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April 1, 2006

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

Re: File Number S7-03-06

Ladies and Gentlemen:

I write to submit comments on the Commission's proposed new rules relating to executive compensation and related party disclosure (file # S7-03-06). I am an attorney who works within a corporation and my areas of responsibility include advising the company on SEC disclosure matters, including proxy preparation. I submit these comments not on behalf of my employer but as a practitioner who will have to understand, interpret and apply the rules. As such, I have examined the proposed rules and spent a considerable amount of time trying to determine how they would apply to the specific compensation and governance practices at my employer.

I appreciate that the proposed revisions to the compensation disclosure rules are intended to provide investors with a clearer and more complete compensation picture. The detail that will be required is going to result in extensive narratives and footnotes. It remains to be seen if investors will in fact understand and appreciate the volumes of information that will be contained in the narratives and footnotes - or whether investors will focus solely on numbers. Only the coming years will determine if the new rules will have provided a clearer and more complete compensation picture that is fully understood by investors.

- Compensation Discussion and Analysis ("CDA"):

As worded, the proposed rules relating to providing the CDA appear to be appropriate. Since each company has its own strategy and objectives, companies need flexibility in approaching the preparation of the CDA. For that reason, companies should be allowed some flexibility in preparing the CDA and the rules should not explicitly mandate what should be disclosed and discussed by every issuer in the CDA. Performance targets should continue to be excludable based on the potential adverse competitive effect, since disclosure of performance targets would provide a clear roadmap of a company's strategy and specific business objectives considered important to a company. While under the new rules there will be very little about compensation that is not disclosed (thus making the information available to competitors), the Commission should not go so far as to require disclosure of specific performance targets.

On another point, if the Commission is really expecting disclosure in the CDA that is unique to each company (and avoids boilerplate), having the compensation committee members sign the CDA will bring accountability and "ownership" of the report to the directors - and force a focus on the compensation strategies and decisions specific to the company. Moreover, the information required by proposed rule 407(e)(3) duplicates in many respects what is required by CDA. Perhaps the Commission could consider consolidating these items and require a committee report that covers compensation analysis as well as compensation committee governance and procedures.

- Summary Compensation Table ("SCT")

The new requirement to determine the most highly paid officers based on total compensation may have unintended consequences. By including all of the "all other" compensation in determining total compensation (and hence the other top three most highly paid executives), an executive officer who has located to headquarters and has a housing and moving allowance that is considered compensation may end up as one of the top five, regardless of the significance of job function. Similarly, an officer who has been with the company for a long time and has

previously deferred large amounts of compensation that would have otherwise been paid to him, thereby accruing a large deferred compensation account, may have significant earnings on the deferred compensation that have the effect of putting the executive in the top five. Although a general counsel or a chief technology officer may be an executive officer, they typically do not occupy job functions managing significant revenue producing operations that are the focus of a company's business, as well as the focus of investors. Yet if either has a housing allowance or a large deferred compensation account, they may end up in the SCT. It is certainly appropriate to include "all other" compensation in the SCT (and it is advisable that "all other" compensation be in one column, just for the sake of clarification) and to detail in footnotes the elements of "all other" compensation. Nevertheless, including "all other" compensation in determining the top five most highly paid executive officers may lead to some strange and/or unintended results.

With respect to stock based awards, it is appropriate to use the FAS 123R valuation. This will ensure that the compensation amounts correlate to the expense amounts included in financial statements. Stock-based compensation should be reported in the year it is granted, as proposed. Reporting the stock-based compensation according to when it is recognized in the financial statements will create enormous difficulties in assembling data for Item 402, requiring lengthy and complicated footnote disclosures to explain how it is reported, thus lessening the prospect that a clear compensation picture will be shown.

