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April 10, 2006

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

Re: File Number S7-03-06
Proposed Amendments on Executive Compensation and Related Party Disclosure

Dear Ms. Morris:

We acknowledge the significant efforts taken by the Commission in formulating the proposed amendments to the executive compensation and corporate governance disclosure rules, and we appreciate this opportunity to provide comments on the proposed rules.

General Comments:

While there are many salutary aspects of the proposed rules, certain other aspects we fear will bury investors in details and therefore obscure the truly important aspects of executive compensation. As described below, we respectfully urge the Staff to recalibrate the final rules to better balance the goal of providing improved disclosure of material information to investors, while avoiding the inclusion of unnecessarily immaterial or duplicative (and therefore misleading) information and the resulting administrative burden and expense to issuers. In addition, we believe that certain sections of the proxy and 8-K rules should be clarified to avoid the disclosure of immaterial information and filing of unnecessary reports, as has happened following the release of the 2004 8-K revisions.

We note that there a number of thoughtful and balanced comment letters already posted on the Commission's site and we concur with many of the positions taken.[1] However, we also take exception to certain positions espoused by the growing cottage industry of self-styled governance advocates, newsletter publishers and others whose interests are served by ever-increasing complexity in the disclosure and governance arenas. We urge the Staff to be similarly skeptical.[2]

[1] In particular, we agree with most of the points and positions set forth in the letters posted by the Society of Corporate Secretaries and Governance Professionals (SCSGP) and the Association of Corporate Counsel (ACC).

[2] By way of example, we note a comment letter filed by Jesse M. Brill, chair of the CompensationStandards.com subscription service and chair of the Advisory Board of the National Association of Stock Plan Professionals (NASPP). In his letter, Mr. Brill cites the large number of CompensationStandards.com subscribers and NASPP members, creating an impression that the views expressed are representative of the subscribers to these services. However, though we are subscribers to these resources, which we generally find to be valuable sources of information, we were not consulted by Mr. Brill's organizations on this subject and, in fact, we disagree with many of the positions taken in Mr. Brill's comment letter. We urge the Staff not to assume by implication that Mr. Brill speaks for corporate issuers generally. In contrast, SCSGP and ACC, the membership organizations mentioned in the previous footnote, worked closely with their corporate members to identify issues and formulate positions to include in their comment letters.

The assumption that more disclosure is automatically better disclosure should not be a guiding principle. We believe that the final rules should provide a clear set of requirements that are as precisely drawn as possible, focused on the goal of providing better and more consistent disclosure of material information that is truly useful to investors.

Specific Comments:

1. **Determination of NEOs Should Not be Based on "Total" Compensation** [Item 402(a)]

We do not believe that the identification of the Named Executive Officers (NEOs) other than PEO and PFO should be determined based on "total" compensation as defined for the "Total" column of the Summary Compensation Table. This "total" number is misleading, in that it would mix current and future compensation and values, overcount equity awards and add other components, particularly through the "All Other Compensation" column, which are determined more by an officer's age, years of service, investment selections or market forces than by action of the compensation committee. This includes, for example, earnings on nonqualified supplemental pension plans and the increase in actuarial value of pension benefits, factors which reflect market performance or statistical assumptions as of a particular point in time, but are neither attributable to the issuer nor significant to investors. If the Commission believes that such information is material to investors, it could instead be disclosed in a separate table or column which is not incorporated in "total" compensation. Many of these components are in fact already included in other tables and should be excluded from "total" compensation to avoid unnecessary distortion and double counting.

We propose that the determination of the other NEOs be made on the basis of the salary and bonus columns of the Summary Compensation Table, or those columns plus additional amounts of compensation (such as perks and issuer contributions to plans) more closely tied to plan design or actually paid by the issuer. This would require revision of the "All Other Compensation" column.

We also note our general agreement with the well-articulated positions on these points that are set out in the comment letters posted by the Society of Corporate Secretaries and Governance Professionals ("SCSGP") and the Association of Corporate Counsel ("ACC").

2. **Change CD&A to a Report of the Compensation Committee which is Furnished Rather than Filed** [Item 402(b)]

As a number of other commentators have noted, due to the incorporation by reference of "filed" proxy materials into Exchange Act periodic reports, the proposed rules would result in the CEO and CFO certifying to proceedings of the compensation committee which involve their own compensation, matters with which the officers are not and should not be involved. The illogic of this seems apparent to us. In our view, investors are better served by having the body that sets executive compensation speak for itself in a "furnished" document, as under current rules. Concerns about eliminating "boilerplate" disclosures sometimes found in compensation committee reports are adequately addressed in the proposed rules by the increased specificity in the required subject matter. The assumption that merely making the CD&A a filed report will minimize boilerplate seems unfounded. To the contrary, we believe that the increased liability associated with a filed report (and corresponding CEO and CFO certifications noted above) will result in the CD&A being littered with cautionary statements and other "lawyer-crafted" language that will obscure, rather than enhance, information that is useful to shareholders.

