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April 7, 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:

The U.S. Chamber of Commerce is the largest business federation in the world, representing the interests of some three million U.S. companies. We are committed to supporting good and responsible capital market regulation, including efforts to provide more and better information to the investing public. This includes support for disclosure of clearer information about executive employment and compensation.

Fundamentally, we believe that free market forces, along with clear and fair disclosure, represent the best means to determine executive compensation. The amount and terms of employment and executive compensation agreements and equity awards result from a complex interaction of interests. The relative negotiating strength of companies and their potential executives varies depending on numerous factors, including the executive's past performance, the company's past performance, and the marketplace for executive talent. These negotiations can produce highly complex compensation arrangements that reflect varying interests of the parties. All corporate boards want to retain executives who will perform at a high level and produce value for shareholders. The question is how to fairly describe to shareholders the highly complex arrangements used to attract and retain key executives, without producing undue regulatory burdens or generating perverse economic incentives.

The SEC's recent initiative in its proposed Executive Compensation and Related Party Disclosure rule (the "Proposal") (Release Nos. 33-8655; IC-27218; File No. S7-03-06) should be examined with three questions in mind:

- Does the Proposal promote a clearer, more useful understanding of executive compensation?

- Is the Proposal simple and fair, imposing no undue compliance burdens?

- Does the Proposal allow market forces to determine executive compensation?

In the comprehensive Proposal, the SEC carefully reexamines long-standing regulations relating to disclosure of compensation paid to the directors and highest paid officers of public companies and key relationships among executive officers, directors, significant shareholders and members of their immediate families. The Proposal contains much thoughtful analysis by the SEC and its Staff. However, we believe that in certain areas the Proposal creates new areas of concern, may not be justified in certain respects by a cost/benefit analysis and is potentially inconsistent in certain respects with the SEC's stated goal of providing a clearer, more complete picture of compensation, relationships and independence.

This letter provides our comments on the Proposal. We have confined our comments to those items that we believe are most critical to our members, namely those items that we believe create an excessive and expensive regulatory regime, and those that we believe begin to interfere with the operation of market forces.

Our Support for Proposal Provisions

We support those parts of the Proposal that aggregate information concerning relationships and other matters that may affect director independence, consistent with the requirements of The New York Stock Exchange and the NASD. In addition, we support the application of the SEC's plain English requirements to proxy statement disclosure and the SEC's efforts to promote publication of committee charters on issuers' websites instead of as attachments to proxy statements. With the exceptions discussed below, we support the revised Summary Compensation Table insofar as it provides meaningful compensation information in tabular form and in a single location. We believe that the new Compensation Discussion and Analysis provides the opportunity for meaningful disclosure, but we also believe, as discussed below, that it raises issues of standards setting for corporate governance. The efforts to clarify and simplify requirements for filing information concerning executive compensation with a Current Report on Form 8-K should improve reporting and disclosure and eliminate some uncertainty. Finally, by putting forth interpretations on perquisites in a more formal manner than has been the case in recent years, the SEC has at least provided a basis for public discussion, debate and comment on matters that have to date been the subject of SEC lore, speeches and enforcement action; we believe, however, that this should be the subject of rule-making, not interpretation.

Comment Summary

We are providing comments in several areas where we believe that the Proposal either creates confusion with conflicting information or excess detail, increases the likelihood of litigation, or interferes with the operation of market forces and the proper functioning of compensation committees and boards of directors.

In general, we are concerned that the Proposal would:

- Substantially overstate certain components of executive compensation;
- Force Compensation Committees and Boards to use certain fixed methods for evaluating compensation, and drive particular non-market compensation decisions;
- Require the creation of misleading single number calculations of total compensation; and
- Place unduly large regulatory compliance burden on public companies, particularly those that are small to mid-sized.

We believe that the SEC's approach to disclosure of compensation for Named Executive Officers, or NEOs, in the Summary Compensation Table, the Compensation Discussion and Analysis and the explanation of the functioning to the Compensation Committee are fundamentally inconsistent in a number of respects. In addition, they suggest the creation of standards of conduct for compensation committees. As more fully discussed below, the Summary Compensation Table purports to provide a "Total Compensation" number, yet the numbers that are set forth are inconsistent with how a compensation committee analyzes executive compensation or how an executive looks at compensation, which seems to be the thrust of the Compensation Discussion and Analysis and the narrative concerning the operation of the compensation committee.

