April 10, 2006

VIA E-MAIL to rule-comments@sec.gov

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

Re: File Number S7-03-06
Executive Compensation and Related Party Disclosure, SEC Release Nos. 33-8655; 34-53185; IC-27218 (January 27, 2006) and published in the Federal Register, 17 CFR Parts 228, 229, 239, 240, 245, 249 and 274 (February 8, 2006) [71 FR 6542](the "Release")

Dear Ms. Morris:

On January 27, 2006, the Securities and Exchange Commission (SEC) issued the Release which contains proposed rules that would significantly amend the current executive and director compensation, director independence and related party proxy disclosure rules, and also would make changes to several other required public filings, e.g., Form 8-K, etc. The Release requested comments on or before April 10, 2006.

Our Comments

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Introduction

Buck Consultants, an ACS Company, is a leader in human resource and benefits consulting with more than 1,500 professionals worldwide. Founded in 1916 to advise clients in establishing and funding some of the nation's first public and private retirement programs, Buck is an innovator in the areas of retirement benefits, health and welfare programs, human resource management, compensation and employee communication. Buck is an independent subsidiary of Affiliated Computer Services, Inc. (ACS). Because of our deep expertise in compensation matters, we wanted to share our comments and recommendations concerning the proposed rules with you in the hope that the final rules can be improved.

Overall, the proposed rules in the Release should provide investors with greater information about compensation at public companies. However, after reviewing the proposals and discussing them at length both internally and externally with clients and others, we believe that certain portions of the proposed rules should be revised. Our comments follow, arranged in accordance with the order utilized in the Release.

Item 402(a) – General

<u>Persons Covered</u>

We agree with the SEC's decision to automatically include the principal financial officer (PFO) in addition to the principal executive officer (PEO) in the Summary Compensation Table (SCT), especially given the heightened scrutiny of financial statements and the certification requirements introduced by the Sarbanes-Oxley Act of 2002.

We believe the better approach for determining the executives to include in the SCT (in addition to the PEO and PFO) is to simply require inclusion of all executives who are Section 16(b) officers[1] (modified to specifically include executives who head up divisions or subsidiaries or report directly to the PEO, if the SEC is concerned that companies have not been disclosing the compensation of such individuals). This approach would be more consistent with other security disclosures. Since the SEC already recognizes that the actions of Section 16(b) officers are important enough to investors that their transactions in company securities must be reported in

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[1] *See* Rule 16a-1(f) under the Securities Exchange Act of 1934 for definition of "officer"; "The term "officer" shall mean an issuer's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Officers of the issuer's parent(s) or subsidiaries shall be deemed officers of the issuer if they perform such policy-making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the issuer is a trust, officers or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust."

accordance with Section 16, e.g., on Forms 3, 4 and 5[2], these individuals should also be included in the proxy's compensation disclosure tables.

The adoption of Section 16(b) officer status (possibly modified) as the standard for inclusion of an executive in the proxy's compensation disclosure tables will permit companies to have a greater amount of certainty regarding which executives will be disclosed and will provide greater and more relevant and consistent information to investors. Additionally, the number of Section 16(b) officers a company has is a function of its complexity and organization, so the number will vary somewhat by industry group and company size, which gives investors information on a more relevant number of executives than using an arbitrary, fixed number of executives. This will likely mean larger companies will disclose information for more than five executives. However, this approach balances consistency of year-to-year presentations against using an arbitrary number of executives (five) that would be less than if all Section 16(b) officers are included.

However, if the SEC does not adopt the Section 16(b) officer standard we recommend above, then the determination of the other three named executive officers (NEOs) on the basis of total compensation should be revised. Given the nature of what is proposed to be included in total compensation (e.g., special one-time hire-on grants, actuarial increase in benefits, etc.), the list of NEOs (other than the PEO and PFO) is likely to change more from year to year than under the current rules. Thus, the information being disclosed will not have the consistency it currently has. One way the SEC could address the variability issue would be to require inclusion in the SCT of up to three executives disclosed in the immediately preceding proxy statement, but who would not be included in the current SCT simply because of a non-recurring compensation event with respect to one or more of the three NEOs that would be included in the SCT (e.g., a special, one-time hire-on bonus or grant, etc.).

We also recommend that if an NEO's reported title is generic (e.g., Vice President, Executive Vice President, Senior Vice President) and does not indicate the NEO's functional responsibilities, that companies be required to include a footnote to the SCT describing the job responsibilities of the NEO.

Item 402(b) – Compensation Discussion and Analysis (CD&A)

Elimination of the Compensation Committee Report

The proposed rules eliminate the Compensation Committee Report[3]. We believe it is not appropriate to eliminate the requirement for a report from the committee charged with

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[2] *See* Rule 16a-3 under the Securities Exchange Act of 1934.
[3] Release, at Section II.A.4. [71 FR 6546-47]. Current Item 402(k).

determining and overseeing compensation matters for a company, especially given corporate governance practices and listing exchange requirements that have emerged in recent years. As a result, the rules should require that either a separate Compensation Committee Report be prepared or that the compensation committee prepare the CD&A. The report could be done in a manner similar to what is done with a Company's MD&A and the required Audit Committee Report, which ends up being "furnished" over the names of the audit committee members. We recommend that the Compensation Committee Report be retained, modified to include relevant items from the proposed CD&A, and that the CD&A format not be adopted. (See below for further discussion of this topic under the "Filed vs. Furnished" Section).

Elimination of the Performance Graph

The proposed rules also eliminate the currently required Performance Graph[4]. We believe the graph is fairly straightforward to produce, and provides useful information to investors reading the proxy relative to the performance of the company. We recommend that the performance graph be kept, but that companies be required to disclose in the graph (covering the same period as currently) the actual performance measures (e.g., ROI, CFROI, EBIDTA, etc.) on which they based pay decisions during the last fiscal year, as well as a comparison of each such performance measure to the actual group of comparator companies utilized in the last fiscal year in assessing the competitiveness of compensation. Companies should be required to disclose in a footnote where they target their compensation (if they do) against such comparator companies (e.g., median, 75th percentile, etc.) as well as where their compensation actually stands in relation to that of the comparator companies. If no performance measures were utilized in making pay decisions in the last fiscal year, then companies should display the total shareholder return (TSR) as currently required, but disclose in a footnote that no performance measures were used. Additionally, if a company utilizes a group of comparator companies for assessing the competitiveness of its compensation, then the TSR for the comparator group (without the subject company) should be disclosed in the graph. If a company does not use a comparator group in making pay decisions, then it should so state and then include the TSR for companies in its industry group, based on the company's Standard Industrial Code or Global Industry Classification Standard number (regardless of the revenues or market capitalizations of such companies). Rules similar to the current requirements as to changing the composition of peer group or index should also apply to the change of any performance measure utilized.

