74

COUNCIL OF INSTITUTIONAL INVESTORS

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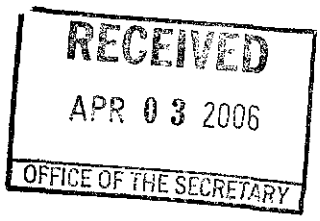

March 29, 2006

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

Dear Ms Morris:

I am writing on behalf of the Council of Institutional Investors, an association of more than 130 corporate, union, and public pension plans with more than $3 trillion in assets. Council members are long-term investors and leading advocates of good corporate governance practices and requirements.

Executive compensation has long been a top priority for the Council and its members. Concerns in recent years have centered not simply on the amount paid to CEOs and other top executives, but also the board processes for setting pay, the disclosure of pay, the structure of pay and the pay-for-performance metrics. Poorly structured pay packages may harm shareowner value by wasting owners' money, diluting ownership and creating inappropriate incentives that may damage a company's long-run performance. Inappropriate pay packages may also suggest a failure in the boardroom, since it is the job of the board of directors and the compensation committee to ensure that executive compensation programs are effective, reasonable and rational with respect to critical factors such as company performance and industry considerations.

Full and clear disclosure of executive pay is of significant interest to the Council and its members because it enables shareowners to evaluate the performance of the compensation committee and board in setting executive pay and the pay-for-performance links.

The Council thanks the Commission and the staff for preparing this comprehensive proposed rule. The proposal addresses a significant number of the most critical issues to investors, and we urge the Commission to move expeditiously to implement the new disclosure rules in time for the 2007 proxy season.

Overall the Council supports the proposed new format, including the concept of a Compensation Discussion and Analysis, the three primary categories of tables and the supplemental narrative disclosures.

The Council believes that the following elements of the proposal are top priorities and essential to ensure the success of the proposed rule. As summarized below and detailed in Appendix I, the Council recommends strengthening these key elements by modifying certain elements of the proposal.

Compensation Discussion and Analysis (CDA). The qualitative aspects of the disclosure rules are vitally important to Council members, but we recognize they are perhaps the most difficult to define as well as enforce. The Council strongly supports the proposal's concept of the CDA and its integration of principle-based and rules-based approaches.

To strengthen this integrated approach, the Council recommends the SEC expand the list of topics to be discussed "at a minimum" to include: detailed discussions of the rationale behind key components of the executive pay program in general as well as the links to performance contained in the program as a whole and specific to each key element of the program; and disclosure of key pay-related policies, such as "clawback" provisions, ownership/holding requirements, and hedging prohibitions.

We also believe it is essential for the SEC to support this integrated approach by providing detailed guidance (particularly in the first few years) and taking enforcement actions when appropriate.

'Filed' vs. 'Furnished' Status. The Council supports the SEC's proposal to deem the new disclosures "filed" in hopes that the potential for increased scrutiny and potential liability will result in higher quality, more comprehensive disclosures. While the filed status will imply some ownership of the document by the full board and top management, the Council recommends the SEC also make it clear in the final rule that the compensation committee retains ultimate ownership of the disclosures.

Performance Targets and Thresholds. The Council recognizes the sensitive nature of the disclosures of performance targets. Similar to the current disclosure rules, the proposed rule maintains a "safe harbor" under which companies may exclude key information regarding performance targets and thresholds if disclosure may be competitively harmful to the company. The Council believes this approach provides too large an exemption for companies, ultimately leading to lower quality disclosures.

To address this significant weakness, the Council recommends an alternative that would balance company concerns of competitive information while providing details critical for investors to obtain a more complete understanding of compensation plans.

We recommend the SEC require companies to disclose performance targets either: (1) at the time they are established, which would be consistent with the disclosure of other incentive awards such as grant date valuations for equity instruments; or (2) at a future date—such as when the performance related to the award is measured—in cases when companies believe this information is competitively sensitive. If disclosure is postponed, the company should be

required to explain that it is taking advantage of this exemption and the basis for taking this action, which would presumably be subject to SEC review.

Summary Compensation Table. The Council strongly supports the disclosure of "total compensation" in the Summary Compensation Table. We believe the elements proposed by the SEC as comprising total compensation are appropriate. In particular, we support the inclusion of the annual increase in actuarial value of pension benefits and the disclosure of the grant date, full fair value of option awards—not the amount expensed under FAS 123. Such disclosures are essential to give investors a full and fair snapshot of executive pay.

