Compass Bancshares

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Jerry W. Powell
General Counsel/Secretary

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Via email: rule-comments@sec.gov

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

Re: SEC File Number S7-03-06 – Executive Compensation and Related Party Disclosure

Dear Ms. Morris:

Compass Bancshares, Inc. ("Compass") is a publicly-held bank holding company with $32 billion in assets and operating 408 full-service banking centers in six states. We appreciate the opportunity to comment on the proposal of the Securities and Exchange Commission (the "Commission"), Executive Compensation and Related Party Disclosure, Release Nos. 33-8655; 34-53185; IC-27218 (the "Release").

Summary Comments

We acknowledge the complexity of the Commission's task to add greater transparency to executive compensation disclosure by public companies. Compass is prepared to take all necessary steps to comply with the new rules. However, as described below, we believe that certain parts of the rule amendments as set forth in the Release will result in the following problems:

- lack of comparability in the compensation disclosures for named executive officers both among different companies and also among executives at the same company;
- inflated compensation figures that will lead to investor confusion;
- complexity in disclosure explanations leading to investor confusion; and
- unnecessary legal exposure for chief executive officers and principal financial officers.

Specific Comments

Comparability Issues

We recognize that one of the purposes of the executive compensation disclosure changes in the Release is to provide greater and more transparent information than is now being provided. The proposals in the Release certainly achieve that goal. However, we believe that an increased amount of disclosure should not be a separate goal from what we also believe is an essential goal: facilitating a comparison of compensation both across companies and industries and also across executives at the same company. Comparative analyses are an integral part of the investor decision-making process. In the case of executive compensation, for example, comparative analyses allow investors to compare how governing bodies of different companies choose to reward their respective senior executives relative to performance for a particular period of time. We urge the Commission to tailor the proposals to enhance a comparative analysis, and not build a disclosure structure that unduly emphasizes quantity over quality.

Unfortunately, we believe that in several areas the proposals in the Release will weaken rather than improve the comparative analysis for executive compensation. In particular, we are concerned that the use of the new concept of "total compensation" for the last fiscal year to determine who are the "named executive officers" in a proxy statement ("NEOs") will produce anomalous results. As defined in the proposals, "total compensation" will include much more than salary and bonus, which are now the sole determinants for inclusion in disclosures. Salary and bonus are very properly measured against company performance, particularly current performance. However, many of the new components of total compensation will include items which reflect factors other than current performance.

The most striking example of how the proposals weaken comparative analysis arises with long-serving NEOs. Such executives may have accumulated substantial amounts in nonqualified deferred compensation plans. Under the proposals, "earnings" on those amounts must be included in "total compensation". However, those "earnings" are not actually paid and do not represent current compensation decisions. Rather, they represent hypothetical investment returns on amounts accumulated over a number of prior years which arguably should not be included at all as "compensation". Indeed, we believe that these amounts represent investment decisions by the individual executives that deserve greater privacy protection than might be possible if the Release's treatment is adopted.

Using hypothetical earnings on deferred compensation to figure total compensation will also cause improper comparisons between executives at different companies; some who might be long-serving and others who might have just joined their companies. Moreover, use of such "earnings" might well cause companies to identify an individual as an "NEO" even though there may be other executive officers who have more senior policy-making roles but who have not served as long. Such shorter-serving individuals would have small nonqualified deferred compensation benefits.

Similar results could occur because of the inclusion of the increase in actuarial value of defined benefit plans accrued during a particular year. This is because such value is typically a function of both compensation and service.

Finally, we note that because "total compensation" includes payments under severance agreements, executives who have left a company and are no longer even in policy-making roles may have to be included as NEOs. Under the proposal, disclosure of the compensation of these individuals would be as prominent as that for the NEOs still serving, although, in our view, not nearly as relevant to investors.

We suggest that one solution to the above problem might be to use only those elements of total compensation that are directly related to current performance by current executive officers to determine inclusion as an NEO. In this regard, we would support use of a summary compensation table described in the Release that would show only amounts earned from services during a particular year.

It might be appropriate to use narrative or footnote disclosure of the other elements of total compensation paid to NEOs, either by express instruction or by relying on the general principles-based construct of the proposed rules. Likewise, it might be helpful to use narrative or footnote disclosure of the total compensation paid to others not in the senior-most policy-making positions who otherwise would be NEOs, including former executive officers. However, even with such narrative or footnote explanations, we remain concerned that inclusion of the above matters in a tabular format will impede meaningful comparisons and, therefore, mislead investors.

We also believe that the proposal to include disclosure about highly compensated employees who are not executive officers, but whose compensation exceeds that of any individual NEO, will hinder accurate comparative analyses. The methods for compensating non-policy making employees can vary greatly between companies and across industries. For example, in some industries it might be necessary to compensate certain classes of employees in a way that produces large commission-based paychecks, but also produces large returns for shareholders. In other industries, on the other hand, it may be unheard of for a non policy-making employee to have higher compensation than someone who is in a policy-making position.