- Disclosure of Employees who are not Executive Officers

The requirement to disclose compensation information of up to three employees who are not executive officers is probably one of the more controversial of the Commission's proposals. Speaking purely as one who would have to determine who these employees might be, I believe the benefits (if any) of this disclosure are far outweighed by the effort issuers will have to undertake to determine these three employees. As a preliminary matter, what do investors gain by learning that there are other individuals in an organization who have compensation in excess of the executive officers? A newly hired talent integral to the company's business that a company has pursued may have a

sign-on bonus or a special stock grant that puts him or her in this category - yet this employee may never be an executive officer. Similarly, packages made available to retain employees who are subject to pirating risks by competitors may also yield the same result.

Putting aside the issue of whether any value is gained from this disclosure, consider the logistical problems of identifying these individuals. Global employers with large worldwide operations will have to examine payrolls and compensation plans and information from around the world (and convert them to dollars as well). Further, these employees would be determined by "total compensation". As noted in the comments on the SCT, "total compensation" is determined not simply by salary, bonus and stock awards (which can be fairly easily determined) but also by "other compensation" such as housing and moving allowances, earnings on deferred compensation (a possible problem with a long term employee who has deferred significant amounts and has a large deferred compensation account balance but who might not otherwise be considered a significant employee), and increases in pension actuarial values (also a possible problem with long serving employees). If the determination of total compensation for these additional individuals excluded the "all other" compensation items, then the burden on companies in identifying these individuals would be significantly reduced. If "all other" compensation is included in determining these individuals, the disclosures in this regard may be suspect because of the difficulties companies will have in identifying the individuals.

- Outstanding Equity Awards at Fiscal Year-End

The instructions to this proposed table require disclosure of the expiration dates of the exercisable and unexercisable options. The Commission needs to clarify in its instructions if what is required is a range of expiration dates or specific expiration dates (and number of options associated with each expiration date) is required. If the latter, has the Commission considered how large the footnote will be and the corresponding benefit the investor may get from it? Disclosure of each option expiration date for executive officers who have been with a company for a long time who have not made it a practice to

systematically exercise their options will make for a long footnote.

The Commission asks for comment on whether the value of out-of-the-money options and stock appreciation rights should be included. If something is out-of-the money at a particular time, what value does it have? If the purpose of the table is to show an equity picture at a particular time, why try to value something that has no value at that time? How exactly is an out-of-the-money option or stock appreciation right valued?

- Retirement Plan Potential Annual Payments and Benefits

The proposed new table on defined benefit plan disclosure will provide a better understanding of defined benefit plan payments. The existing pension plan disclosure is confusing.

- Non-Qualified Defined Contribution and Other Deferred Compensation Plans Table

This table will provide additional information on non-qualified deferred compensation plans which should provide a better understanding to investors of how deferred compensation plans work. There is, however, a requirement to detail in a footnote how much of the aggregate balance at fiscal year end constitutes compensation previously reported in the SCT for prior years. As a preliminary matter, what does the Commission mean by compensation? Does it include deferrals of salary, which is compensation? Earnings on the deferred account balance? Registrant contributions? Since all these items are "compensation" under prior years, isn't this amount going to be equivalent to the account balance? If so, what is the purpose of the disclosure? Are registrants supposed to go back over many years of Summary Compensation Tables prepared under the prior rules to identify what was previously reported? Can the Commission provide guidance on how many years are to be taken into account, bearing in mind that named executive officers who have been with a company for a long time may have many prior years of disclosures? If an executive officer has moved in and out of the SCT over the prior years, is the registrant to include compensation for the prior years when the executive officer was not included in the table? Similarly, what is a registrant supposed to do

with an individual who has been an employee for a long time (and therefore may have a significant deferred compensation account balance) but has only recently become an executive officer included in the SCT? The Commission should bear in mind that for long term employees, the data may not be readily available to determine prior compensation (as opposed to earnings and deferrals). By these questions, I hope the Commission can understand and appreciate the difficulties registrants are going to face in assembling the data for this particular disclosure and provide some specific guidance on these points in the final rules.

