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September 15, 2009

Via Internet Comment Form

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

Re: File Number S7-13-09
Proposed Amendments to Requirements
For Compensation and Corporate Governance Disclosures.

Dear Ms. Murphy:

On July 17, 2009, the Commission published in the Federal Register proposed amendments to its rules regarding compensation and corporate governance disclosures (the "Proposed Rule").[1] This letter sets forth the comments of Frederic W. Cook & Co., Inc. with respect to the proposed amendments. In addition, the Proposed Rule generally requested comments on what other changes in proxy disclosures would improve the disclosure process with respect to executive compensation. This letter also responds to that request.

Frederic W. Cook & Co., Inc. provides compensation consulting services to corporations, boards of directors, and compensation committees with respect to the compensation of executives and directors. The Firm's services are provided to companies in all industries and size categories. We have provided compensation consulting services to more than 2000 companies since we were founded 36 years ago. We are the independent compensation consultants to approximately 30% of the S&P Top 250 companies.

We will first set forth comments regarding the amendments in the Proposed Rule and then set forth our proposals in response to the SEC's request for recommendations on how to improve the executive compensation disclosure process. Unless otherwise stated, references to portions of Regulation S-K will use section designations reflecting the numbering of Items 402 and 407 in the Proposed Rule.

Item 402(b)(2)—Compensation discussion and analysis of the registrant's overall compensation program as it relates to the registrant's risk management

[1] This letter does not comment on the proposed amendments in the proposed rule regarding the transfer of certain reporting requirements to Form 8-K or the proposed amendments to the proxy rules clarifying how they operate and addressing certain issues in the proxy solicitation process.

A threshold question with respect to proposed Item 402(b)(2) is whether it even belongs in section 402, which is the section of Regulation S-K requiring "executive compensation" disclosures. Item 402(b) already requires numerous disclosures in the compensation discussion and analysis (CDA) that enable a reader to evaluate how the compensation programs for named executive officers (NEOs) may influence behaviors that affect risk (for example, information about the mix between long- and short-term compensation, the metrics in long- and short-term performance plans, and share ownership policies). New section 402(b)(2) is focused, however, on the risk impact of compensation policies for non-executive officers.

Registrants may find it easier to understand and respond to Item 402(b)(2) if it is made clear at the outset that the purpose of Item 402(b)(2) is not related to evaluating the compensation of executive officers. Instead it has an entirely different purpose—providing information relevant to determining whether the compensation programs for non-executive officers are likely to elicit excessively risky behaviors or actions that may compromise shareholder value.

In that regard, we question how valuable the additional disclosures will be. Registrants will, of course, endeavor to comply with the directives in new Item 402(b)(2). Our concern that the new disclosures may not be meaningful stems from two facts:

- There is no consensus regarding what compensation practices are more likely to lead to excessive risk taking. For example, while most commentators have asserted that high proportions of stock options in long-term incentive (LTI) compensation and highly leveraged annual incentive plans potentially lead to excessive risk taking, one commentator recently asserted the opposite.[2]
- A company's compensation practices usually contain counterbalancing elements with respect to risk taking. While annual incentive plans necessarily place an emphasis on short-term results, long-term incentive plans focus on long-term value creation. As another example, a highly leveraged annual incentive plan (payout continues to increase until performance is significantly above target) may be counterbalanced if the compensation committee can modify the indicated payout based on the quality of earnings. Since there is obviously no recipe for computing the right proportions of counterbalancing incentives, there will be an inevitable tendency for this portion of the CDA to simply end up as a list of compensation factors that increase and decrease risk taking, followed by a company's conclusion that it believes the right balance has been achieved.