[4] Release, at Section II.A.4. [71 FR 6546-47], Current Item 402(l).

No Stated Period
As proposed, the rules for the CD&A do not specify the period of time to be utilized in determining the compensation disclosures that must be discussed. We recommend that the last fiscal year be used, as is currently required for the Compensation Committee Report[5].

Policy Regarding Qualifying Compensation Under Section 162(m)
The current requirement that companies discuss their policy with respect to qualifying compensation under Internal Revenue Code Section 162(m)[6] should be continued. However, we recommend that the requirement be incorporated into the revised Item 402 disclosure rules. Additionally, companies should be required to disclose how they actually applied their policy in the last fiscal year either through a narrative disclosure or a tabular disclosure along the lines of the following, covering the NEOs:

Name /Position	**Non-deductible Compensation Under Section 162(m) Paid in Last FY**
PEO	$500,000
PFO	$100,000
A	$0
B	$0
C	$0
Total	**$600,000**
Company's Estimated Federal Income Tax Rate	35%
Estimated Lost Federal Tax Benefit	**$210,000**

Filed vs. Furnished
The CD&A would be considered a part of the proxy statement and any other filing in which it is included[7]. As a result, the securities law liability provisions of Section 18 of the Securities Exchange Act of 1934 would apply[8]. Furthermore, if the CD&A or any other narrative discussion concerning compensation matters is included or incorporated by reference into a periodic report (e.g., Form 10-K, Form 10-Q, etc.), then the disclosure would also be covered by the certification that the PEO and PFO are required to make under the Sarbanes-Oxley Act of 2002[9].

If the PEO and PFO are to certify anything to do with compensation, it should be as to the accuracy of the data disclosed in the tables, as is currently the case, e.g., the amounts actually

[5] Current Item 402(k).
[6] SEC Release No. 33-7032, November 22, 1993, "[t]he [compensation committee] report should in its discussion of executive compensation policies address the registrant's policy with respect to qualifying compensation paid to its executive officers for deductibility under section 162(m) of the Internal Revenue Code."
[7] Release, at Section II.A.3. [71 FR 6546].
[8] *Ibid*.
[9] *Ibid*.

paid or amounts awarded. One problem in having the PEO and PFO certifications apply to the CD&A is that the PEO and PFO would not necessarily have all the details on how their own compensation was set. This is due to a growing trend whereby compensation committees make compensation decisions regarding the PEO during executive sessions without the PEO and other executives (this is required under the rules of the New York Stock Exchange and NASDAQ). Thus, it does not make sense to have their certifications extend to matters that are within the control of the compensation committee.

As stated above, we prefer that the CD&A not be adopted and that the Compensation Committee Report be continued, modified to include relevant provisions of the proposed CD&A (e.g., the requirements to discuss the compensation awarded to, earned by, or paid to the NEOs and to explain all elements of the company's compensation of the NEOs). However, if the SEC does include the CD&A in the final rules, we recommend that the compensation committee should still prepare and submit a report to shareholders on compensation matters to inform shareholders of the actions it took relative to compensation for the NEOs during the prior fiscal year. This report should continue to appear over the names of the compensation committee members during the past year who participated in compensation decisions. However, the rules should be revised to require the inclusion of any member of the committee who participated in compensation decisions, regardless of the individual's current committee status. Footnote disclosure should be permitted to indicate any member who has joined or left the committee during the last fiscal year, the date of such action and the compensation decisions in which the member participated.

Additionally, like the Audit Committee Report, the Compensation Committee Report should continue to be "furnished" rather than "filed." This solution would ensure that the compensation committee would still "own" the compensation disclosures in the proxy and that the best practice of having the compensation committee decide executive compensation matters could continue to be reinforced by requiring the committee to file a report detailing its activities as part of the proxy.

Boilerplate Language

The proposed instructions indicate that the CD&A shall not use boilerplate. The SEC should clarify what is meant by "boilerplate." Companies generally do not materially change their compensation policies, processes, procedures, plans or philosophies from year to year, so using similar language from year to year may be appropriate (and even could be viewed as desirable, especially if the disclosure is well-written in plain English and does a good job of explaining the company's compensation policies, processes, procedures, plans and philosophies). We recommend that when programs are changed or reexamined for continued relevancy, that companies disclose the changes and explain the impact on their executives' compensation going forward. It may also be appropriate for companies to disclose why the programs continue to be relevant. Along these lines, we believe the SEC should consider adding a requirement for companies to state if there were not any material changes in their compensation policies, processes, procedures, plans or philosophies during the last fiscal year.

Item 402(c) – Summary Compensation Table (SCT)

Earned and Awarded Compensation

There is a distinction between compensation that has been earned and compensation that has been awarded, but not yet earned. Items such as salary and bonus lend themselves naturally to an earned compensation disclosure, while items such as stock options do not. The SEC's proposed SCT requires disclosures of both of these types of compensation but does not clearly indicate this. Thus, total compensation disclosed is the combination of both earned and awarded compensation, but does not necessarily represent what an executive actually realized during the past year as income from the company.

One way for the SEC to reflect this distinction in compensation would be to revise the proposed SCT so that compensation disclosures are grouped into two broad categories, Earned Compensation and Awarded Compensation. Each one of these areas could then have its own subtotal column, if necessary, and the total compensation column would then be the total of these two subtotal columns. This revision would help investors understand and see the distinction between earned and awarded compensation.

