



CENTER FOR CAPITAL MARKETS

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April 28, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

**Re: Proposed Rules on Listing Standards for Compensation Committees Release
Nos. 33-9199; 34-64149; File No. S7-13-11**

Dear Ms. Murphy:

The U.S. Chamber of Commerce is the world's largest business federation, representing more than 3 million businesses and organizations of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. To achieve this objective it is an important priority of the CCMC to advance an effective and transparent corporate governance structure. The CCMC welcomes this opportunity to comment on the Proposed Rules on Listing Standards for Compensation Committees ("proposed rules") of the U.S. Securities and Exchange Commission ("SEC").

While the CCMC believes this proposal helps to achieve important aims related to the process for executive compensation, the CCMC also has some general and specific concerns that it wishes to express.

Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 adds Section 10C to the Securities Exchange Act of 1934 (the "Exchange Act"). Section 10C requires the Commission to adopt rules directing the national securities exchanges (the "exchanges") and national securities associations to prohibit the listing of any equity security of an issuer that is not in compliance with Section 10C's compensation committee and compensation adviser requirements. In accordance with the statute, the proposed rules would direct the exchanges to establish listing standards that, among other things, require each member of a listed issuer's compensation committee to be a member of the board of directors and to be "independent," as defined in the listing standards of the exchanges adopted in accordance with the proposed rules. In addition, Section 10C(c)(2) of

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the Exchange Act requires the Commission to adopt new disclosure rules concerning the use of compensation consultants and conflicts of interest.

The CCMC believes that strong corporate governance is a cornerstone for a growing and prosperous economy and requires a robust dialog between directors and shareholders. Effective disclosure policies are pivotal to this dialog. Accordingly, the CCMC supports enhanced disclosures provided the disclosure is an effective contributor to investors' economic decisions.

Additionally, the CCMC believes that the setting of executives' compensation is among the most important roles of a public company's board. Directors, in order to discharge their duties effectively, must have access to reliable information to arrive at executive compensation decisions that properly align executives' compensation with the interests of shareholders and other stakeholders, and must themselves be free from certain relationships that may distract from the integrity of the executive compensation decision making process.

The CCMC's concerns are discussed below.

Discussion

Elimination of "Broad-Based" and "Non-Customized Data" Exceptions

The proposed rules would eliminate the current exceptions contained in rule 407(e)(3)(iii) of Regulation S-K, which exclude from the disclosure requirement: 1) any role of compensation consultants limited to consulting on any broad-based plan that does not discriminate in scope, terms or operation in favor of executive officers or directors of the registrant and that is available generally to all salaried employees, or; 2) limiting issuers' obligation to provide information that either is not customized for a particular registrant or is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant does not provide advice.

The current exceptions exist because there is no real potential for a conflict of interest if a consultant provides advice on broad-based plans or non-customized benchmark data. In fact, in adopting the exemption in 2009, the SEC concluded that non-customized

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benchmark data does “not raise the potential conflicts of interest” that the rules intended to address.¹

As the Commission is undoubtedly aware, as a result largely of the Commission’s own rules and policies, many of the compensation consultants used by issuers are boutique firms. These firms typically do not have comprehensive databases sufficient to meet issuers’ compensation benchmarking needs, and, as a result, such data is typically obtained from larger consulting firms, which maintain compensation databases useful for providing benchmarking information. Additionally, it is often necessary for companies to purchase such data from multiple sources in order to permit an issuer’s compensation committee to make fully informed judgments. It would be neither useful nor helpful to an investor to understand the source of all of this data.

Furthermore, the Commission itself noted in 2009 that non-customized benchmarked data are not deemed to be executive compensation consulting services.² Consistent with the reasoning set forth in the 2009 rule release, providing mere non-customized benchmark data should not be considered “advice” and therefore should remain outside of the scope of the rules. Therefore, in order to eliminate the addition of disclosure burden without corresponding benefits for transparency and capital formation, we respectfully request that the SEC’s final rules preserve the existing disclosure exceptions.