The proposed rules appear driven by the fact that, as widely reported in the press, some of the financial institutions that have suffered the greatest loss in value over the last two years

[2] See www.watsonwyatt.com/payriskinsider. We do not endorse such conclusions, but only introduce them as evidence of the lack of consensus in this area.

employed highly paid non-executive officer employees who (1) were primarily compensated through annual incentives and (2) had the authority to initiate or recommend transactions that would expose the financial institution to significant losses, such as the sale of credit default swaps or the purchase of mortgage-backed securities. In fact, of the five factors listed in the Proposed Rule as potentially indicating a potential need for risk disclosures, four of them appear to relate to this fact pattern.[3] While the proposed rule may elicit new details regarding annual incentive plans with large potential payouts for non-executive officers, we are uncertain how useful the information will be, especially since we expect such disclosures to be routinely followed by statements to the effect that senior management continually evaluates investment decisions by other employees in order to evaluate their riskiness.

Outside of financial institutions, most registrants may be justified in concluding that Item 402(b)(2) does not require any additional CDA disclosures because, excluding actions that may be taken by NEOs, compensation policies do not have an impact on risk management and risk taking that is material to the registrant. We expect, however, that many registrants will decide to say something about all their compensation programs as they relate to risk, such as describing the programs and following the description with language generally describing how supervisory controls are in place that are intended to avoid excessive risk taking. There will be an inevitable tendency toward production of boilerplate language that expands the CDA without providing useful information for investors.

Because of these difficulties in crafting meaningful disclosures about risk, we believe the SEC should consider replacing the lengthy language of proposed Item 402(b)(2) with a simpler requirement. Item 402(b)(2) would contain a requirement that, to the extent material, the registrant disclose that it has procedures in place for evaluating the extent to which its compensation programs for persons other than NEOs encourage inappropriately risky behaviors.

Item 402(c)(2)—Amending the Summary Compensation Table (SCT) to report the grant date fair value of equity awards instead of the dollar amount recognized for financial reporting purposes.

We strongly favor the SEC's proposal to amend columns (e) and (f) in the SCT so that the grant date fair value of equity awards is included, instead of the dollar amount recognized for financial statement reporting purposes.

Like the SEC, we also acknowledge that the grant date fair value approach is not a perfect solution to how to best disclose the value of an executive's compensation in a year—for example, if a multi-year equity grant is made in Year 1 that is intended as the only equity compensation for several years, the grant date approach overstates the value of executive

[3] The regulations refer to business practices at a business unit of the company that carries a significant portion of the registrant's risk profile; at a business unit with compensation structured significantly differently than other units within the registrant; at a business unit that is significantly more profitable than others within the registrant; and at a business unit where compensation is a significant percentage of the unit's revenues.

compensation in Year 1 and understates the value in subsequent years. This potential defect is far outweighed by the fact that most executive compensation programs provide for annual grants and that the SCT today provides a dollar value for equity compensation that (a) bears little resemblance to the data actually used in the executive compensation decision making process and (b) fosters confusion among investors with regard to the value of compensation intended to be delivered for any given year.

In general, in determining the appropriate amount of equity compensation to be awarded an executive for a year, a compensation committee collects data on the equity compensation awarded to peer executives at comparable companies, measuring that value with reference to grant date values. We are not aware of any companies that use the annual accounting charges currently reported in the SCT for peer companies as the basis to assess market practice in their benchmarking process. Similarly, the compensation committee generally values the equity award to the executive by looking at the fair value of the award at the date of grant, using either the methodology of FAS 123(R) or some other appropriate methodology. Reporting grant date fair values in the SCT much better aligns the information provided to investors with the information used by the compensation committee in the process of deciding equity compensation.

In connection with the transition to grant date fair values for the SCT the SEC has stated it is considering retroactively applying the new disclosure principle to preceding years required to be reported in the SCT.[4] We support retroactive application of the new rules. Based on our experience, it will not be difficult to gather the necessary data. More importantly, equity compensation values comprise such a major part of NEO compensation that failure to restate the table for preceding years will prevent readers from meaningfully interpreting changes in compensation over the years being reported.