Additionally, to increase the consistency in the way performance-based compensation is treated under the SCT, performance-based awards should be included in the SCT in the year in which they are earned and payouts are determined, with a supplemental table to the SCT explaining the amount disclosed as performance-based compensation earned (a sample table appears after the proposed revised SCT below), and utilizing a separate row for each type of performance-based award that was paid out during the last fiscal year. We would still expect grants of performance-based awards to be disclosed in the Grants of Performance-Based Awards table in the proxy statement covering the fiscal year in which they were granted.

Non-performance-based awards should be disclosed in the year of grant in the SCT in a single column (non-performance-based equity compensation) and supplemented by a slightly revised All Other Equity Awards Table, which we would rename the Non-Performance-Based Equity Awards Table. This table would detail each type of award (options/SARs and stock or stock units) and each separate grant of an award would be shown on a separate row for each NEO. We recommend adding a column that displays the fair value for each type of non-performance-based award granted in the last fiscal year, which would then tie to the amounts disclosed in the SCT. (See table below).

The table below illustrates our suggested changes to the SCT, including those that are discussed in the following sections:

Summary Compensation Table

		Earned Compensation					Awarded Compensation	
Name and Principal Position (a)	Year (b)	Salary ($) (c)	Bonus ($) (d)	Performance-Based Compensation ($) (e)	All Other Compensation ($) (f)	Total Earned Compensation ($) (g) [= c + d + e + f]	Non-Performance-Based Equity Compensation ($) (h)	Total ($) (i) [= g + h]
PEO								
PFO								
A								
B								
C								

Performance-Based Compensation Earned in Last Fiscal Year

Name (a)	Type of Award (b)	Grant Date (c)	Number of shares, units or other rights (#) (d)	Dollar amount of consideration paid for the award, if any ($) (e)	Performance or other period until vesting or payout and Option Expiration Date (f)	Payout Amount ($) (g)	Annualized Payout Amount ($) (h) [=g/f]
PEO							
PFO							
A							
B							
C							

Additionally, if our recommendation regarding changing the Performance Graph (see above) is not implemented, we recommend that the Performance-Based Compensation Earned in Last Fiscal Year table be supplemented by narrative disclosure that discusses how the payout amount was determined, detailing the actual performance metrics and targets utilized for the award(s), what actual performance was for the performance period, and what this meant in terms of the payout amount.

Non-Performance-Based Equity Awards

Name (a)	Type of Award (b)	Grant Date (c)	Number of shares, units, other rights or options (#) (d)	Exercise or Base Price ($/Sh) (e)	Expiration Date (f)	Vesting Date (g)	Fair Value ($) (h)
PEO							
PFO							
A							
B							
C							

Total Compensation Column

This column should be placed on the far right side of the table, as is customary practice when showing totals. Additionally, if the SCT is re-configured to show Earned Compensation and Awarded Compensation as we suggest, then Total Compensation should be the sum of earned and awarded compensation.

Option Awards Column

The proposed rules utilize the Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment* (FAS 123R), assumptions that a company discloses in its financial statements[10] to value awards. However, this may not be the most appropriate method. Again, this goes back to the discussion of distinguishing earned versus awarded compensation. The use of the expected term for purposes of FAS 123R, (e.g., for purposes of determining the cost to the company of the equity award), will not yield an appropriate estimate of the potential value being delivered to an executive. Instead, to determine such potential value companies should utilize the full term of the option. The use of the full term results in a better disclosure of the potential value represented by the award. The fact that an executive chooses to exercise an award early (before the end of its full term) does not change the potential value of the initial award. This also increases comparability among companies in the value being delivered to executives. Although this creates an inherent disconnect between the compensation expense and compensation value of an option, the different purposes of these items should justify different methods of determination.

[10] Proposed Item 402(c)(2)(vi) and Instruction 1 to Proposed Item 402(c)(2)(vi) and (vii).

If the SEC does not require the use of the full term of options in determining their fair value, then it should at least require the use of the expected term/life and other assumptions that were actually utilized in determining the fair value of the NEOs' option awards for purposes of FAS 123R. The assumptions utilized in determining the fair value of options should be detailed in a footnote to the SCT to make it easier for investors to determine the assumptions used, rather than having to look them up in the footnotes to a company's financial statements.

Additionally, the requirement to include the full fair value of stock options and similar instruments that are repriced or materially modified during the year in the SCT could be viewed as requiring double disclosure of such amounts. The fair value of outstanding equity awards would be first included in the SCT when granted, then in the year they get repriced or modified, the SEC would require companies to include the full fair value of the new/modified equity award in the SCT. Here the SEC should follow the requirements of FAS 123R and only require the incremental fair value to be disclosed (determined using the full remaining term of the option, for the same reasons discussed above).

Non-Stock Incentive Plan

As currently proposed, the rules treat substantially similar awards quite differently for disclosure purposes.

For example, if a company granted one NEO a performance share and another NEO a non-stock-based performance unit, the value of the grant of the performance share is included in the SCT in the year of grant while the value of the performance unit is the amount ultimately earned and reported in the year earned.

We recommend the rules be revised to include all performance-based awards (whether options, stock, or non-stock incentives) in the SCT in the year earned and all non-performance-based awards in the year of grant

All Other Compensation

The proposed supplemental table should be required instead of narrative disclosure in a footnote of items included in this column. This will make this disclosure more understandable to investors. We recommend including a "total" column at the far right hand side, to make it easier to tie the table back to the number disclosed in the All Other Compensation column of the SCT.

Perquisites and Personal Benefits

The SEC should consider providing a safe-harbor (or other advice or instruction) for companies to utilize in calculating the cost to be disclosed of certain perquisites in order to increase comparability among companies. One area that could use some specific guidance is calculating the cost to be disclosed for an NEO's (or NEO's family member's) personal use of a company plane.

A question exists as to whether the proposed threshold for disclosure of perquisites (in excess of $10,000 in the aggregate) is appropriate. The proposed threshold for disclosure is too low to effectively be called a *de minimis* standard because amounts above the proposed threshold may not be material, e.g. $15,000 worth of financial planning and tax preparation services provided to a PEO whose salary, bonus and equity grants is $6 million. Thus, we recommend that the *de minimis* threshold for purposes of perquisite disclosure be increased to $25,000.