Disclosure of these amounts, even without identifying names, seems more designed to create publicity for companies that might have such highly-compensated employees than to produce meaningful comparative analysis about management of the company. Investors can always look at the total compensation figures in financial statements to decide whether a particular company is operating efficiently. We believe that the proposal in this regard will have the unintended consequence of creating unnecessary confusion respecting compensation at the affected companies. In addition, the proposal could create competitive issues if, as may well be the case, such disclosures will permit third parties to determine the identity of the individuals in question even if not named.

Finally, we believe that the Release itself, by acknowledging that the names of these individuals or "more detailed information" about these employees "does not appear appropriate in light of the fact that they do not have a policy making function in the company", states the fundamental reason as to why compensation disclosures for these types of individuals is simply unnecessary.

Misleadingly-Inflated Compensation Figures

There are several ways in which the proposals in the Release may produce compensation figures for the required tables that are misleading and inflated. For example, a proposed instruction for the stock-based compensation award columns for the summary compensation table would require that where a stock option is "materially modified" during a year, then the entire recalculated fair value of the option would have to be included rather than just any incremental additional amount. We note also that the "materially modified" standard is a different standard than is used in FAS 123(R) for determining whether the special accounting rules on stock option modifications are triggered. In any event, we do not believe that including the total value of a stock option grant when it is modified in a particular year gives an accurate picture of compensation related thereto for that year, because such an approach would overstate the magnitude of the change. Under the principles-based approach of the Release, it might well be appropriate to describe the rationale for the new total value of a stock option modification, but we question its validity in a summary table.

A second example of how the proposals in the Release produce misleadingly-inflated compensation totals can be found in the requirement for including in the non-stock incentive compensation column of the summary compensation table amounts that are "earned" instead of amounts that are "paid". This requirement could lead to inclusion of amounts for a particular executive officer that may never actually be received. For example, a company might choose to pay cash-based incentive compensation that requires not only achieving certain performance goals but also meeting certain service requirements. If an executive officer earned such an award in a particular year based on performance, it would have to be disclosed, even if he or she subsequently left the company and did not meet the service requirement necessary for payment.

A third risk of inflating compensation figures arising from the proposals in the Release is the proposed requirement that the entire fair value of performance-based stock awards be included in the stock awards and option awards columns of the summary compensation table. These awards might also never be earned.

We acknowledge that the Release suggests that the risk of any "double counting" in required tables can be managed through narrative disclosures following the tables. Respectfully, however, we believe that it is unrealistic to believe that such narrative disclosures will be utilized by most readers to supplement disclosures made in the tables, particularly the summary compensation table. Therefore, we suggest that any performance-based, contingent compensation be required to be included only in the table for grants of performance-based awards, so as to reduce the risk that inflated figures will be used.

Unnecessary Complexity and Confusion

We believe that several aspects of the Release's proposal will create complex explanations of compensation that actually will serve to hinder transparency rather than to promote it, because the methodologies employed are so complicated.

A striking example of such complexity will arise, we believe, in the required tabular and narrative disclosures of retirement-related payments and benefits. First, there may be a number of plans for such payments and benefits that have been developed over a long period of time at a particular company, including a broad-based qualified defined benefit plan, a non-qualified supplemental defined benefit plan, plans that were in place before Internal Revenue Code Section 409A became effective and plans that were adopted after such effective date. Second, each one of these types of plans within the same company may utilize different assumptions, and different companies with similar plans may utilize different assumptions. Third, it is common for such plans at a company to interrelate to, or supplement, one another to determine amounts payable. The use of different benefit formulas and actuarial assumptions under each plan may require that multiple scenarios be explained. As with the comparability issues described above, the extensive explanation that would be required for a long-serving executive participating in several of these retirement plans may place such an executive at a disadvantage both internally and externally to those who have more recently joined a company.

A second example of complexity will arise from the Release proposals for disclosure of amounts payable to NEOs under severance arrangements. The required disclosures would include specific amounts payable under a number of different termination-related scenarios such as resignation, severance, retirement, involuntary termination, constructive termination and change in control. Calculating a particular amount that would be paid for each such scenario would require application and explanation of a number of assumptions that might be pure conjecture. For example, it is impossible to predict with certainty future compensation increases and future tax rates applicable for gross-up purposes. The Release's permitted treatment of such information as "forward-looking information" provides some relief for issuers. However, such treatment does not address the fact that for most readers the complexity of the explanations required to explain the amounts disclosed will render them confusing if not meaningless.

There are several possible unintended consequences of requiring such complexity in disclosures. The first is a general concern that issuers may feel compelled to adopt compensation structures that can be readily explained and understood by the average investor. Such structures might not always offer the best incentives for producing results and might place public companies at a competitive disadvantage with private companies. A more specific, unintended consequence of such disclosures in the context of change in control-related disclosures may be that a company will be viewed as too difficult to engage in any sort of business combination because the required disclosures will give the appearance of excessive complexity and inordinate cost related to a change in control.

We suggest that if there is to be greater disclosure of post-employment related payments such as retirement and severance payments, they not be "shoe-horned" into dollar-based estimates.

