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Via e-mail to: rule-comments@sec.gov

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
Attention: Elizabeth M. Murphy, Secretary

Reference: S7-13-11 April 1, 2011

Dear Ms. Murphy,

Thank you for the opportunity to provide comments on the SEC's proposed rules for listing standards for compensation committees and for the disclosure of the independence of compensation consultants. My comments focus on the intent of Congress based on the legislative history of the Dodd-Frank Act and on the application of the rules to foreign private issuers.

Should the exchanges be required to only list issuers with compensation committees?

Yes. In my opinion, the statutory language in section 10C(a)(1) that foreign private issuers are only exempt if they disclose to shareholders the reasons why they do not have an independent compensation committee implies that domestic issuers are required to have a compensation committee. The Senate Report generally describes section 952 to prohibit the listing of any security of an issuer that does not comply with independent compensation committee standards. In contrast to the description of compensation committee standards, the Senate Report expressly states that the provision does not require the use of compensation consultants. It would seem illogical not to mention that the provision does not require listed issuers to have a compensation committee, if it would have been intended that listed issuers are not required to have compensation committees.

Not requiring listed issuers to have a compensation committee would also be inconsistent with the intent to ensure that the persons who decide about the compensation of executive officers are independent from those executive officers and from the listed issuers that are controlled by those executive officers. Not requiring listed issuers to have a compensation committee would mean that the board of directors, including directors that are not independent, can decide about the compensation of the chief executive officer and maybe even have a non-independent chief executive officer take part in the vote about the compensation of the other executive officers. This is mitigated to some extent by the fact that at least the NYSE's and the NASDAQ's listing rules currently require the majority of the members of the board of directors of listed domestic issuers to be independent. However, there is a difference between a decision taken by a committee that only consists of independent directors or only the independent directors (which would be a de facto committee if the non-independent directors are neither present during the discussions nor have a right to vote on such decisions) or the full board with the non-independent directors being present and taking part in the vote.

If the Commission, decides that listed domestic issuers should not be required to have a compensation committee, then all of the independent directors should the required to deliberate decide about the compensation of executive officers with non-independent directors not having a vote.

Our proposed rules would apply to a listed issuer's compensation committee, or in the absence of such a committee, any other board committee that performs functions typically performed by a compensation committee, including oversight of executive compensation. Is this proposed functional approach appropriate and workable? If not, why not?

In contrast to the definition of an audit committee in the Exchange Act, neither the Exchange Act nor the rules of Commission contain a definition of the functions of a compensation committee. The New York Stock Exchange has chosen a functional approach and I believe it has worked so far. However, the Commission should consider, whether Congress intended the compensation committee to determine and not just recommend the compensation of executive officers other than the chief executive officer to the full board with the non-independent directors having a right to vote. The listing rules of the NYSE currently allow that the compensation committee only proposes the compensation of the other executive officers to the full board of directors with the non-independent directors having a right to vote. The fact that the NYSE's listing rules also allows that the determination or approval of the compensation of the chief executive officer is made by the compensation committee together with the independent members of the board of directors seems to be less problematic, because it does not allow non-independent directors to take part in the vote and it broadens the number of independent directors that take part in the vote.

The Commission, could use its statutory authority to define technical, trade and other terms to define the term "compensation committee" through the functions and authority that such a committee typically performs. The approach in the Sarbanes-Oxley Act that all of the members of the board of directors of a listed issuer are required to be independent if no audit committee exists is quite drastic. It would be sufficient to require that in the absence of a compensation committee that only includes independent members of the board of directors, the majority of the members of the board of directors of listed issuers are required to be independent and that the preparation of a proposal for and the final decision about the compensation of executive officers is made by all of the independent directors with the non-independent directors not taking part in the vote.

As noted above, the listing standards of some exchanges permit a listed issuer to have its executive compensation matters be determined, or recommended to the board for determination, either by a compensation committee composed solely of independent directors or, in the absence of such a committee, by a majority of independent directors in a vote in which only independent directors participate. Should our rules implementing Section 10C require the exchanges to mandate that independent directors performing this function in the absence of a formal committee structure also be subject to our new rules? Would so doing be consistent with the mandate of Section 10C of the Exchange Act?

Yes, independent directors that perform this function in the absence of a formal committee structure should also be subject to all new rules including the consideration of the independence of compensation consultants.

Rather than establishing minimum independence standards that the exchanges must apply to compensation committee members, our proposed rule would permit each exchange to establish its own independence criteria, provided the exchange considers the relevant factors specified in Section 10C relating to affiliate relationships and sources of compensation. Is this approach appropriate? Is there a better approach that would be consistent with the requirements of Section 10C?