The Proposed Rule's better alignment of the SCT with how executive compensation is generally decided upon would be significantly advanced if Item 402(c) is clarified and/or amended in two key respects: (1) the reporting of fair values in the case of performance shares and (2) the year in which the fair value of equity awards is reported. In addition, for the reasons explained below, it is recommended that column (l) to the Grants of Plan-Based Awards Table (GPBAT) be retained.

<u>Performance Share Reporting.</u> CD&I 120.05 states that the grant date fair value reported in column (l) of the Grants of Plan-Based Awards Table should be "based on maximum performance, so that investors can see the maximum grant date fair value numbers that were authorized in granting the award." While the Proposed Rule is not clear regarding this issue, it appears that the SEC may intend that the grant date fair value in columns (e) and (f) of the SCT be based on the ***<u>maximum</u>*** amount of the equity award that may be earned, rather than the

[4] The determination of NEOs in prior years would not be retroactively affected; only the reporting of equity values for prior years.

amount actually used for financial statement reporting purposes. It is important that the final rule clarify that, instead of this number, the grant date fair value calculation should be based on the amount used for financial statement reporting purposes.[5]

For example, suppose a performance share plan awards shares at the end of three years depending on EPS growth. For performance at a target EPS level, 100 shares are awarded; for performance at a maximum EPS level or above, 200 shares are awarded; and for EPS performance below a threshold, no shares are awarded. Assuming an initial stock price of $100 and assuming that performance at target is the expected outcome, the original fair value for accounting purposes would be $10,000 (100 shares at $100). Similarly, if the expected outcome is performance below or above target (e.g., 75% or 125%), the original fair value for accounting purposes would be adjusted from target to reflect the expected earnout. The SEC's approach would require, however, that $20,000 be reported in the SCT, even if it were considered extremely unlikely that the maximum award would be paid. In other words, the SEC's approach does not reflect the degree of difficulty associated with the performance requirements and could therefore lead to over-reporting of performance-based awards, which could have the perverse effect of encouraging companies to adopt awards without performance requirements.[6]

Choosing the year in which to report the fair value of equity awards. The SCT would present a substantially more accurate representation of the compensation decisions made during the year if equity awards based on a prior year's performance could be reported in the SCT for the year to which they relate. This objective would be accomplished by adding the following new Instruction 3 after Item 402(c)(2)(vi):

> Instruction 3 to Item 402(c)(2)(v) and (vi). Awards reported in columns (e) and (f) should normally be reported in the year of grant; provided that, if the grant is made after the year in question but on behalf of the prior year's performance, the grant may be reported in the SCT for the performance year. A decision to report fair value in the performance year, rather than the year of grant, should apply to all equity awards reported for a year and should be consistently followed in future years.

This amendment would avoid two defects of the present system: (1) cash and equity awards are today reported inconsistently and (2) today's timing of the reporting of equity awards can mislead investors with regard to how the compensation committee is rewarding executive performance. Regarding the first defect, suppose a compensation committee determines that, based on 2009 performance, the CEO is entitled to a cash bonus of $1.5 million and equity awards with a fair value of $3 million. Both awards are made in February of 2010, shortly after

[5] As described below, we also recommend the retention of column (l) of the GPBAT. Similarly, Item 402(d) should clarify that the value reported in column (l) is the grant date fair value as computed under FAS 123(R), not the maximum amount that may be paid.
[6] Of course, it is desirable that the maximum value of equity awards be reflected in the tables. This could be done, for example, by requiring footnotes to columns (e) and (f) of the SCT that disclose fair values for maximum performance.

the compensation committee meets to evaluate 2009 performance. Neither the 2009 nor the 2010 SCT contains full information on how 2009 performance was evaluated--the cash bonus is reported in the 2009 SCT and the equity award is reported in the 2010 SCT.

Investor confusion will be further heightened when there are significant year-to-year changes in equity awards because of significant differences in company performance. Assume a company makes February grants based on prior financial performance and good 2007 financial performance is followed by poor 2008 financial performance and recovered 2009 financial performance (this fact pattern will apply to many companies). The poor financial performance in 2008 led to significant decreases in the equity awards granted in 2009 compared to the amounts awarded in 2008 (which reflected 2007 performance). Assuming that the SEC's proposed amendment had been in effect in prior years, the SCT would have shown the NEOs receiving large awards in 2008 (the year of poor performance) and smaller awards in 2009 (the year of good performance).[7] Adding Instruction 3 will allow a company to avoid this miscommunication.

