NACCO Industries, Inc.

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Vice President, General Counsel
and Secretary

April 10, 2006

VIA E-MAIL (rule-comments@sec.gov)
Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

Re: Comments on the Proposed Regulations Regarding Executive Compensation and Related Party Disclosure – File Number S7-03-06

Dear Ms. Morris:

I. INTRODUCTION AND BACKGROUND INFORMATION

NACCO Industries, Inc. ("NACCO") is pleased to submit the following comments on the proposed regulations regarding executive compensation and related party disclosure under the Securities Exchange Act of 1934 and the Securities Act of 1933. Public comments on the proposed regulations are due by April 10, 2006.

NACCO is an operating holding company with three principal businesses: lift trucks, housewares and mining. As of December 31, 2005, NACCO and its subsidiaries had approximately 11,100 employees, with facilities throughout North America, South America, Europe, Asia and Australia. NACCO's Class A common stock is traded on the New York Stock Exchange under the ticker symbol NC. For the year ended December 31, 2005, NACCO had operating revenues exceeding $3.2 billion.

NACCO appreciates the thoughtful attention that the SEC has given to revising the executive compensation and related party disclosure requirements and generally agrees that the proposed changes will provide shareholders with better information about executive and director compensation matters, related party transactions and director independence. However, NACCO believes that certain of the proposals need to be reconsidered in order to avoid shareholder confusion, eliminate certain inequities, mitigate unintended consequences and reduce administrative burdens on reporting companies where the information requested is otherwise readily available and/or will not provide investors with any additional meaningful information.

II. DETAILED COMMENTS

A. Named Executive Officers (Preamble P. 80)

Proposed Rule: The proposed regulations include the "principal financial officer" as one of the named executive officers for whom disclosure of compensation arrangements is required. In the preamble to the notice of proposed rulemaking (the "Preamble"), the SEC also questioned whether other officers (such as the general counsel or principal accounting officer) should be specifically identified as named executive officers.

Comment: We do not believe there is a need to expand the summary compensation table to include anyone other than the principal executive officer and the four other most highly compensated executive officers. While other officers of a reporting company may play a vital role in the company, if they are not one of the most highly compensated employees, separate disclosure would not provide any additional beneficial information to shareholders.[1]

The proposal to include the "principal financial officer" as one of the named executive officers raises many issues for reporting companies that utilize a holding company structure (such as NACCO). Each of NACCO's subsidiaries employs its own chief financial officer who is responsible for compiling the financial records for that subsidiary. At the holding company level, NACCO employs a controller, who has narrow and focused responsibilities, including certifying consolidated financial results. NACCO does not have, or need, anyone serving in the traditional role of a "chief financial officer". The chief financial officers of NACCO's subsidiaries are more highly compensated than is NACCO's controller, as is commensurate with their duties. We are deeply concerned that NACCO's ability to hire and retain a qualified controller on a cost-effective basis would be compromised by the SEC proposal. This proposal seems to be premised upon the historical model that assumes that a CFO is one of the Company's most highly compensated employees. Accordingly, we believe that the "one size fits all" premise of this proposed regulation would be misleading and does provide any information that is beneficial to the Company's shareholders. Notwithstanding the foregoing, we agree with the SEC's premise that the identity of the principal financial officer is important to shareholders. As a result, we believe that the principal financial officer should be identified in the proxy statement. However, he or she should not be listed in the summary compensation table unless he or she is one of the five most highly compensated employees of the company.

B. Compensation Discussion and Analysis (Preamble PP. 19 & 22) and Grants of Performance-Based Awards Table (Preamble P. 61) – Continued Non-Disclosure of Confidential Information

Proposed Rule: The proposed regulations make it clear, as is currently the case, that companies are not required to disclose target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any factors or criteria involving confidential commercial or business information, the disclosure of which would have an adverse effect on the company (unless otherwise disclosed publicly). The SEC has asked whether this exclusion should be continued.

