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October 24, 2006

Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-1090

Re: Executive Compensation Disclosure; File No. S7-03-06; 71 Fed. Reg. 53267
(September 8, 2006).

Dear Ms. Morris:

The American Bankers Association ("ABA") appreciates the opportunity to comment on the Securities and Exchange Commission's ("Commission") proposal to modify an earlier proposal to require disclosure of the top three employees' compensation and job description who earn more than any executive officer. Specifically, the Commission is considering modifying the earlier proposal by requiring compensation and job description disclosure for only those employees who have significant policy decision making responsibilities. The proposal is intended to give investors a more comprehensive understanding of a public company's compensation structure. Despite its good intentions, this proposal, like the earlier version, will leave publicly-traded companies at a competitive disadvantage to privately-held companies with very little concomitant benefit for investors.

The ABA, on behalf of the more than two million men and women who work in the nation's banks, represents all types of banking institutions in this rapidly changing industry. The ABA's membership includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks (collectively referred to as "banks"), making it the largest banking trade association in the country.

DISCUSSION

The Commission's earlier proposal on executive compensation and related party disclosure would have required publicly traded banking organizations to disclose director deposit and trust accounts, as well as securities processing and other services provided to director affiliated companies. The ABA argued that ordinary course of business transactions provided on a non-preferential basis,

such as these, should be exempt from disclosure. The ABA is pleased that the Commission agreed with our reasoning and determined to exempt these ordinary course of business transactions. We are also pleased that the Commission determined to require, under Item 407, only categorical disclosure of transactions with independent directors, instead of more detailed transaction disclosure.

We are, however, opposed to the proposal to require further disclosure of employee compensation beyond that already required under Item 402. Our opposition is based on the following reasons:

- It is difficult to implement;
- It imposes significant regulatory burdens with little investor benefit; and
- It places publicly traded companies at a competitive disadvantage.

Difficulty in Implementation

The Commission has suggested that the disclosures concerning highly compensated non-executive employees should be limited to those individuals who have responsibility for “significant policy decisions” or exert “significant policy influence” within the company. The term “executive officer” is defined as “president, any vice president of the registrant 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 registrant.”¹ Therefore, a non-executive employee is someone who does not perform policy making functions.

Determining which individuals perform policy making functions and are, thus, executive officers is difficult enough now. To require, all other employees to be viewed through a “policy decision-making” or “policy influence” prism will surely exacerbate current difficulties, requiring companies to create new procedures and assign new work to individuals to collect and analyze the necessary information.

The proposal itself highlights the difficulties companies will face in determining which individuals are responsible for significant policy decisions or exert significant policy influence. Specifically, the proposal states that investment professionals (such as a trader or a portfolio manager for an investment adviser who is responsible for one or more mutual funds or other clients) will not be deemed to have significant policy decision making responsibilities. But, an investment professional, such as a trader or portfolio manager who has broader duties within a firm (such as oversight for all equity funds for an investment adviser) may be considered to have significant policy decision making responsibilities. Left unspoken is what happens between these extremes. Does an investment professional need to oversee 90%, 75%, 50% of the firm’s equity

¹ Rule 3b-7, 17 CFR 240.3b-7.

funds? How do you measure that percentage? By number of funds? By market capitalization of funds?

For banks, high income earning employees may also come from the institutional and retail credit departments. How do we measure significant policy decision making responsibilities for these employees? By number of mortgages? By credit quality? By profitability of the credit?

The difficulties inherent in determining whether a highly compensated individual exerts the requisite policy decision making authority demonstrates just how unworkable this proposal is. As such, the proposal should not be adopted.

Regulatory Burdens

The proposal is intended to give investors and others a “better understanding of the compensation structure of the named executive officers and directors.”² It is unclear, however, what value the new proposal would add beyond what is already covered by the existing rule. For example, compensation for the principal executive officer (“PEO”), the principal financial officer (“PFO”) and the registrant’s three most highly compensative executive officers other than the PEO and PFO is required to be disclosed in proxy and information statements, and periodic and other reports required under the Securities Exchange Act of 1934.