Our proposed change is consistent with the SEC's proposed modification to paragraph 2 of the Instructions to Item 402(c)(2)(iii) and (iv). Paragraph 2 addresses the correct reporting of salary and bonus that is paid in the form of an equity award pursuant to an NEO's election. As revised, the instruction will require the reporting of the equity award in the SCT for the year in which the salary or bonus would have been reported. For example, if an executive chooses that a portion of the cash bonus for 2010 be paid in stock options delivered in 2011, the value of the stock options is reported in the 2010 SCT. Allowing non-elective equity awards to also be reported in the year to which they relate is consistent with the SEC's rationale for amending paragraph 2.

Item 402(d)—Proposed Amendment to the Grants of Plan-Based Awards Table (GPBAT) to remove column (l) and Item 402(k)—Proposed Amendment to the Directors Compensation Table (DCT)

We recommend that column (l) (containing the grant date fair value of equity awards) be retained, as well as those portions of Item 402(d) describing column (l). While the SCT will now contain the fair value of equity awards under the proposed amendments, this value is reported on an aggregate basis. Absent retention of column (l), an investor will not be able to determine the values attributable to different forms of equity awards when an executive receives multiple forms of awards during the year that are reported in the same column of the SCT, e.g., restricted stock units and performance shares. This is important information since different forms of awards, such as restricted stock units and performance shares, can have significantly different effects on executive incentives. In order to avoid duplication, an instruction to Item 402(d) could provide

[7] Because the current rules look at accounting charges, rather than grant date fair values, the potential today for miscommunication is much less in the case of companies making annual grants with multi-year vesting periods (because the SCT number reflects the value of grants in multiple years). The change to grant date fair value dramatically increases the problem because the new SCT will only capture the value of the grant for a single year.

that column (l) may be omitted when none of the executives have received multiple forms of awards that are being reported in the same column of the SCT.

The instructions to Item 402(d) should further provide that, if a registrant elects to report an equity award in the performance year rather than the year of grant, the award should also be reported in the performance year in the GPBAT.

For the reasons just described, the instructions to Item 402(k)(2)(iii) and (iv) should continue to require disclosure of grant date fair values in cases where a director has received multiple forms of awards that are being reported in the same column of the DCT.

Item 407(e)(3)(iii)—Compensation Consultants

We agree that an investor is entitled to know whether the compensation consultant to the compensation committee provides additional services to the company that could influence its advice. Knowing the extent to which a compensation consultant receives remuneration for non-compensation committee services assists the investor in forming a judgment regarding whether the potential loss of revenues from those other services could influence a consultant's impartiality.[8]

We think that Item 407(e)(3) will best achieve these objectives by requiring disclosure of a compensation consultant's fees if the individual consultant or the firm that employs this individual provides any services beyond those necessary to support the board of directors in relation to its responsibilities in overseeing executive and nonemployee director compensation unless those services are a de minimis amount (as defined below).

Compensation consulting vs. additional services. The application of Item 407(e)(3)(iii) would be much improved if it were amended to define the concept of "additional services" with more precision. The following definition is recommended:

> "Services by a compensation consultant, including the individual engaged by the board of directors or the firm that employs this individual, shall be considered 'additional services' unless (1) the compensation consultant is authorized by the compensation committee to perform the services and (2)(A) the consulting involves the compensation of directors, officers or other highly compensated employees with respect to which the compensation committee has oversight, (B) the consulting is performed directly for the full Board of Directors, the compensation committee or another Board committee responsible for oversight of executive or nonemployee director compensation, and the results of the consulting are delivered to the respective members of the Board or applicable committee for its direct review, or (C) the consulting consists of providing

[8] Of course, the proxy statement can explain steps taken by the consultant or the company to lessen this possibility, such as the use of separate consultants for non-compensation committee services.

compensation survey services primarily with respect to employees whose compensation is under the oversight of the full Board of Directors, the compensation committee or another Board committee responsible for oversight of executive or nonemployee director compensation."