To improve the clarity and consistency of the summary compensation table disclosures, the Council recommends the SEC amend column (h), "Non-Stock Incentive Plan Awards," to provide a grant date fair value estimate of the awards instead of the actual earned award value. In our view, the Summary Compensation Table should represent the decisions of the compensation committee during the applicable year. The remaining columns in the proposed Summary Compensation Table are consistent with this approach, and we believe non-stock incentive plan awards also should be presented on this basis. We propose that companies be given direction to calculate these values using probability estimates of achieving the award, discounted to a present value. Disclosure of the methodology and assumptions used by companies to estimate the awards should be required in a footnote. The Council requests that the actual payouts of non-stock incentive plan awards (consistent with the proposed column (h)) be disclosed in the Option Exercise and Stock Vesting Table.

Perquisites. The Council believes the current methodology of using incremental cost to value perquisites and other benefits may significantly understate the value of the benefits. To ensure more accurate disclosures, we recommend changing the current approach to require valuations of perks based on a commercially available equivalent.

The Council supports the proposed thresholds applicable to perks, which we believe strike the appropriate balance between investors' need for complete disclosures and the burden on companies to track minor benefits. To enhance and clarify the presentation of the detailed information, the Council recommends that the SEC require tabular format disclosure of individual perks.

Related-Party Transactions. The Council opposes raising the dollar threshold from $60,000 to $120,000 for disclosure of related-party transactions. The Council has long urged the SEC to enhance the disclosures of related-party transactions between companies, directors and executives. The proposed increase would further weaken an already weak rule, and we urge the Commission to consider amending Regulation S-K as proposed by the Council in its October 1998 rulemaking petition.

Post-Employment Compensation. The Council strongly supports the proposed post-employment compensation disclosures, including the potential payments from retirement plans, nonqualified deferred compensation, and other potential post-employment payments. Post-employment compensation can represent significant value and have a material impact on the overall profile of

a compensation program. Disclosures for each named executive officer permit investors to understand the unique nature of the post-employment compensation at any particular company.

We recognize the complexities of disclosures in this area, and we accept that some disclosures will be based on estimates. Therefore, in each of the key areas of post-employment compensation, we support the SEC's proposed rules requiring companies to disclose all material factors related to each plan, particularly the key assumptions and methodologies used for the disclosures.

Performance Graph. The Council believes the new disclosures should retain the performance graph. We do not agree that the information communicated by the graph or its role in the overall compensation disclosure regime is outdated. To the contrary, the graph provides a quick performance comparison in close proximity to the compensation disclosures and is valuable to investors. Further, we believe removing the graph would eliminate a readily accessible and non-controversial source for performance comparisons that shareowners often use in their proposals and other correspondence.

The Council thanks the Commission and its staff for this comprehensive proposal. We value the open dialog the Council has enjoyed with the SEC on this critical issue.

We would be happy to respond if you have any questions or need additional information.

Sincerely,

Ann Yerger
Executive Director

Appendix I

Council of Institutional Investors' Response to File No. S7-03-06
Executive Compensation and Related-Party Disclosure

Appendix I is organized consistent with the SEC's proposed rule on executive compensation disclosure and related-party transactions. Each primary section contains the Council's general views on the topic. Bullet points respond to questions posed by the SEC in the release.

Compensation Discussion and Analysis

The Council strongly supports the proposed Compensation Discussion and Analysis (CDA) concept. However, we recommend some amendments to make the approach even stronger.

The Council recognizes that the qualitative nature of the disclosures in the current Compensation Committee Report and the proposed CDA is perhaps one of the most difficult areas for the SEC to define and enforce. Although the current rules established in 1992 emphasized the need for comprehensive qualitative disclosures, the resulting disclosures still are generally viewed as inadequate, which is evidence of this difficulty.

The Council believes the qualitative disclosures in the CDA and the narrative support for specific tables are critical elements of this proposal. To ensure the proper level of qualitative disclosures, we strongly support the proposed approach integrating the strengths of a principle-based approach with some rules-based criteria to ensure specific topics and concepts are discussed in the CDA.

The Council informally surveyed its membership, as well as many executive pay disclosure experts, on the topic of safe harbors in the context of executive compensation disclosure. While the Council is supportive of the SEC's proposal that the new disclosures be deemed "filed," we believe some steps should be taken to ensure the increased liability does not result in more boilerplate language rather than less. One concern is that increased liability related to executive compensation disclosures may result in "over-lawyered" documents in which the individuality and meaning of the disclosures are watered down in an attempt to limit potential liability. Clearly, such an outcome is not the SEC's intent nor will it serve the needs of investors.

