



Nancy M. Morris
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RE: File Number S7-03-06
Executive Compensation and Related Party Disclosure

Dear Ms Morris,

I am writing in my capacity as Chairman of the Remuneration Committee of the International Corporate Governance Network, a global membership organization of institutional and private investors, corporations and advisors from 38 countries with capital under management in excess of US\$10 trillion. The ICGN is a global leader in promoting good corporate governance and fair treatment of equity investors around the world. Information about the ICGN, its members and its activities is available at our web site (www.icgn.org).

The ICGN strongly supports the Commission's proposed rule on executive compensation disclosure and related party transactions, and is happy to provide comments. Please note that these views reflect our position in relation to the position in the US market, where many of our members have investments. The ICGN committee on compensation issues which I chair is currently updating its international principles and these will be shortly published. This guidance will reflect the essential points below, but adapted to the circumstances found in different markets.

In summary, we believe the proposed rules, with some modest amendments, will significantly improve executive compensation disclosure in the United States, and we urge the SEC to implement the new disclosure rules in time for the 2007 proxy season.

The ICGN supports the proposed new format, including the concept of a Compensation Discussion and Analysis, and the three primary categories of tables and supplemental narrative disclosures. We believe that the clarity and logical format of the proposed sections eliminates concern over double counting while providing more comprehensive disclosure of all elements of executive compensation.

However, we have a number of suggestions and comments to strengthen the proposal in the following areas:

Compensation Discussion and Analysis (CDA). The ICGN recognizes that the qualitative aspects of the disclosure rules are perhaps the most difficult to define and enforce. We support the concept of the proposed CDA and we encourage the SEC to continue to integrate the strengths of a principle-based approach and rules-based approach. To accomplish this goal, we believe the SEC should maintain the broad principles-based standard in the proposed rule, and supplement this approach with rules-based requirements that help ensure complete disclosure. We believe that the rules-based element should be utilized to ensure coverage of specific areas and topics. Of particular interest to investors are requirements that ensure detailed discussion of the rationale

behind key components of the plan, the links to performance contained in the plan as a whole and specific to each key element, and disclosure of key policies related to compensation, such as the existence of “clawback” provisions, ownership/holding requirements, and hedging prohibitions. We also believe it will be important for the SEC to support the principle-based approach by providing detailed guidance (particularly in the first few years) and strict enforcement actions.

‘Filed’ vs. ‘Furnished’ Status. The ICGN supports the SEC’s proposal to deem the new disclosures “filed.” Clearly, the fact that the disclosures will be filed will imply some ownership of the document by the full board and top management. The ICGN suggests that the SEC also make it clear in the final rule that, despite the filed status, the compensation committee of the board retains the ultimate ownership of the disclosures.

Performance Targets and Thresholds. The proposed rule maintains a “safe harbor” under which companies can exclude key information regarding performance targets and thresholds for fears that the information may be competitively harmful to the company if disclosed. The ICGN believes that this approach provides too large an exemption for companies, ultimately leading to lower quality disclosures. There needs to be an appropriate balance between the needs of investors for full disclosure and the potentially sensitive nature of this information. This is an issue of great importance and we welcome a continuing debate on resolving this creative tension.

Summary Compensation Table. The ICGN strongly supports the disclosure of “total compensation” in the Summary Compensation Table. We believe the elements that comprise total compensation are appropriate and we support the inclusion of the annual increase in actuarial value of pension benefits. The ICGN strongly supports the fair value basis for reporting option grants. We believe it is appropriate to require disclosure of the full grant date fair value in the year of grant for disclosure purposes and we fully recognize the difference between this methodology and the requirements of FAS 123R.