Comment: We agree with the SEC that the exclusion should be continued. It is vital that reporting companies not be required to disclose confidential information as part of describing executive compensation amounts and policies. Investors have a right to know the amount of compensation and a general description of the factors used in various compensation plans. However, in order to keep a competitive edge, it is vital for the company, and accordingly in the best interests of the investors, that reporting companies be able to maintain trade secrets, a problem that would become particularly exacerbated by allowing access to such information to a reporting company's non-public competitors with no such disclosure requirement. Many performance targets are based on information that would be useful to competitors (such as targets for performance factors measured by sales, income, expenses, cash flows, return on equity, market share, introduction of new products, completion of new projects,

[1] For purposes of clarity, we note that we do not object to the SEC's proposal to require disclosure for up to three employees who were not executive officers (Preamble P. 62).

etc.). If reporting companies were required to disclose target levels with respect to specific quantitative or qualitative performance-related factors, reporting companies are likely to modify their performance measures to avoid the need to disclose otherwise confidential competitive information, with the result that compensation will become based on non-material factors, increasing the likelihood that employees are compensated based upon factors other than key performance drivers. This would not be in the best interests of the company or its shareholders. In short, any benefit of such additional disclosure to the investor is greatly outweighed by the corresponding detriment to the company and accordingly to the investor. The current standards relating to such disclosure (*i.e.*, Securities Act Rule 406 and Exchange Act Rule 24b-2) provide sufficient safeguards relating to such non-disclosure and do not need to be changed.

C. Grants of Performance-Based Awards Table (Preamble P. 62) – Disclosure of a Material Modification or Waiver of Any Specified Target

Proposed Rule: The proposed regulations require a separate table describing the Grants of Performance-Based Awards, along with a narrative description. As part of the narrative description, companies will be required to disclose any material waiver or modification of any specified performance target, goal or condition to payout under any reported incentive plan payout. The disclosure would need to state whether the waiver or modification applied to all participants or one or more specified executive officers.

Comment: We believe that the disclosure of a material waiver or modification of a specified performance target, goal or condition to payout is only warranted in those rare instances when a performance-based plan contains specified (non-confidential) targets and no discretion. In other cases, such disclosure would not be beneficial. Most performance-based plans are filed with the SEC and/or required to be approved by the company's shareholders. Where the terms of the plans themselves give the Compensation Committee the discretion to increase or decrease awards, by definition, there cannot be a "waiver" of a target, since the Committee has the discretion to ignore it in any event. In addition, since many targets are classified as confidential information and are not disclosed in the first place, describing a waiver of an unknown target will not provide investors with any relevant information. Of greater concern is that this proposal could induce companies to reduce or eliminate the use of challenging and meaningful targets and replace them with purely discretionary plans (or plans with easily achievable targets). Compensation Committees need to be able to utilize their discretion to ensure that the original compensatory intent of a performance-based plan is accomplished and that executives are not penalized for events that are out of their control.

D. Summary Compensation Table (Preamble P. 26)[2] – "All Other Compensation" Column of Summary Compensation Table – Non-Retirement Plan Issues (Preamble PP. 52-& 54)

Proposed Rule: The proposed regulations provide a redesigned Summary Compensation Table which, among other things, eliminates the distinction between annual and long-term compensation and moves all items currently reported as "Other Annual Compensation" into the "All Other Compensation" column. The redesigned Table also adds a new column entitled "Non-Stock Incentive Plan Compensation." The SEC has asked whether changes should be made to this format, whether changes

[2] Our comments relating to the Summary Compensation Table, to the extent relevant, also apply to the proposed Director Compensation Table (Preamble P. 88).

should be made to the All Other Compensation column and whether a new supplemental table further describing the types of other compensation should be required.

Comment 1: We agree with the elimination of the distinction between annual and long-term compensation. The current rules do not take into account the great variety of plan designs which currently results in plans being mischaracterized or companies going to great lengths to add immaterial plan provisions so that the amounts paid under the plans are reported in the "correct" columns. For example, a book value unit plan with a one-year performance period that is based on a long-term target is currently required to be listed as an "annual plan," despite the fact that the units are subject to 5-year or 10-year holding periods before being paid out.

Comment 2: We agree with the inclusion of all items currently reported as "Other Annual Compensation" into the "All Other Compensation" column for the same reasons set forth above in Comment 1.