Furthermore, the Compensation Discussion and Analysis is intended, in the SEC's presentation, to reflect the framework a compensation committee uses when making its compensation decisions, but the SEC provides topics that it believes are appropriate for discussion by a compensation committee, which may not be the areas actually addressed by the compensation committee. Suggesting topics necessarily implies a framework for committee decision-making rather than encouraging discussion of an existing framework. Finally, the Proposal asks for an explanation of how a compensation committee actually functions, and requires comments in specified areas including the use of executive compensation consultants. We believe that the SEC's disclosure requirements should be harmonized to permit the investing public to understand how a compensation committee reaches its decisions and the values that it ascribes to various elements, and should not suggest the standards that the SEC believes a compensation committee should use.

Summary Compensation Table and Tabular Presentations

We strongly believe that the inclusion of fully valued items in a single line item provides a false impression of Total Compensation. Compensation has many elements, some of which are properly presented in the aggregate, but others do not lend themselves to such presentation, especially where realization of benefits is based on future events or performance. We believe that this aggregation inflates the number presented, potentially sensationalizing the discussion, as opposed to providing a meaningful number for comparison with compensation levels of similarly situated executives.

1. Calculating the "Grant Date Fair Value" of Equity Awards

The Proposal would require reporting companies to disclose in the Summary Compensation Table the "grant date fair value" of stock-based awards awarded to NEOs during a year, determined pursuant to Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), Share-Based Payment (FAS 123R), using the same valuation method and assumptions that the company uses for financial reporting purposes. However, under FAS 123R, the compensation cost calculated as the fair value is generally recognized for financial reporting purposes over the period in which the employee is required to provide service in exchange for the award (generally the vesting period). Under the Proposal, the full compensation cost calculated as the grant date fair value would be shown as compensation in the year in which the grant is made. We recognize that companies will calculate grant date fair value under FAS 123R for financial statement reporting, but we believe that the application of FAS 123R for executive compensation disclosure under the Proposal is flawed in a few critical respects.

The full value feature of the Proposal will overstate NEOs' annual compensation. We believe that the application of FAS 123R in the Proposal is not typically consistent with the methodology used by compensation committees, executives and executive compensation consultants and will significantly overstate NEOs' annual compensation. Showing the full grant date fair value of stock awards pursuant to FAS 123R in the year in which the grant is made would overstate the actual amount of compensation paid to the NEO by the company. FAS 123R grant date fair value is widely perceived as overstating the value of the stock option awards. Certainly, executives do not place a value on their equity awards as high as FAS 123R does. This perception is ameliorated somewhat in financial statement reporting (but not under the Proposal) by the fact that FAS 123R permits companies to (i) spread the charge over a multi-year vesting period and (ii) "true up" the compensation expense at the end of the vesting period based on the number of options or awards that actually vest.

If FAS 123R is to be used in the Summary Compensation Table, equity-based compensation should be reflected according to the same time schedule as for financial statement reporting purposes.

We note that FAS 123R gives companies significant discretion in selecting assumptions for the FAS 123R valuation calculation, which lessens the comparability of compensation reporting between companies.

The full value feature of the Proposal will influence the way in which companies compensate their executives. If the SEC requires companies to disclose the full (arguably overstated) potential value of each equity award on the day of grant, despite the possibility that the NEO may never receive that value, many companies, boards and NEOs may eliminate the vesting requirements. Companies and boards will ask themselves the logical question: why run the risk that investors, politicians and the media may adversely react to awards that may never provide a benefit at the reported level? If the companies, boards and NEOs are going to "take the hit" anyway, many may decide to eliminate the risk of non-payment by eliminating conditions.

Separate assumptions for NEOs. The Proposal appropriately allows companies to aggregate NEOs receiving awards into a group separate from non-executives with respect to exercise and post-vesting employment termination behaviors for determining expected term, consistent with FAS 123R. However, because the exercise behavior of NEOs differs sharply from that of non-executives, we believe that companies should be able to use the full term rather than an expected term assumption for calculations for NEOs. We believe that this difference from financial reporting will not confuse investors as investors look at these areas of companies' reports differently.

