American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000
www.aflcio.org

April 5, 2006

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

Re: File Number S7-03-06

Dear Ms. Morris:

I am writing on behalf of the American Federation of Labor and Congress of Industrial Organizations to comment on the Securities and Exchange Commission's ("SEC") proposed executive compensation and related party disclosure rule. We commend the SEC for its efforts to increase transparency and clarity in compensation disclosure, and offer comment on ways we believe the rule can be improved.

While the basic thrust of the rule is both positive and long overdue, significant improvements are needed in the areas of performance benchmarks disclosure and director related party transaction reporting.

Increasingly in recent years, executive pay packages have amounted to a cash-grab at the expense of unsuspecting shareholders. According to the *Washington Post*, one recent study identified 60 underwhelming companies that lost \$769 billion in market value in the five years ending in 2004. Their top five executives pocketed more than \$12 billion over this period, meaning they averaged more than \$8 million each per year.

Union members participate in benefit plans with over \$5 trillion in assets. Union-sponsored pension plans hold approximately \$400 billion in assets, and runaway executive pay has undermined accountability to shareholders and diminished returns for our funds.

In analyzing the proposed rule, we have separated the issues into four categories:

- Performance Benchmarks Disclosure and Equity Compensation Awards
- Filed versus Furnished Status
- Pensions, Perks and Golden Parachutes
- Related Party Transactions, Director Pay and Independent Compensation Committees

I. Performance Benchmarks Disclosure and Equity Compensation Awards

More than any other executive compensation issue, shareholders are concerned about pay-for-performance. In the proposed rule, companies are not required to disclose target levels with respect to specific quantitative or qualitative performance related facts involving confidential business information. In our opinion, the SEC has erred in preserving an overly broad exception under which companies may continue to skirt disclosure.

Shareholders should be told what performance targets are being established for senior executives, whether executives meet their performance targets, and what amount of compensation is tied to the performance targets. Performance benchmarks for senior level executives are generally based on disclosed financials, and the SEC should mandate disclosure of these performance targets. At a minimum, to allay any concerns over disclosure of competitive information, such disclosure should be retroactive after the conclusion of the performance period.

Peer groups comparisons are also a crucial executive compensation benchmark. Unfortunately, investors increasingly lack basic disclosure, including a clear description of the median of the peer group used in making awards. Companies should not be able to claim that the peer group used in awarding compensation is confidential. Companies that do not rely on peer group comparisons should also describe the reasons these were not used.

Under the proposed rule, valuation of stock awards would be based on the grant date fair value of the awards pursuant to FAS 123R. We support this approach. Ideally, the grant date value of performance vesting equity awards would be reported in the summary compensation table, instead of the value on the vesting date. In response to the Commission's inquiry, we believe that the valuation method and all valuation assumptions should be disclosed in the proxy.

The SEC proposes to eliminate the Performance Graph and Comp Committee Report because they view the graph as being "outdated," and the Report's "boiler disclosure is of little benefit to investors." We respectfully disagree. As investors we rely on the Performance Graph as a useful tool for peer group comparison. We urge its retention in the final rule.

II. Filed versus Furnished Status

We strongly support the proposal under which disclosure will be considered "filed" with the SEC as opposed to the current "furnished" status. Both chief executives and chief financial officers would be responsible for the veracity of the report under the certification requirements of the Sarbanes-Oxley Act of 2002, and would be required to certify, through their signatures, that the statements in the narrative are true.

Filed documents subject to SEC regulations 14A or 14C and liabilities of Section 18 of the Exchange Act will better encourage the desired level of disclosure. The safe harbor provisions contained in the current rule, which were intended to facilitate open and frank disclosures, have failed in this regard. In our opinion, the SEC's effort to get companies to take more responsibility for board matters and make it consistent with other disclosure is both long overdue and commendable.

III. Pension, Perks and Golden Parachutes

According to Lucian A. Bebchuk of Harvard, pension promises generally account for almost a third of a chief executive's total career compensation. We support the Commission's proposed valuation of pensions according to the aggregate of increase in actuarial value to the officer accrued during that year.