We recommend the SEC take the following steps to ensure the CDA disclosures are comprehensive and robust:

1) Continue to emphasize and encourage the comprehensive requirements of the proposed CDA. It is clear in the proposed rule the SEC expects robust, qualitative disclosures, and this emphasis should also be present in the final rule and in any related guidance, enforcement actions, and commentary from the Commission and staff;

2) Continue to provide detailed requirements supplementing the principle-based aspect of the CDA, such as the proposed list of specific topics that must be discussed "at a minimum." The Council recommends the SEC expand the list provided in the proposed rule to include:
   - A greater emphasis on articulating the performance aspects of the overall compensation program, including the company's overall philosophy related to performance and how each component—including employment contracts and severance arrangements—of the program relates to performance and the company's overall compensation objectives, if at all;
   - The company's policy for recapturing incentive pay following specific events such as a restatement in which the "performance" measures affecting a plan are adjusted (clawback provisions)[1]. If the company has no such policy, it should be required to state this fact and explain the reason;
   - Disclosure of any company policy, or lack thereof, regarding the hedging of equity and equity-like positions in the company, including those obtained through the compensation program as well as through other holdings[2].

3) Commit SEC staff resources to evaluating the quality of disclosures under the new rules and providing detailed guidance to companies and to the market as appropriate. The SEC should support the new rules with strict enforcement actions for those companies failing to meet the principle-based requirements of the CDA (as well as other aspects of the new rule); and

4) Consider ways the SEC can ensure compensation committees maintain "ownership" of the compensation disclosures. This could include maintaining the requirement that members of compensation committees include their names under the full reports or in portions thereof.

Disclosure of Performance Target Levels

The Council recognizes the sensitive nature of disclosures related to actual performance targets and thresholds attached to incentive awards granted to executives. Similar to the current disclosure rules, the proposed rule does not require companies to disclose "target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any factors or criteria involving confidential commercial or business information, the disclosure of which would have an adverse effect on the company."

The Council believes this approach provides too great an exemption for companies, resulting in poor quality disclosures. We cannot over emphasize the importance to investors of understanding the overall philosophy behind and drivers of incentive awards granted to top executives. Integral to gaining this type of understanding is the ability to

[1] For a recent example of this type of disclosure, see Pfizer Inc. Preliminary Proxy Statement PRE 14A, filed 2-24-2006, page 52.
[2] For a recent example of this type of disclosure, see Pfizer Inc. Preliminary Proxy PRE 14A, filed 2-24-2006, page 65.

not only understand the types of metrics—such as return on equity, sales growth, or total stock return—to which performance hurdles are tied but also the absolute levels of performance that must be achieved to earn the performance award. This information permits investors to evaluate the potential behavioral characteristics of the awards, the rigor of the targets, the value of the alignment, and the performance of the compensation committee in establishing the incentive program.

There may be some circumstances in which competitive information is embedded within performance plans. We do not believe this is the norm; in most cases, disclosure of performance targets poses no competitive threat to companies.

The Council recommends the SEC require companies to disclose performance targets either: (1) at the time they are established, consistent with the disclosure of other awards such as grant date for equity instruments; or (2) at a future date—such as when the performance related to the award is measured—in cases where companies believe the information is competitively sensitive. If companies postpone disclosure, they should be required to explain that they are taking advantage of the exemption and the basis for taking this action, which would presumably be subject to SEC review as part of the company's filed disclosures.

This compromise approach: 1) provides a balance between investors' need for information and companies' concerns over disclosure of competitive information; 2) helps ensure that companies utilize the exemption in appropriate circumstances and provides for a method of enforcement through SEC oversight; and 3) ensures the compensation committee knows the market will be able to view the hurdles at some point in time, even if only retrospectively.

Performance Graph

The Council believes the new disclosure rule should retain the performance graph. We do not agree the information communicated by the graph or its role in the overall compensation disclosure regime is outdated. The graph provides an easily accessible visual comparison of a company's performance relative to its peers and the market. The rationale expressed in the 1992 rules for placing the graph in close proximity to the narrative disclosure of the company's compensation philosophy remains valid today.

In addition, the graph should be retained because many investors prefer to utilize this source for unquestionable performance comparisons in shareowner proposals and other correspondence. Removing the graph forces investors to utilize other sources or make assumptions in a proposal, which opens a debate that some shareowners would rather avoid.

Compensation Tables

The Council strongly supports the tabular approach for compensation disclosures and the SEC's proposed reorganization of the tables into the three primary categories: 1) compensation within the last fiscal year; 2) holdings of equity-based interests; and 3) retirement and other post-employment compensation. This approach is logical, and we believe the risk of "double counting" of certain types of pay is minimized by the clear delineation between the major components, clear table and column headings, and supporting narrative disclosures. We also believe the SEC should clarify in the final rule that companies should utilize the narrative supporting disclosure to explain what the disclosures mean and provide guidance to avoid the potential for double counting.