3. **Harmonize Valuation of Equity Grants and Do Not Include in Total Column of Summary Compensation Table** [Items 402(c) and (h)]

We believe that including equity grants in numerous places in the proxy tables and at inconsistently determined values would be confusing and misleading to investors. For example, the "Stock Awards" and "Option Awards" columns include the value of grants in the most recent year as well as earnings on outstanding awards. While grants would be valued at the FAS 123(R) grant date fair value in the Summary Compensation Table, they would be shown at most-recent-year-end market value in the Outstanding Equity Awards at Fiscal Year-End table and again disclosed based on the amount realized at the time of exercise in the Option Exercises and Stock Vested table.

We propose the elimination of multiple reporting of equity grants. To the extent that equity grants will be reported in more than one place in the same proxy statement, they should be based on consistent valuation methodologies.

We note again our general agreement with the positions on these points that are set out in the comment letters posted by SCSGP and ACC.

4. **Retain Alternative Percentage Threshold for Perk Disclosure** [Item 402(c)]

If there is one aspect of the proposed rules that threatens to clog future proxy statements with minutiae more than any other, this is it. We believe that the materiality and reasonability of perks can only be assessed in relation to the overall compensation paid to the respective individuals. A "one-size-fits-all" hard dollar threshold for disclosure of perquisites can not fairly be established. Perquisites of $11,000 to an executive whose total annual compensation is $2,000,000 is not meaningful information, while perquisites totaling $9,000 to an executive making $100,000 may be meaningful. Yet, under the proposed rules, the former would have to be disclosed, while the latter would not. We favor the current approach of calculating the lesser of a percentage of salary and bonus (to address the proportionality concerns expressed above) and an absolute dollar amount (to ensure disclosure in the case of an executive with large dollar amounts of perks that would otherwise fall beneath the percentage threshold). We would suggest retaining the current approach, with the percentage threshold reduced somewhat from its current level, while leaving the existing dollar threshold intact (e.g., the lesser of 5% of salary and bonus, or $50,000). The dollar threshold should be periodically adjusted to compensate for inflation.

5. **Retain Exemption for Non-Discriminatory Retirement Benefits from Plan Compensation to be Disclosed** [Item 402(c)]

Under the proposed rules, all retirement benefits paid by the issuer would be included in the "All Other Compensation" column and detailed in a footnote, regardless of whether the benefits provided to the NEOs are fundamentally different from those offered to other salaried employees. This results in the inclusion of these non-discriminatory benefits in "total" compensation and clutters the footnotes with information that is not particularly useful to investors. Instead of requiring disclosure of garden variety benefits offered to everyone, the rules should focus on compensation that is preferential or unique to the NEOs and information which shines a light on compensation abuses. We believe that the rules should retain the current standard in 402(a)(7)(ii) which allows omission of plan benefits which are generally available to other salaried employees and do not discriminate in favor of executive officers.

6. **Eliminate Disclosure of Compensation of Three Additional Employees** [Item 402(f)]

We agree with a large number of other commentators that the requirement of disclosing up to three additional persons who make more than the NEOs is problematic and does not provide useful information to investors. Tracking this information across all operations of the issuer would be extremely challenging administratively, particularly because the determination of these employees is based on "total" compensation. Although their names would not be disclosed, the employees' identities will often be easy to determine, creating unnecessary burdens on the individuals and the issuer. Most importantly, as these employees will not likely be policy-making executives or a consistent group of employees from year to year, this information is not likely to be useful to investors. Therefore, considerations of individual privacy and administrative burden are not outweighed by a need for the disclosure.

7. **Provide Alternative Disclosure for "Reload" or "Restorative" Option Grants**

For issuers with "reload" or "restorative" option programs,[3] some of the proposed disclosure requirements further exacerbate the problem of duplicative counting of grants. Restorative option grants do not represent new compensation decisions by the compensation committee, but rather automatic replacements of previously-granted options in order to compensate for the loss of stock surrendered in payment for the exercise of such options. Thus, restorative options do not increase the total number of shares of stock and options held by a particular individual, but

[3] Under a restorative option program, options granted include the right to receive "reload" or "restorative" options in defined circumstances. Generally, subject to particular plan requirements, an option holder receives an automatic restorative option grant to replace shares of previously-owned stock that he or she surrenders, either actually or constructively, in order to satisfy the related exercise price and/or tax withholding obligation. The particular requirements to be are met at the time of exercise vary by company and plan, and may include, for example, stock appreciation or holding requirements. Restorative options are generally subject to the same terms and conditions as the original options, including the expiration date, except that the exercise price of a restorative option is usually equal to the fair market value of the stock on the date of its grant.

merely represent a shifting of the mix between the shares and options so held.[4] Including restorative option grants in the value of grants awarded in the Summary Compensation Table creates the appearance of excessive grants, despite the fact that a portion of the value shown is attributable to automatic restorative option grants. In contrast, for companies without restorative option programs, the value included in this table is attributable entirely to new grants awarded in the applicable year. In addition, by including restorative option grants as part of "total" compensation, the determination of the NEOs for a given year may be significantly impacted by the number and form of option exercises made by the executive officers that year. Restorative options simply replace other outstanding grants and should not be added into the value of an individual's "total" compensation for the most recent year.

