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VIA E-MAIL

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

Re: File Number S7-03-06
Comments to Release No. 33-8655
Executive Compensation and Related Party Disclosure

Dear Ms. Morris:

We are pleased to submit this letter in response to the request of the Securities and Exchange Commission for comments regarding its proposed rules on executive compensation and related party disclosures contained in Release Nos. 33-8655, 34-53185 and IC-27218. We support the Commission’s efforts to increase the transparency of disclosures in this area. We submit these selective comments in an effort to enhance the understandability and utility of the proposed disclosures.

Compensation Discussion and Analysis Section

We support the requirement for narrative disclosure that sets the context for compensation decisions and discusses the material elements of the company’s compensation philosophy and programs. We are concerned, however, that the compensation discussion and analysis section should be deemed “furnished” and not “filed” with the Commission, similar to the current treatment of the compensation committee report. If the compensation discussion and analysis is “filed,” then it will be incorporated by reference in an issuer’s annual report on Form 10-K, resulting in the issuer’s principal executive officer and principal financial officer having to make the certifications required by the Sarbanes-Oxley Act with respect to this information.

We believe this result would be inconsistent with the corporate governance regime currently in place under New York Stock Exchange and Nasdaq rules. Both the New York Stock Exchange and Nasdaq have corporate governance rules requiring the compensation committee (either alone or with the independent members of the board of directors) to be responsible for compensation of the chief executive officer and other executive officers. The intent of these rules is to put decision-making authority with respect to executive compensation into the hands of the independent directors on the compensation committee.

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As a result of these corporate governance changes, the principal executive officer and principal financial officer are not present when the compensation committee discusses their compensation. Accordingly, to make the required certifications, the principal executive officer and principal financial officer would need to make inquiries of the compensation committee members to be able to confirm that the disclosure in the compensation discussion and analysis is accurate. This process may impact the compensation committee's decisions regarding executive compensation and suggests a lessening of the compensation committee's responsibilities for executive compensation matters. If the Commission is concerned that someone should be responsible for the compensation discussion and analysis section, then we recommend that the compensation discussion and analysis section be under the signature of the directors on the compensation committee similar to the current compensation committee report.

Comments to Compensation Tables

Consistent with the Commission's plain English initiatives, we believe that making tabular data regarding executive compensation readily understandable is important for transparency. We offer the following suggestions for improving the tabular data proposals.

Summary Compensation Table

Inclusion of unvested awards. We believe that it does not promote transparency to require that (1) unvested compensation, whether consisting of stock options, restricted stock or stock appreciation rights, be included in the stock awards column of the summary compensation table, and (2) the value attributed to such unvested amount be included in the total compensation figure of the summary compensation table (which value would be determined on the date of grant pursuant to Statement of Financial Accounting Standards No. 123 (revised 2004) ("FAS 123R")). This assumed value will not necessarily reflect the cost to the company nor the benefit to the named executive officer or director. While grant date fair value will be the basis for expensing for GAAP purposes by the company, the expensing takes place over the vesting period. If vesting requirements are not satisfied, then there will be no GAAP expense for the unvested portion of the award, and the recipient will forfeit the unvested portion. For example, if stock options are subject to cliff vesting based on continued tenure with the company and the executive terminates employment before expiration of the vesting period, then the options will be forfeited. Yet, the company will have included the grant date fair value of the award in full in the stock awards column of the summary compensation table and in the total compensation column of the summary compensation table in the year of award. We also believe that investors will be confused by including stock-based awards in the summary compensation table at the time of grant of the award, while including non-stock based awards only when the relevant performance criteria have been satisfied.

We recommend that fair value, as determined under FAS 123R, be reported over the vesting period of the award. We also suggest that this amount be disclosed as part of the options exercises and stock vested table rather than in the summary compensation table. We believe that investors commonly view the compensation element of such awards as derived from the fair market

value of the underlying stock on the date of vesting (or in the case of options, on the date of exercise), as opposed to the amount expensed by the company for GAAP purposes. We are therefore opposed to including grant date fair value in the total compensation column, even in the year in which vested.

Repriced or modified options or SARs. Including the full grant date fair value of repriced or modified stock options or stock appreciation rights, rather than just the incremental cost recognized by the company, in the option awards column of the summary compensation table will not reflect either the cost to the company or the benefit to the recipient. It also involves double counting by not taking into account the compensation that the proposed rules would require be disclosed in the summary compensation table for the year of the original award.