Given the large proportions of compensation tied up in pension value, we would also support disclosure in a separate column in the summary compensation table. A further breakdown of executive retirement benefits would provide additional clarity. For example, we believe companies should disclose whether executives are receiving preferential treatment or if their retirement benefits are on the same terms as those offered to other company employees.

The discussion and interpretative guidance surrounding perks is encouraging. We support the narrow concept that emphasizes as non-perks only those benefits that are "integrally and directly related to job performance."

Executives should be required to disclose the full value of perks, not just the incremental costs to the company. The valuation of perks should be estimated using either the equivalent market value, or the full accounting cost to the company including depreciation and capital costs.

We also believe the supplemental table found at the top of page 54 of the rule would prove useful for investors. Finally, given the rise in company gross-up payments, a separate enumeration of these expenditures should be split from table "f," payments/accruals on termination plans.

IV. Related Party Transactions, Director Pay and Independent Compensation Committees

During a speech by Chairman Cox to the Council of Institutional Investors on March 30, 2006, he summarized the following reasons for increased perk disclosure:

> Currently, companies are required to report a lump sum if an executive's perks are more than $50,000 , or 10% of his or her salary and bonus. And under current rules, an individual perk has to be reported only if it represents more than 25% of all the perks than an executive receives. **That sets the bar too high.** $50,000 is what many of a company's shareholders make all year, and it's far above the median household income of $44,000. So under our proposal, perquisites must be itemized if they total $10,000 or more. (emphasis added).

The same principle should be applied to related party transaction reporting. We strongly oppose the modification of the related party transaction threshold, and the current $60,000 default threshold should be retained at a minimum, or eliminated altogether. The median compensation for individual directors in 2004-2005 was $106,732,[1] and given the limited interaction between directors and the company,[2] any related party transaction gains in magnitude. The $10,000 perk disclosure for directors should also be lowered on this basis.

The lack of independence in compensation committees is one root cause of runaway pay, and the discussion surrounding committee independence is disappointing. The Commission would require companies "to apply the same definition consistently to all directors and also to use the independence standards of the same national securities exchange...for purposes of determining the independence of members of the comp, nominating and audit committees."

The independence standards would be much improved by relying on the Council of Institutional Investors ("CII") independent director definition. CII is an organization of large public, labor and corporate pension funds, including over 140 pension fund members whose assets exceed $3 trillion.

The independence definitions relied on by the securities exchanges lack adequate safeguards to protect investor interests. The New York Stock Exchange listing standards

---

[1] "The Corporate Library's Director Pay Survey," January 2006, http://www.boardanalyst.com/tcl-research/DirectorComp04-05.pdf

[2] Paul Lapides, Director of the Corporate Governance Center at Kennesaw State University, estimates that the average director spends about 100 hours annually on his or her duties. http://coles.kennesaw.edu/documents/AJC_Boards.pdf The average number of board meetings held in a year is estimated at 7.69. http://icra.in/aspx/2005-February-EmergingboardCGR.pdf

require compensation committees with independent directors having no direct or indirect material relationship with the company. NASDAQ's rules are similar.

The CII basic independent director definition provides that an independent director is "someone whose only nontrivial professional, familial or financial connection to the corporation, its chairman, CEO or any other executive officer is his or her directorship. Stated most simply, an independent director is a person whose directorship constitutes his or her only connection to the corporation." Robust director independence is crucial in restoring board accountability and linking pay to performance.

We commend the Commission and the staff for taking up this issue and for the general approach in the proposal. We urge that the final rule address the specific concerns we have identified in our comment in the interests of providing investors the long overdue transparency in executive compensation that is the goal of the proposed rule.

V. Conclusion

We appreciate the opportunity to offer comment on this issue of great importance. Should you have any questions, please do no hesitate to contact Damon Silvers at (202) 637-3953 or Brandon Rees at (202) 637-3900.

Regards,

Richard L. Trumka

cc: Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Cynthia A. Glassman
Commissioner Annette L. Nazareth