September 15, 2009

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Audit – Tax – Advisory

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Via Email to rule-comments@sec.gov

Re: File Number S7-13-09
Proxy Disclosure and Solicitation Enhancements

Dear Ms. Murphy:

Grant Thornton LLP appreciates the opportunity to comment on the above-referenced proposed rule. We have responded to certain questions included in the proposal regarding the proposed change to the requirements for reporting equity amounts in the Summary Compensation Table (and Director Compensation Table) in the accompanying appendix. We have the following comments on the proposed change to the reporting of equity-based incentives in the Summary Compensation Table (SCT).

Under the SEC's proposal, we understand that the grant date fair value of options and awards to named executive officers (NEOs) will be disclosed in the SCT in the period that grants are issued (in the same manner that options and awards were reported in the SCT prior to the 2006 rule change). This change is intended to simplify disclosure and address concerns with the existing requirements, including:

- *Repetitive-Reporting:* Grants that vest over several years are expensed over that same period; hence, the same grants show up repeatedly in the SCT. This has confused readers, who perhaps do not understand *FASB Accounting Standards Codification*™ (ASC) 718, *Compensation – Stock Compensation* (formerly, FASB Statement 123 (revised 2004), *Share-Based Payment*).

- *Forfeitures and expense true-ups:* It resolves issues associated with reporting negative or adjusted expense numbers resulting from forfeitures of performance-based awards, or changes in the estimated number of performance-based awards that will vest.

- *Clarity:* The proposed disclosure requirements should be easier for investors to understand.

We agree that perhaps the current method of disclosing the total compensation paid to each NEO within the SCT is imperfect. In fact, we conducted a survey of clients and others on this matter, and found that the majority agree that a change in how equity-based awards are reported is appropriate. However, we are not sure if the desire for change and the proposed amendments improve upon the current method, other than simplifying matters for those that must complete the SCT. We have summarized our thoughts below.

Underlying Intent of the SCT

Currently, companies disclose the fair value of options and awards granted to NEOs over the grants' service periods, aligning the compensation disclosure with the expense recognized under ASC 718. As compensation expense is recognized for the grants, that expense is disclosed as compensation paid to the NEOs in the SCT.

Forfeitures have proved to be an issue, sometimes resulting in disclosures of negative compensation amounts. This issue became more evident in the most recent proxy season, with so many performance-based stock awards not expected to vest.

The proposed amendments would result in quite different reporting for equity-based awards than as required for the other compensation elements reported in the SCT. While not explicitly stated by the SEC, the other compensation elements currently reflect the fiscal year's compensation cost incurred on behalf of the NEO (as is currently the case for stock-based awards). We assumed that the SEC's intent all along was to answer questions such as (1) what is the expense and annual earnings per share impact to the company of the stock awards that have been granted to the NEOs, and (2) how has this been considered in the granting of awards prospectively to these executives (a Compensation Discussion and Analysis (CD&A) disclosure item)?

Differences in Vesting Conditions and Time Periods

We believe the proposed amendments do not appropriately consider the difference in vesting conditions of various stock-based awards. For example, time-vested and performance-vested awards would be reported as the same grant date value even though the risk to the executive of the performance-based award is greater, and are intended to provide quite different incentives (retention versus performance). In addition, the company's ability to "reverse" expense in the disclosures if the awards do not ultimately vest would no longer be possible. The result may be to discourage companies from granting performance-based stock to their senior executives.

In our experience, multi-year awards are common and equity-grant levels can vary significantly from year to year. The amendments may, therefore, discourage companies from granting relatively large equity awards with longer vesting schedules or from granting what are termed as "retirement" awards, as the total grant date value is generally significantly greater than more typical annual grants. The current approach, which reports expense as recognized in accordance with the vesting schedule, allows for this higher grant date value to be fairly recognized in the disclosures when compared to other, smaller grants. The net impact of the proposed change would be to discourage stock grants with longer vesting schedules (or in some cases, timed to the executive's retirement from the company); we believe this would be unfortunate, since these characteristics are generally considered to be strongly favorable to shareholders.

Fair Value Measurement Assumptions

U.S. GAAP requires companies to calculate its best estimate of fair value at the date of grant. Many believe that the fair value assumptions in ASC 718 are imperfect in representing the future potential value of a stock option grant to an executive. The assumptions are also complex, particularly when companies are using a lattice-binomial or Monte Carlo valuation model to determine grant date fair value. Thus, the fair value calculation is highly sensitive to management-developed assumptions and may not predict the actual value that is ultimately realized by the NEO.