Summary Compensation Table

The summary compensation table is an important tool used by investors to gain a "snapshot" of total compensation paid during the year. The Council generally supports the SEC's proposals regarding the table—particularly the disclosure of the total compensation figure and the full present valuation of stock option awards—but recommends a few changes to enhance this important table.

First, the Summary Compensation Table should disclose the decisions of the compensation committee in the applicable year. Most of the information presented in the proposed columns is consistent with this perspective, including the disclosure of the grant date full fair value for equity instruments, which the Council strongly supports. However, the current proposed column (h) for Non-Stock Incentive Plan Compensation would report the value realized during the applicable year for awards established or granted in some previous year. It would be more consistent and more meaningful to investors to alter column (h) so that it provides a grant date estimate of the present value of the non-stock incentive awards made during the year. The Council recommends that companies be directed to calculate these values using probability estimates of achieving the award, discounted to a present value, and be required to disclose the methodology and details of the estimate (similar to the requirements for valuing equity awards). Information related to the realized value of previous years' awards under column (h) is also valuable, and the Council recommends the SEC require disclosure of this amount in another table, perhaps in the Option Exercises and Stock Vesting Table.

Second, the SEC should amend the proposed approach for valuing perquisites to require that it be based on current market prices. We believe the current incremental cost approach is subject to gamesmanship and may significantly understate the true cost of the benefits, particularly relating to transportation benefits, such as company aircraft, and housing benefits. The Council recommends a methodology based on retail prices, including, for example, the retail cost to charter the same model aircraft.

Third, the SEC should expand the items required to be disclosed via tables as opposed to narrative footnotes. In particular, the Council recommends tabular disclosure of individual perquisites and major components of the All Other Compensation column.

The following bullets summarize the Council's responses to questions raised in the release regarding the summary compensation table:

General Comments

- The SEC should maintain the current three-year rolling disclosure format.

- The Council supports the supplemental disclosures accompanying the table (as well as other sections of the proposed rule).

Total Compensation

- The Council strongly supports the proposed requirement that all compensation be disclosed in dollars and that companies provide a total compensation amount. The total pay figure will not only provide meaningful disclosures to investors, it also will help compensation committees understand overall compensation programs and the potential interactions of each element.

Salary and Bonus

- Regarding annual salary and bonus, the Council supports the proposed change to Form 8-K eliminating the disclosure delay when salary or bonus cannot be calculated as of the most recent practicable date. The proposed footnote disclosure in these cases, including the date that the salary and bonus is expected to be determined, should also be included in the final rule.

Stock Awards and Option Awards

- One of the most important (and long overdue) reforms contained in the proposal is the requirement that companies disclose the full grant date present value of equity instruments. The SEC's proposed approach is appropriate, meaningful, consistent with other disclosures and readily understandable to investors. The Council would oppose eliminating the proposed requirement or weakening it to permit the disclosure of an alternative valuation, such as the amounts expensed under FAS 123R. The proposed methodology is consistent with the objective of providing investors with the tools needed to evaluate the annual decisions of the compensation committee, and it should be retained in the final rule.

- The same term assumptions used in computing FAS 123R values for financial statement purposes should be used in executive compensation disclosures to permit efficiency and consistency. However, disclosure of the key valuation assumptions should be provided in close proximity to the equity tables, not simply referenced in the company's financial statements. This information is critical to investors in evaluating the reasonableness of the key assumptions underlying the grant date present value estimate. Several of these assumptions can have a significant impact on the estimated value of option awards.

- The Council supports the elimination of the "potential realizable value" of option grants based on 5 percent and 10 percent increases in value. This disclosure is not as meaningful to investors as the grant date present value.

- The Council supports the SEC's proposal to require disclosure of repriced or otherwise materially modified equity (options and stock appreciation awards) based on the total fair value of the award. Although this methodology differs from the incremental cost basis in FAS 123R, the SEC's approach for the purpose of compensation disclosure is appropriate.

- The Council supports the SEC's proposal to eliminate the current rules giving companies the ability to report performance-based stock awards as incentive plan awards. Requiring consistent disclosure of these awards at the time they are granted is more appropriate and meaningful to investors.

Non-Stock Incentive Plan Compensation

- As noted above, the proposed disclosure of non-stock incentive plan compensation should be amended to require a grant date estimate of the value of the award, similar to the concept behind the other equity columns.

- The Council supports the proposed requirement that all earnings on outstanding equity awards be disclosed. This is more meaningful information to investors than the current requirement that provides disclosure of only above-market or preferential earnings.

