

May 16, 1983

Re: File No. S7-958

Mr. George A. Fitzsimmons  
Securities and Exchange Commission  
450 5th Street, N.W.  
Washington, D.C. 20549

Dear Mr. Fitzsimmons:

The New York Stock Exchange, Inc. (the Exchange) appreciates this opportunity to comment on the Commission's proposed amendments to Item 402 of Regulation S-K and Schedule 14A relating to disclosure of management remuneration. The Commission's proposals are included in Release No. 34-19431 (the Release) which is the fourth release published by the Commission in its ongoing and comprehensive Proxy Review Program.

Currently, disclosure requirements relating to management remuneration are complex and confusing. Often they result in so much detail that they fail to communicate to stockholders basic information which may be of interest in forming investment and voting decisions. Certainly, reform is called for. The Commission proposes to achieve this needed reform through the adoption of a substantially new Item 402 to Regulation S-K, which governs disclosure of management remuneration in proxy statements, registration statements and periodic reports.

The Exchange supports the Commission's new approach to a difficult subject and believes that proposed Item 402 represents a substantial improvement over current requirements. However, the Exchange does have the following general comments and a few technical comments for the Commission's consideration.

1. Disclosure of management remuneration on an individual basis under the proposed new Item 402 will be limited to the registrant's five most highly compensated executive officers or directors whose cash remuneration exceeds \$60,000 for services rendered during the registrant's last fiscal year.\* Currently, individual disclosure of remuneration is required as to the five most highly compensated executive officers or directors whose direct and indirect remuneration exceeds \$50,000. While the proposed new standard is higher than the current one, the Exchange believes that it is still lower than it need be. Stockholders have an understandable and quite legitimate interest in knowing how much the registrant is paying for its top executive talent and, in addition, how much it is paying for all executive officers and directors as a group, but it seems to the Exchange that this general overview would be provided if a much higher threshold than is being proposed were adopted in proposed Item 402. If, for example, in addition to the required group disclosure as proposed, individual disclosure of remuneration was required in the case of the three most highly compensated executive officers or directors whose cash remuneration exceeds \$75,000, the needs of the shareholders would seem to be satisfied, yet the personal intrusions inflicted on individual officers and directors would be significantly reduced. Lowering the number of the persons subject to individual disclosure from 5 to 3 would continue to assure that representative figures reflecting the highest levels of compensation paid by the registrant would be provided. This would be true even for those registrants (surely a small minority) that have more than 3 executive officers in the office of the chief executive. Raising the proposed \$60,000 to \$75,000 would not result in any significant

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\* Of course, under the new Item 402, particularly paragraphs (b) and (c) of that item, disclosure will also be required as to certain non-cash remuneration received by any of the named individuals.

loss of meaningful information. In today's economy, \$75,000 of cash remuneration for the highest paid executive of a registered company does not seem unreasonable. If no individual received that much, the group disclosure should suffice.

2. In the Release, the Commission points out that proposed Item 402(b), like existing Item 402, will require disclosure of interest received on deferred compensation and dividends received on restricted stock. The Commission asks whether these receipts should continue to be treated as remuneration under Item 402. The Exchange does not believe they should. No disclosure of payments, or of the unconditional vesting of the right to payments, of dividends on restricted stock or of interest on deferred compensation should be required with respect to the named individuals or the group, because such payments do not represent compensation for services rendered. Rather, they represent a return on capital invested in the registrant's business.

3. Proposed new Item 402 would eliminate disclosure of the net value realized on the exercise of options, although that information is required to be disclosed under existing Item 402(d). The Commission asks for specific comment as to whether the requirement to disclose such net value should be included in proposed Item 402. The Exchange does not believe it should and agrees with the Commission that the exercise of the option giving rise to the realization of value would not be related to the performance of services to the registrant.

4. The Exchange has a few comments of a technical or drafting nature that may be of interest to the Commission:

A. Item 402(a)(2)(i) requires the Cash Remuneration Table to include certain cash bonuses "unless such amounts have not been allocated at such time as remuneration disclosure is filed". In view of the fact that several days may elapse between the

commencement of the printing of definitive proxy statements and the date on which the statements are filed, the Exchange suggests that the quoted language might be changed to read as follows:

“unless such amounts have not been allocated as of a date seven days prior to the date on which remuneration disclosure is filed”.

B. Items 402(a)(2)(iii) and 402(b)(1)(vii). Where a portion of salary that would otherwise have been received during the last fiscal year is voluntarily deferred by one of the individually identified executive officers and such deferral is pursuant to a deferred compensation plan which makes all amounts deferred thereunder subject to subsequent forfeiture in certain events, it is not clear whether the amount of deferred compensation should be included in the Cash Remuneration Table for the fiscal year with respect to which it was earned, or should be governed by Item 402(b)(1)(vii) and disclosed only when it is no longer subject to forfeiture. This point might be clarified.

C. Item 402(b)(1)(v). Any “recent material amendments” to the plan must be described under paragraph (b)(1)(v). The term “recent” should be clarified. Perhaps the term should be dropped and the item should call for a description of any material amendments to the plan made since the beginning of the last fiscal year.

D. It would seem to be helpful if the instructions to Item 402(b) were to include the substance of footnote 27 to the Release.

In general, the Exchange strongly supports the initiatives proposed by new Item 402 and believes that the adoption of the new Item will result in significantly improved disclosure of basic management remuneration of importance to investors and security holders. The Exchange hopes the comments contained in this letter will be helpful to the Commission and looks forward to reviewing future releases as the Commission’s Proxy Review Program

continues. If the Commission or staff has any questions about the Exchange's comments, please contact Donald L. Calvin, Executive Vice-President.

Very truly yours,

J E Buck