2. Disclosure of Equity Awards and Holdings in Multiple Tables

The Proposal would separate equity awards into three different categories, in three different tables, showing grants of equity awards, outstanding equity awards at year-end, and showing the income realized from the equity awards due to option exercise or stock vesting. Essentially, the only equity awards that would be excluded from these three tables are those based on performance criteria, which would be reported in a separate table.

The value of each equity award to be disclosed in these tables will have been already disclosed in columns (c), (f) and (g) of the Summary Compensation Table. The proposed Summary Compensation Table would require the full value of equity awards to be shown in the total compensation column and devote two columns exclusively to equity plan-based awards. Stock awards subject to performance-based conditions would be included in the new Stock Awards column (proposed column (f)). The Option Awards Column (proposed column (g)) would disclose awards of options, stock appreciation right grants, and similar stock-based compensation instruments that have option-like features.

We believe that this multiple-table feature of the Proposal is flawed in two critical respects.

The multiple-table feature of the Proposal creates a high likelihood of double or even triple counting of equity awards. We believe that the multiple-table feature of the Proposal, as a practical matter, will ensure double or even triple counting of equity awards by investors, the media and others. Apparently, the SEC believes that the current disclosure system makes it too difficult for investors to ascertain the total equity compensation awarded to executives. However, we believe that this portion of the Proposal will make it *even more difficult* for investors to ascertain the total equity compensation awarded to executives.

We believe that the SEC should reduce the number of tables proposed. For example, we believe that the Grants of All Other Equity Awards Table could be combined with columns (f) or (g) of the Summary Compensation Table by adding the actual number of shares awarded to the grant date fair value figure in those columns.

Alternatively, the Proposal could combine the Grants of All Other Equity Awards Table with Outstanding Equity Awards at Fiscal Year-End Table.

The multiple-table feature of the Proposal will influence the way in which companies compensate their executives. When faced with the practical reality of double or triple counting by investors, the media and others, companies, boards and executives may respond by altering the mix of NEOs' compensation packages to reduce the percentage of the total package that is equity-based, or move to a performance-based award where compensation is reported when earned. We generally favor making a greater portion of executive compensation equity- or performance-based. However, we do not believe that the SEC should influence this matter by its disclosure requirements.

3. Analysis of Results under Post-employment Compensation Methodology.

In its proposed methodology for prescribing the value of post-employment compensation, again the Proposal departs from the actual financial tools that a compensation committee might use. The Proposal requires that the reporting company set forth assumptions to develop a single number, as opposed to the procedure more likely used by a compensation committee, namely one that analyzes results under various scenarios to arrive at multiple conclusions that are evaluated as part of the decision-making process. To pick one for the compensation presentation suggests certainty for a number that is not certain and not considered as certain by those making decisions.

By requiring the use of a fixed number, the Proposal introduces a significant risk that any number reported will vary substantially from the actual resulting compensation. Additionally, the reduction of complex relationships to a single number that we believe may vary from year to year and company to company suggests comparability where none truly exists. We believe that the Proposal's reference to the use of footnotes to clarify previously-reported post-employment numbers and avoid accumulation is naïve; this type of detail will be ignored as readers and reporters seize upon a single reported number.

We note two aspects of the Proposal on change in control provisions that we believe would significantly increase the risk of litigation and the time and expense of preparing disclosures without increasing the amount of useful information provided to investors.

Estimating possible payments on change in control would increase the time and expense of preparing disclosures. The Proposal would require companies to estimate the payments and benefits, including possible tax gross-up payments, that would be provided in each possible termination circumstance. Based on the extensive experience of our members with change in control provisions, we believe that producing this calculation would require each reporting company to hire counsel and an accountant and/or actuary each year.[1] The number of speculative assumptions and complicated legal analysis required makes this calculation virtually impossible to perform "in-house," especially for smaller public companies. We believe that reporting companies can describe to investors the significant amounts of compensation that may be involved by providing a meaningful disclosure of the specific provisions of the change in control agreement and allowing investors to make their own assumptions as to such matters as the possible takeover price.