All Other Compensation

- The SEC's proposed methodology for the All Other Compensation column is appropriate, as is requiring separate identification of each item exceeding $10,000. This amount is a reasonable balance between the needs of investors for complete disclosure and burdens on companies.

- Given the extent of the disclosures under the All Other Compensation column, the Council recommends the SEC require a supplemental table detailing the various components captured in the column. Tabular disclosure is a much clearer format for these items than a footnote.

- The Council broadly supports the proposed disclosure of deferred compensation and specifically supports disclosing earned compensation, footnoting the amounts deferred, and providing appropriate disclosure under the separate and comprehensive deferred compensation presentation.

- The Council also strongly supports the proposed requirement that companies include the increase in actuarial value of defined benefit and actuarial plans. The SEC's rationale that this information is necessary to permit the presentation of a total compensation figure is accurate.

- The Council requests that the final rule contain the SEC's proposed clear definition and classification of perquisites in an effort to provide ample direction to companies.

- Regarding perquisites, the Council supports the proposed aggregate threshold of $10,000 below which disclosure would not be required. This threshold strikes an appropriate balance between investors' need for complete disclosure and the burden placed on companies. We support the proposed detailed disclosure of any individual perquisites valued at the greater of $25,000 or 10 percent of total perquisites and other personal benefits. In addition, the SEC should require tabular disclosure of individual perquisites; we believe this presentation would be clearer than the proposed footnote list.

- The current and proposed methodology of using incremental cost to value perquisites is flawed and may understate the value of the benefits, therefore, the Council recommends changing the rule to require fair market valuations.

- The Council strongly supports maintaining the current requirement that any tax gross-ups or other reimbursements of taxes owed be separately quantified and identified in the tax reimbursement category. Narrative disclosures related to perquisites should also include a discussion of the tax implications of specific benefits, including whether the benefits are deductible.

Supplemental Annual Compensation Tables

The Council supports the SEC's two proposed Supplemental Annual Compensation Tables. The proposed format provides clear and understandable supplements to the Summary Compensation Table. This information is not too repetitive, nor will it lead to any significant risk of double counting. For this reason, the Council prefers the Supplemental Table approach over the alternative of creating two Summary Compensation Tables.

The following bullets summarize the Council's responses to questions raised in the release regarding the supplemental annual compensation tables:

- The Council strongly supports the proposed delineation between performance-based awards and "all other" awards. This format will enable investors to better evaluate the relative mix of compensation between performance-based and non-performance-based awards.

- As noted above, the Council recommends the SEC amend the format of Column (h) in the Summary Compensation Table to provide an estimate of the grant date fair value of non-stock incentive awards. Such an approach would be consistent with the expanded disclosure of other equity awards. In addition, disclosure of the earned value of non-stock incentive awards should be consistent with the approach in the Option Exercises and Stock Vesting Table.

Narrative Disclosure to Summary Compensation Table and Supplemental Tables

The Council strongly supports the proposed requirement for narrative disclosures supporting the Summary Compensation Table and Supplemental Tables. Clearly, this type of detailed explanation and supporting material is crucial to provide a complete picture of the individual elements of executive pay programs. The SEC must continue to place very strong emphasis on the expectations for complete narrative disclosures in the final rule and in any subsequent guidance, enforcement actions, and commentary from the Commission and its staff.

The following bullets summarize the Council's responses to questions raised in the release regarding narrative disclosure to the summary compensation table and supplemental tables:

- The proposed instructions for the supporting narrative disclosures are sufficiently clear and distinct from the purpose of the CDA, and some overlap between these disclosures is acceptable. It is critical for companies to better explain the philosophy and rationale for: (1) the executive pay program as a whole; and (2) each of the key elements within the program, including how the elements fit together and support the objectives and situation of the company. Some of these points will be relevant in both the CDA and the supporting narrative throughout the disclosures.

- The SEC should amend the proposed rule to include an additional column in the Summary Compensation Table where companies must indicate by checkmark if the individual has an employment agreement.

- The proposed treatment of repricings is a positive step but would be enhanced by quantification and footnote disclosure of the fair value of the award both immediately before and immediately after the repricing or other modification.

Exercises and Holdings of Previously Awarded Equity

Given the size and variety of equity awards granted to executives, the Council has long supported clear disclosure of the potential value of previously awarded equity compensation.

The following bullets summarize the Council's responses to questions raised in the release regarding the disclosure of outstanding equity awards and options exercised/stocks vested:

- The Council supports the proposed format for the Outstanding Equity Awards at Fiscal Year-End Table. Companies should not be required to value out-of-the-money options and stock appreciation rights. However, it would be very useful to investors to require disclosure of the number and key terms of out-of-the-money

instruments, since in many cases these instruments may be near their strike price, and regardless, these instruments may have significant impact on an investor's evaluation of the compensation program. This disclosure could easily be accomplished by adding columns for out-of-the-money options and shares/units with footnote disclosure of their key terms.

