



April 10, 2006

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

Re: Comments on the Securities and Exchange Commission Proposed  
Amendments to Executive Compensation and Related Party Disclosure  
File No. S7-03-06

Dear Ms. Morris:

The Society for Human Resource Management (“SHRM”) submits these comments to the Securities and Exchange Commission (the “Commission” or the “SEC”) in response to the notice on the proposed amendments to the rules that govern public company disclosures of executive and director compensation. *See* 71 Fed. Reg. 6,542 (Feb. 8, 2006).

SHRM is the world’s largest association devoted to human resource management. Representing more than 200,000 individual members, the Society’s mission is both to serve human resource management professionals and to advance the HR profession. Founded in 1948, SHRM currently has more than 550 affiliated chapters and members in more than 100 countries. SHRM’s membership comprises HR professionals who work for organizations subject to the data collection and reporting requirements established by the Commission, including companies who are required to disclose compensation information of specified company executives. For this reason, SHRM has a strong interest in the proposed amendments to the rules that govern the disclosure of executive and director compensation in proxy and other filings required by the Commission. SHRM has taken a multi-faceted

approach to obtain input from our members regarding the proposed amendments, and our comments to the Commission reflect information provided by SHRM members.

## **DISCUSSION**

SHRM applauds the Commission for its efforts to increase the transparency of executive compensation. Full and clear disclosure of executive compensation is not only beneficial to shareholders, but will also assist HR professionals in explaining their company's executive compensation information to employees. While the proposed rules mandate the collection of more information than is otherwise currently required, SHRM believes that the Commission has achieved a reasonable balance between the burden of the collection and reporting of such additional information and the goal of providing more complete disclosures for shareholders and employees.

### **I. The Summary Compensation Table – Disclose Data From the Three Completed Fiscal Years**

The Commission has asked whether the disclosure of executive compensation information for each of a company's last three fiscal years, or from the last completed fiscal year, is appropriate. *See* 71 Fed. Reg. 6,542, 6,548 (Feb. 8, 2006). SHRM believes that the Summary Compensation Table should continue to require the disclosure of compensation for each of the company's last three fiscal years.

The Commission currently requires the disclosure of compensation information regarding a company's chief executive officer and the next four most highly-compensated executive officers on the Summary Compensation Table by setting forth the actual compensation paid by the company to each of these executive officers during the last three completed fiscal years. SHRM supports this current disclosure requirement. The disclosure of the last three years of compensation data makes it easier for employees and shareholders to identify changes in compensation forms and amounts from year to year. Generally, the annual proxy statement is made available to the public on the Commission's Web site through the Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR"). Although employees and shareholders are able to retrieve the compensation information from previous years through EDGAR, the average individual may not be familiar with EDGAR, and thus have difficulty locating and comparing the Summary Compensation Tables from prior years. One of the goals of the proposed rule is to provide investors with the ability to easily compare changes in executive compensation from year to year. Therefore, for the reasons addressed above, SHRM recommends that the Commission maintain the current three-year disclosure format.

## **II. Disclosure of “All Other Compensation” – Maintain the \$10,000 Threshold**

The Commission has asked whether \$10,000 is the appropriate threshold for disclosing certain elements of executive compensation. *See* 71 Fed. Reg. 6,542, 6,552 (Feb. 8, 2006). Under the proposed rules, the Summary Compensation Table will require the disclosure of the various elements of compensation paid to an executive in a specific column of the Table (e.g., salary, restricted stock awards, and stock option grants are disclosed in separate columns). The proposed rules provide that compensation that is not reported in any of these columns must be disclosed under the “All Other Compensation” column.<sup>1</sup>

This proposed change provides that if a compensation item included in the “All Other Compensation” column exceeds \$10,000, such compensation must be separately identified and quantified in a footnote. However, if an item of compensation is less than \$10,000, such item would be required to be included in the column, but need not be identified in a footnote.<sup>2</sup> SHRM believes that establishing the \$10,000 threshold for disclosure of certain elements of compensation in the “All Other Compensation” column is reasonable. Specifically, SHRM believes that requiring the disclosure of all de minimis benefits would be administratively burdensome. Tracking and gathering information relating to every benefit provided to an executive would significantly increase administration and administrative costs. In addition, identifying and quantifying hundreds of benefits in a footnote would adversely affect the utility of the streamlined Summary Compensation Table, and negate the policy of making it easier for employees and shareholders to understand. Thus, SHRM believes that the \$10,000 threshold is reasonable.

## **III. Plain English Disclosure**

The Commission has proposed that most of the disclosure items be provided in “plain English.” *See* 71 Fed. Reg. 6,542, 6,582 (Feb. 8, 2006). SHRM agrees with the Commission that the plain English disclosure will produce a more concise presentation of executive compensation information that is easier to read and understand by the average employee and shareholder.