Treatment of Compensation Discussion and Analysis as "Filed"

We believe that the Release's treatment of the new Compensation Discussion and Analysis ("CD&A") as "filed" with the Commission may have a significant unintended consequence for the chief executive officer and principal financial officer of a company. It is very common for issuers to incorporate by reference their annual meeting proxy statements "filed" with the SEC into their Forms 10-K in order to meet the disclosure requirements relating to officers and directors in such annual reports. Under Sections 302 and 906 of the Sarbanes-Oxley Act of 2002, the "principal executive officer" and "principal financial officer" of a public company must certify as to the material accuracy of such information incorporated by reference in a Form 10-K. By definition, such individuals are supposed to be independent of the process described in a CD&A and in any event would seem to have a significant conflict of interest in passing on the accuracy of any CD&A information relating to their own compensation. Thus, it seems both punitive and illogical to ask that such individuals pass on the accuracy of the CD&A. This treatment is especially problematic in light of the criminal penalties for an inaccurate certification under Section 906 of the Sarbanes-Oxley Act.

Moreover, we believe that treatment of the CD&A as "filed" will necessarily cause most public companies to expend resources, such as internal audit resources, to verify the information in a way that is not justified by the materiality of such information to investors.

We suggest that the Commission address this by not treating the CD&A as "filed".

Miscellaneous

Perquisites. We acknowledge the intense interest of the media in the issue of perquisites, and we recognize that the Commission is committed to greater disclosure in this area. However, we believe that the effect of the new, lower disclosure threshold of $10,000 will result in the disclosure of small dollar items that are of little interest to investors. Many of these perquisites are built into benefit plans available to employees generally and are not unique to the NEOs, such as term life insurance, accidental death and disability insurance and company matches of charitable contributions. We also question whether it is proper for public policy decisions to be made in response to polemical journalism.

Related Party Disclosures. Compass and other publicly-held financial institutions are already subject to extensive disclosure and other requirements in their transactions with related parties. We disclose, for example, all material loan, deposit and fiduciary transactions between the corporation and directors and executive officers We ensure that all loans are made on a non-preferential basis and do not present more than a normal risk of collection, pursuant to the insider lending restrictions of the Federal Reserve Act. Finally, we also comply with the lending restrictions of Sarbanes-Oxley.

We are concerned that to the extent that the Release's changes to Item 404 would require greater disclosure, by name and amount, of transactions with directors and executive officers and their families, this will place financial services companies such as Compass at a disadvantage relative to non-financial firms in retaining and recruiting executive officers and directors. This is due to the fact that such firms have a number of routine financial transactions with such individuals, which are deserving of privacy protection. This problem is exacerbated by the proposed new definition of "immediate family member", because it might further expand the universe of individuals whose financial transactions would have to be disclosed.

In addition, the proposed expansion of related party disclosures could inhibit the effectiveness of directors. We seek to attract directors who develop multiple relationships with Compass, because we believe these relationships help them understand and provide advice to management on customer service, new product development and other aspects of our business. To the extent that directors are less likely to engage in financial transactions with us because of the proposed rules, this would render them less able to provide that advice. There is also a question of relevance and materiality of the disclosures, because the sheer volume of disclosure that might be required could overwhelm the average investor.

We urge the Commission to adopt special rules for financial institutions that recognize the nature of normal banking relationships with directors and family members and acknowledge the protections provided by existing banking regulations. We suggest that Item 404 contain a provision for transactions between directors, their family members and financial institutions owned by registrants that will continue to permit general disclosure of specific transactions under the following circumstances: (1) the transactions are in the ordinary course of business; (2) the transactions do not present undue risk of loss; (3) the transactions are not, in the aggregate, material to the gross revenues of the registrant; and (4) the transactions are made in compliance with applicable regulations issued by banking regulatory agencies.

Disclosure of Shares Pledged as Collateral. As described above, we believe that there are sufficient existing restrictions on loans by financial institutions to their executive officers and directors. We must comply not only with the restrictions of Sarbanes-Oxley, which are applicable to all companies, but also the insider lending restrictions of the Federal Reserve Act. We believe that such restrictions adequately address the risks posed by a pledge of company securities for company loans to executive officers and directors. Indeed, footnote 228 of the Proposal cites to a law review article as support for the stock pledge disclosures, but the footnote references extensions of credit to the CEO of WorldCom. Sarbanes-Oxley now would prohibit such a transaction.

There may also be unintended consequences arising from the proposed new disclosure of stock pledges for company loans. Pledging activity in a company's stock might be viewed as indicative of the pledgor's outlook on the stock's performance, when in fact there might be no connection whatsoever. Moreover, pledging company stock may be the only way that a corporate executive can "monetize" his or her stock holdings without incurring a capital gains tax. Requiring additional disclosures regarding stock pledges might inhibit otherwise legitimate tax and financial planning. We request that the Commission consider amending the stock pledge proposal so as to recognize the nature of these transactions as tax and financial planning strategies for executive officers, directors and their families.

Very truly yours,

Jerry W. Powell
General Counsel and Secretary