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Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Executive Compensation Disclosure
(Release Nos. 33-8765; 34-55009)
Commission File No. S7-03-06

Dear Ms. Morris:

Ernst & Young LLP is pleased to respond to the request for comment by the Securities and Exchange Commission (the Commission or the SEC) on its interim final rule *Executive Compensation Disclosure* (the Interim Final Rule). As we noted in our comment letter to the Commission dated April 10, 2006, we firmly believe that the determination of executive and director compensation is an important aspect of corporate governance, and we support the Commission's efforts to improve the clarity and completeness of disclosure in this area.

The Commission decided in the Interim Final Rule to adopt an approach to Summary Compensation Table (SCT) disclosure that aligns with the recognition of compensation cost for financial reporting purposes. We believe that this approach will better achieve the Commission's objective of providing investors with a "clearer and more complete picture" and will provide the most understandable and representationally faithful way to disclose the compensation earned by directors and named executive officers (NEOs). The Interim Final Rule adopts this approach for those elements of executive and director compensation that fall within the scope of Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment* (Statement 123R). We believe that the Commission should adopt a similar approach for compensation outside the scope of Statement 123R, such as salaries and cash bonuses, which should be disclosed in the SCT on the same basis as the corresponding amounts recorded in the registrant's financial statements for the respective fiscal year.

The Interim Final Rule requests comment on whether the deviation from Statement 123R to exclude the accounting effects of any estimate of forfeitures related to service-based vesting conditions presents meaningful executive compensation disclosure. We concur with the Commission's approach in the Interim Final Rule to disclose executive and director compensation on the presumption that service-based vesting conditions will be met.

We also support the SEC's decision to require disclosure in the Grants of Plan-Based Awards Table of the full grant date fair value of awards on a grant-by-grant basis computed in accordance with Statement 123R, which we recommended in our comment letter to the Commission dated April 10, 2006. This disclosure remains relevant and useful to investors and will provide a useful reference for a registrant's Compensation Discussion & Analysis (CD&A). In addition, we observe that paragraph A240.h of Statement 123R requires financial statement disclosure of "the total compensation cost related to nonvested awards not yet recognized and the weighted-average period over which it is expected to be recognized" as of the most recent fiscal year end. Such disclosure is required in the financial statements of all companies, including small business issuers that are otherwise exempt from any SEC requirement to disclose the grant date fair value of awards and modifications to each NEO and director during the most recent fiscal year. Within their executive and director compensation disclosures, we would encourage all registrants to disclose information with respect to each NEO and director that is equivalent to the information specified by paragraph A240.h. In our view, such disclosure would provide more transparent information about the future compensation effects of past actions.

By aligning SCT reporting with Statement 123R recognition and measurement principles, the SCT will not necessarily report compensation for a stock or option award for the first time in the same period that such award is disclosed in the Grants of Plan-Based Awards Table. That is, the Grants of Plan-Based Awards Table might include grants for which compensation was reported in the SCT for an earlier period. The Grants of Plan-Based Awards Table also might report grants of awards with performance-based vesting conditions for which no compensation would be reported in the SCT if the issuer concludes that it is not probable that those conditions will be satisfied. As a result, the Grants of Plan-Based Awards Table will no longer serve as a supplemental table that merely provides detail about amounts reported in the SCT, nor should it. In our view, the Grants of Plan-Based Awards Table should disclose information about all awards with a grant date within the most recent fiscal year. We do not favor any mandatory disclosure, by footnote or otherwise, of circumstances in which the SCT does not reflect any compensation related to awards disclosed in the Grants of Plan-Based Awards Table, or vice versa. Instead, registrants should disclose such circumstances when necessary to avoid disclosures that otherwise would be misleading.

By aligning SCT reporting with Statement 123R recognition and measurement principles, the possibility now exists for "negative amounts" to be reported in the SCT, as well as the Director Compensation Table (DCT). Negative amounts might result from, among other things, the remeasurement of liability awards, decreases in the actuarial present value of accumulated pension benefits (e.g., as a result of increases in the discount rate), forfeitures of awards with service-based vesting conditions, and changes in the probability of meeting any performance-based vesting conditions of awards. We believe the SCT and DCT should include any "negative amounts" that arise from applying the compensation measurement principles consistent with those used for financial reporting purposes. Otherwise, on a cumulative basis, the SCT and DCT would overstate the amount of executive and director compensation. We do not favor any mandatory disclosure, by footnote or otherwise, of negative amounts reported in the SCT or DCT. Instead, registrants should disclose the effects of negative amounts when necessary to avoid disclosures that otherwise would be misleading.