Earnings on outstanding awards. Grant date fair value of awards determined in accordance with FAS 123R takes into account whether dividends will be paid on an award based on assumptions regarding the same. Therefore, including earnings in the all other compensation column of the summary compensation table results in double counting of the earnings element included as part of the grant date fair value.

If the Commission nevertheless wants to include earnings on awards, we assume that earnings on outstanding awards that are themselves subject to vesting requirements would not be required to be included in the all other compensation column of the summary compensation table until vested, e.g., dividend equivalents on unvested restricted stock that vest as the shares vest. The instructions are not clear on this point. We suggest that express instructions be added regarding the treatment of unvested earnings.

Accruals for retirement. Proposed Item 402(c)(2)(ix)(E) of Regulation S-K requires that amounts paid or accrued in connection with any arrangement for retirement of a named executive officer be included in the all other compensation column of the proposed summary compensation table. We note that FAS 123R requires the immediate expensing for GAAP purposes of any unvested stock-based awards that vest on retirement when the executive is first eligible for retirement, regardless of whether or not the executive chooses to retire on that date. The proposed rules would require disclosure of accrued amounts for executives who do not actually retire when first eligible to retire. We suggest that clarifying language be added to eliminate this anomaly, especially for the purpose of avoiding double counting if the Commission chooses to require full disclosure of unvested stock-based awards in the year in which awarded.

Grants of all other equity awards table

Column for vesting of restricted stock. The grants of all other equity awards table includes a column for the date of vesting of restricted stock but provides for the vesting schedules of stock options to be disclosed by footnote. We believe that the vesting dates for restricted stock should likewise be disclosed by footnote. Including multiple rows for different tranches of vesting will make this table more difficult to read.

Order of columns. We believe that readers are accustomed to seeing dates in chronological order, left to right. The proposed grants of all other equity awards table presents the dates in reverse chronological order, with expiration date of the options or restricted stock first, followed by vesting dates for stock options and then grant date for both types of awards. We suggest including the grant date first, followed by the expiration date, and, as described above, eliminating the vesting date column.

Option exercises and stock vested table

Previously reported grant date fair value. We do not believe that including a column in the option exercises and stock vested table for the grant date fair value previously reported in the summary compensation table will reduce the potential for double counting. The grant date fair value determined in accordance with FAS 123R is an accounting estimate for GAAP purposes. It does not necessarily reflect the ultimate value that will be realized by the recipient of options or restricted stock on vesting. Including grant date fair value in the option exercises and stock vested table next to the value realized on vesting will enhance the potential for confusion.

Nonqualified defined contribution and other deferred compensation plans table

Title. We suggest that the title of the nonqualified defined contribution and other deferred compensation plans table be revised to include the word “nonqualified” after the word “other” and before “deferred compensation plans” to make it clear that the table covers only nonqualified plans, not all deferred compensation plans. In its present form as proposed, the nonqualified defined contribution and other deferred compensation plans table heading could be read to include 401(k) plans, for example.

Earnings on nonqualified plans. We do not believe it is appropriate to require that earnings on nonqualified plans be included in the nonqualified defined contribution and other deferred compensation plans table where these earnings are derived from third party investment vehicles selected by the executive pursuant to the terms of the plan. In that instance, those earnings do not represent a cost to company.

Fiscal year-end balances in deferred compensation plan accounts. We also do not believe that it is appropriate to require the disclosure of fiscal year-end balances for deferred compensation plan accounts because the size of these balances will be determined in large part by the length of time that the executive has made deferrals under the plans and earnings have compounded on the accounts. In addition, as noted above, in the case where the executive chooses third party investment vehicles for an account, the growth in account balance from earnings will be determined by the performance of those vehicles rather than reflecting a cost to the company. Furthermore, to the extent that fiscal year-end account balances reflect contributions, there will be double counting because the contributions will have been included in the summary compensation table.

