

January 29, 2007

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

Re: File No.: S7-03-06
***Interim Rules-- Executive Compensation and
Related Party Disclosures***

Dear Ms. Morris,

This letter contains two comments in reaction to the SEC's Interim Rules on Executive Compensation and Related Party Disclosures that became effective on December 29, 2006 (the "Interim Rules").

(1) *Potential double counting when Non-Equity compensation is exchanged for equity compensation*

Pursuant to the executive compensation rules released in August, Instruction 2 to Item 402(c)(2)(iii) and (iv) provided that if executives elected to forego their salaries or bonuses in exchange for non-cash compensation, companies would not be required to report the value of the salary or bonus in the applicable "Salary" or "Bonus" columns in the Summary Compensation Table (SCT). Instead, such awards were required to be reported in the more appropriate column of the SCT (i.e., the Stock, Option or Non-Equity Award Columns), and simply footnoted in the Salary or Bonus column.

The Interim Rules amended Instruction 2 to now require that such amounts be reported in the Salary or Bonus column, regardless of an executive election to receive non-cash compensation. In addition to this disclosure, information with respect to the actual non-cash award that was made must be reported at full fair value in a new column of the Grant Table.

The unintended result of this change may be double counting in the SCT. The award initially will be reported in the SCT in the year of grant as Salary or Bonus. In addition, the full amount of the award will again "run through" the SCT as such amount is recognized pursuant to FAS 123R.



While we understand that the new Instruction 2 initially aligns compensation reporting with the timing of “earned” salary or bonus, it creates a situation where the SCT will be artificially inflated as the amount is recognized pursuant to FAS 123R. For this reason, we believe an instruction should be included that, if, and to the extent that, salary or bonus amounts are included in the Salary or Bonus columns, respectively, in the year of grant, the FAS 123R values resulting from the non-cash awards elected by the executive should not be included in the SCT in subsequent years, but simply be footnoted in the applicable column(s).

(2) *Inability for newly public companies to calculate fair value under the modified prospective transition method*

The Interim Rules require companies to utilize the FAS 123R modified prospective transition method for Item 402 disclosure purposes, without regard to whether they have adopted that method for financial statement reporting purposes. Under the modified prospective transition method, a proportionate share of the grant date fair value determined under Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123, Accounting for Stock-Based Compensation (“FAS 123”), of equity awards that are outstanding at the date FAS 123R was adopted will be recognized in the financial statements over those awards’ remaining vesting periods, if any. Footnote 66 of the Interim Rules recognizes that for companies that have not adopted the modified prospective transition method for financial statement reporting, the tabular compensation disclosure may not match financial statement disclosure during the transition period.

However, requiring the modified prospective transition method using grant date fair value determined under FAS 123 fails to recognize that FAS 123 did not require fair value reporting for private companies. The FASB recognized that nonpublic entities have neither the grant date fair value amounts for non-vested awards outstanding at the date of adoption of FAS 123R necessary for modified prospective transition, nor the pro forma fair value disclosures for prior years (¶B255 of FAS 123R).

The FASB acknowledged that an emerging entity whose stock is not yet publicly traded may offer stock options to its employees. In concept, those options also should be measured at fair value at the grant date. The FASB recognized, however, that estimating expected volatility for the stock of a newly formed entity that is rarely traded, even privately, is not feasible (¶174 of FAS 123). The FASB therefore provided that use of the “minimum value method” by nonpublic entities was a practical solution to the difficulties of estimating expected volatility for a nonpublic entity (¶178 of FAS 123).



Under FAS 123R, the FASB again recognized that a nonpublic entity may have difficulty estimating the expected volatility of its share price because of the lack of frequent observations of the fair value of its shares. Accordingly, if it is not possible for a nonpublic entity to reasonably estimate the fair value of its equity share options and similar instruments because it is not practicable for the entity to estimate the expected volatility of its share price, FAS 123R requires that the entity measure its equity share options at a value calculated by substituting the historical volatility of an appropriate industry sector index for expected volatility in applying an option-pricing model (“calculated method”)(¶B96 of FAS 123R).

For these reasons, we believe an instruction should be included to allow the use of the “minimum value method” or “calculated method” for companies not required to calculate fair value under FAS 123 or FAS 123R.

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We appreciate the opportunity to share our views. By way of background, Pearl Meyer & Partners is one of the nation's leading compensation consulting firms, serving Board Compensation Committees as outside counsel and assisting companies in the creation and implementation of innovative, performance-oriented compensation programs to attract, retain, motivate and appropriately reward executives, employees and Board Directors. Since its founding in 1989, PM&P's compensation professionals have advised hundreds of organizations in virtually every industry here and abroad, ranging from Fortune 500 companies to smaller and private firms and not-for-profit organizations.

We note that PM&P is submitting this comment on its own behalf, and not on behalf of any specific client. Please contact us at 212-407-9523 if you have any questions regarding our comment.

Sincerely,

Pearl Meyer & Partners