Because amended Item 407(e)(3) requires providing the aggregate fees for additional services, it is important that the term "additional services" be defined with some precision in order that (1) companies and consultants not be forced to spend inappropriate amounts of time determining what constitutes an "additional service" and (2) consultants not be able to avoid treating services as "additional" because of the vagueness of the concept. We think the proposed definition avoids these problems. Any service is "additional" unless authorized by the compensation committee or other Board entity and, even if authorized, the service is "additional" unless it fits within three categories:

- The first category encompasses compensation consulting with respect to directors, officers, and other highly compensated employees. In this case, it is not necessary that the results of the consulting be directly reported to the compensation committee for its direct review. For example, if a highly compensated employee is to be relocated overseas, the compensation committee might both (1) want management to draw on the compensation consultant's expertise to devise a compensation package that takes into account the complex issues raised by an overseas assignment and (2) not need to become involved in approving the final package (this could occur, for example, when the highly compensated employee is not an executive officer).
- The second category encompasses broad-based consulting where the compensation consultant's work is delivered directly to the compensation committee for its direct review. Absent this exception, the concept of "additional services" could be construed to encompass the consultant's review on behalf of the compensation committee of changes in broad-based plans that are being brought to the compensation committee for approval. This second exception would apply, for example, if management wanted the Board of Directors to approve major revisions to the company's broad-based tax-qualified pension plan and the compensation committee was charged with reviewing management's recommendation on behalf of the Board of Directors. If a consultant worked with management to formulate the initial recommendations with regard to the broad-based plan, those consultant services would not be excluded; instead only services provided to the compensation committee in reviewing the recommendation would be excluded. Similarly, preparation of a pension plan actuarial report or health plan redesign recommendations would not be excluded; if requested by and for the compensation committee, however, the consultant's review of these

recommendations on behalf of the compensation committee would be excluded.

- The third category recognizes that many compensation consultants prepare general compensation surveys regarding compensation paid to employees in different job categories. So long as the survey information is being collected primarily with regard to employees whose compensation is overseen by the compensation committee, this service should not be treated as an additional service.

De minimis rule. Just as the proxy rules recognize that the value of providing information about perquisites can be outweighed by the costs of collecting information, Item 407(e)(3) should also provide a de minimis threshold below which it is unnecessary to report the remuneration paid compensation consultants or separate the remuneration between compensation consulting and additional services. We recommend that compensation consultant fees only be reported when additional services are more than $15,000. Based on our experience, this threshold should adequately distinguish between minor additional services and services so large that they might compromise a consultant's independence. Such a threshold also recognizes the realities that (1) no definition of "additional services" will be able to clearly distinguish between all possible situations and (2) consultant billing systems are not necessarily set up to distinguish between compensation consulting services and other services.

Recommendations on How to Improve the Executive Compensation Disclosure Process

1. Item 402(a)(6)(ii)

This item currently provides that the registrant may omit information regarding "group life, health, hospitalization, or medical reimbursement plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees." While this subparagraph has the beneficial goal of allowing the already voluminous CDA and tables to eliminate information about small benefits, two amendments to this item would better enable it to accomplish its purposes.

As currently written, the item is literally inapplicable if even one salaried employee is ineligible for the benefit. Because many registrants have multiple lines of unrelated businesses, they have ***no*** medical and health plans available to all employees—instead, plans are designed on a division by division basis. To recognize this business reality, the current language should be amended so that the exclusion applies so long as the benefit in question is available to a "broad and non-discriminatory group of salaried employees."