- The Council supports the SEC's proposal to continue to provide disclosure of awards transferred by an executive. The requirement also should include footnote disclosure of the facts surrounding any transfer, including the identity of the transferee and the relation to the executive. This information is material to investors in evaluating the impact of such a transfer on the alignment and incentive characteristics of the overall plan.

- The Council strongly supports the SEC's proposed format of the Option Exercises and Stock Vested Table. The proposed information in this table is material to investors, and the Council supports the requirement to provide the original grant date fair value of the awards next to the ultimate realized value. Given the supporting disclosure as well as the column heading, this format would not lead to any material risk of double counting. Instead, this table will help investors evaluate the accuracy of companies' estimates and pricing methodologies over time, which the Council views as a significant positive factor. It would not be preferable to combine the proposed Outstanding Equity Awards at Fiscal Year-End Table with the proposed Option Exercise and Stock Vested Table.

- As previously noted, the Council supports the addition to the Option Exercise and Stock Vested Table of realized value under Non-Stock Incentive Plan Compensation. Specifically, the Council requests the Summary Compensation Table column (h), Non-Stock Incentive Plan Compensation, be amended to provide a grant date fair value estimate, similar to other equity tools and that the realized value of non-stock incentive compensation be reported in the Option Exercises and Stock Vested Table.

Post-Employment Compensation

Investor concerns over post-employment compensation have escalated in recent years as these arrangements have exploded in value. Because current disclosure rules in this area are lacking, it is impossible for investors to fully and clearly understand the scope and dollar value of these arrangements. We applaud the SEC for proposing significant revisions to the current rules addressing post-employment compensation.

The following bullets summarize the Council's responses to questions raised in the release regarding the disclosure of post-employment compensation:

Retirement Plan

- The Council supports the SEC's proposed format for the Retirement Plan Potential Annual Payments and Benefits Table, particularly the proposed

disclosure based on each NEO and the proposed supplemental narrative description of material factors "necessary to an understanding of each plan disclosed in the table." The examples listed by the SEC in the proposal are appropriate and should be included in the final rule along with a statement that this list is not exhaustive and other material factors should be disclosed as appropriate.

Deferred Compensation

- The Council strongly supports the SEC's proposed tabular and narrative format disclosure of nonqualified deferred compensation. The existing disclosure rules in this area do not provide complete disclosure of relevant compensation and supporting information and thus are in need of significant of revision. Should the SEC require disclosure of all earnings on nonqualified deferred compensation plans as proposed, the Council recommends separate disclosure of any preferential treatment, such as any premium, above-market, or other preferential terms. Earnings on these awards are distinct from other compensation decisions, and the Council believes some investors may treat these values differently from an analytical standpoint.

- The Council supports the proposed footnote quantification indicating the extent to which amounts in the contributions and earnings columns are reported as compensation in the year in question (and other amounts reported in the table under the aggregate balance column were reported in the Summary Compensation Table for prior years) and believes it provides adequate protection against double counting.

- A narrative description of the tax implications for both the participant and the company would be useful information to investors and analysts and should be included with the narrative disclosures accompanying the table.

Other Potential Post-Employment Payments

- The Council strongly supports the SEC's proposal regarding disclosure of Other Potential Post-Employment Payments. These arrangements may vary significantly and often involve significant value and consequences on the alignment and incentive characteristics of the overall compensation program. It is critical for the SEC to require detailed qualitative disclosure regarding the specific mechanics of the plan(s) as well as the rationale and justification supporting their use. The examples of narrative disclosures provided by the SEC in the proposal are appropriate and should be provided in the final rule, particularly the disclosure of tax gross-up payments. The Council suggests the SEC specifically permit tabular disclosure as appropriate in this area, but recognizes that due to the variation in plans, no single format may fit[3]. The Council believes that regardless of the formats used in this section, the final rule should strongly emphasize complete qualitative disclosure.

[3] For a recent example of tabular disclosure providing estimated current values of change in control benefits, see Pfizer Inc. Preliminary Proxy Statement PRE 14A, filed 2-24-2006, page 72.

- The Council understands the quantitative disclosures under the Potential Post-Employment Payments section will necessarily be based on estimates. Nonetheless, investors value this information, because the potential realizable values and the underlying mechanics are key to understanding the complexities of the whole compensation plan. The SEC should emphasize complete disclosure of the assumptions underlying the estimated payments disclosed in this section.