The proposed amendments would likely compound these challenges because this “imperfection” would be magnified if the entire grant date fair value is to be reported in the SCT alongside the annual expense for the other elements of NEO compensation.

The SCT and the GPBA Tables

We believe the proposed amendment will result in redundancy and confusion between the SCT and the Grants of Plan-Based Awards table (GPBA). As a result of the many issues noted above, in order to clearly communicate to readers what the grant date fair values reported in the SCT fairly represent vis-à-vis the other elements of compensation, the GPBA will essentially become a footnote to the SCT. It will become necessary to describe in exacting detail the awards reported in the SCT in order for the reader to arrive at a reasonable conclusion regarding NEO total compensation. Thus, while the proposed amendment may simplify disclosures in one place, we believe it creates additional complexity elsewhere within the proxy disclosures.

We suggest that the Commission consider revising the GPBA to include a total of column (k) for each NEO, which would provide an aggregate grant-date fair value of equity awards for all grants made throughout the fiscal year. Additionally, adding the in-the-money value to the Outstanding Equity Awards at Fiscal Year-End table (Outstanding Equity) may provide for a better picture of potential value created by the equity arrangement (similar to column (j) in this table that reports the payout value of unvested shares). The various disclosures across the SCT, GPBA, Outstanding Equity, and the Option Exercises and Stock Vested tables provide for a complete picture of the value of various equity grants for NEOs. We are concerned that the proposed amendment is a response to readers wanting an answer on equity incentive value in one “snapshot,” hoping for a simple answer to a complex question.

Year-to-Year Volatility in Reported NEOs

Equity grants can vary from year to year, and may be forgone for certain NEOs by companies that make significant, multi-year grants. Continuity in reporting has been a strength in the proxies that may be impacted by the proposed change. The proposed amendment can result in significant volatility in who is an NEO each year (except for, of course, the Principal Executive Officer and Principal Financial Officer). If the SEC plans to move forward with the proposed amendment, we think that alternative ways for determining who is an NEO will be necessary, for example:

- Determine NEOs using only a base salary or total cash basis
- Define more narrowly who should be considered an NEO for disclosure purposes
- Exclude one-time retention or new hire grants or “mega-grants” from total compensation when determining the NEOs (but do not exclude these grants from the GPBA disclosure)

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Prior to implementing further changes to reporting, we suggest that the SEC confirm and clarify the overarching intent of the SCT, and how it is to be used to complement the other required table disclosures as well as the CD&A.

We would be pleased to discuss our comments with you. If you have any questions, please contact Eddie Adkins, Partner, National Tax Office, at 202.521.1565 or Eddie.Adkins@gt.com; Don Nemerov, Executive Director, at 312.602.8437 or Don.Nemerov@gt.com.; or Bridgette Hodges, Partner in Charge, SEC Regulatory Matters, at 703.637.4129 or Bridgette.Hodges@gt.com.

Sincerely,

Grant Thornton LLP

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Appendix – Responses to Request for Specific Comments on Revisions to the Summary Compensation Table

Question 1
Is the proposed Summary Compensation Table reporting of equity awards a better approach for providing investors clear, meaningful, and comparable executive compensation disclosure consistent with the objectives of providing concise analysis in the CD&A and a clear understanding of total compensation for the year? Would the proposals facilitate better informed investment and voting decisions?

We are concerned that the proposed amendment deviates from the spirit of the Summary Compensation Table (SCT), which predominantly reflects the fiscal year's compensation cost incurred on behalf of each named executive officer (NEO) for the year. In contrast, the grant date fair value typically represents many years of potential compensation to be received by each NEO.

Many people believe that ASC 718 and the fair value measurement are imperfect and complex. We are concerned that the proposed amendment may compound this misunderstanding in that the "imperfection" would be amplified by including the entire grant date value in the SCT. In addition, reporting the entire grant date value for stock or option awards that vest over several years is a very different reporting approach from the annual cost approach for reporting other compensation elements that appear in the SCT.