In addition, the newly adopted Compensation Discussion and Analysis narrative is intended to provide the context for executive officer compensation. Furthermore, a company also has an obligation to disclose any *material* company expenses, including non-executive compensation, in its Management’s Discussion and Analysis of Results of Operations and Financial Condition. It is unclear how the Commission’s proposal to require disclosure of the compensation and job positions of certain non-executive individuals who are compensated more highly than named executive officers will assist in understanding a company’s executive compensation structure.

While the benefits to be gained by the proposed additional disclosures are questionable, the costs, the ABA would assert, are significant. First, while the proposal only requires disclosure regarding the compensation levels of up to three individuals, the proposal could nevertheless force registrants to track the compensation levels of a significant number of employees. Compensation levels fluctuate significantly from year to year based on numerous factors, including signing and other specialized bonuses paid on business acquired. As a result, the identity of highly compensated individuals required to be disclosed one year may not be the same as those required to be disclosed the next.

² 71 Fed. Reg. 53267, 53267 (Sept. 8, 2006).

In addition, the pool of individuals could expand or contract depending on whether the individual had any policy decision making responsibilities for that year. Highly compensated individuals without policy making responsibilities one year may assume policy making responsibilities, for a variety of reasons, in a subsequent or earlier year.

Moreover, it is not uncommon for executive officers to agree to little or no compensation, yet the proposal ties the requirement for reporting non-executive compensation to the level of executive officer compensation. In those situations where the executive officers have agreed to accept little or no compensation, the pool of potential highly-compensated employees, and the concomitant regulatory burden, will be greatly expanded.

The Commission has requested comment on its regulatory burden analysis. That analysis undervalues the true cost of compliance. First, the estimate only accounts for the approximately 1,700 “large accelerated filers” even though the proposal, as it is written, applies to all publicly-traded companies.³ Even smaller public companies will have employees who are compensated more than the executive officers and directors. These accelerated and non-accelerated filers must be accounted for in the estimate.

Second, the estimate of two hours of outside counsel time for each year after the first year of compliance is an extremely low estimate. The determination of who qualifies under the “significant policy decision” test will require very detailed factual analysis that is likely to change from year to year. As firms grow and new positions are added, public companies will need to seek counsel for more than a mere two hours.

Publicly-Traded Companies are Competitively Disadvantaged.

The proposed rule will have a significant and detrimental effect on the ability of publicly-traded companies to hire and retain employees who are in high demand. By disclosing the job description of a highly compensated individual, as well as his or her compensation, public companies will be vulnerable to competitors picking off their prized employees. This would be especially true if their competitors were companies not subject to the Commission’s periodic reporting requirements. Companies value the confidentiality of this information to such an extent that they have contractually prohibited their employees from disclosing their compensation.

Despite the fact that disclosure of compensation and employee job descriptions and, not individual employees, is required, our concerns remain. Our

³ The Commission has suggested limiting the disclosures discussed herein to only those registrants that come within the definition of “large accelerated filers.” Because the ABA is opposed to the proposal for a number of reasons, including the fact that it places all of its publicly-traded member firms at a competitive disadvantage to non-publicly traded firms, we do not take a position on the Commission’s suggestion to limit the proposal to “large accelerated filers.”

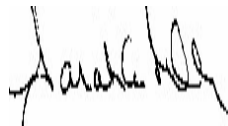
competitors will surely be able to identify specific individuals from the more generalized disclosures. We are also opposed to these disclosures as they could alert our competitors, public and non-public alike, to confidential information about the company, its sales volumes, and commission schedules.

In addition, these disclosures could disrupt current business operations in other ways. For example, disclosure of highly compensated individuals' salaries could undermine team spirit and foster resentment among those employees who are not quite so highly compensated. Finally, we believe that employee expectations of privacy are severely undermined if their compensation is disclosed for the world to see; employees also value confidentiality with regard to compensation and will likely favor employment with firms able to preserve the confidentiality of their income.

Conclusion

For all of the reasons outlined above, we are opposed to public disclosure of highly compensated non-executive employees. We believe that investor benefits associated with this proposal will be significantly outweighed by the costs to the companies. If the Commission nevertheless remains convinced that the compensation for these individuals is important to the investing public, we would respectfully suggest that the Commission defer adoption of the proposal until such time as the Commission and the investing public have had the opportunity to analyze the fully the costs and benefits associated with the Commission's newly adopted executive compensation rules.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Sarah A. Miller". The signature is fluid and cursive, with the first name being the most prominent.

Sarah A. Miller