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April 10, 2006

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

Re: Comments on Proposed Rule for Executive Compensation and Related Party Disclosure;  
File No. S7-03-06

Dear Ms. Morris:

On February 8, 2006 the Commission published in the Federal Register proposed amendments to the proxy statement disclosure rules for the compensation of executives and directors, related party transactions and other matters. Our firm, on behalf of several of our clients, appreciates the opportunity to provide the following comments on the proposed amendments to the rules. Our comments are limited to two aspects of the Summary Compensation Table as it is proposed to be amended.

First, the inclusion of the value of options and other stock based awards using the FAS 123R valuation methodology in columns (f) and (g) and consequently in the "Total Compensation" column distorts the named executives' true compensation picture. Second, using Total Compensation (which includes items reported in column (i) (*e.g.*, severance awards)) to determine those officers who will be included in the Summary Compensation Table leads to a presentation of executive compensation that is of less importance to investors and, in fact, may be misleading. Our comments are presented in greater detail below.

#### Total Compensation Determination

We believe that the currently proposed methodology of calculating "Total Compensation" in column (c) presents a potentially distorted view of an executive's compensation. As currently proposed, the Total Compensation column represents the sum of the dollar value of the compensation quantified in columns (d) through (i) of the Summary Compensation Table. Specifically, columns (f) (Stock Awards) and (g) (Option Awards) are problematic in the calculation of this sum. These columns would require, as proposed, disclosure of the dollar value of stock and option awards at the full grant-date value of such awards using FAS 123R without regard to subsequent vesting requirements.

While perhaps appropriate for financial statement purposes, using the FAS 123R value to provide theoretical values of stock awards that may never vest or be received by an executive may result in an inflated and, therefore, distorted, value of an executive's present day compensation being reported in the Summary Compensation Table. A cash award, for example, in an amount of the theoretical value of a stock based award that contained the same conditions for vesting or receipt would be reported only when actually *earned* (see proposed column (h)). Accordingly, we would recommend that columns (f) and (g) of the proposed Summary Compensation Table include the value of stock based awards when they vest or are earned by an executive and are not subject to forfeiture. Those values could be based upon the market value of the company's securities when those awards vest or become exercisable. In essence, this presents a clearer picture of the executives' compensation and could replace several disclosures in the "Outstanding Equity Awards at Fiscal Year End" table that are based upon the market value of the company's securities when stock-based awards are earned or become exercisable.

If deemed of importance to investors, the FAS 123R value of stock based awards could still be presented; however, it would appear that a more appropriate location would be in the proposed (but perhaps renamed) "Exercises and Holdings of Previously Awarded Equity" table. The 123R value of outstanding awards to an executive could be presented in that table much like the "Aggregate Balance at last FYE" column presents the value of certain benefits in the "Nonqualified Defined Contribution and Other Deferred Compensation Plans" table, either as its own column or as a footnote. This also would require an adjustment to column (d) the proposed "Option Exercises and Stock Vested" table to refer to the disclosure of that award in the "Exercises and Holdings of Previously Awarded Equity" rather than the Summary Compensation Table.

Also, in today's environment with concerns over what some view as excessive executive compensation, we would also note another potential effect of the "Total Compensation" column as it currently is proposed. As the Commission is aware, many companies engage in "benchmarking" in establishing executive compensation. Without discussing the pros and cons of that practice, as noted above, we are of the opinion that by mixing current compensation with prospective compensation, the Total Compensation column sets forth a distorted and, in many cases, inflated, view of executive compensation. To the extent that companies "benchmark" based upon these distorted numbers, the "Lake Wobegon effect" on executive compensation described by one Commission representative could contribute to what some have deemed "runaway" executive compensation.

#### Determination of Named Executive Officers in Summary Compensation Table

As proposed, the Total Compensation calculation would be used to determine which executive officers are deemed named executive officers. As noted above, this calculation aggregates columns (d) through (i) of the Summary Compensation Table, including the "All Other Compensation" column. The "All Other Compensation" column also is proposed to include "amounts paid or accrued pursuant to a plan or arrangement in connection with any termination (or construction termination) of employment or a change in control." Accordingly, situations could exist (*e.g.*, corporate restructurings, mergers and acquisitions) in which the Summary Compensation Table is dominated (with the exception of the

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principal executive officer and principal financial officer) by persons who are no longer employed by and will play no role in the future of the company. We do not believe that provides meaningful disclosure for purposes of the Summary Compensation Table and, accordingly, recommend that “amounts paid or accrued pursuant to a plan or arrangement in connection with any termination (or construction termination) of employment or a change in control” not be considered in determining those named executive officers who appear in the Summary Compensation Table.

This could be accomplished by basing the determination of who is included in the Summary Compensation Table on the total of columns (d) through (h) (with columns (f) and (g) modified as recommended above). The amounts *reported* in the table under the Total Compensation column would continue to include the total of columns (d) through (i) (again, with columns (f) and (g) modified as recommended above). This is similar to the current requirement that persons included in the table be based upon the total of salary and bonus, and once determined, that all required compensation of those executives be disclosed per the requirements of the table.

Because any principal executive officer and principal financial officer always will appear in the proposed table, any severance to those executives will be captured and disclosed in the table. We believe, however, that the disclosure of compensation to executives whose employment will be ongoing is more relevant to investors than is the compensation of executives who no longer are with the company. We would also note the proposed new narrative disclosure that captures up to three other employees whose total compensation exceeds that of any of the named executive officers who are listed in the Summary Compensation Table. To the extent that large severance payments occur that would cause an executive’s compensation to exceed that of any of the named executive officers, it can be disclosed there with an explanation that the compensation results from severance payments. That would appear to be more meaningful disclosure than including those executives in the Summary Compensation Table.

We thank you for your consideration of our comments on the proposed rules. We would be pleased to discuss any questions about our comments at your convenience.

Very truly yours,

BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, P.C.

A handwritten signature in black ink, appearing to read "Gary M. Brown", with a horizontal line extending to the right.

Gary M. Brown