In addition, the item should be expanded to cover other types of welfare plans that are like life and health plans. In particular, the exclusion should apply to the following types of plans so long as they are nondiscriminatory: dependent care plans, educational assistance plans, travel accident plans, accidental death and dismemberment plans, and charitable reimbursement programs. The failure to exclude these items can clutter up the already lengthy CDA or SCT with details that detract from an investor's ability to focus on the significant elements of an NEO's compensation.

2. Changes to the CDA

It would be beneficial if the SEC could use the process of finalizing the Proposed Rule as an opportunity to remind registrants that Item 402(b)(1)(ii) only states that the 15 items of information in Item 402(b)(1)(ii) warrant discussion in the CDA when they are material.

In particular, two areas deserve this reminder. In response to Item 402(b)(2)(ii)(L)'s statement that CD&As should consider including a statement regarding the impact of the tax treatment of compensation, many CDAs now contain a formulaic statement about how the compensation committee takes section 162(m) into account (for example, "The Compensation Committee considers the impact of section 162(m) in making its compensation decisions, but, depending upon the circumstances, may provide for forms of compensation that are not deductible under section 162(m) when this best serves the interest of the company." Registrants should be reminded to consider whether such a disclosure is required under a materiality standard.

A second area where clarification could significantly improve the usefulness of the CDA concerns the tendency of some issuers to list all companies in a broad-based compensation survey that is used as part of the benchmarking process.[9] A registrant might supplement peer company data through the use of broad-based surveys. Depending on what survey is used, the survey data may represent information provided by hundreds, if not thousands of companies. Some registrants have received comment letters from the SEC stating that the CDA rules require listing of all companies in a survey sample, regardless of size. This position is based on Item 402(b)(1)(ii)(N), which refers to "identifying the benchmark and, if applicable, the components (including component companies)." In actuality, not only does the company often not care about the identity of the companies comprising the survey sample, in some cases it may be difficult to even determine which companies are involved. This could happen if the registrant were only interested in companies above a certain size (for example revenues above $1 billion), but the survey only provided a list of all companies in the survey, without identifying which specific companies fall into the various revenue ranges provided.

The usefulness of the CDA would be enhanced by the SEC's specifically stating that the listing of all companies in a broad-based survey is only required when it is material.

Finally, registrants should be permitted to use drop-down menus of paragraph headings in their electronic filings of CD&As. This would both shorten the length of proxy statements and allow readers to focus on paragraphs most relevant to them.

[9] Some SEC comment letters on the CDA have asserted that such disclosure is required.

<u>3. Minimum Font Size for All Tables</u>

Due to the volume of information required by some of the tables, some registrants have used font sizes that have made the information very hard to read. For example, we are aware of tables that have used a 3.5 point font size. The final rule should require that a minimum font size be used for the tables.

<u>4. Changes to the SCT and DCT</u>

<u>The SCT should be modified by (1) combining the bonus and non-equity incentive compensation column and (2) showing long-term cash compensation separately</u>. These two related modifications would improve the disclosure of cash compensation without increasing the complexity of the SCT.

In our experience, the bonus column is often used only to report signing bonuses since an incentive plan is broadly defined as "any plan providing compensation intended to serve as an incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the company or an affiliate, the company's stock price, or any performance measure." Item 402(a)(6)(iii). Under this broad language a registrant could put payments under a completely discretionary plan in the non-equity incentive plan column so long as the plan document provides that the executive's bonus is based on the committee's evaluation of the annual performance of the executive and the company. There would be no loss in meaningful disclosure if columns (d) and (g) were simply combined into a new column (d) entitled "short-term non-salary cash compensation." All cash payments for performance periods of less than one year would be shown in this column.

In order to coordinate the disclosure in the "short-term non-salary cash compensation" column with the disclosure in the GPBAT of estimated future payouts under non-equity incentive plan awards, registrants would be required to provide footnote disclosure of any compensation reported in this column that was not being paid under a non-equity incentive plan. This would, for example, enable an investor to distinguish between signing bonuses and payments based on annual performance.