Comment 3: Except for the comments in Sections I and J below (relating to disclosures for non-qualified defined contribution benefits and qualified and non-qualified pension benefits), we believe that footnote disclosure of the various other components of the All Other Compensation column is sufficient and a new supplemental table is not required.

Comment 4: We suggest that the proposed regulations clarify the difference between the amounts that are required to be disclosed in the "Bonus" and "Non-Stock Incentive Plan Compensation" columns of the new Summary Compensation Table. Proposed Regulation 402(a)(6)(iii) defines an incentive plan as one that provides compensation intended to serve as an incentive for performance to occur over a specified period. Based on that definition, it appears that performance based bonuses (regardless of the performance period) will now be disclosed as "Non-Stock Incentive Plan Compensation" and that only purely discretionary bonuses will be disclosed in the "Bonus" column.

E. Disclosure of *Qualified* Defined Contribution Benefits – Summary Compensation Table (Preamble PP. 28 & 29)

Proposed Rule: Compensation that is earned, but for which payment will be deferred, must be included in the "Salary," "Bonus," "Non-Stock Incentive Plan Compensation," or "All Other Compensation" column in the Summary Compensation Table (as appropriate). The proposed regulations require that amounts that are deferred for any reason, which would include amounts deferred to a qualified defined contribution plan, must be disclosed in a footnote to the applicable column. Company contributions to a qualified defined contribution plan must be disclosed in the "All Other Compensation" column. No disclosure is required of earnings on qualified defined contribution benefits or the aggregate account balances thereof.

Comment: We agree that amounts that are deferred by an executive into a qualified deferred compensation plan should be reported in the appropriate column in the Summary Compensation Table. However, we do not believe that a separate footnote disclosure of the amount of the deferral is needed. Qualified defined contribution plans are subject to stringent non-discrimination requirements under the Internal Revenue Code. Consequently, by definition, they are broad-based plans that cannot provide benefits that favor highly-compensated employees. We recommend that the amounts deferred by an executive under a qualified deferred compensation plan not be separately disclosed in a footnote to the

Summary Compensation Table (i) for the reasons set forth below in our comments in Section I, suggesting changes to the disclosure for non-qualified deferred compensation, which would eliminate the footnote disclosure for these amounts and move them to a separate column, and (ii) due to the fact that the amount of compensation a named executive officer may defer under a qualified defined contribution plan is very limited under IRS rules. We agree with the current disclosure requirements for company contributions to qualified defined contribution plans and agree that no disclosure is necessary regarding earnings on qualified defined contribution benefits or the aggregate account balances thereof.

F. *Non-Qualified* Defined Contribution Deferred Compensation Disclosure – Summary Compensation Table (Preamble P. 29) and Non-Qualified Defined Contribution and Other Deferred Compensation Plans Table (Preamble P. 74)

Current Rule: Current disclosure rules require that salary, bonus or other compensation that is deferred by the executive under a non-qualified deferred compensation plan be included in the applicable column of the Summary Compensation Table. The rules also require that company contributions and "above-market" earnings (*i.e.*, if the rate exceeds 120% of the applicable federal long-term rate) be disclosed as "All Other Compensation" in the Summary Compensation Table.

Proposed Rule: In addition to including the non-qualified deferred salary, bonus (or non-stock incentive plan compensation) or other compensation in the applicable column of the Summary Compensation Table, the proposed regulations require that the amounts be separately disclosed in a footnote. The proposed regulations retain the requirement that company contributions to non-qualified deferred compensation plans be disclosed as "All Other Compensation" in the Summary Compensation Table. However, all earnings (not just above-market earnings) would need to be disclosed. The proposed regulations also add a separate, new table for the sole purpose of describing non-qualified defined contribution benefits, called the Non-Qualified Defined Contribution and Other Deferred Compensation Plans Table (the "NQ DC Table"). The same deferred compensation amounts, company contributions and earnings that are disclosed on the Summary Compensation Table would need to be repeated in the NQ DC Table. In addition, the NQ DC Table would require disclosure of (i) aggregate withdrawals and distributions[3] and (ii) an aggregate account balance. Footnote disclosure would be required of (i) amounts reported in the current year's Summary Compensation Table, (ii) amounts reported in prior years' Summary Compensation Tables, (iii) a description of the earnings measure and (iv) a description of material plan terms.