- Narrative Discussion of Post-Employment Payments

Presumably this is another controversial element of the SEC's proposals. As a preliminary matter, the proposed rule requires disclosure of any payments made upon termination for any reason, without regard to whether the same type of benefit is made available to the general employee population. It is typical for companies to pay terminating employees their accrued vacation (in some states, it is mandatory). Do the Commission and investors really need a complete discussion (and quantification) of benefits made available to all departing employees, such as accrued vacation and 401(k) plan payouts? Isn't the focus intended to be on benefits made available to executive officers that are not available to the general employee population and shouldn't the Commission consider making a suitable exception in this case? If the exception is not made, there will be long boilerplate disclosures of the standard termination benefits made available to all employees, including executive officers.

The requirement to specifically quantify amounts due on termination is also problematic, particularly with respect to change-of-control agreements which typically provide for benefits on a going forward basis. Calculating these benefits will be difficult, particularly if a golden parachute excise tax gross-up has to be calculated. Registrants may try to make reasonable estimates and disclose the assumptions under those estimates, but, in the absence of retaining a third party provider to perform the calculations, the results themselves may be suspect. I understand why the Commission might want this information made available to investors. Nevertheless, the Commission

should understand that there are significant difficulties facing registrants in preparing these numbers.

- Compensation of Directors

The Commission should clarify in its instructions whether the footnote disclosure requirements on equity awards at fiscal year end are required to include all the footnotes required for Item 402(g), including the expiration dates of exercisable and unexercisable options at fiscal year end. If the footnote is required to include all the Item 402(g) footnote information, the footnote will be longer than the Director Compensation Table. In addressing this, the Commission needs to make clear whether a range of option exercise dates or specific expiration dates for each option are required.

- 8-K Reporting Requirements

The proposed revisions to the 8-K reporting requirements are a welcome relief. As the Commission knows, without a materiality limitation, registrants have been filing 8-K forms reporting amendments (even if minor or technical in nature) to any "plan or agreement" in which any executive officer participates. The proposed revisions are a sensible approach to ensuring that material compensation arrangements are reported on a "real-time" basis. Registrants will welcome this change and, under the new disclosure rules, investors will have access to significantly more information in the annual proxy statement, as well as real-time information on other significant compensation matters. It goes without saying that only material amendments to plans and agreements should be filed on Form 8-K. Do investors really gain anything when a non-qualified deferred compensation plan is amended to address technical IRS requirements (and are those amendments even understood by investors?)

The Commission has asked for comment on whether it should also require quarterly disclosure of material changes to information required by Item 402 and 404 in the Form 10-Q. Given the detail now required by Items 402 and 404, requiring quarterly updates will require companies to dedicate considerable resources on a regular basis to providing compensation disclosures. Given that all executive compensation plans and arrangements are filed

annually on Form 10-K (and amendments thereto are filed on Form 10-Q), what would be gained by recasting the tables every quarter?

- Transition

The proposed rules provide for the rules to be effective for Forms 10-K for fiscal years ending 60 days or more after publication and for proxy statements filed 90 days or more after publication. Many companies file their Form 10-K's incorporating the compensation information from the proxy statement. It is conceivable, depending on fiscal year end and date of proxy filing, that a Form 10-K will be filed under the previous rules and the proxy which the Form 10-K incorporates will be filed under the new rules. The Commission should consider some correlation between the two in setting effective dates.

- Costs/Benefits

Speaking purely as one who has taken the proposed rules and attempted to assemble the compensation tables based on the proposed rules, please be advised that the costs estimated by the Commission for compliance are woefully underestimated. Companies are going to need to dedicate additional and substantial resources to preparing compensation disclosures. Whether this will, like Sox 404 compliance efforts, provide huge new sources of revenue for outside consultants remains to be seen.

Thank you for the opportunity to provide these comments. I trust that these comments will help the Commission understand some of the issues and difficulties companies will face in preparing future compensation disclosures.

Very truly yours,

Nancy Lucke Ludgus

Nancy Lucke Ludgus
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