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<sup>1</sup> Examples of amounts that would be included in this catch-all column include the following:

- Increase in present value of benefits under a defined benefit plan;
- Earnings on nonqualified deferred compensation;
- Perquisites or other personal benefits;
- Employer contributions or other allocations to defined contribution plans;
- All premiums paid on life insurance.

<sup>2</sup> The proposed rules provide that if perquisites or other personal benefits (“perks”) do not, in the aggregate, exceed \$10,000, such perks need not be disclosed in the “All Other Compensation” column. SHRM supports this proposal for the same reasons we support the \$10,000 threshold for identifying and quantifying “All Other Compensation.”

SHRM also supports the form in which executive compensation information will be disclosed. Specifically, requiring the information to be set forth in a tabular design rather than a narrative format helps the average shareholder and employee better understand and process the disclosed information. However, SHRM agrees with the Commission that there are instances in which information is more appropriately disclosed in narrative footnotes. SHRM believes that the Commission has achieved a reasonable balance by requiring narratives within a tabular format. Based on the comments above, SHRM recommends that the Commission require companies to provide disclosures in the “plain English” format as proposed.

#### **IV. Disclosure of Post-Employment Compensation**

The Commission has proposed significant revisions to the disclosure of post-employment compensation. *See* 71 Fed. Reg. 6,542, 6,560 (Feb. 8, 2006). Specifically, the Commission has proposed a new table to disclose contributions, earnings, and balances under nonqualified deferred compensation plans. Under the current rules, companies are only required to disclose the compensation when earned and only the above-market earnings on nonqualified deferred compensation. This information does not disclose the full value of the earnings on nonqualified deferred compensation and the account balances on which the earnings are payable. The proposed rules, however, require the disclosure of all earnings on compensation that is deferred on a nonqualified basis.

SHRM believes that clear and complete disclosure of nonqualified deferred compensation on an annual basis will enable shareholders and employees to understand the amount of compensation a former executive receives after separation at employment. SHRM supports the disclosure of post-employment nonqualified deferred compensation in the year of termination so as to disclose any large lump sum payments made to the exiting executive. SHRM also supports such disclosure on a year-by-year basis so as to capture the level of post-employment nonqualified deferred compensation paid in the years following the executive’s year of termination. In addition to this disclosure, however, SHRM believes that a narrative disclosure should be included which sets forth the time period during which post-employment nonqualified deferred compensation payments will be made. Such disclosure will help HR professionals quantify the amount and length of payments, thereby equipping them with tangible information that can be relayed to employees in response to their inquiries.

SHRM is concerned that the Commission’s proposed requirement may be interpreted to require the disclosure of a nonqualified deferred compensation plan’s method used to calculate the payments. SHRM believes that because the proposed rules already require the disclosure of how earnings and interest on nonqualified deferred compensation amounts are calculated, providing the manner in which post-employment nonqualified deferred compensation payments are calculated would further complicate the disclosure, and negate the policy of providing clear and complete information regarding post-employment compensation. Therefore, SHRM recommends that the Commission clarify that the method

for calculating post-employment nonqualified deferred compensation payments need not be disclosed in a narrative.

**V. Elimination of the Compensation Committee Report and Filing the Compensation Discussion and Analysis May Result in Liability under Sarbanes-Oxley**

The Commission has proposed to add a Compensation and Discussion Analysis (CD&A) section to a company's proxy statement, which would replace the current Compensation Committee Report. *See* 71 Fed. Reg. 6,542, 6,546 (Feb. 8, 2006). The CD&A would be considered "filed", rather than "furnished", as the Compensation Committee Report is currently. SHRM believes that requiring the disclosures under the proposed CD&A to be filed, rather than furnished by the compensation committee, could increase potential liability for the principal executive officer ("PEO") and principal financial officer ("PFO") with respect to the certification required under the Sarbanes-Oxley Act of 2002. A significant number of decisions, with respect to compensation of executive officers, are made by a compensation committee in an executive session outside of the presence of the PEO and PFO. Often, all of the factors behind compensation decisions may not be communicated to either or both of these individuals. To impose personal liability with respect to matters of which the PEO and PFO have no personal knowledge or access outweighs the benefits of requiring the filing of the Compensation Discussion and Analysis. Therefore, SHRM strongly recommends that the Commission require that the Compensation Discussion and Analysis be "furnished" rather than "filed."

**VI. Conclusion**

SHRM appreciates the opportunity to submit these comments. SHRM looks forward to working with the Securities and Exchange Commission to provide educational and outreach efforts to both employers and employees on any revisions to the executive compensation disclosure process.

Respectfully submitted,



Michael P. Aitken

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Society for Human Resource Management