Estimating possible payments on change in control would increase the risk of litigation. We believe that disclosure of highly speculative information related to a possible change in control would unnecessarily increase the risk of lawsuits against board members and executives, without increasing the amount of useful information provided to investors. As proposed, a company would be required to provide quantitative disclosure despite the manifold uncertainties that exist as to amounts payable under these plans and arrangements. The Proposal recognizes that uncertainties exist as to the provision of payments or benefits or the amounts involved. However, the Proposal would require the reporting company to make reasonable estimates and disclose material assumptions underlying such estimates. The Proposal provides that the required disclosure would be considered forward-looking information that falls within the safe harbor for disclosure of such information but we find little comfort in this protection when assumptions are subsequently attached.

4. Requirement to Disclose Salaries of Highly Compensated, Non-NEOs.

Disclosing salaries of Non-NEOs only benefits competitors, gossips and the press and would not provide meaningful information to shareholders. We disagree with the SEC's proposed addition of compensation disclosure for up to three employees who were not executive officers during the last competed fiscal year and whose total compensation for the last completed fiscal year was greater than that of any of the named executive officers. The primary beneficiaries of this information would be competitors, gossips and the press. This information would be of little use to investors. Personnel costs are part of product or service delivery costs. Just as contracts for other goods and services are disclosed only when material, we believe that compensation agreements for personnel, except for executive officers, should be judged no differently. For example, large complex financial services companies must employ a wide range of talent, some of which is highly specialized. Compensation must be based on market factors for the required talent. For persons performing certain functions such as trading, the relevant competitors may include hedge funds and other sophisticated participants where market-based compensation may be higher than that paid to the senior managers of the corporation. Disclosing the compensation of three individuals who are non-executive officers does no more than give anecdotal information to shareholders, and does not inform shareholders in any analytically meaningful way.

[1] These professional service firms are very expensive and, as we have learned in the aftermath of the Sarbanes-Oxley Act of 2002, tend to become more expensive when government regulation increases the "demand" for their services.

Disclosing salaries of Non-NEOs would provide an open opportunity for competitors to bid talent from the company and will lead to an overall higher compensation cost. Although compensation must be market-based, information within the market is usually obtained through surveys that mask the identity of individuals. Under the Proposal, the identity of the three unnamed individuals would not be disclosed in the proxy statement, but it is highly likely that competitors and other employees within the firm would be able to guess to whom the disclosure relates. This is likely to increase the number of demands for higher compensation by similarly situated employees within the firm who are not as highly compensated. It also will provide an open opportunity for competitors to lure highly productive employees away from the company, leading to an overall higher compensation cost.

Compensation Discussion and Analysis; Compensation Committee Decision-Making

By identifying topics for discussion, the SEC is imposing a framework for compensation decision-making. We believe that the independent directors of a company who comprise the compensation committee should determine the standards that should be applied to the compensation of the company's executives, subject to satisfaction of state fiduciary duty standards. The Compensation Discussion and Analysis for such company should reflect how the requesting company's compensation committee approaches its decisions, not how the SEC believes that it should do so.

We believe that by identifying topics for discussion the SEC is essentially defining what a compensation committee should address - either as best procedures or fiduciary duty. A board's satisfaction of its fiduciary duty obligations is a state law question, and is very fact specific. By creating a checklist for suggested disclosure, the SEC, we believe, is moving toward filling in fiduciary duty requirements. The level and type of disclosure suggested will influence how directors act.

Market-forces and compensation committee methodologies vary widely and do not fit the SEC's proposed common mold. We disagree with the SEC's attempt, as reflected in the Proposal, to fit all decision-making on compensation into a common mold by suggesting factors to be discussed. Industry, history, size, competitive needs and other facts and circumstances all play important roles in determining how a particular compensation committee approaches its task at any particular time. Additionally, all compensation committees do not operate in the same way, using different types of modeling, with and without external consultants.

An employment agreement is a negotiated contract, not simply a determination of "fair compensation" by a compensation committee that is presented to an executive officer for acceptance. The executive officer and the company negotiate his/her benefits, which a compensation committee must assess in terms of competitive reality as well as value to the company. Each agreement arises under distinct circumstances that do not lend themselves to the proposed disclosure requirements.