The value of long-term non-equity incentive compensation could now be shown in column (g), which would be labeled "long-term non-equity incentive plan compensation." Non-equity long-term incentive compensation would continue to be reported in the same manner as today, i.e., in the year in which the multi-year performance measure is satisfied. Instructions to Item 402(c)(2)(vii). This separation of long-term and short-term incentive compensation into two components enables readers to more readily evaluate the extent to which executive compensation emphasizes long-term value creation through incentives based on long-term performance.

Clarification of column headings. One minor change would make the SCT/DCT tables more reader friendly. Instructions should clarify that column headings may omit items that are not relevant. This would eliminate the confusion that now arises with the "Change in pension value and non-qualified deferred compensation earnings table." In our experience most registrants have at most one of these two types of plans, so it is usually only necessary to label the column "Change in pension value" or "Change in non-qualified deferred compensation earnings."

5. Changes to the Options Exercise and Stock Vested Table (OESVT)

While the OESVT currently communicates the values realized during the year on account of stock option exercises and the vesting of stock awards, this information can be misleading. Stock option gains and the vesting of stock awards represent accretions in value that have occurred over periods as long as 10 years,[10] yet the gains are all shown as occurring in the year of exercise. Equally important, the OESVT does not reflect unrealized gains or losses in equity awards during the year. An executive could have realized $1 million in stock option gains at the start of 2008, but, due to the market collapse in Fall 2008, watched the value of his or her unexercised options and unvested equity awards ***decrease*** by $3 million. This executive is more likely to believe he or she lost $2 million in 2008 than made $1 million.

While we do not recommend eliminating the information now found in the OESVT, we believe the utility of the table to its readers would be greatly improved if the table were expanded to both capture (1) the total value of unrealized gains in equity awards and (2) the extent to which this value has increased or decreased during the current year. The expanded table would be entitled the "Realized and Unrealized Equity and Non-Equity Incentive Awards Table."

While the total value of unrealized gains in equity awards can be computed today from the Outstanding Equity Awards at Fiscal Year End Table, this is a difficult computation in the case of executives with many awards. Investors will be benefited by presenting the information in summary form in the revised table since it provides both a measure of executive wealth and, by showing the unvested portion of the equity awards, provides a measure of the retention incentives in place. As explained above, showing the year-over-year increase in values serves the equally important purpose of providing information that best correlates with how the NEO views his or her own compensation.

Finally, in keeping with the theme of capturing all elements of long-term incentive compensation, we think the new table should be expanded to capture similar data with regard to long-term cash incentives.

[10] This assumes a 10-year option is exercised at the end of its term.

Set forth below are two hypothetical tables showing what the table would have looked like in 2008 (a down market) and what the table would look like in 2009 (an up market). The table assumes a share price of $70 at the start of 2008, dropping to $35 by year end, and then rising to $50 by the end of 2009.[11] We think the column headings are largely self-explanatory, but a few comments may be useful. With regard to option values (columns (b) and (c), it is intended that values be represented by the difference between strike price and the fair market value of the underlying stock at year-end. With regard to equity and non-equity incentive plans (columns (e) and (g)), we recommend that values prior to payout be based on target values unless the metrics of the plan allow an estimation of results based on financial performance through the end of the intermediate year.

The numbers in the tables strikingly show the differences in the quality of the information now conveyed in the OESVT and what the new table would convey. The current OESVT would only tell the reader that the executive had realized gains of $2,015,000 in 2008 (columns (d) and (f)) and would not explain that the executive actually suffered an overall diminution in value of $1,875,000 from the start of the year value (column (i)) because of the drop during 2008 of the stock price from $70 to $35. The current OESVT would only show realized gains of $420,000 in 2009 (column (f)) and not capture the overall increase of $2,132,143 in equity values for 2009 (column (i)) because of the stock price rebound. Moreover, new columns (b) and (e) also show the value of the executive's year end holdings, including unvested values.

We believe the additional information in the revised OESVT table would be very well received by the investor community.