Disclosure of Compensation for Up to Three Other Employees

Proposed Item 402(f)(2) of Regulation S-K requires disclosure of the amount of total compensation for up to three employees who were not executive officers if their total compensation is greater than any of the named executive officers. We believe this disclosure would be unduly burdensome for issuers to track and of limited value to investors. Depending on the nature of the issuer, this requirement might pick up compensation, for example, of sports and media stars or salespeople. Disclosing a large number without naming these individuals and the reasons why they were compensated at those levels would do little to help investors understand an issuer's compensation structure. However, we are not recommending that this disclosure requirement be expanded. Instead, we recommend it be eliminated because it is inconsistent with what historically has been the purpose of disclosure in this section of the proxy statement – to disclose compensation of the executives who have a policy making function at the issuer. The compensation of non-executive officer employees typically is not determined by the compensation committee. It does not present the types of corporate governance issues associated with compensation of executives for which investors need disclosure.

Payments on Termination or Change in Control

Proposed Item 402(k) of Regulation S-K requires quantification of estimated payments and benefits required to be made on termination of employment or in connection with a change in control and disclosure of reasonable assumptions underlying these estimates. The calculations necessary to quantify these payments and benefits can vary widely depending on the date that the termination or change of control takes place and the price of the issuer's stock. Accordingly, we recommend that the rule specify that issuers make these disclosures assuming that (i) the termination or change in control took place as of the last day of the issuer's fiscal year and (ii) the fair market value of an issuer's stock be the closing price on the last trading day of the issuer's last fiscal year. These changes would make it easier for investors to make comparisons among different issuers as well as prevent issuers from being second-guessed on the reasonableness of these key assumptions.

The proposed rule is also vague on whether only a total amount for payments and benefits is required to be disclosed or breakout for each type of payment or benefit is required. Thus, we recommend that the rule specifically state whether the quantification of (1) the total amount of the payments and benefits, (2) each type of payment or benefit (*e.g.*, cash severance, vesting of equity awards, tax gross-ups, etc.) or (3) both a total and each type is required to be disclosed. If each type of payment or benefit will be separately disclosed, then we recommend that this disclosure be made in a tabular format to make it more understandable for investors.

The proposed rule should also be revised to make clear how quantification of the acceleration of unvested equity awards should be calculated, again to make it easier for investors to make comparisons among different issuers. We recommend that the value of these awards be calculated using the price of the issuer's stock on the last trading day of the issuer's fiscal year.

Because this amount will be disclosed in the outstanding equity awards at fiscal year-end table under the proposed rules, we believe it would be appropriate for an issuer to simply include narrative disclosure that vesting of equity awards will be accelerated upon a change of control of the issuer and then cross reference to the amounts in the outstanding equity awards at fiscal year-end table.

Threshold for Related Party Disclosures

Footnote 239 of the proposing release states that the proposed \$120,000 threshold for related party disclosures is not a bright line test but rather is subject to a materiality analysis. However, proposed Item 404 of Regulation S-K suggests that that the threshold is a bright line test, as follows:

Describe any transaction, since the beginning of the registrant's last fiscal year, or any currently proposed transaction in which the registrant was or is to be a participant and the amount involves exceeds \$120,000 and in which any related person had, or will have, a direct or indirect material interest [emphasis added].

We suggest that express language be added to indicate that the \$120,000 is a rebuttable presumption of materiality. We also suggest adding rebuttable presumptions for entities that are tied to the assets or revenues of the entity, similar to the thresholds in current Item 404(b) of Regulation S-K.

Repository for Plain English Requirements

We support the Commission's plain English initiatives. To avoid repetition of plain English requirements in various rules and forms, including the proposed additions to Form 8-K, we suggest that proposed Rule 13a-20 (Plain English presentation of specified information) be broadened and moved to a central repository for all plain English requirements for 1933, 1934 and 1940 Act filings. A Regulation Plain English (Reg PE) can serve as the basis for broadened plain English requirements in the future, for example, if and when the Commission decides that more portions of 1934 Act filings should be mandated in plain English.

Effective Date

Given the numerous changes contained in the lengthy proposed new rules and the volume of additional disclosures that will be required, we believe it is important that issuers have sufficient time after the rules are adopted to digest the rules in their final form and prepare their first annual meeting proxy statements under the new rules. For example, if the Commission intends for the new rules to apply to 2007 proxy statements of calendar year end companies, we urge that they be published in final form no later than September 30, 2006.



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We would be happy to discuss any questions that the staff may have regarding the above comments. Please call Linda Y. Kelso at (904) 359-8713, Jay O. Rothman at (414) 297-5644 or John K. Wilson at (414) 297-5642 if you have any questions.

Sincerely,

Foley & Lardner LLP

FOLEY & LARDNER LLP