By requiring identification of consultants, the Proposal introduces cost and delay into the disclosure process. By requiring (in the narrative describing the activities of the compensation committee) specific identification of executive compensation consultants and the role they play, the Proposal introduces an element of cost and delay that we believe is unjustified. Consultants of various types – executive compensation firms, accountants, attorneys – may be consulted with various levels of detail from time to time; there is no consistent model. Use of such consultants may assist a compensation committee in its analysis, but it is not a substitute for directors' judgment, and to bring consultants into a preeminent position for disclosure is not meaningful.

The requirement that the Compensation Disclosure be "filed" rather than "furnished" is based on a mischaracterization and creates litigation risk where unwarranted. We strongly urge the SEC to reject the classification of Compensation Discussion and Analysis as "filed" instead of "furnished." We do not concur with the assertions in the Proposal that the classification of the compensation committee report as a furnished document has lessened the efforts of issuers to comply with the SEC's rules; this mischaracterizes what we believe is an honest effort on the part of substantially all reporting companies to respond to reporting requirements. Even if that were the case, to place the chief executive officer and the chief financial officer in the position of certifying the content of the Compensation Discussion and Analysis seems to us an unnecessary step, particularly in light of the fact that the Compensation Discussion and Analysis reports information on a process in which the certifying officers likely were not primarily involved, and in any event did not serve in a supervisory role.

Additionally, we believe that the combination of the classification of the Compensation Discussion and Analysis as a filed document and the suggestion of topics for discussion by the SEC creates a basis for a newly-styled litigation that seeks to hold directors personally liable for decisions made in good faith, in discharge of their fiduciary duties. We believe that directors will request experts on fiduciary duty defense to vet this disclosure to reassure the directors that they are satisfying their fiduciary duty through the Compensation Discussion and Analysis.

Perquisites

The interpretations in the Proposal are better suited for rule-making and go well beyond what most would consider perquisites. Unfortunately, the SEC has chosen to use the Proposal to set forth interpretations of what constitute perquisites, as opposed to engaging in rule-making, which we believe is the appropriate way to proceed. Historically, the SEC's views on perquisite disclosure have been laid out in broadly-worded enforcement actions that arise out of atypical circumstances, in Staff or Commissioner speeches, or in comments on filings. We believe that these interpretations and positions setting forth definitions should be incorporated into Regulation S-K, following publication of proposed regulations and public comment. We suggest that the "interpretations" set forth in the Proposal go well beyond what many would consider to be in the nature of perquisites. By interpretation, the SEC divorces "business purpose" from the determination of whether an item is a perquisite by declaring that for an item not to be a perquisite or personal benefit it must be "integrally and directly related to the performance by the executive of his or her job." This is rule-making at its most basic level and should be addressed as such.

The lowered threshold creates additional disclosure with questionable benefit. Combining this "interpretation" with the lowered threshold (to $10,000) for disclosure contained in the Proposal creates the potential for additional disclosure in public documents with questionable benefit. If all of these "perquisites" and "personal benefits" are included in the total compensation reported for an executive, we question the utility to the investor in providing details of a benefit that might be deemed to be a perquisite under the SEC's expansive interpretation. For example, if an executive assistant were to be deemed to provide some level of personal support for the executive, then part or all of his/her salary would be included in the Other Compensation caption under this interpretation. What benefit is gained by identifying the executive assistant's salary as a separate item in the disclosure? The purpose appears to be an underlying view that such benefits need to be exposed in some fashion as corporate largesse well beyond IRS and corporate law strictures (we note the SEC's use of this concept for inclusion as "not generally available to employees on a non-discriminatory basis"), to be judged for appropriateness based on the limited information in the proxy statement, as opposed to a part of an explanation of the total benefits paid to the executive pursuant to arrangements entered into with the executive.

The level of detail required is excessive. The proposed perquisite disclosure contains several examples of places where we believe disclosure of detail reaches absurd levels; for example, the tax gross-up disclosure is a separate item even if the perquisite is not required to be separately quantified.

Interested Party Transactions and Independence

We agree with the SEC that, in addition to disclosure regarding executive compensation, a materially complete picture of financial relationships with a company involves disclosure regarding related party transactions. Generally, we support the features of Proposed Item 407(a) that would require disclosure regarding the independence of directors, including whether each director and nominee for director of the company is independent. However, we disagree strongly with the portion of Proposed Item 407(a) that would require a description of any relationships not disclosed under paragraph (a) of Item 404 that were considered when determining whether each director and nominee for director is independent.