Question 2
The proposal contemplates that the Summary Compensation Table would report the aggregate grant date fair value of stock awards and option awards granted during the relevant fiscal year, just as the Grants of Plan-Based Awards Table reports each grant of an award made to a named executive officer in the last completed fiscal year. Should the Summary Compensation Table instead report the aggregate grant date fair value of equity awards granted for services in the relevant fiscal year, even if the awards were

granted after fiscal year end? Explain why or why not. For example, could such an approach be applied in a manner inconsistent with the purposes of our compensation disclosure rules, for example by distorting the determination of named executive officers?

It is not clear to us what circumstances this question is intended to address. Is this to cover incentives paid in stock after the end of the fiscal year, but in relation to the relevant fiscal year? If so, we agree this should be included in the amounts reported in the current year's SCT. This would accurately reflect all equity-based compensation granted in the relevant fiscal year. An appropriate parallel is an annual cash bonus that is earned for 2009, but not paid until 2010. Under the current disclosure rules, this amount would normally be reported in the non-equity incentive column of the SCT in 2009. Similarly, we believe equity incentives earned in 2009 but not granted until 2010 should be reported in the SCT for 2009.

If awards are significant enough, this requirement could impact the determination of NEOs. However, we still believe under the circumstance described that awards should be disclosed.

Question 2 (continued)
If we change our approach with respect to the Summary Compensation Table, should the Grants of Plan-Based Awards Table be amended correspondingly to conform to the scope of awards reported in that table?

We are concerned that the amendments, as proposed, could result in some redundancy and confusion between the SCT and the Grants of Plan-Based Awards Table (GPBA). Currently, the GPBA table discloses details of the equity grants made in the fiscal year, including the aggregate grant date fair value of equity grants. Under the proposed amendments, this same information would also be provided in the SCT. Therefore, if the Commission decides to adopt the amendments as proposed, corresponding changes to the GPBA should be considered to avoid redundancy and possible confusion.

In general, if the amendments are adopted, as proposed, the GPBA will become a footnote reference for the SCT, to describe the awards contained in the Stock Awards and Option Awards columns. This is the case because the reader will need to refer to the GPBA in order to fully understand the different characteristics of each grant that comprises the dollar value reported in the SCT (for example, vesting terms, time period, and so on).

The aggregate grant date fair value is not currently disclosed for directors. As an alternative to the proposed amendments, the Commission may consider requiring disclosure similar to the GPBA for directors.

Question 3
If the Summary Compensation Table is amended as proposed, should the Grants of Plan-Based Awards Table disclosure of the full grant date fair value of each individual award be retained, rather than rescinded as proposed?

We are concerned that if the Commission moves forward with the proposed amendments, retaining these amounts in the GPBA will result in unnecessary redundancy. Therefore, the Commission may want to consider revisions to the GPBA.

Question 3 (continued)
Should the Grants of Plan Based Awards Table continue to disclose the incremental fair value with respect to individual awards that were repriced or otherwise materially modified during the last completed fiscal year? If so, why?

Yes. Disclosing the incremental fair value related to option repricings or other modifications is important to understanding the full cost of equity-based awards. We believe it is important for readers to clearly understand that an award has been modified, that increased value is being provided to the NEOs, and that the company has incurred additional cost on their behalf. Further, this disclosure quantifies the decision made by the company and the Compensation Committee to modify the award.

Question 4
As described above, one reason for adopting the financial statement recognition model was the potential for distortion in identifying named executive officers when a single large grant, to be earned by services to be performed over multiple years, affects the list of named executive officers in the Summary Compensation Table, even though the executive earns a consistent level of compensation over the award's term. Are multi-year grants a common practice, so that they would introduce significant year-to-year variability in the list of named executive officers if the proposed amendments are adopted relative to the variability under the current rules? If so, how should our rules address this variability?

Multi-year grants are common and grant levels often vary from year to year (for a variety of reasons). We are concerned that the prevalence of these awards, coupled with the proposed amendments, would result in potentially unintended consequences. We are concerned that requiring the aggregate fair value to be disclosed in the SCT and to be considered in determining the NEOs, other than the Principal Executive Officer and the Principal Financial Officer, will create significant variability in NEOs reported from year to year.

We are concerned that the proposed amendments may discourage companies from granting these types of equity awards to executives. For example, a company may elect to grant a "mega-grant" to an executive with a 6-, 8-, or 10-year vesting schedule or in some cases, upon retirement or separation from the company. Since these grants are typically larger than normal equity grants, under the proposed amendment, a very lengthy disclosure item in the SCT would result (in which the annual value would be calculated and provided). This would require additional narrative and/or footnote disclosure describing the award in the current and subsequent years. Further, if equity grants are forgone for subsequent years as a result, it could also result in unintended volatility in the reporting of NEOs.