Covered Officers

The following bullets summarize the Council's responses to questions raised in the release regarding the disclosure of covered officers:

- The Council supports the SEC's proposal that the Principal Executive Officer (PEO) and Principal Financial Officer (PFO) with the three other most highly compensated executive officers constitute the Named Executive Officers (NEO). The addition of the Principal Financial Officer to automatic NEO status is appropriate given the role of this position under the requirements of the Sarbanes-Oxley Act in certifying the financial statements and the general importance of this position in the capital structure decisions of public companies.

- The Council supports the SEC's proposed standard of basing NEO status for the three other executive positions on total compensation. The current standard of basing this classification on salary and bonus alone has the potential to miss significant forms of compensation, thus not capturing the highest paid executive officers. The Council recognizes the concerns over volatility in NEO status and potential bias to longer-term employees that may be caused by utilizing total compensation as the standard for NEO status. However, this concern is mitigated by a number of factors: 1) the primary positions of PEO and PFO are locked into NEO status, providing some stability in the disclosures; 2) NEO status is limited to the executive officer team, which is already a somewhat limited group; 3) the focus on total compensation is more representative of companies' decisions and emphasis in their compensation plans (in other words, volatility in the classification of NEO status may in itself be an indicator of how a company views and implements its compensation program); and 4) it is more consistent with the SEC's overall focus on total compensation.

- The final rule should retain the current requirement providing disclosure for up to two additional individuals for whom disclosure would have been required but for the fact that they were no longer serving as executive officers at the end of the year.

- The Council supports the proposal to exclude payments attributable to overseas assignments from the determination of most highly compensated officers as proposed. Other exemptions based on "not recurring and unlikely to continue" compensation should be eliminated

- The proposed threshold of $100,000 total compensation for disclosure of Named Executive Officers appears reasonable.

Interplay of Items 402 and 404

The Council supports the SEC's proposal to clarify the interplay between Sections 402 and 404. In particular, we support the consolidation of disclosures regarding compensation items under Section 402, and we agree with the SEC's rationale that the "possibility of additional disclosure in the context of each of the respective items is preferable to the possibility that compensation is not properly and fully disclosed under Item 402."

Compensation of Directors

In recent years, director compensation has grown more complex. Unfortunately, the disclosure rules have not kept pace with the changes in the director pay arena. As a result, it is difficult for shareowners to determine from narrative disclosures exactly how and how much their elected representatives are paid.

The following bullets summarize the Council's responses to questions raised in the release regarding the disclosure of director compensation:

- The Council supports the proposed tabular format for disclosure of compensation paid to each director. However, these disclosures should be enhanced by providing a three-year rolling format similar to the Summary Compensation Table rather than just a single-year format. The All Other Compensation column should be supported by footnote or expanded tabular disclosure of the individual items under this heading.

- The Council requests that the SEC require narrative disclosure of the rationale, purpose and philosophy of the director compensation program. This emphasis should be similar to the proposed CDA that is related to the executive compensation program, but it should be included with the Director Compensation Table (separate from the CDA).

- The proposed de minimis exception of $10,000 for the disclosure of perquisites and other personal benefits is appropriate and consistent with the proposed rules for executive compensation disclosure.

- The Council recommends specific footnote disclosure or supplemental tables similar to the Outstanding Equity Awards Table and Option Exercise and Stock Vesting Table because they would provide meaningful enhancement to the director compensation disclosure rules. Given the significant importance of equity in director compensation plans, this type of disclosure would permit

investors to evaluate overall levels of alignment better than the proposed summary table alone.

Treatment of Specific Types of Issuers

The Council recognizes that small businesses have fewer resources available to meet the proposed executive compensation disclosure requirements. However, the sweeping exemptions for small businesses proposed in the current draft go too far and will result in poor quality disclosures. As a general rule, the Council believes that special exceptions for small businesses, while well-intentioned, ultimately are a disservice to the public markets and to the businesses themselves.

In the case of executive compensation disclosures, the proposal would exempt small businesses from such critical elements of the disclosure rules as the comprehensive qualitative descriptions of the plan (including the CDA), Option Exercises and Stock Vested Table, and Post-Employment Compensation. The Council does not support such significant exemptions for small business in the critical area of executive compensation disclosures. The proposed exemptions would adversely affect the ability of investors to evaluate the merits of compensation structures at these companies and reduce the comparability of disclosures among small companies.

Beneficial Ownership Disclosure

The Council supports the proposed amendment to Item 403(b) to require footnote disclosure of the number of shares pledged as security by NEOs. These circumstances have the potential to influence management's performance and alignment, and thus, this information is material to investors. The Council supports the SEC's proposal that no specific category of loans be treated differently from any other because the purpose should be to provide complete disclosure of all cases in which shares have been pledged.