The existing minimum independence standards of the exchanges are currently used for audit committee membership and have been approved by the Commission.

The independence standards currently do not take into consideration the percentage of total income that a board member or an immediate family member of the board member receives directly or indirectly receives from the issuer. An absolute amount of 120’000 Dollars may not be high and may not impair the independence of a person that has a lot of other sources of income so that the 120’000 Dollars only represent a small fraction of that person’s total income. On the other hand 120’000 dollars or just a high board member fee or committee member fee may already potentially impair independence and create an incentive to keep the board member and committee member position and not to anger a chief executive officer that may have some influence over who is proposed to shareholders for re-election.

The proposed independence factors that must be considered relate to current relationships between the issuer and the compensation committee member, which is consistent with the approach in Rule 10A-3(b)(1) for audit committee members. Should the required factors also extend to a "look back" period before the appointment of the member to the compensation committee? (We note that the exchanges currently have look-back periods for their definitions of independence for purposes of determining whether a majority of the board of directors is independent.) For members already serving on compensation committees when the new listing standards take effect, should the required factors also extend to a "look back" period before the effective date of the new listing standards? If so, what period (e.g., three years or five years) would be appropriate? Should there be different look-back periods for different relationships or different parties? If so, what should they be, and why?

The look back periods of the current listing standards of the NYSE and NASDAQ for certain relationships seem appropriate. The look back periods should also apply to the time before the appointment of the member to the compensation committee. However, issuers should have an opportunity to cure such defects.

Should there be additional factors apart from the two proposed factors required to be considered? For example, should the exchanges be required to include business or personal relationships between a compensation committee member and an executive officer of the issuer as mandatory factors for consideration? Should the exchanges be required to include board interlocks or employment of a director at a company included in the listed issuer's compensation peer group as mandatory factors for consideration? Would any such requirements unduly restrain a company in setting the composition of its board of directors?

The Commission should consider the inclusion of the materiality of the income that is directly or indirectly received from the issuer (e.g. through profits from business relationships) as a percentage of the member's total income. However, this may be unfavorable for poorer board members and younger board members that have not had the time to accumulate several board memberships or other part-time sources of income. It could reduce the pool of candidates for the board of directors and reduce the social pool to "old boy networks" of persons that are active or retired executive officers at other companies or partners of accounting or law firms.

A director should not be considered independent if he or she is an executive officer at another company and an executive officer of the listed issuer serves as a director (or at a minimum as a member of the compensation committee) at this other company (i.e. a board interlock).

While boards may want to have directors that have experience in the same industry, this can also bring conflicts of interest unless the listed issuer and the employer of the director do not materially compete in the same markets and are unlikely to do so in the future. However, a director that is employed as an executive officer in a company that is in the compensation peer group of the listed issuer does not have a potential conflict of interest (other than simply being used to receive a certain level of compensation in such an industry and perceiving that is normal). On the contrary, a director that is employed as an executive officer in a company *whose* peer group includes the listed issuer, has a potential conflict of interest because his or her decisions about a higher compensation of the executive officers of the listed issuer may increase his or her own compensation at the other company. The fact that a listed issuer includes another company in its peer group does not necessarily mean that the other company also includes the listed issuer in its own peer group.

Large shareholders may be deemed affiliates by virtue of the percentage of their shareholdings. As noted above, some commentators have expressed the view that directors affiliated with large shareholders should continue to be permitted to serve on compensation committees because their interests are aligned with other shareholders with respect to compensation matters. Would a director affiliated with a shareholder with a significant ownership interest who is otherwise independent be sufficiently independent for the purpose of serving on the compensation committee? Would the interests of all shareholders be aligned with the interests of large shareholders with respect to oversight of executive compensation? Should our rules implementing Section 10C provide additional or different guidance or standards for the consideration of the affiliated person factor?

Directors that are affiliated with large shareholders who are otherwise independent should be permitted to serve on compensation committees provided the issuer discloses that some members of the compensation committee are affiliated with large shareholders and whether executives are related parties of such large shareholders. There is a residual risk that large shareholders grant excessive compensation to executive officers that are affiliated with those large shareholders and who then share some of that compensation with the large shareholders. However, this risk is also present because controlled companies are not required to have compensation committees that only consist of independent board members. At controlled companies controlling shareholders or family members of controlling shareholders may also be executive officers and may receive excessive compensation to the detriment of the profits received by the outside minority shareholders. This could be mitigated by requiring issuers where the majority of the board members that decide about the compensation of executive officers are affiliated with large shareholders, to provide additional disclosure about how the board determined that the compensation is at arm’s length.