If the SEC plans to move forward with the proposed amendment, we suggest considering the following alternative ways of determining NEOs under the amended rules:

- Determine NEOs using only a base salary or total cash basis
- Define more narrowly who should be considered an NEO for disclosure purposes
- Exclude one-time retention or new hire grants or "mega-grants" from total compensation when determining the NEOs (but do not exclude these grants from the GPBA disclosure)

Question 5
Under the proposal, all stock and option awards would be reported in the Summary Compensation Table at full grant date fair value, including awards with performance conditions. Would the proposal discourage companies from tying stock awards to performance conditions, since the full grant date fair value would be reported without regard to the likelihood of achieving the performance objective?

We are concerned that if the amendments are adopted, as proposed, it would discourage companies from granting performance-based equity awards to executives because the proposed rule would not appropriately consider the difference between time-vested and performance-vested awards. Performance-based equity awards are becoming more prevalent and often are larger than service-based grants because of the additional risk component. This would, at a minimum, create the need for more discussion in the Compensation Discussion and Analysis (CD&A) and lengthier footnotes to fully explain the compensation reported in the SCT.

In addition, the realized expense reversal to the company associated with performance-based stock, would become opaque to the reader, which is not the case under current reporting. Under the current rules, if the necessary performance thresholds to vest in a performance-based equity award are not met, the company reverses the compensation expense booked for the year and that expense is not reported in the SCT (that is, the company takes a credit for the expense reversed). However, under the proposed amendment, the aggregate grant date fair value of the award would be reported in the SCT even if the award never vests. Multi-year performance periods or awards with performance modifiers would complicate this issue further.

Question 5 (continued)
If the proposal is adopted, is any disclosure other than that already currently required (e.g., in the Compensation Discussion and Analysis, the Grants of Plan-Based Awards Table, and the Outstanding Equity Awards at Fiscal Year-End Table) needed to clarify

that the amount of compensation ultimately realized under a performance-based equity award may be different?

Disclosure discussing the actual progress to date with respect to performance goals will be required to make it clear to readers how much of a performance-based stock award is expected to vest. Companies will likely also desire to add discussion related to stock options that are under water and the grant date fair value previously reported that is not likely to be realized. This is due to the fact that the entire grant date fair value for an option grant would be reported. Under current rules, the annual expense for an underwater stock option is reported; however, the expense is included with several other grants that may be in-the-money. The more sophisticated companies are already discussing this in their disclosures, but adopting the amendments as proposed may result in more companies being compelled to include this disclosure. The Commission may need to consider additional required disclosures, which may not improve clarity if it results in overwhelming the reader with the additional detail.

Question 6
Not answered

Question 7
The Commission also has received a rulemaking petition requesting that we revise Summary Compensation Table disclosure of stock and option awards a different way. Instead of reporting the aggregate grant date fair value of awards granted during the year, as we propose, the petition's suggested approach would report the annual change in value of awards, which could be a negative number if market values decline. For restricted stock, restricted stock units and performance shares, the reported amount would be the change in stock price from year-end to year-end. For stock options, it would be the change in the in-the-money value over the same period. Would the approach suggested by the rulemaking petition be easy to understand or difficult to understand?

The approach suggested by the rulemaking petition should be relatively easy to understand with the proper disclosure, but complicates the calculation of the compensation being reported. We are concerned that this methodology, as proposed, could result in understating compensation payable to NEOs as they would get dollar "credit" for underwater stock options for which they have not incurred any financial investment.

Question 7 (continued)
Would the information provided under the suggested approach be useful to investors? In particular, would investors be able to evaluate the decision making of directors with respect to executive compensation if the value of equity compensation on the date of the compensation decision is not disclosed, but instead investors are provided

information regarding changes in value of the compensation, which changes occur after the compensation decision is made?

We are concerned that these amounts do not reflect the cost to the company for the equity awards, nor would the disclosures help shareholders understand how executives are paid. Therefore, we do not believe these amounts would be useful to shareholders or investors. The change in value of equity-based awards from year to year simply reflects the change in the stock price over the year multiplied by the number of shares/options granted. This does not provide insight into the executive compensation and governance practices of the company above and beyond the current disclosures. We believe additional disclosure of the original award value would be necessary to maximize the understanding of the awards and the decision-making process.

