituted, the Commission's disclosure rules call for a wide range of information regarding specific employees. This information includes the compensation disclosure called for by Item 402 of Regulation S-K, but also includes information regarding employment history (Item 401(e)), involvement in legal proceedings (Item 401(f)), related-party transactions (Item 404) and trading in securities (Section 16(a) and the Commission's rules thereunder). In nearly every case, this information is limited to employees who are executive officers.[2]

The Commission's proposal would create an unknown class of employees (i.e., those who are not executive officers of an issuer but nevertheless have significant policy-making authority with respect to one of its significant subsidiaries, or a principal business unit, division or function). Disclosure with respect to this class of employees would be required, but only with respect to a specific type of information (i.e., compensation only), and only by a limited class of issuers (i.e., large accelerated filers), and then only if particular circumstances happen to be present (i.e., the additional employees happen to have more in total compensation than any NEO). It simply is not apparent why information regarding compensation should be placed in an entirely different class than information regarding any of the other subjects covered by the Commission's existing rules relating to disclosure concerning employees.

[2] Item 401(c) does, of course call in certain limited instances for disclosure regarding employees who are not executive officers. In addition, the Section 16 rules are, of course, tied to the Rule 16a-1(f) definition of 'officer,' rather than the Rule 3b-7 definition of 'executive officer.'

Conclusion

The Committee thanks the Commission for the opportunity to present its views. The Committee requests again that the Commission not adopt this proposal. If the Commission continues to believe that some additional disclosure in this area is required, the Committee suggests that the Commission instead adopt a less burdensome alternative. One such alternative would be a requirement that issuers state, without elaboration, whether they have any employees who have more in total compensation than the lowest paid named executive officer. This will provide some of the context the Commission desires without having the negative consequences described above.

If you have any questions or would like to discuss these issues further, please contact the undersigned or Amal Aly, SIA Vice President and Associate General Counsel, at 212-618-0568 or aaly@sia.com.

Very truly yours,

/s/ John Faulkner
John Faulkner
Chairman
Capital Markets Committee

cc: The Hon. Christopher Cox, Chairman
The Hon. Cynthia Glassman, Commissioner
The Hon. Paul Atkins, Commissioner
The Hon. Roel Campos, Commissioner
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