



NATIONAL  
BUSINESS AVIATION  
ASSOCIATION, INC.

1200 EIGHTEENTH STREET NW, SUITE 400  
WASHINGTON, DC 20036-2527  
Tel: (202) 783-9000 • Fax: (202) 331-8364  
E-mail: info@nbaa.org • Web: www.nbaa.org

April 10, 2006

VIA EMAIL: Rule-Comments@SEC.gov

Ms. Nancy Morris  
Secretary  
U.S. Securities Exchange Commission  
100 F Street N.E.  
Washington, DC 20549-0213

**Re: SEC File No. S7-03-06 Executive Compensation and Related Party Disclosure**

Dear Ms. Morris:

The National Business Aviation Association, Inc. (NBAA) has reviewed the Securities and Exchange Commission extensive NPRM regarding executive compensation and related party transaction reporting requirements. NBAA develops best practices to address business aviation issues, including aircraft tax, finance and economics, for several thousand companies that operate aircraft in the furtherance of their business. NBAA supports clear and accurate reporting by public companies of the true cost of perquisites and other personal benefits relating to personal use of company aircraft by executives. Accordingly, our comments are limited to your request for information with respect to the valuation of perquisites and other personal benefits such as personal use of employer provided aircraft<sup>1</sup>.

NBAA agrees with the Commission's assessment that the current standard of reporting, aggregate incremental cost, is the proper valuation methodology for valuing perquisites and other personal benefits. No other mechanism reports the true cost to the company of providing such benefits, which is the information that shareholders need to know. There is no public policy benefit for companies to report artificial rates, such as retail charter value, when that does not reflect the way in which the flight is provided or the cost the company incurred in providing the transportation service.

A company may provide a personal flight to an individual in any of a number of different ways, ranging from the use of an aircraft owned or leased by the corporation to a charter flight conducted by a third-party air carrier. The required reporting methodology must provide the

---

<sup>1</sup> Executive Compensation and Related Party Disclosure, Exchange Act Release Nos. 33-8655; 34-53185; IC-27218; File No. S7-03-06 (January 27, 2006), Section II.B.1.d.iii at page 50.

necessary flexibility to accurately report the appropriate amount for the particular flight involved.

Reporting aggregate incremental cost captures the variances associated with these travel options. For example, the aggregate incremental cost for a personal flight conducted on a business aircraft owned by the company equates to the *variable costs* (also known as *direct operating costs* in the aviation industry) of the flight. These costs include expenses such as fuel, oil, landing fees, travel expenses for crew, hangar and facility fees when the aircraft is away from its home base, maintenance required based on the hourly operation of the aircraft, catering, insurance required for a particular flight, and overtime expenses for crewmembers, but exclude fixed costs incurred for the overall ownership and staffing of the aircraft and not for the operation of a particular flight. Many business aircraft operators track their own direct operating costs, but numerous third-party resources exist to validate the direct operating cost data for aircraft. These sources include the aircraft manufacturer published data, aviation periodicals, and independent company reports such as Conklin and de Decker aviation information. In contrast, if a company charters an aircraft for an individual's personal flight, the aggregate incremental cost would be the full cost of the charter.

The differing objectives of the Commission, the Federal Aviation Administration and the Internal Revenue Service have resulted in differing treatments of the use of business aircraft by employees for personal use. It is important to note that, from the FAA's perspective, a business is prevented from charging anyone (including employees) for flights on their non-commercial aircraft<sup>2</sup> except under very limited circumstances identified in Part 91.501 of the Federal Aviation Regulations. Even utilizing the FAA-prescribed formula for these regulatory exceptions, a company likely cannot recoup of the entire cost of the flight<sup>3</sup>. From the perspective of the Internal Revenue Service, if fair value is not paid by the employee for use of the aircraft, the value of such un-reimbursed use is a taxable fringe benefit, which must be included in the employee's income based upon formulas promulgated under applicable Treasury Regulations. The Commission's perspective is one that focuses on the cost to the company of providing the transportation to the executive, and for the reasons cited above, aggregate incremental cost is an appropriate measure of the actual incremental cost to the company of providing the perquisite.

---

<sup>2</sup> The vast majority of companies operating business aircraft are private (and not commercial) aircraft operators and they are, therefore, subject to this limitation.

<sup>3</sup> Arguments have been made that employees should be able to reimburse a corporate operator for personal use of the Aircraft under the provisions of Section 91.501(b)(5) of the Federal Aviation Regulations. Such arguments have been squarely rejected by the FAA. See FAA Federal Aviation Decision Interpretation 1993-17 – Personal Use; Letter from Donald P. Byrne, FAA Assistant Chief Counsel, Regulations Division, dated August 2, 1993.

Comments of the National Business Aviation Association, Inc.

SEC File No. S7-03-06

Page 3

NBAA would be pleased to provide the Commission with additional information related to aviation cost data and regulatory restrictions on payment for noncommercial flights related to personal use of employer provided aircraft in order to assist the Commission on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "J.E. Murdock III". The signature is fluid and cursive, with a large, stylized "J" and "E" at the beginning.

J.E. Murdock III

Senior Vice President-Administration & General Counsel