The current rules, with some modification provide sufficient disclosure. Board committees consider all relevant information pertaining to transactions and relationships with directors and family members when determining director independence. The specific information is highly confidential. Disclosure should be acceptable to the extent that Item 407 requires a general statement of the types of transactions and arrangements that the board considered in determining independence. However, to the extent that it will require specific disclosure of transactions and arrangements by name and amount it may be highly damaging.

Proposed Item 407(a) would require disclosure regarding the independence of directors, including whether each director and nominee for director of the company is independent. Additionally, Item 404(b) would require disclosure regarding the company's policies and procedures for the review, approval or ratification of related person transactions. We believe that these requirements are sufficient. We do not believe that it is necessary or desirable to require a description of any relationships not disclosed under paragraph (a) of Item 404 that were considered when determining whether each director and nominee for director is independent, as would be required by Proposed Item 407(a).

Current rules already require a reporting company's board of directors to make determinations of director independence based on all relevant information. If specific transactional, fiduciary or other information were required to be disclosed, in addition to the harm referenced above, it will lead to a multiplicity of second guessing by rating agencies, institutional shareholders, proxy organizations and others that will be very disruptive to the process and will undermine the board of directors' ability to make these determinations.

We believe that NYSE and NASD rules clearly set forth the independence standards, and should be the basis for the disclosure.

Requiring the directors to disclose all factors they considered will impair one of the goals of good governance. Most of these disclosures will provide information for gossips and the press, but little information that is useful to investors. Nearly every recent case challenging the independence of corporate directors features titillating information about who went to whose wedding or stayed at their house in the Hamptons. This information is not useful to investors. This will only make it harder to find quality directors willing to serve on corporate boards.

Cost/Benefit Analysis.

We respectfully suggest that the SEC should re-evaluate its cost/benefit analysis, especially on the cost side. History has clearly demonstrated that the SEC's analysis of potential costs under the SEC's requirements under Sarbanes-Oxley Act §404 was grossly understated. We believe that the cost analysis in the Proposal also fails to consider realistic additional costs. The SEC needs to take into consideration the following elements: the disclosure is more detailed and lengthy, and realistically will require more preparation time by more people; historically the individuals involved in the process outside a company have been attorneys and accountants who are preparing or reviewing the documents, but under the Proposal executive compensation consultants and their advisors would be introduced into the process, as would special counsel to directors to determine whether the process described is consistent with the standards of fiduciary conduct and with current fiduciary duty case law; and the cost analysis does not reflect additional director time that we believe will be required to read the lengthy new disclosure.

Unfortunately, just as in Sarbanes-Oxley, smaller issuers will be negatively affected, disproportionately more than larger public companies, as the detailed disclosure requirements increase and they are pushed into greater reliance on external support.

Conclusion

We support the SEC's goals of providing investors with transparency in disclosure of executive compensation and relationships with the issuer's board, executives and significant shareholders and the functioning of the board and its committees, as well as the continuing emphasis on documents written in a form that shareholders can more readily understand. We understand that the investing public has clearly evidenced its discontent, frequently as a result of negative publicity surrounding excessive unreported compensation in a few high profile examples. Nevertheless, some of this discontent is a result of the lack of understanding of the dynamics of executive compensation and the sensationalizing of executive compensation without thoughtful reflection. The SEC, under Chairman Cox's leadership, has put forth a bold initiative in the Proposal, and we hope that major parts of it will be adopted promptly to address identified concerns. We concur with Chairman Cox that changes are appropriate in order to eliminate "surprises" in executive compensation. But we urge the SEC to reconsider portions of the proposal, as we have discussed, where the changes impose additional burdens on issuers with limited, if any, benefits to investors. We also urge the SEC to create a forum for discussion that permits a thoughtful exchange of views on disclosure, as opposed to one that is used to attack executive compensation and the application of market forces to establish appropriate levels of compensation. More disclosure can aid the functioning of market forces. However, the SEC's disclosure requirements should not unduly influence the types of compensation provided by creating inappropriate incentives.

Sincerely,

David C. Chavern

Vice President – Capital Market Programs