<u>Realized and Unrealized Equity and Non-Equity Incentive Awards Table for 2008</u>

(a)	Outstanding options-- BOY $ value/ EOY $ value/ unvested EOY value (b)	Outstanding options— Increase/ (decrease) in value (c)	Options-# of shares acquired on exercise/ value realized on exercise (d)	Stock awards-BOY value /EOY value/ increase or (decrease) in value (e)	Stock awards— shares acquired on vesting/ value realized on vesting (f)	Cash LTI— BOY value/ EOY value/ increase in value (g)	Cash LTI paid out for year (h)	Total Increase/ (decrease) for year (incl. realized gains) (i)
PEO	$2,370,000 $0 $0	***($2,370,000)***	39,500 ***$965,000***	$2,590,000 $1,070,000 ***($1,520,000***	15,000 ***$1,050,000***			***($1,875,000)***
PFO								
A								
B								
C								

[11] Appendix A contains all the assumptions used in creating the two tables.

<u>Realized and Unrealized Equity and Non-Equity Incentive Awards Table for 2009</u>

(a)	Outstanding options--BOY $ value/ EOY $ value/ unvested EOY value (b)	Outstanding options—Increase/ (decrease) in value (c)	Options-# of shares acquired on exercise/ value realized on exercise (d)	Stock awards-BOY value /EOY value/ increase or (decrease) in value (e)	Stock awards—shares acquired on vesting/ value realized on vesting (f)	Cash LTI—BOY value/ EOY value/ increase in value (g)	Cash LTI paid out for year (h)	Total Increase/ (decrease) for year (incl. realized gains) (i)
PEO	$0 $996,429 $771,429	***$996,429***		$1,070,000 $1,785,714 ***$ 715,714***	12,000 ***$420,000***			***$2,132,143***
PFO								
A								
B								
C								

6. Changes to the Nonqualified Deferred Compensation Table (NDCT)

The NDCT would be more useful if a new column (b) could be inserted showing the beginning of the year value of the non-qualified deferred compensation plan(s). This would enable a user to quickly determine the year-over-year increase/decrease in the account by comparing this column to current column (f)—aggregate balance at last FYE. Today a reader has to sum the values in columns (b) through (e) to compute this number.

7. Changes to the DCT

Item 402(k)(2)(vii)(G) and Instruction 1 to Item 402(k)(2)(vii) suggests that charitable contributions on behalf of directors must be reported in column (g) of the DCT even if the contribution is pursuant to the same matching charitable contribution generally available to employees.[12] Just as Item 402(a)(6)(ii) provides that there is no reporting obligation with respect to payments with respect to non-discriminatory group life, health, hospitalization, or medical reimbursement plans, it is appropriate to eliminate the reporting obligation with non-discriminatory charitable contribution plans.[13]

Respectfully submitted,

Dave Gordon

David E. Gordon, Principal

For Frederic W. Cook & Co., Inc.

[12] Such a plan might provide, for example, that the registrant will match dollar for dollar any charitable contributions by employees of up to $10,000.

[13] This amendment will be unnecessary if Item 402(a)(6)(ii) is amended in the manner previously discussed.

APPENDIX A—ASSUMPTIONS USED IN CONSTRUCTING THE REVISED OESVT

On February 1 of each year, commencing 2/1/05, executive receives an equity award valued at $1.2 million, consisting 50% of options and 50% of RSUs. The options vest 1/3 on each anniversary date of the grant. The RSUs cliff vest at the end of three years. In determining the number of options to award, the options are valued at 1/3 of the strike price (an option on stock worth $60 is valued at $20).

The company stock prices are the following—$40 at 2/1/05; $50 at 2/1/06; $60 at 2/1/07; $70 at 2/1/08; $35 at 2/1/09; and $50 at 12/31/09. The stock price as of February 1 is assumed to remain in effect through July 1 of each year.

On July 1, 2008, the executive exercise half of the in-the-money vested options. No options are exercised July 1, 2009, because no options are in-the-money.