Earnings on Deferred Compensation
We recommend that the current requirement that only the amount of above-market rate interest be disclosed continue to apply instead of the proposed requirement to disclose all interest on deferred compensation. The continued utilization of the Applicable Federal Rate (AFR) as the gauge of a market interest rate provides investors the information they need to understand what is being given to executives above and beyond what they could receive elsewhere.

Increase in Actuarial Value of Defined Benefit and Pension Plans
We agree with the SEC's proposed requirement to calculate and disclose a value for the annual increase in benefit earned under a defined benefit pension plan. The annual increases under these plans can represent a significant element of compensation for NEOs, and thus the concept of Total Compensation would be incomplete and incorrect without inclusion of an amount related to the annual increase in value from defined benefit pension plans. These pension arrangements are clearly and simply deferred compensation.

We wish to make a number of comments relating to how this Increase in Actuarial Value ("Value") is to be calculated, including methodology, assumptions and benefit items. Some of our comments specifically address questions raised in the proposed rules. This is a very technical area and we attempt to use lay terms and concepts as much as possible so that (a) readers of this letter can gain a better understanding to make practical final rules and (b) ultimately the users of the final rules and future proxies can better understand company's future disclosures.

Actuarial Methodology
With respect to the basic actuarial methodology, we believe that the SEC must proscribe a single, clearly defined method to be used to determine the value of the annual benefit increase for consistency and comparability purposes. We believe the current wording in the proposals ("Increase in Actuarial Value of Defined Benefit and Pension Plans") is too broad and could lead to multiple interpretations of the appropriate method of calculation.

We believe there are two ways to look at this. First, the proscribed methodology could be based on a "benefit" approach. This is perhaps the simplest and most straightforward approach (and the approach that some people have interpreted the brief description in the proposed rules as requiring). Under this approach the accrued benefit at the end and beginning of the fiscal year would be calculated, the difference between the two would be the benefit earned during the year and would be multiplied by a present value factor. Such present value factor would be based on a deferred annuity factor, or an immediate annuity factor if the individual is at or beyond the assumed retirement age. (Comments related to assumptions, including the retirement age are provided below). Appendix A presents a table as to how this approach works for four sample CEOs, all representing relatively common situations.

If this approach is adopted, the rules could express the value of the pension benefit as "the actuarial value of the increase in the accrued benefit earned during the fiscal year based on an additional year of service and changes in plan compensation." (Please note that this definition is not the same as the difference between the actuarial values at the end and beginning of the year.)

We want to emphasize that under this accrued benefit approach, a very large amount would be disclosed in any year in which a significant change in the benefit structure or plan compensation occurs. We have illustrated this in the attached Appendix under "Existing CEO with New, Enhanced SERP" and "Existing CEO with SERP with Large, One Time Compensation Amount". The large increase in the accrued benefit from the beginning of year to the end of year would be recognized all in one year under this benefit approach.

The second approach is a "cost" approach under which any actuarial cost method could be used. For example, the Projected Unit Credit method, required under SFAS 87, would be a reasonable choice where there is a normal cost (the value of benefits earned during the year on a projected basis, with an assumption of increases in future compensation) and which would also produce a value for a benefit increased as a result of plan amendment. (Note: the period over which to recognize this amortization would also need be decided but it would seem appropriate to amortize the increases over the executive's assumed remaining working period.)

One advantage of this method is that some users of proxies have become familiar with it over time and the SEC has used this cost based approach in other circumstances. A weakness of this method is that if there is a future compensation increase assumption for all future years, there is not a direct correlation between the benefit accruing each year to the executive (based on a benefit approach, as described earlier) and the amount disclosed. Some amounts disclosed could exceed actual value received by the NEO if the NEO left the company some years before expected or if the Board amended the SERP to freeze benefits.

Another actuarial method called Individual Level Premium calculates only one amount, called the normal cost, which includes both a value for the projected benefit accruing during the year and any amortization of new liabilities resulting from a plan amendment over future remaining years. This method has the attraction of “spreading” all pension benefit obligations over a level period (remaining years until retirement). Again, a drawback of this method is the customary use of a compensation increase assumption.

In summarizing this important issue of methodology we recommend that the SEC adopt the benefits approach as discussed above. While there are reasonable arguments for use of a cost approach, as described above, and also including that we have recently seen some 990 reporting use the cost approach (SFAS 87 – like calculations) among our non-profit clients, the benefit approach does have the best correlation to what the NEO is accruing in a given year.

Use of Compensation Increase Assumption
The SEC has a fundamental decision to make regarding the appropriateness of requiring / not requiring the use of compensation beyond that of the current fiscal year in the calculation of the Value. For the reasons stated in the paragraphs directly above we believe that it should not include compensation levels beyond current amounts.

Interest Rate Assumption
The SEC must decide what interest rate methodology should be used for calculating the present value that will be disclosed. First, we suggest looking to the pension plan(s) itself and using the specific rate or the rate setting methodology in the plan covering the NEO if the plan provides for distribution of the benefit in a single lump sum. If a lump sum distribution is not applicable, then the SEC must decide between allowing the use of (a) a discount rate consistent with SFAS 87 or (b) another rate that would be reflective of the asset returns on assets used to distribute the anticipated benefits. We recommend the discount rate concept due to its use for financial statement purposes, its resulting widespread understanding and greater comparability across companies due to a narrow band of acceptable rates.

In addition, we recommend that the SEC view each year’s calculation separately. That is, each year an appropriate rate would be determined to calculate that year’s Value without looking back to what impact a change in interest rate from that used in the previous year has on the Value. In other words, the disclosures would not deal with actuarial gains and losses from a different rate than that used in the prior year.

Retirement and Other Assumptions
The final rules should provide guidance on selection of a retirement assumption for this disclosure. Here are five choices: a single retirement age based on the company’s (with advice

from their actuary) best estimate as to when the NEO will retire; single retirement age, best estimate based on looking at the early retirement subsidies in the plan; single retirement age based on age with most valuable benefit; a set of retirement decrements (probabilities at each possible age of retirement) based on best estimate as to when retirement will occur; and normal retirement age.