Comment 1: We disagree with the proposed treatment of non-qualified deferred compensation in the proposed regulations. The proposed dual disclosure of non-qualified deferred compensation amounts as current compensation in the Summary Compensation Table and "contributions" in the NQ DC Table poses a real risk of shareholder confusion and "double counting" of compensation. Merely referencing the amounts in a footnote is unlikely to avoid the confusion. We recommend adding a separate column to the Summary Compensation Table entitled "Non-Qualified Defined Contribution Benefits." This column would include both executive deferrals and company contributions and would tie directly to the "Executive Contributions" and "Registrant Contributions" columns in the NQ DC Table.

[3] Note that the model NQ DC Table in the Preamble requires disclosure of all withdrawals and distributions, while the proposed regulations themselves only require disclosure of withdrawals and distributions made during the current fiscal year. We assume that the table contained in the regulations is correct. Many companies will not have records of prior withdrawals and distributions and, in any event, such information is not relevant to current investors.

Comment 2: We disagree with the proposed disclosure of all annual earnings on non-qualified defined contribution benefits. We believe that the current rules, requiring disclosure of only above-market earnings, provides sufficient information for investors. The purpose of the Summary Compensation Table is to disclose executive compensation. Payment of at or below-market interest on deferred amounts is not generally considered compensation. *See, e.g.*, Treas. Reg. Section 31.3121(v)(2)-1(d) (only those earnings on deferred compensation that provide an unreasonable rate of return are considered "wages" for purposes of FICA taxes).

In addition, some companies (including NACCO) credit some or all earnings based on internal measures such as return on equity, return on capital or internal borrowing rates. Requiring disclosure of the entire amount of annual earnings, combined with a narrative disclosure of the earnings measure, would give outsiders the ability to discern confidential commercial or business information, the disclosure of which would have an adverse effect on the company and accordingly its shareholders. If the amount of the earnings and a description of the basis for the determining earnings are required to be disclosed, the regulation should make it clear that information that is deemed confidential does not need to be disclosed or companies will find other, non-competitive information to tie their interest rates to, as suggested above in Section D.

Comment 3: We strongly disagree with the proposed disclosure of aggregate non-qualified deferred compensation balances. We believe that this disclosure would be misleading and lead to shareholder confusion. It would also penalize long-service executives, executives who have the ability to direct the investment of their non-qualified benefits and have been fortunate enough to invest wisely, and employers that changed their compensation policies from a defined benefit to a defined contribution model. Many companies have had non-qualified defined contribution plans in effect for over 20 years. The aggregate account balances of many executives will be very large. Disclosing these accumulated account balances, however, will not provide investors with any relevant information. Without a detailed history of how the balance was accumulated (*e.g.*, company contributions, additional amounts credited in years with extraordinary results, executive surrender of other potential compensation in exchange for the benefits and, most importantly, the proportion of the account balance that represents earnings rather than contributions), investors will not have any basis to determine what this amount represents and whether it is reasonable or unreasonable compensation. This is especially true where all or a large portion of the account balance is attributable to voluntary executive deferrals of salary and bonus amounts, which are already required to be disclosed as compensation in the year of the deferral. Investors will also be unable to accurately compare this benefit to benefits offered to similarly-situated executives at other companies.

Finally, the SEC's proposal that the company identify in a footnote the amounts currently included in the aggregate account balance amounts that were previously disclosed in the Summary Compensation Table for prior years does not adequately address this issue. Also, many companies would not have the records to make this determination, especially where the plan has been in effect for many years, where the plan was assumed from a non-public company, etc.