As part of the 2006 amendments to Item 402 of Regulation S-K, the SEC introduced Instruction 3 to Item 402(c)(2)(viii), which instructs an issuer to exclude from the SCT and DCT any negative amount arising from a decrease in the actuarial present value of accumulated pension benefits. Consistent with our view that the SCT and DCT should include any negative amounts, we recommend that the SEC rescind this instruction. Otherwise, the SCT and DCT might include some, but not all, negative amounts.

While we believe that total compensation reported in the SCT should include "negative amounts," we question whether such negative amounts should affect the determination of the NEOs to be disclosed in the SCT. Currently, the determination of the NEOs is based on total compensation to be reported in the SCT, excluding the change in pension value and nonqualified deferred compensation earnings reported in column (h) of the SCT. We recommend that the SEC adopt an approach that also excludes the effects of any negative amounts, regardless of their source, in the determination of the NEOs. We believe that such an approach would result in more consistency from year to year in the identity of the NEOs included in the SCT. Further, the NEOs determined in this fashion would more likely be those executives that the compensation committee regards as the most highly compensated.

The Interim Final Rule amended the SCT to require that salary or bonus forgone at the election of the named executive officer in exchange for equity or other forms of non-cash compensation be disclosed in the salary or bonus column of the SCT, as applicable, with footnote disclosure of the receipt of non-cash consideration in the year the election is made. We do not believe that this change improves the transparency or representational faithfulness of the executive compensation disclosures. Specifically, we are concerned that, under the Commission's new approach, compensation reported in the SCT would not necessarily represent the form of compensation ultimately received by the NEO. In addition, when the non-cash consideration has a fair value greater than the cash consideration forgone, the SCT still would have to report the incremental compensation under the applicable stock awards or option awards column. Instead, the SCT should adhere to the principle of reporting the form of compensation received on the same basis as the corresponding amounts recorded in the registrant's financial statements for the respective fiscal year. Under such an approach, the SCT would report a negative element of salary or bonus if an executive relinquishes salary or bonus earned and reported in the SCT in a previous fiscal year in exchange for another form of compensation in a subsequent fiscal year.

The adopting release for the Interim Final Rule instructs a registrant to provide disclosures under Item 402 of Regulation S-K assuming the adoption of Statement 123R using the modified prospective transition method, regardless of the method of adopting Statement 123R for financial reporting purposes. As a practical matter, for companies that adopted Statement 123R using either the modified retrospective method or the modified prospective method, the SEC's instruction will still result in consistency between the amounts reported under Item 402 and the corresponding amounts in the respective financial statements, which would be determined using a fair value method. However, as discussed further below, we are concerned that a registrant that was required to adopt Statement 123R using the prospective method may be unable to prepare Item 402 disclosures on the basis of the modified prospective transition method. The Commission's instruction would require such a registrant to estimate the fair value of awards granted prior to the adoption of Statement 123R, for which the registrant otherwise would not be required to develop and estimate for financial reporting purposes. In our view, a registrant should provide its Item 402 disclosures on a consistent basis with its accounting under Statement 123R, including the method of adoption, which would be the most practical, efficient and understandable way to provide disclosures about executive and director compensation.

Most nonpublic companies (as defined by Statement 123R) used the minimum value method to value awards prior to adopting Statement 123R. For example, prior to an initial public offering, a previously nonpublic company could use the minimum value method under Statement 123 either in its financial statement accounting or for purposes of its pro forma disclosures. Similarly, many debt-only registrants, which are defined as nonpublic companies by Statement 123R, used the minimum value method. Because the minimum value method omits volatility, the resulting compensation cost does not represent a fair value measurement. For this reason, Statement 123R required companies that previously used the minimum value method to use the prospective transition method of adopting Statement 123R. Under the prospective transition method, compensation cost is recorded in accordance with Statement 123R only for awards granted or modified after the Statement 123R adoption date while awards granted prior to the Statement 123R adoption date are accounted for using the company's previous accounting policy (i.e., either the intrinsic value method under Accounting Principles Board Opinion No. 25 or the minimum value method permitted by Statement 123).

Accordingly, we recommend that the SEC rescind the instruction and allow the Item 402 disclosures to be made on a basis that is consistent with registrant's method of adopting Statement 123R for financial reporting purposes. We recognize that, for companies that adopted

Statement 123R using the prospective transition method and that previously applied the intrinsic value method under Accounting Principles Board Opinion No. 25, in many cases this transition approach would result in the SCT reporting no compensation cost related to awards granted prior to the adoption of Statement 123R. However, we believe that maintaining consistency between the SCT and the financial statements is preferable to other possible approaches, which also would not report awards granted prior to the adoption of Statement 123R in the SCT at fair value.

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We would be pleased to discuss our comments with the Commission or its staff at your convenience.

Very truly yours,

Ernst + Young LLP