Note: The Council also is requesting specific disclosure under the CDA of companies' policy, or lack thereof, regarding the hedging of equity and equity-like positions. The purpose of this request is similar to the justification the SEC proposes for disclosure of pledges: these circumstances have the potential to alter the alignment of the compensation plan and influence behavior.

Certain Relationships and Related Transactions Disclosure

Director independence is an issue of fundamental importance to investors and the U.S. corporate governance model. But assessing a director's independence has long been problematic. Current disclosure rules are dated and weak, and as a result, some very basic, yet material, details about director relationships do not have to be disclosed and cannot be determined readily by shareowners.

To ensure that all interested parties have access to the information needed to assess a director's independence, the Council has submitted over the past decade two rulemaking

petitions asking the SEC to require enhanced disclosure of relationships between directors, corporations and corporate executives. The October 1997 petition requested an amendment to paragraph (d) of item 401 of Regulation S-K to require company disclosure of "personal, professional and financial relationships" between directors, companies and top management. Recognizing that personal relationships may be too difficult to depict clearly in regulatory language, the Council amended its petition in October 1998 to require disclosure of "familial, professional and financial relationships."

The 1998 petition includes no de minimis dollar thresholds under which disclosure would not be required. Members of the Council recognize that independent directors do not invariably share a single set of qualities that are not shared by non-independent directors. As a result, given that no clear rule can unerringly describe and distinguish independent directors and that various groups have different approaches for assessing independence, the Council firmly believes the only appropriate solution to this persistent problem is to ensure that companies provide disclosure of any professional, financial and familial relationships betweens companies/executives and directors/relatives. Owners and others may then evaluate this information to make their own decisions about a director's independence.

- The Council opposes raising the initial dollar threshold to $120,000. The proposed increase would eliminate disclosure of certain related-party transactions, such as many of the cases involving the employment of relatives, which investors believe are important.

- The Council supports the SEC's approach to indebtedness (integrating paragraph (c) of Item 404 into paragraph (a)). We believe it is appropriate to treat loans like any other related-party transaction and recognize the exception for "ordinary course loans" by financial institutions.

Procedures for Reporting Related-Person Transactions

The Council supports the proposed requirement for disclosure of the policies and procedures established by the company regarding related-party transactions. This type of information is material to investors, so at a minimum, the disclosures should include: 1) the types of transactions that are covered and the standards to be applied pursuant to the policies; 2) the person(s) on the board or otherwise responsible for applying the policies; 3) whether the policies are in writing and where a complete version can be viewed; and 4) if there are transactions requiring disclosure under 404(a) where a company's policies and procedures did not require review or were not followed (or if any type of exception was granted).

Corporate Governance Disclosure

The Council supports the proposed consolidation of governance disclosures in Item 407. In particular, it will be meaningful for investors to be able to identify the criteria the company utilized for the independence determination, including a description of any

transactions, relationships or arrangements not disclosed in Item 404(a) that were nonetheless considered by the board in determining that the applicable independence standards were met. In cases where companies have their own definition of independence that is used to make certifications under this section, the companies also should be required to list the material differences between their definition and that of a national securities exchange (applicable to the company). This will provide an easy reference for comparability purposes.

The Council believes the proposed disclosure requirements regarding compensation consultants (under disclosures related to the process and procedure for the consideration and determination of executive and director compensation) is appropriate.

Treatment of Specific Types of Issuers

The Council recommends that paragraph (b) of Regulation S-K also should be included in Regulation S-B. As the SEC appropriately notes in the proposed rule, information regarding policies and procedures established by the company for related-party transactions is material to investors. The mere fact that a company files under Regulation S-B does not change this fact and should not exclude the company from disclosure of these policies. Presumably, the small business issuer still would have a policy or procedure for addressing these issues, and briefly articulating this policy should not cause a burden.

Plain English Disclosure

The Council strongly supports the proposed Plain English requirements; however, we do not believe that these requirements alone are sufficient to prevent boilerplate disclosures. Rather, these requirements should be viewed as an important component of an integrated approach by the SEC to promote the desired levels of disclosure. Other important components should include such aspects as SEC review and guidance (particularly in the first few years of the new rule), public commentary and support from the Commission and staff, as well as appropriate enforcement action.

The Council supports the broad application of Plain English requirements in the compensation disclosure rules. This requirement does not lead to increased disputes or increased litigation because it does not prohibit clear and complete disclosures of material information (in fact, it promotes this perspective).