We therefore recommend that the proposed NQ DC Table be revised to include only the following columns:

Name	Executive Contributions in Last FY ($)	Registrant Contributions in Last FY ($)	Aggregate Above-Market Earnings in Last FY ($)	Aggregate Withdrawals and Distributions in Last FY ($)

If the SEC chooses not to eliminate the aggregate account balance disclosure requirement, we recommend that the requirement should be modified to require disclosure only of the aggregate account balance for periods after December 31, 2005. (Alternatively, to ease recordkeeping requirements for reporting companies, requiring disclosure of aggregate account balances for periods after December 31, 2004, which is the effective date of the American Jobs Creations Act (the "Jobs Act"), would also be reasonable, as most companies were required to segregate account balances as of that date in accordance with the requirements of the Jobs Act.)

<u>Comment 4</u>: We recommend that the rules provide that no disclosure is required for a "frozen" plan (*i.e.*, plans under which no further executive or company contributions are credited), unless above-market earnings are credited thereunder (regardless of whether the aggregate account balance disclosure requirement is eliminated) since amounts that were previously credited under a frozen plan relate to prior performance periods and bear no relation to current compensation matters.

<u>Comment 5</u>: We disagree with the requirement that a reporting company provide a narrative disclosure of non-qualified defined contribution plan terms. This is duplicative and unnecessary. By definition, the plans cover a select group of executives and are required to be filed with the SEC as material contracts. The plan documents themselves are available to interested parties via the EDGAR system. There is no need to add a description of their terms to the proxy. Many companies sponsor several non-qualified defined contribution plans, including many frozen plans (especially after passage of the Jobs Act), each with different terms. The narrative disclosure for many companies would be several pages long and will add no useful information to investors.

G. <u>Defined Benefit Pension Plan Disclosure Rules (Preamble PP. 41-43; 70-74)</u>

<u>Current Rule</u>: Currently, disclosure for defined benefit pension plans under which benefits are determined by final compensation and years of service consists of a general table showing estimated annual benefits under qualified and non-qualified plans for specified compensation levels and years of service, with an accompanying narrative disclosure. The table does not provide disclosure for any specific named executive officer. For other plans, narrative disclosure of the benefit formula and estimated annual benefits payable at normal retirement age is required.

<u>Proposed Rule</u>: The proposed regulations require companies to include the increase in the actuarial value of an executive's qualified and non-qualified defined benefits during the year in the "All Other Compensation" column of the Summary Compensation Table. The assumptions used to calculate the increase in actuarial value are required to be disclosed in a footnote. The SEC has asked whether this amount should be disclosed in a separate column entitled "Increase in Pension Actuarial Value" in the Summary Compensation Table and/or whether another measure of value is more accurate.

The proposed regulations also require the use of a new table entitled "Retirement Plan Potential Annual Payments and Benefits" (the "Pension Table"). The Pension Table requires disclosure of (i) years of service, (ii) normal retirement age, (iii) estimated annual normal retirement benefit, (iv) early retirement age and (v) estimated annual early retirement benefits. The estimated retirement benefits must be described in the form currently elected by the executive. Separate disclosure would be required for each plan in which the executive participates.

The narrative description that accompanies the Pension Table would be required to include, among other things: (i) material terms and conditions of each plan, (ii) the amount of any available lump sum distribution (and the assumptions used to calculate the amount), (iii) company policies regarding extra service credits and (iv) the reasons for each plan.

Comment 1: We agree that disclosure of the annual increase in the actuarial value of pension benefits should be disclosed in the Summary Compensation Table and that such disclosure is necessary to permit a full understanding of an executive's total compensation for the year. The disclosure also helps to equalize the treatment of executives who are compensated using defined contribution plans with those who are compensated using defined benefit plans.

Comment 2: We agree that the annual increase in the actuarial value of pension benefits is a relevant measure of the compensation value of these benefits. However, in lieu of allowing each reporting company to determine how this value should be calculated (and describing the assumptions in a footnote), the SEC should require the use of a standard set of assumptions. Without a standard set of assumptions, it will be impossible for investors to compare pension values across reporting companies.

Comment 3: We believe that additional disclosure of pension benefits is warranted under the revised Summary Compensation Table. Based on our comment in Section I above, where we recommend adding a separate column to the Summary Compensation Table entitled "Non-Qualified Defined Contribution Benefits," we also recommend adding a separate column entitled "Increase in Pension Actuarial Value." These separate disclosures will equalize the treatment of defined contribution and defined benefit retirement amounts and provide clarity for investors. The amounts disclosed in these columns will tie directly to the new NQ DC Table and the new Pension Table, eliminating the need for footnote disclosures.