We suggest that the Commission consider adding a supplemental disclosure within the CD&A providing a "wealth accumulation" analysis of NEOs. This would illustrate the value realized over time related to equity awards that have both gained and lost potential value.

Question 7 (continued)
Would it enhance or diminish the ability of companies to explain in the CD&A the relationship between pay and company performance? Would it be more or less informative to voting and investment decisions than the aggregate grant date fair value approach we propose? Would it be a better measure for computing total compensation, including for purposes of identifying named executive officers?

The methodology proposed by the rulemaking petition would provide insight on the value to be potentially realized (to the extent that fair value is not felt to be representative of future value). It may or may not provide useful insight on the relationship between pay and performance. As you know, share price can be affected by many other factors besides overall company performance. For example, stock price may decrease if a company is performing well from a revenue and earnings standpoint, but is falling short of guidance provided earlier to investors and analysts. Similarly, stock price may increase if revenues and profits are in decline, but the company is performing better than expected, or better than peers.

We are concerned that the approach suggested by the rulemaking petition is counterproductive in computing total compensation and exacerbates some of the issues discussed earlier (for example, variability in NEOs). Specifically, we believe reporting a negative number (and hence, reducing current year compensation) for out-of-the-money stock options would be technically incorrect. For unvested, unexercised stock options, the executive has not incurred any financial loss (because they have not paid for the stock), nor (in most cases) have they given up other compensation they would have otherwise received in order to receive the grants. Therefore, we do not believe it is a better measure for computing total compensation.

Question 7 (continued)
Are there any other ways of reporting stock and option awards that would better reflect their compensatory value? If so, please explain. For example, are there any potential amendments to the Grants of Plan-Based Awards Table or the Outstanding Equity Awards at Fiscal Year-End Table that we should consider to better illustrate the relationship between pay and company performance?

We suggest that the Commission consider requiring companies to report the current intrinsic value (that is, the amount above the exercise price or grant price) in the Outstanding Equity Awards at Fiscal Year End Table (Outstanding Equity). In cases where the options are out-of-the-money, $0 would be reported.

We suggest that the Commission consider revising the GPBA to include a total of column (k) for each NEO, which would provide an aggregate grant date fair value of equity awards for all grants made throughout the fiscal year. Additionally, adding the in-the-money value to the Outstanding Equity table may provide for a better picture of potential value created by the equity arrangement (similar to column (j) in this table that reports the payout value of unvested shares). For the most part, the linkages between the SCT, GPBA, Outstanding Equity, and the Option Exercises and Stock Vested tables provide for a complete picture of the equity grants for NEOs. We are concerned that the proposed amendments are a response to readers requiring answers on executive compensation in one easy-to-read table, or a "snapshot." We do not believe this can be achieved, given the complexities in executive compensation arrangements.

Question 8
The Summary Compensation Table requires disclosure for each of the registrant's last three completed fiscal years, and with respect to smaller reporting companies, for each of the registrant's last two completed fiscal years. Regarding transition, our goal is to facilitate year-to-year comparisons in a cost-effective way. To this end, we are considering whether to require companies providing Item 402 disclosure for a fiscal year ending on or after December 15, 2009 to present recomputed disclosure for each preceding fiscal year required to be included in the Summary Compensation Table, so that the Stock Awards and Option Awards columns would present the applicable full grant date fair values, and Total Compensation would be recomputed correspondingly. If a person who would be a named executive officer for the most recent fiscal year (2009) also was disclosed as a named executive officer for 2007, but not for 2008, we expect to require the named executive officer's compensation for each of those three fiscal years to be reported pursuant to the proposed amendments. However, we would not require companies to include different named executive officers for any preceding fiscal year based on recomputing total compensation for those years pursuant to the proposed amendments or to amend prior years' Item 402 disclosure in previously filed Forms 10-K or other filings. Would recomputation of prior years included in the 2009

Summary Compensation Table to substitute aggregate grant date fair value numbers for the financial statement recognition numbers previously reported for those years cause companies practical difficulties?

Revising prior year disclosures and recomputing total compensation would add complexity and staff time required to complete the proxy disclosure in the transition year. Most companies should have the necessary records to recompute and revise the amounts reported in the SCT, and we agree that this represents the most efficient way to transition from the current disclosures to the proposed amendments. Additional lead time would be helpful and probably necessary.