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Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

File No. S7-03-06
Interim Final Rule: Executive Compensation Disclosure
Release Nos. 33-8765; 34-55009

Dear Ms. Morris:

Thank you for providing this opportunity to comment on the Securities and Exchange Commission's (the Commission) interim final rule "Executive Compensation Disclosure" (the Interim Final Rule). We offer the following comments on areas where we believe the Commission may enhance the usefulness of the disclosure requirements of Item 402 of Regulation S-K.

Accounting Policy Disclosure

We believe that the principles based disclosure requirements of the executive compensation rules as currently issued adequately instruct registrants to consider whether or not the disclosures required by FASB Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment*, (SFAS 123R) are sufficient for readers to understand the basis under which stock compensation is being reported under Item 402 of Regulation S-K. Rather than prescribe in Item 402 of Regulation S-K the level of detail for additional disclosures that may be required to describe how various forms of compensation are accounted for under generally accepted accounting principles and therefore reflected in the Summary Compensation Table, we believe Regulation S-K should provide for registrant judgment in determining the level of detail needed to adequately convey to readers depending on the mix of compensation for any particular executive and its relative significance to total compensation.

SFAS 123R Transition Method

The transition amendments outlined on page 26 of the adopting release state that "we are requiring companies to utilize the SFAS 123R modified prospective transition method for Item 402 purposes." Separately the amended requirements provided on page 49 of the adopting release state that for S-K 402 (c)(2)(v) and (vi) the table should include "… the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with SFAS 123R…"

Many nonpublic companies (as defined by SFAS 123R) used the minimum value method to value awards for their pro forma disclosures prior to adopting SFAS 123R. Because this method omits volatility, the compensation cost calculated using the minimum value method is not comparable to the amount calculated using the fair value method required by SFAS 123R. For this reason, SFAS 123R requires companies that previously used the minimum value method to use the prospective transition method of adopting SFAS 123R.

Under the prospective transition method, compensation cost is recorded in accordance with SFAS 123R only for awards granted or modified after the SFAS 123R adoption date while awards granted prior to the SFAS 123R adoption date are accounted for using the company's previous accounting policy. Therefore, the financial statements and the Summary Compensation Table of a company that was required to use the prospective transition method will include compensation cost recognized under either Accounting Principles Board Opinion No. 25 or the minimum value method permitted by SFAS 123R, depending on its accounting policy, for awards granted prior to adoption of SFAS 123R. By comparison, a company that previously applied the fair value method would adopt SFAS 123R using the modified prospective transition method, which requires that the unvested portion of awards granted prior to adoption be recorded in the financial statements, and therefore in the Summary Compensation Table, at fair value.

For example, when a nonpublic company that used the minimum value method in its pro forma disclosures files an initial public offering registration statement, we believe the amount included in the Summary Compensation Table should be the same amount that is included in the financial statements under APB 25. Similarly, many debt-only registrants, which are nonpublic companies under SFAS 123R but are still required to comply with Item 402, previously used the minimum value method of valuing stock based compensation for their pro forma disclosures and are therefore required to use the prospective method of adopting SFAS 123R. We recommend that the Commission clarify that stock based compensation be reported in Item 402 using the prospective transition method in those situations where the registrant previously used the minimum value method, as it is required by SFAS 123R to use prospective adoption.

<u>Service Inception Date Precedes Grant Date</u>

In those situations where an executive's service inception date precedes his or her grant date for a particular award, the registrant would be required to record compensation expense in its financial statements in accordance with SFAS 123R, starting with the service inception date. Under the Interim Final Rule, this compensation also would be included in the Summary Compensation Table. If the service inception date and the grant date are in different fiscal years, the Grant of Plan-Based Awards table would not include the award giving rise to the compensation until the terms of the award are final and the grant date as defined in SFAS 123R has been reached, which may be in the subsequent fiscal year. Registrants should explain, to the extent they believe material, the timing difference between these two tables. We agree that including the award in the Grant of Plan-Based Award table prior to the SFAS 123R grant date would not be appropriate because the terms of the award are not final. Including the award prior to finalization of its terms would introduce additional uncertainty into the Grants of Plan-Based Awards Table and create confusion for readers who may believe that changes in the terms of awards prior to finalization represent formal award modifications such as those otherwise required to be disclosed pursuant to Instruction to Item 402(k(2)(iii) and (iv) of Regulation S-K.

Placement of SFAS 123R Assumptions Disclosure

The adopting release states that "the full grant date fair value disclosure formerly disclosed in the Summary Compensation Table is moved to the Grants of Plan-Based Awards Table, where it is required on a grant-by-grant basis". However, the amended Instruction to Item 402(c)(2)(v) and (vi) states " Disclose assumptions made in the valuation by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in Management's Discussion and Analysis" while the amended instruction to Item 402(d) does not include the requirement to discuss the assumptions used in valuing the awards. We recommend that the instructions referenced above be amended to clarify that disclosure of the assumptions used to value the awards be included in the footnotes to the Grants of Plan-Based Awards table.

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If you have any questions about our comments, please contact Glen Davison at (212) 909-5839 or via email at gdavison@kpmg.com or Melanie Dolan at (202) 533-4934 or via email at mdolan@kpmg.com.

Very truly yours,

KPMG LLP