Comment 4: We strongly disagree with the SEC's suggestion that the cost to the company of the annual pension benefits be disclosed in the Summary Compensation Table in lieu of disclosing the actuarial increase in the benefits. Company "cost" is a relative concept. Defined benefit plans are funded on an aggregate basis. There is no accepted standard for allocating a contribution or expenses among individual participants. Some plans are over-funded, in which case no company contributions are being made. This does not mean that there is no "cost" to the company.

Comment 5: We believe that the SEC should consider revising the disclosure rules for "cash balance" and other "account based" defined benefit plans. Consideration should be given to requiring that the value of those benefits be disclosed using the rules applicable to defined contribution plans, rather than the above-described rules applicable to defined benefit plans. In other words, the "credits" to the cash balance accounts would be disclosed as registrant contributions and the "earnings" would be disclosed on the same basis as defined contribution earnings. In addition, if the SEC does not eliminate the requirement to disclose an aggregate account balance for defined contribution plans, a similar requirement should be added for account based defined benefit plans.

Comment 6: We disagree with the requirement that the estimated early and normal retirement benefit amounts be calculated using "the form of benefit currently elected" by the executive. This is unworkable. Under IRS regulations, qualified pension plans cannot obtain a valid distribution election until 90 days prior to pension commencement date. Most benefits that were accrued prior to January 1, 2005 (*i.e.*, benefits that are "grandfathered" under the Jobs Act) provide for mirror elections. Therefore, the regulations should provide that the estimated benefit amounts be calculated in the form of a single life annuity. This standard should apply even if an executive has elected another form of payment, to assist investors in making comparisons of the benefits.

Comment 7: We disagree with the requirement that separate disclosure be provided for each "plan" in which an executive participates. This requirement is unworkable in those instances where an executive participates in a qualified pension plan and an "excess" supplemental pension plan ("SERP"). The amount payable from the SERP cannot be accurately identified until retirement. It depends upon, among other things, IRS qualified plan limits, final compensation, etc. The regulations should be revised to permit the disclosure of a single benefit amount for these "tandem" plans, with a footnote disclosure that a part of the benefit will be paid from the SERP.

Comment 8: We disagree with the proposal to allow each reporting company to determine the assumptions that are used to calculate the estimated annual normal retirement benefit and the estimated annual early retirement benefit. The SEC should require the use of a standard set of assumptions. Without a standard set of assumptions, it will be impossible for investors to compare pension values across reporting companies.

Comment 9: We disagree with the proposals regarding disclosure of lump sum pension benefits. The proposed regulations do not require disclosure of a lump sum value in the Pension Table itself. Disclosure of a lump sum value is only required in the footnotes and only required if the plan has a lump sum distribution option. If the SEC eliminates the disclosure of the aggregate account balances under non-qualified defined contribution plans, then we agree that the proposed disclosure of the lump sum value of defined benefits is appropriate. However, we recommend that the SEC require a standard set of assumptions (such as use of the Internal Revenue Code Section 417(e) rates) for this purpose.

If the SEC chooses to implement the requirement that the NQ DC Table disclose the aggregate account balance of non-qualified defined contribution benefits, then a similar disclosure should be required for all defined benefit pension benefits. Otherwise, it will be impossible for investors to fairly compare the retirement benefits of executives. The Pension Table should be revised to add a column entitled "Lump Sum Value of Benefit." The narrative disclosure could describe whether a particular plan offers a lump sum and any restrictions applicable thereto.

Comment 10: We disagree with the requirement to provide a detailed narrative disclosure of pension plan terms. The new detailed Pension Table will provide investors with all of the information they need. Investors are interested in the dollar amounts that are payable to the executives, not the benefit formula, eligibility standards, etc. The regulations should be revised to merely require a general description of the plan's terms. The narrative disclosure for many companies would be several pages long and will provide no additional useful information to investors.

