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April 7, 2006

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

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

Dear Ms. Morris,

Top Five appreciates the opportunity to provide comments on matters regarding enhanced executive compensation disclosure in proxy filings. These comments are made in response to questions included in the Commission's proposed rule, "Executive Compensation and Related Party Disclosure." For your information, Top Five is a compensation consulting firm that works with many employers who are subject to the Commission's proxy disclosure rules; the majority of our clients are in the life sciences industry, and range from development stage to Fortune 50 companies. The following comments reflect our views of the proposal, some of which are based upon our discussions with life science industry members.

The current system of disclosure is not providing adequate information. As we continuously review proxy statements to obtain data for the analyses that we provide to our clients, we find that the majority of disclosures under the current system have become standardized; for example, the text of the compensation committee reports for many companies does not significantly change from year to year—but it is hard for us to imagine that compensation committees do not have discussions and take actions that investors would find relevant. Certain tabular data is confusing, and other tabular data is purely speculative. Companies have become expert at disclosing, under the current system, only what is absolutely necessary to disclose—and this lack of full disclosure makes it difficult for investors (and competitors) to determine what executives are paid and the relationship of those payments to the satisfaction of company goals and/or good performance.

In general, we support the spirit of the proposed rule. The enhanced tabular disclosure will help investors better understand the components of executive pay, particularly in the areas of long term incentives and perquisites. The requirement of a detailed discussion of executive pay programs should highlight whether a company's programs reflect a 'pay for performance' mentality; this is a concept that has been discussed for decades but only sporadically applied. The increased disclosure also fits in well with the concept of better corporate governance of the executive compensation function—more disclosure will highlight what compensation committees do (and don't do), and will cause the committees to take a harder look at how competitors operate. Finally, the increased disclosure of board compensation is welcome—it was primarily anecdotal—and may cause a shift in the methodology of board pay, towards a system where a board member is paid only an annual payment (as opposed to numerous meeting and committee fees).

As a result of our review of the proposal and our work to date with clients to understand the scope of the proposed regulation and the steps that need to be taken for compliance, we have the following areas upon which we would like to comment:

> Page 22—<u>Is there any significant impact by not having the report over the names of the compensation committee of the board of directors?</u> We believe that this is a significant issue. One of the most significant changes in the world of corporate governance over the last five years has been an increase in the role of the compensation committee. We have noticed, over this period, that compensation committees have become significantly more involved in the executive compensation process—this has been shown by additional committee meetings and expanded areas of the committee's interest. Some committees have gone so far as to retain their own advisors and engaged in training to learn more about the executive compensation area. We feel that removing the compensation committee's name from the report would be a step backwards in this area of corporate governance; when coupled with the proposed requirement for chief executive and financial officer certification of this part of the proxy, the Commission is delivering the message that responsibility for this function rests with management and not the compensation committee.
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> We are also concerned about the CEO and CFO certification requirement for this portion of the proxy which is discussed on page 20 of the proposal. In many companies, the CFO is not actively involved in the executive compensation design or administration process; although there may be areas in which the CFO provides input (particularly in the accounting and/or tax aspects of a particular program design), certification responsibility will put an additional burden on the CFO for oversight of a function in which the CFO is neither involved in or trained for. We can see a value in the CEO's certification, as the CEO should be involved in the determination of the executive pay package (both components and levels).

Page 22—Should performance targets continue to be excludable based on the potential adverse effect on the company of their disclosure? A limited disclosure of performance targets would be beneficial information to investors. The disclosure should be limited to the *types* of metrics that are used for targets, while excluding data that would disclose trade secrets or company strategy—for example, a disclosure that revenue growth is a target would be appropriate but additional disclosure of the percentage or dollar level of growth would not be proper. A disclosure of threshold, target and 'stretch' levels would be inappropriate, as would specific disclosure of a business course of action (for example, 'sell the following lines of business'). As different corporate officers have different performance targets, we suggest that a disclosure of performance targets for each named officer be made, rather than a composite of all performance targets for members of the executive group or a detailing of solely the CEO's targets.