We recommend use of a single retirement age based on the company's best estimate of when each NEO will retire. The final rules should provide specific guidance as to how a company should select this assumption including specific information known to the company about when any of the NEOs is planning to retire, recent other experience at the company, industry norms, and the pension plan early retirement benefits.

A single retirement age is easiest for readers to understand and when there is an individual or small group it generally makes sense to keep assumptions as simple as possible based on the most educated estimate one can make.

We understand that generally companies will report a lower Value by using a later retirement age assumption such as normal retirement age (commonly age 65) since the plans' early retirement subsidies would not be reflected. However, if the company determines that the NEO is most likely going to remain until age 65 then that should be the basis for the disclosure.

Again, because of the small group we do not recommend the use of pre-retirement mortality or turnover assumptions. A post-retirement mortality assumption is necessary and we suggest that the SEC require use of the same mortality table as used for SFAS 87.

Finally, as was the case for the interest rate, we do not believe that the concept of actuarial gains and losses should be reflected in calculating the Value to be disclosed.

Year of Retirement
Just like any other year a Value would be calculated and disclosed in the year of retirement for an NEO. We wish to note that it will not be uncommon for this Value to be significantly larger in this final year than in previous years. This will be in part due to the definitiveness of the date of retirement versus that assumed as a retirement date in prior disclosures and the use of the NEO's actual age of retirement and early retirement factors in the present value calculation.

Vesting
The SEC should clarify in the final rules that a Value will be disclosed, as is the case for stock based awards, even if the pension benefit is not yet vested.

Disclosing a Negative Value
Since SERPs do not generally have the anti-cutback protection, as under qualified retirement plans, that accrued benefits cannot be reduced, it may be possible that a NEO's accrued benefit would decrease in a given year (for example, due to a reduced plan average compensation amount if the plan formula bases the benefit on the average compensation in the three years before retirement and a large bonus is paid in a year prior to the final three). We recommend that the SEC permit a negative value to be disclosed along with a requirement for a narrative footnote explaining what has caused this result.

Transition to Final Rules
The SEC should clarify in the final rules that in the first year of adoption the disclosed Value does not reflect benefits earned prior to the current fiscal year. In effect, this is a "fresh start" approach.

Item 402(d) – Grants of Performance-Based Awards Table
The instructions should specify that each type of award should be reported on a separate row, e.g., stock options, stock, and cash should be reported separately. This will enable investors to determine the types of performance-based awards that are granted.

If the SEC revises the SCT to provide for Earned and Awarded Compensation sections, then it is appropriate to have separate performance-based and all-other equity awards (non-performance-based equity awards) tables. However, we recommend that the two tables be slightly revised so that the vesting provisions applicable to the granted awards are easier to determine. We suggest that companies indicate the type of vesting (in general) that applies to the award: G = graded vesting – where an award vests ratably over a stated period, MG = modified graded vesting – where an award generally vests over a stated period, but may not be on a ratable basis, C = cliff vesting – where an award vests at the end of a stated period, and MC = modified cliff vesting – where an award vests at the end of a stated period, but vesting may not be consistent across the period. It also would be helpful if companies indicated the length of the period starting on the date of grant and ending on the date that the last part of the award vests, expressed in years, e.g., an award granted with three-year graded vesting would have a code of "G-3." A narrative disclosure should be required to fully explain this vesting, e.g., for a G-3 coded award, "The award vests one-third on each of the 1st, 2nd and 3rd anniversaries of its date of grant."

If the SEC does not revise the SCT to break down compensation into Earned and Awarded Compensation, then this table should be combined with the Grants of All Other Equity Awards (Non-Performance-Based Equity Awards) Table with a new column added in which companies indicate the conditions on which the future value of each award are dependent upon, e.g., P = performance-based condition being met, T = time-based service condition being met, S= stock price appreciation above the grant-date exercise price. Only performance-based awards would have to detail estimated future payouts, e.g., threshold, target, and maximum. The combination of these two tables would enable an investor to view all of an NEO's equity award grants at once and more easily understand the mix between performance-based and non-performance-based awards.

Item 402(e) – Grants of All Other Equity Awards Table
The proposed rules indicate that a public company determines whether the exercise or strike price of stock options, SARs and similar instruments is less than the market price on the date of grant by reference to the closing market price on the date of grant[11]. This poses a problem for companies that determine their exercise price in any manner other than by using the closing market price on the date of grant. Even if a company complies with its internal method for determining fair market value for setting the exercise price (e.g., average of high and low stock price on the date of grant, etc.), it may have to treat its grants as discounted awards (if the exercise price is less than the closing market price), which would require disclosure of the closing market price on the date of grant in an adjoining column to the exercise price column.

The SEC should permit companies to use any reasonable method to determine fair market value of the securities underlying such awards on the date of grant such that the accounting rules treat the award as having an exercise price equal to the stock price on the date of grant. A footnote disclosure of the method utilized by a company in setting the exercise prices for the disclosed grants along with relevant amounts utilized in such determinations should be required.

Item 402(f) – Narrative Disclosure to SCT and Subsidiary Tables
General
In several instances, the information called for to be disclosed in the narrative could perhaps be more easily disclosed using supplemental tables, e.g., a table summarizing the key terms of the company's standard employment agreement (if one exists) and then a narrative discussion of how, if at all, each NEO's employment agreement differs from the standard agreement.

Disclosure of Performance Targets
The SEC has proposed allowing companies to continue to keep private any factor, criteria, or performance-related or other condition to payout or vesting of a particular award that involves confidential commercial or business information, disclosure of which would adversely affect the company's competitive position[12]. We recommend that the ability to exclude such information continue for newly-disclosed grants of performance-based awards – otherwise companies could

[11] Instruction 6 to Proposed Item 402(e).
[12] Proposed Item 402(f)(1)(iii).

be put at a competitive disadvantage. However, if our recommendations regarding the Performance Graph (see above) are not implemented, once performance-based awards are paid or the performance period ends if there is no payout, we recommend that companies detail the actual performance metrics, targets and actual performance achieved under each performance metric for each performance-based award (allowing aggregate disclosure if the same performance metrics and targets apply to multiple awards) in a narrative disclosure to the Performance-Based Compensation Earned in Last Fiscal Year table that we recommend be added to supplement the SCT.