Exchange Implementation

We believe it is appropriate for the SEC to clarify that, where a committee other than the company’s compensation committee determines compensation for non-executive directors only, the members of that committee will not be required to abide by the independence standards that Section 10C imposes on members of the compensation committee. Such an exception is necessary because some companies, consistent with the requirements of applicable stock exchange listing standards, have elected to have non-executive director compensation set by a committee other than the compensation committee, which is solely responsible for setting the compensation of executives. It is clear

¹ Item 407(e) of Regulation S-K; Proxy Disclosure Enhancements, Release No. 33-9089 (Dec. 16, 2009) [74 FR 68334 at 68348] (the “2009 Release”).

² 2009 Release at 68347.

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from Section 952 that such an extension would not be required, and the clarification would be consistent with the Commission's interpretation of Section 952 to apply only to formal compensation committees that meet the specifications of stock exchange listing standards. We believe you would agree that it would be an unintended and unnecessary burden to extend these additional independence criteria to board committees whose only compensation-related responsibilities are setting director compensation.

We support the proposed rules insofar as they do not extend the new requirements to Nasdaq-listed issuers whose compensation matters are governed by independent directors rather than a formal compensation committee. This approach is mandated by a clear reading of the legislation.

Implementation Issues and Proposal for a Working Group

We do not believe that the SEC has adequately addressed the required standard under Section 23(a)(2) of the Exchange Act to consider the impact that any rule may have on competition. We note in this connection that the proposed rules, if implemented, would impose additional compensation reporting and director independence requirements that can be burdensome, resulting in additional disclosure of companies' use of compensation consultants, without in every case providing meaningful benefit to companies or investors, and in fact may confuse investors or deter investors from reading proxy materials by increasing their length and density without pruning other, less pertinent, or dated disclosures.

By delegating rulemaking authority to the SEC, we believe that Congress intended the agency to collect and analyze this type of data and information when providing more detail on how the rules would be implemented in a practical manner. Accordingly, we encourage the SEC and the Exchanges to establish a series of working groups to better understand both the costs and benefits these rules are likely to impose on the various constituencies that will be affected by this rule. These working groups should include issuers, investors, compensation consultants, Exchange staff, and other interested stakeholders whose perspectives will be important to gaining a better understanding of how these proposed rules would affect compensation decisions.

In the materials released with the proposed rules, furthermore, the SEC estimates that issuers will be burdened with \$3,192,000 in compliance costs and that the total annual increase in the paperwork burden for all affected issuers to comply with the proposed collection of information requirements will be approximately 23,940 hours of in-house personnel time.

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In the materials accompanying the proposed rules, the SEC notes that these estimates were produced based on assumptions that the burden hours of these proposed disclosure requirements would be comparable to the burden hours that were assumed to result from the SEC's 2009 rules on Proxy Disclosure Enhancements, which required certain disclosures relating to companies' use of compensation consultants. In that regard, we note that the SEC has not indicated that it has followed up on the 2009 estimate to evaluate its accuracy, or that the estimate has otherwise proven to be accurate. Accordingly, the SEC's assumptions regarding burden hours and costs of implementing these rules may drastically underestimate the actual burden on issuers.

Conclusion

The CCMC wishes to thank the Commission for the opportunity to comment on the proposal. While the CCMC believes that enhanced disclosures and compensation committee independence requirements are a necessary part of vibrant capital markets, the proposal contains issues of concern that should be addressed in the final rule. Accordingly, the CCMC stands ready to assist the Commission in developing and implementing enhanced disclosure policies that will benefit the capital markets and strike the appropriate balance in director-shareholder relations.

Sincerely,

A handwritten signature in black ink, appearing to read "David Hirschmann". The signature is written in a cursive, slightly slanted style.

David Hirschmann