Page 49—Should all perquisites be required to be separately identified when the aggregate threshold is exceeded, as proposed? While we believe that executive benefits is a very important part of this disclosure, we are concerned that the breadth of the items suggested as perquisites will result in extremely long and detailed disclosures of items that are not relevant. We suggest that the disclosure requirement call for separate identification of any item with a value in excess of $1,000 when the $10,000 threshold is satisfied—how concerned will an investor be about the company's paying for an executive's newspaper subscription?

Page 50—We request comment as to whether we should require perquisites and other personal benefits to be valued based on the retail price of the item, or, if none, the retail price of a commercially available equivalent. We believe that it should be based on the retail price of the item; a particular employer's ability to acquire a benefit at a discounted rate should not serve to reduce the value of the benefit.

Additional guidance would be appreciated regarding valuation methods for certain types of benefits that do not have a readily ascertainable cash value; this guidance would assist investors in comparing levels of benefits between different companies. For example, how does an employer assess the value of office space in a building that it owns (as opposed to leases)? Is it related to the employer's cost or the cost for comparable buildings within a certain distance? The lack of definitive guidance in this area could lead to distortion of income attributable to items of this nature.

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Page 64—Would the proposed disclosure of up to three employees who are not executive officers but earn more in total compensation than any of the named executive officers be appropriate in the narrative discussion? We do not believe that this is valuable information to investors. Highly paid non-executive employees may not be involved in company management or decision making positions—they could be salespeople, non-U.S. residents who are receiving additional cost of living allowances or individuals receiving significant long term incentive plan payouts related to prior years. Additionally, for multinational corporations, it may be difficult to obtain the information on a timely basis. Although many investors may find this information interesting, this disclosure does not meet the goal of informing investors about the compensation of senior corporate decision makers.

Page 77—Other potential post-employment payments. While this is an important area that needs to be addressed in the proxy statement, significant additional guidance will be needed so that levels of change of control and severance payments will be comparable between employers. Consider the following issues, which are not an all inclusive list:

- Many severance and change of control programs include redemption of outstanding stock options—what price should be used to make this calculation? The answer could be the end of the fiscal year or a standard percentage above the value on a certain date.

- Many severance and change of control programs make payments over time as opposed to a lump sum payment; what, if any, discount factor should be used?

- Many severance programs contain a provision that reduces benefits if the recipient obtains other employment. Should this factor be taken into consideration?

- For those change of control programs that provide tax gross ups, what income tax rate should be used? What impact should state tax rates have?

There is some concern that disclosure of these figures could lead to investor legal action of a change of control occurs and payments are made that exceed these figures due to the circumstances at the time of the payment; if your agency were to provide a set of assumptions regarding the calculations (similar to the items mentioned above), this issue would be limited.

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We believe that the calculation of the value of these types of benefits will take employers a substantial amount of time; it is a calculation that will need to be re-created every year.

Page 108—Is there a particular benefit to receiving information regarding employment compensation on a current basis rather than annually or quarterly? What information is material in that regard? We believe that quarterly distribution of employment compensation information is sufficient. The current system puts an unnecessary administrative burden on filing companies who must administer their executive pay programs while watching a calendar; for example, if the CEO desires to award bonuses to executive officers and doesn't reach all of the executives within the required time period, multiple filings will be necessary. We also feel that few investors would make investment decisions based on the announcement of base pay raises and bonus awards to the executive group. We believe quarterly filing (as part of the 10-Q or 10-K) would be appropriate.

We would, however, want to continue to see disclosure on a current basis of the creation/amendment of executive compensation programs as well as information regarding executive hires and departures.

Again, we appreciate the ability to submit comments on this important topic. If you would like to discuss these comments further, please contact Ted Ginsburg, Consulting Principal, at 440-720-0898 or at tginsburg@top5.com.

Very truly yours,

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