Disclosure of Position and Total Compensation of Up to Three Non-Executives
The proposal to include a narrative disclosure of the total compensation and positions of up to three non-executives if their total compensation exceeds that of any NEO during the year should not be incorporated into the final proxy disclosure rules. This information does not provide investors with material information as compared to the burden placed on companies tracking a significant number of employees. Additionally, investors are not given specific information, nor do they vote on, most large expenditures made in the ordinary course of a company's business. If the SEC's concern is about the possibility that companies are not including employees who head divisions or subsidiaries when determining the NEOs, it would be more appropriate to revise the requirements of who should be considered for inclusion in the SCT. We recommend that all Section 16(b) officers (or larger group if modified) be included in the SCT, eliminating the need to disclose additional non-executives.

Item 402(g) – Outstanding Equity Awards at Fiscal Year-End Table
The proposed table completely excludes "at- and out-of-the money awards." Investors would get a better picture of the equity awards held by a NEO by requiring similar disclosures for both "in-the-money" and "at- or out of-the-money" options and similar instruments. For both "in-the-money" and "at- or out of-the-money" options and similar instruments, companies should also be required to disclose the weighted average exercise price for such awards, on a total, exercisable and unexercisable basis. This information gives investors a better understanding of how changes in the company's stock price could impact the value of executives' equity awards. To make it easier for investors, we suggest that for each NEO there be two rows, one for "In-the-Money Awards" and another for "At- or Out-of-the-Money Awards."

Outstanding Equity Awards at Fiscal Year-End

Name (a)	Number of securities underlying unexercised Options (#) Exercisable / Unexercisable (b)	Intrinsic value of unexercised Options ($) Exercisable / Unexercisable (c)	Weighted Average Exercise Price of Options ($) Aggregate/ Exercisable/ Unexercisable (d)	Number of shares or units of Stock held that have not vested (#) (e)	Market value of nonvested shares or units of Stock held that have not vested ($) (f)	Incentive Plans: Number of nonvested shares, units or other rights held (#) (g)	Incentive Plans: Market or payout value of nonvested shares, units or other rights held ($) (h)
PEO							
- In-the-Money Awards							
- At- or Out-of-the-Money Awards							
PFO							
- In-the-Money Awards							
- At- or Out-of-the-Money Awards							
A							
- In-the-Money Awards							
- At- or Out-of-the-Money Awards							
B							
- In-the-Money Awards							
- At- or Out-of-the-Money Awards							
C							
- In-the-Money Awards							
- At- or Out-of-the-Money Awards							

The instructions should clarify how the number of unvested shares or units of stock are calculated for purposes of the Incentive Plan column (column (f)). We recommend that if an incentive award could have different numbers associated with it based on performance achieved that the target number be utilized, unless a company can conclude that a different number of shares is likely to be paid out or vest and discloses the basis for such a conclusion. Similarly, the instructions should indicate for performance-based awards that if performance through the end of the last fiscal year would be sufficient to ensure a payout under the award, that the performance-based award be treated as “in-the-money” for purposes of the table. The instructions should also clarify that awards of restricted stock, stock units, and similar full value awards will always be deemed to be “in-the-money.”

Item 402(h) – Option Exercises and Stock Vested Table

The inclusion of the FAS 123R value originally disclosed in the SCT does not enhance the understanding of option exercises and the amount realized by NEOs. If anything, it causes investors greater confusion. This is simply because the Black-Scholes and similar option-pricing models rarely, if ever, predict the value that an executive realizes upon exercise. We recommend that the FAS 123R values be eliminated from this table.

However, to make it easier for investors to understand the annualized compensation represented by exercised stock options and vested stock, we recommend that a column be added to the far right side of the table that shows the annualized amount realized for stock options exercised and stock that vests. This figure would be computed by taking the figure in the value realized column and dividing it by the period of time (expressed in terms of years) from the date of grant until the date of exercise (for stock options, stock appreciation rights, and similar instruments) or vesting (for stock, stock units, and similar awards). This would be a more useful figure for investors than the FAS 123R valuation originally disclosed. This information could also help counter some of the bias towards current compensation in the proposed rules.

Item 402(i) – Retirement Plan Potential Annual Payments and Benefits Table
The proposed rules do not request disclosure of two relevant items: the current, accrued benefit and its present value. The first item is the annual benefit a NEO would be eligible to receive immediately (if eligible for retirement, or at some future date when first eligible for retirement) if he or she left the company as of the end of the fiscal year, and the second item is the lump sum value of this benefit. These disclosures should be added to the proposed table. We also recommend that if these two items are included that Early Retirement Age and Benefit be omitted because too many benefit numbers will create more confusion. Also, because the Normal Retirement benefit is being shown, the "years of credited service" is not important and can be omitted as well.

We also recommend that even if a plan did not require a lump sum distribution, the SEC provide guidance regarding how the present value of the accrued benefit is to be calculated (look to the earlier section on the calculation of the Increase in Actuarial Value of Defined Benefit and Pension Plans for purposes of the SCT for our comments on actuarial assumptions).

We suggest the instructions include the following sentence to clarify the issue relating to narrative disclosure of form of payment: "If form of payment has not been elected, then the Normal Form of payment should be used when providing a benefit amount and it should be disclosed."

Item 402(j) – Nonqualified Defined Contribution and Other Deferred Compensation Plans Table
A question exists as to whether it is appropriate to show an executive's entire nonqualified deferred account balance at fiscal-year end, especially for existing deferred account balances. This would lead to double disclosure, i.e., both in the SCT of earned amounts of compensation and in the Nonqualified Defined Contribution and Other Deferred Compensation Plans Table. Currently, at the time executives elected to defer compensation, their account balances were not

required to be disclosed[13], so executives had an expectation that such balances would not be disclosed. If the proposed disclosure requirement had applied, executives might have chosen not to defer any compensation.

Therefore, we recommend that only company-provided deferred compensation (in the form of company contributions and earnings on company contributions) and above market rate earnings on executive contributions should be disclosable, and not the executive's own contributions from salary or other items disclosed in the SCT. We also recommend that the table show total company contributions and total earnings on company contributions along with any above market rate earnings on executive contributions as the account balance at fiscal year end (i.e., excluding executive contributions and market rate earnings on such contributions).