The ICGN requests the Summary Compensation Table be amended in column (h), “Non Stock Incentive Plan Awards,” to provide a grant date fair value estimate instead of the proposed actual award value. In our view, the Summary Compensation Table should represent the decisions of the compensation committee during the applicable year. The remaining columns in the proposed Summary Compensation Table are consistent with this perspective, and we believe that non stock incentive plan awards also can be presented on this basis. We propose that companies be given direction to calculate these values using a probability estimate of achieving the award, discounted to a present value. Disclosure of the methodology and assumptions used by companies to estimate the awards should be required in a footnote. The ICGN requests that the actual awards (consistent with the proposed column (h)) be disclosed in the Option Exercise and Stock Vesting Table.

Outstanding Equity Awards. The ICGN supports the proposed format for the Outstanding Equity Awards at Fiscal Year-End Table. Companies should not be required to value out-of-the-money options and stock appreciation rights. However, it would be useful to investors to require disclosure of the number and key terms of out-of-the-money instruments, since in many cases they may be near their strike price, and, in any case, they may have a significant impact on an investor’s evaluation of the overall plan.

Option Exercises and Vesting. The ICGN strongly supports the SEC’s proposed format of the Option Exercises and Stock Vested Table. The proposed information in this Table is material to investors, and the ICGN supports the requirement to provide the original grant date fair value of the awards next to the ultimate realized value. Given the supporting disclosures, as well as the column heading, this format would not lead to any material risk of double counting. Rather, this table will help investors evaluate the accuracy of companies’ estimates and pricing methodologies over time, which the ICGN believes is valuable.

Perquisites. The ICGN believes that the current methodology of valuing perquisites and other benefits, based on their incremental cost, may significantly understate the true cost to the company

and the benefit to the employee. We believe that valuation of perks based on a commercially available equivalent would provide an efficient means of more accurate disclosure. The ICGN supports the proposed thresholds applicable to “perks”, which we believe strike the appropriate balance between investors’ need for complete disclosure and the burden on companies to track minor benefits. The ICGN believes that tabular format disclosure of individual “perks” would be clearer than the proposed footnote list.

Related Party Transactions. The ICGN is opposed to raising the dollar threshold, below which related party transactions would not be disclosed, from \$60,000 to \$120,000. The proposed increase would eliminate many disclosures of related party transactions which provide pertinent information to investors.

Post Employment Compensation. The ICGN strongly supports the proposed post employment compensation disclosures, including the potential payments from retirement plans, nonqualified deferred compensation, and other potential post employment payments. The ICGN believes that post employment compensation can represent significant value and have a material impact on the overall profile of a compensation plan. The ICGN believes it is beneficial to require disclosures based on each individual NEO as this permits investors to more quickly understand the unique nature of the post employment compensation at any particular company.

We recognize the complexities of disclosures in this area, and we accept that some disclosures will be based on estimates. Therefore, in each of the key areas of post employment compensation, we support firm requirements in the final rule to disclose all material factors related to each plan, particularly the key assumptions and methodologies that facilitate the disclosures.

Should the SEC require disclosure of all earnings on deferred compensation plans as proposed, the ICGN believes that it would be important to provide separate disclosure of amounts attributable to employee contributions, company contributions, general earnings, and earnings from above market rates or other sweeteners offered to select executives. We believe investors will treat different aspects of deferred compensation plans quite differently for analytical purposes, and without segregated information it would be difficult to fully understand the plan(s).

Performance Graph. The ICGN believes that the new disclosures should retain the performance graph. We do not agree that the information communicated by the graph or its role in the overall compensation disclosure regime is outdated. To the contrary, the graph provides a quick performance comparison in close proximity to the compensation disclosures and is valuable to investors. Further, we believe that removing the graph would eliminate a readily accessible and non-controversial source for performance comparisons that shareowners often use in their proposals and other correspondence.

If you would like to discuss the above, have any comments or questions, please do not hesitate to contact me via our Executive Director, Anne Simpson at execdirector@icgn.org. We appreciate the opportunity to comment and look forward to hearing the next stage of the SEC’s thinking on this important subject.

Yours sincerely,

Ted White, Chairman,
ICGN Executive Remuneration Committee