H. Valuation of Perquisites (Preamble P. 50)

Proposed Rule: The proposed regulations request comment as to whether the SEC should require perquisites and other personal benefits to be valued based on the retail price of the item or, if none, the retail price of a commercially available equivalent, instead of the SEC's historical measure of the aggregate incremental cost to the company.

Comment: We believe that the SEC's historical measure of the aggregate incremental cost to the company is the appropriate measure because it measures the actual cost to the company and therefore a measure of the impact upon the investor. The retail cost of an equivalent benefit is irrelevant and is subject to numerous factors, including the vagaries of the marketplace, that have no impact on the company or the investor. In addition, selecting and pricing an equivalent benefit would impose a significant burden on reporting companies. They would incur additional costs and require additional time to comply with a different measurement standard.

I. "All Other Compensation" Column of Summary Compensation Table – Valuation of Perquisites (Preamble PP. 43-51)

Proposed Rule: The proposed regulations require that perquisites and personal benefits be disclosed in the "All Other Compensation" column of the Summary Compensation Table and that all such benefits be disclosed unless the aggregate amount of such compensation is less than $10,000 (compared to the current standard of the lesser of $50,000 or 10% of aggregate salary and bonus). The proposed regulations also require a footnote description of such compensation, in a manner that identifies the particular nature of each benefit received if the value of any such benefit is greater than $25,000 or 10% of all perquisites for the executive. In addition, the proposed regulations define "perquisite" very broadly.

Comment 1: We disagree with this proposal. It will impose a significant burden on reporting companies to identify and calculate the value of numerous, previously insignificant benefits that, to date, have not been identified as perquisites for any purpose. The dramatic lowering of the threshold for perquisite disclosure is unnecessary and will not provide any useful information to shareholders. We propose that the threshold be increased (to $100,000) to reduce corporate administrative costs and to reflect corporate reality and inflation since the $50,000 threshold initially became effective.

Comment 2: If the SEC does not revise this proposal, the effective date should be delayed for at least one year. Many companies will need to implement new recordkeeping and valuation systems. Alternatively, many companies will decide to change their perquisite procedures to comply with (or eliminate) their reporting requirements. In addition, we recommend that this proposal be phased in prospectively over three years to relieve companies of the burden of creating records relative to past perquisites that were provided prior to new recordkeeping and valuation systems and, as noted above, to provide companies with the opportunity to alter their perquisites practices.

Comment 3: To make sure that all reporting companies report perquisites on a level playing field, the SEC must issue more definitive guidance on what is, and what is not, a perquisite for this purpose. The guidance and examples in the proposed regulations are unclear and, at times, inconsistent. In addition, the definition of a "perquisite" contained in the proposed regulations is too broad. A standard of reasonableness must apply. Benefits that provide an incidental benefit to the executive, especially if provided in the corporate workplace and if the benefits help the executive work more efficiently, should not be deemed a perquisite, unless the value thereof (on an individual basis) exceeds a specified dollar amount.

J. Beneficial Ownership Disclosure (Preamble P. 114)

Proposed Rule: The proposed regulations require that beneficial ownership table include footnote disclosure of the number of shares pledged as security by the named executive officers, directors and director nominees.

Comment: We disagree with the proposal to disclose pledged shares. Investors are interested in the number of shares owned by the named executive officers, directors and director nominees. Shares are subject to a variety of possible risks and contingencies, any of which could potentially influence management's performance and decisions. We see no reason to single out pledged shares as a possible motivating factor.

K. Director Independence (Preamble PP. 137-144)

Proposed Rule: The proposed regulations add a requirement that the proxy include a "description of any transactions, relationships or other arrangements" with the directors that are not disclosed but were considered by the board in determining that the applicable independence standards were met.

Comment: We agree with the theory behind the disclosure. However, we would like the SEC to clarify that, if a relationship with a particular director is disclosed, there is no need to separately describe every transaction with that director. For example, if a director works for a service provider of the reporting company, and this relationship is disclosed in the proxy, each transaction with the service provider does not need to be separately disclosed.

We appreciate the opportunity to present these comments. If the SEC has any questions about our comments, or if we can be of further assistance, please let us know.

Very truly yours,

Charles A. Bittenbender

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