Item 402(k) – Potential Payments Upon Termination or Change-In-Control
Much of the information required to be detailed in a narrative disclosure might be better disclosed in a tabular format, including some typical columns for compensation and benefits to be paid in such situations (cash payments of severance, cash payments of previously vested amounts, number of shares or options that become vested due to termination or change-in-control, number of shares and value of previously vested shares or options), along with an "Other" column to capture compensation or benefits which are not typically seen in such arrangements (see the suggested table below). A narrative disclosure should supplement the tabular format. This type of disclosure enables investors to review the information more readily, while also increasing comparability among companies. Creating a tabular disclosure format has its own challenges, but would be superior to a solely narrative disclosure for this type of information.

[13] Current Item 402.

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Potential Payments Upon Termination or Change-In-Control

Name	Termination Circumstance	Estimated Cash Payments ($)	Estimated Benefits ($)	Estimated Impact on Equity Awards		Other Amounts ($)
				Vesting / Paid Out (#)	Value of Awards Vesting / Paid Out ($)	
PEO	Change-in-control (CIC)					
	Change in Responsibilities					
	Constructive Termination					
	Non-CIC Severance					
	Retirement					
	Voluntary Termination					
	Change-in-control (CIC)					
	Change in Responsibilities					
	Constructive Termination					
	Non-CIC Severance					
	Retirement					
	Voluntary Termination					
PFO	[Same as above]					
A						
B						
C						

Item 402(l) – Director Compensation Table

Standard Compensation Arrangements

We suggest that an additional new table be required regarding standard compensation arrangements for directors that would precede the Director Compensation Table. We recommend that this new table cover retainers, meeting fees and other standard compensation paid to directors for service on the Board and committees, and, if applicable, indicate the differences in these arrangements based on whether a director serves as chair or a member of the Board or committee. These would be expressed in dollar terms. If equity is awarded for one of these items, then a footnote disclosure would detail the specifics underlying the equity award, e.g. a set number of shares is granted each year to directors, or each year directors receive shares worth $50,000. A suggested format is as follows:

Standard Compensation Arrangements for Directors

Type of Compensation	Standard Compensation for Service on the Board	Audit Committee	Compensation Committee	Nominating/Corporate Governance Committee	Other Committee(s)
Retainer					
-Chair	$	$	$	$	$
-Member	$	$	$	$	$
Meeting Fees					
In-Person					
-Chair	$	$	$	$	$
-Member	$	$	$	$	$
Electronic					
-Chair	$	$	$	$	$
-Member	$	$	$	$	$
Other Standard Compensation					
-Chair	$	$	$	$	$
-Member	$	$	$	$	$

We recommend that narrative disclosure be required to further explain any amounts in the table and any special compensation amounts (e.g., an equity grant upon being elected a director).

Director Equity Ownership Table

A separate table that details directors' outstanding equity awards at fiscal year-end should also be required, similar to the table required for NEOs. A separate table increases consistency and comparability among companies and would make it easier for investors to see the equity holdings of directors.

Director Compensation Table

To make it easier for investors to notice the changes in director compensation, we recommend that comparative data on director compensation be disclosed. One simple way to do this would be to add two sections to the bottom of the proposed Director Compensation Table to disclose Average Director Compensation and Median Director Compensation for each column for the last three fiscal years:

Name (a)	Total ($) (b)	Fees earned or paid in cash ($) (c)	Stock Awards ($) (d)	Option Awards ($) (e)	Non-Stock Incentive Plan Compensation ($) (f)	All Other Compensation ($) (g)
Average Director Compensation						
200Z						
200Y						
200X						
Median Director Compensation						
200Z						
200Y						
200X						

The proposed rules actually introduce a threshold for disclosure of perquisites and personal benefits for directors of $10,000[14]. Currently, no such threshold exists and all perquisites and personal benefits for directors need to be disclosed[15]. Although this proposal brings some consistency with the SEC's proposal for NEO's disclosure of perquisites and benefits, it does not appear necessary. We recommend that the final proxy rules remove this threshold for disclosure of directors' perquisites.

Item 403(b) – Security Ownership of Certain Beneficial Owners and Management
Given the growing use of stock ownership guidelines for executives and directors as well as the desire of investors to know how many shares an executive or director owns or could receive, we suggest that the beneficial ownership table be revised to separately include shares that people do not have the right to acquire beneficial ownership as specified in §240.13d-3(d)(1) (generally those that can be acquired within 60 days), e.g. stock units, stock options, unvested shares, etc. ("potential beneficial ownership"). The table could look something like this:

Security Ownership of Management

(1) Title of Class	(2) Name of beneficial owner	(3) Amount and nature of beneficial ownership	(4) Percent of Class	(5) Amount and nature of potential beneficial ownership	(6) Percent of Class

Item 407(e) – Compensation Committee
A tension exists in some of the proposed corporate governance disclosures related to the compensation committee between the right of investors to know more about what is going on and the compensation committee's right to conduct its affairs in a way that maximizes the benefit for the company and shareholders.

In particular, the requirements as to compensation consultants could cause some issues.

- We note that unlike auditors, there are no stated standards for compensation planning as there are for financial statements, e.g. GAAP.

[14] Proposed Item 402(l)(2)(vii)(A).
[15] Current Item 402(g).

- Neither the company nor the compensation committee is required to follow the advice of compensation consultants or other third parties who provide input on compensation.

- Only compensation consultants are addressed, nothing is required regarding other third parties that might serve a similar role, e.g., attorneys, venture capitalist investors, etc.

- Certain disclosures of the use of compensation consultants could result in disclosure that jeopardizes the competitive stance of the company (e.g., if a compensation committee has undertaken a search for a new CEO, enlisting the assistance of a compensation consultant without the CEO's knowledge, the disclosure of the engagement of a compensation consultant and the nature of the assignment could be disruptive to the company).

We recommend that the SEC clarify that only the compensation consulting firms be disclosed, and not the individual compensation consultants.