A) *Column (g) of Summary Compensation Table*:
The rules should be revised to exclude restorative option grants from this column. Alternatively, restorative option grants should be listed separately from original grants and excluded from the "total" compensation column.

B) *Footnote to Outstanding Equity Awards at Fiscal Year-End Table*: The required footnote disclosure of the expiration and vesting dates of all outstanding options would often result in lengthy, repetitive information of little significance to investors, and is particularly cumbersome for issuers with active restorative option programs. Restorative option grants generally replace only portions of prior grants. As their exercise prices differ from those of the original options to which they relate, restorative options can no longer be included with such options on lists of outstanding options. As a result, for companies with restorative option programs, the proposed footnote disclosure could involve long lists of outstanding options consuming entire pages.

We propose the elimination of this detailed footnote requirement. As the information is already publicly disclosed on Form 4 reports, repeating this detailed information in the proxy statement clutters the footnotes with unnecessary, distracting and potentially misleading data.

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[4] A simple example, which ignores the effects of income taxes, may help to illustrate:

> Suppose an executive holds 100 shares of the common stock of his employer and is granted options to purchase 100 shares of such stock at an exercise, or "strike", price of $30 per share. At that point, the executive holds a total of 200 shares and options (100 shares and 100 options). Suppose further that, at a time when the market price of the stock is $50 per share, the executive exercises his 100 options. The total exercise price is $3,000 (100 X $30). Rather than paying cash, the executive chooses to surrender 60 shares of stock that he already owns and which is worth $3,000 (60 X $50) in order to pay this exercise price. The restorative feature of his employer's stock option program creates an automatic grant of options to purchase 60 shares of stock at the current market price ($50 in this example) to compensate him for the surrender of the 60 shares he used for the option exercise. Note that at the end of this transaction, the executive owns the same total of options and shares (200) that he did before, except that the mix has changed. He now holds 140 shares and 60 options. No new compensation decision has been made by the compensation committee, because the restorative option feature is built into the terms of the original option grant.

8. **Eliminate or Limit New Stock Pledge Disclosures** [Item 403]

We believe that the disclosure of stock pledged by directors, nominees and executive officers should be eliminated from the rule, as it would involve information that is not useful to investors and has no bearing on the issuer's compensation policies and practices, yet would be unnecessarily intrusive into the personal affairs of executives. Like all other stockholders, an officer or director who is also a stockholder will benefit from an increase in the stock's price whether the stock is held unencumbered or subject to a security interest. The mere fact that an officer or director has pledged shares of the issuer's stock as security is not material information, as we are aware of no empirical evidence suggesting that the pledging of stock would adversely influence the individual's decisions regarding the issuer.

However, if the requirement must be included in the final rules, we believe that it should be limited to instances in which the issuer has guaranteed the debt for which the issuer's stock is collateral. Absent such a guarantee, it is the executive, not the issuer, who stands to suffer if the underlying debt is not paid and the collateral is foreclosed.

While the proposed disclosure requirement may not, in isolation, seem draconian to the Staff, we note that each successive encroachment of this sort by regulators into the personal lives of corporate officers and directors, absent some compelling public benefit (which has not been adequately articulated in the proposed rules) will simply further discourage capable and honest people from serving in these capacities.

9. **Clarify 8-K Revision** [Item 5.02(e)]

The proposed 8-K revisions help to a limited extent to answer some of the questions raised by the 2004 8-K amendments related to director and officer compensation. We believe that the revisions should further clarify when an 8-K must be filed to report changes in executive compensation and what needs to be disclosed. Specifically, under proposed Item 5.02(e), the rules should clarify when an 8-K is required to report annual compensation committee decisions on: (a) salary increases (i.e., clarify whether required 8-K disclosure of "materially amended or modified" arrangements includes annual salary increases which are consistent with historic annual increases); and (b) bonuses for prior year and option grants in current year (i.e., clarify when awards or grants are excepted under instruction 2 based on consistency with prior disclosure about applicable plans).

We thank the Staff in advance for its careful consideration of these views.

Sincerely,

Scott Renwick
Senior Vice President and General Counsel