Disclosure of the compensation consulting firm(s) alone makes the most sense and gives investors the same level of information they receive about other service providers, e.g., auditors, proxy solicitors, etc. (e.g., jut the service provider company name and not the names of the individuals providing the service on behalf of the service provider company). Additionally, the final rules should clarify that the fees paid to the compensation consultant(s) are not part of the nature and scope of their assignment and are not required to be disclosed.

Item 201(d) – Equity Compensation Plan Information
Given the changes being proposed for compensation disclosures, the Equity Compensation Plan Information Table also should be revised to provide more meaningful information. In particular, we believe the table should continue to disclose plan information based on whether a plan was approved by shareholders. However, within each of these types of plans, the disclosures should be done on the basis of (1) options/SARs and similar rights, and (2) restricted stock, stock units, and similar full-value awards. For both types of awards, it is useful to investors if the table also disclosed the weighted average remaining term. For most full-value awards the remaining term will be the remaining vesting period (or requisite service period in accordance with FAS 123R if vesting is not a stated period of time). This will provide investors with much more useful information than is currently required.

Equity Compensation Plan Information

Plan Category	Number of securities to be issued upon exercise / number of shares granted subject to vesting or lapse of restrictions (a)	Weighted average exercise price of outstanding options, warrants and rights (b)	Weighted average remaining term / vesting period or requisite service period (c)	Number of securities remaining available for future issuance (d)
Equity compensation plans approved by security holders				
- Options, warrants and rights				
- Restricted stock, units and full-value awards		N/A		
- All awards				
Equity compensation plans not approved by security holders				
- Options, warrants and rights				
- Restricted stock, units and full-value awards		N/A		
- All awards				
Total				

Small Business Issuers

Under the proposed rules, Small Business Issuers would only be required to provide, along with the related narrative disclosure:

- The SCT, but only covering the PEO and two most highly compensated officers other than the PEO for the last two years[16]
- The Outstanding Awards At Fiscal Year-End Table[17], and
- The Director Compensation Table[18]

Given the comments in the Release regarding the requirement to include the PFO among the NEOs because the PFO signs the Sarbanes-Oxley Act of 2002 certification, the NEOs for a Small Business Issuer should be the PEO, PFO and the most highly compensated officer other than the PEO or PFO, based on total compensation for the past year. Of course, utilizing the earlier-suggested Section 16(b) officer standard might make even more sense in the context of Small Business Issuers.

[16] Proposed Items 402(a), 402(b) and 402(c) of Regulation S-B.
[17] Proposed Item 402(d) of Regulation S-B.
[18] Proposed Item 402(f) of Regulation S-B.

Effective Date
As proposed, the final rules would become effective after being published in the Federal Register as follows for:

- Forms 10-K and 10-KSB, for fiscal years ending 60 days or more after publication;
- Forms 8-K, for triggering events that occur 60 days or more after publication;
- Securities Act and Investment Company Act registration statements and Securities Exchange Act of 1934 registration statements that become effective 120 days or more after publication; and
- Proxy statements that are filed 90 days or more after publication.[19]

As a result, if the rules are finalized and published before November 1, 2006, public companies with calendar fiscal years would apply these new rules to their Forms 10-K and proxy statements filed in 2007. This may not give calendar-year public companies enough time to review and implement the new rules. Accordingly, we believe that there should be a sufficient period before any final rules become effective for any of the above filings to permit companies to more easily implement the new rules. For calendar year companies, we believe this would require the final rules to be published on or before October 1, 2006 in order give companies sufficient time to implement them for the 2007 proxy season.

Because of the significant differences in the compensation disclosure amounts under the current rules and the proposed rules, we believe that the proposal to phase in the application of the new rules will cause great confusion. Instead, we believe that the final rules should require companies to provide two or three (preferred) years worth of disclosures in accordance with the new rules. This, along with narrative discussion which companies should be strongly encouraged to provide that explains the differences in disclosures under the old and new rules, should help investors understand the new disclosures and allow them to more easily put the new disclosures in context of the information provided under the old rules.

[19] Release, at Section VII. [71 FR 6583].

Conclusion

We hope this letter explains our comments on the Release. If you have any questions about our comments or recommendations, we would be happy to discuss these with you. Please call me at (312) 846-3822 or e-mail me at edward.hauder@buckconsultants.com at your convenience.

Best Regards,

Edward A. Hauder

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Appendix A:
Retirement Plan Annual Values for 4 Sample CEO's Under Proposed SEC Rules

	"Long Tenured CEO; SERP in Place for Many Years"	"Existing CEO with New, Enhanced SERP"	"Newly Hired CEO with SERP"	"Existing CEO with SERP with Large, One Time Compensation Amount"
Age at Hire	35	35	52	40
Age becomes CEO	50	50	52	55
Current Age	55	58	53	60
Supplemental Executive Retirement Plan ('SERP') Benefit (Inclusive of any Qualified Plan)	2% of 3 yr average compensation (Base + All Bonuses) times all years of service	Same as 1st CEO (previously, CEO was in qual plan equal to 1.25% of 3 yr average compensation times service with SERP just equal to ERISA excess plan)	50% of 3 yr average compensation, if retirement at age 65, less prior employer retirement benefits (assumed to be $270k per year)	Same as 1st CEO
Base Compensation	$500,000	$500,000	$800,000	$1,000,000
Bonus Compensation	$500,000	$500,000	$800,000	$2,000,000
Special Bonus Compensation	N/A	N/A	N/A	$5,000,000
Total Plan Compensation	1,000,000	1,000,000	1,600,000	$8,000,000
Accrued, Annual SERP Benefit, Beginning of Year	$320,000	$230,000	$0	$960,000
Accrued, Annual SERP Benefit, End of Year	$350,000	$405,000	$30,000	$1,660,000
Annual Benefit Accrued During the Year (difference of prior two rows)	$30,000	$175,000	$30,000	$700,000
Annual Retirement Plan Values:				
Actuarial Value of Increase in Pension Benefit (annual benefit times annuity factor)	$235,000	$1,570,000	$215,000	$7,200,000
Pension Value as % of Plan Compensation	24%	157%	13%	90%

Assumptions: 6% interest; 4% assumed past years compensation increases; assumed retirement age of 62 ; post retirement mortality GAM 94 table ; no pre-retirement decrements.
Also, early retirement benefit reductions of 3% per year from age 65.