Is additional specificity in the proposed rule needed to provide clearer guidance to listed issuers? For example, should we define what constitutes an “independent legal counsel”? If so, how?

No, this is not necessary.

Should we clarify more explicitly in the implementing rule that this provision is not intended to preclude the compensation committee from conferring with in-house legal counsel or the company's outside counsel or from retaining non-independent counsel?

No, this is not necessary. The compensation committee can determine whom it prefers to consult.

Our audit committee rules implementing Section 10A(m) provide that each listed issuer must provide funding for ordinary administrative expenses of the audit committee that are necessary or appropriate in carrying out its duties. Would such a provision be helpful with respect to the compensation committee? Do compensation committees have administrative expenses? If so, are they significant?

Yes.

Section 10C(b) specifies that the independence factors identified by the Commission must be competitively neutral, but does not state how we should determine whether a factor is competitively neutral. Are there any issues that should be considered to determine or assess whether a factor is competitively neutral?

The Commission should preserve the ability of new compensation consultants with no or a small client base to enter the market for the provision of advice on executive compensation for listed issuers. This is important in order not to harm competition in the market for compensation consulting services.

Are the five factors identified in Section 10C(b) of the Exchange Act competitively neutral among different types of compensation advisers? If not, what modifications or adjustments should be made in order to make these factors competitively neutral? Are there specific categories of compensation advisers that would be adversely affected by the compensation committee's use of these factors to assess independence?

No. Since the committee only needs to consider these factors, but is not precluded from selecting consultants where the issuer is one of the main sources of revenue or that provides other services to the issuer, there should be no problem.

Are there any factors affecting independence that we should add to the list of factors identified in proposed Rule 10C-1(b)(4)? If so, what are they and why should they be included?

No.

Would the existence of a business or personal relationship between a compensation adviser and an executive officer of the issuer be relevant in considering whether to engage the compensation adviser? If so, why? Should we add this to the required list of factors that must be considered?

Yes. The existence of a business or personal relationship between a compensation adviser and an executive officer would be as relevant as the existence of a business or personal relationship between a member of the board of directors and an executive officer of the issuer in current listing rules of stock exchanges. It may result in overly favorable recommendations for the compensation of the executive officer to the compensation committee.

Based on the language in Section 10C(b)(2), which distinguishes between the adviser and the person that employs the adviser, a personal or business relationship between the person employing the adviser and a member of the compensation committee would not be covered by the proposed rule (which, like Section 10C(b)(2)(D), only refers to relationships between the adviser and the compensation committee). Should the required list of factors also include a business or personal relationship between the person employing the compensation adviser and a member of the compensation committee? Along those lines, should it also cover a business or personal relationship between the person employing the adviser and an executive officer of the issuer?

A business or personal relationship between the person employing the adviser and a member of the compensation committee should also be considered since this creates a risk of selecting the advisory firm based on favoritism.

A business or personal relationship between the person employing the compensation adviser and the executive officer of the issuer should also be considered.

If the Commission concludes that it does not have the statutory authority to require compensation committees to consider those two additional factors, it could use its existing statutory authority to define the contents of registration statements, annual reports and proxy statements to require issuers to at least disclose whether they considered those two factors and if not, the reasons why they did not consider those two factors.

Should we provide materiality, numerical or other thresholds that would apply to whether or when the independence factors must be considered by a compensation committee? If so, what should they be? For example, should we require consideration of stock ownership only if the amount of stock owned constitutes a significant portion of an adviser’s net worth, such as 10%?

Yes. Counting any share, would just create a lot of bureaucracy for compensation advisory firms to keep track of the shares owned by the advisers and whether any new client is among the issuers of those shares. It would also create a lot of immaterial disclosure by advisory firms to compensation committees about a fractionally small conflict of interest through share ownership (i.e. disclosure noise) that would routinely be deemed to be immaterial by compensation committees.

Would law firms be affected by the requirement to consider independence factors in a way that would be materially different than how compensation consultants would be affected?

No.

Should we clarify what is covered by "provision of other services" in proposed Rule 10C-1(b)(4)(i)?

No. It is better to have a general principle than to have exhaustive detailed rules that may leave loopholes for services that may impair the independence of an advisory firm.

We interpret "any stock of the issuer owned by the compensation consultant, independent legal counsel or other adviser" in proposed Rule 10C-1(b)(4)(v) to include shares owned by the individuals providing services to the compensation committee and their immediate family members. We do not believe this factor is intended to extend to the person that employs the adviser since Section 10C(b) is specific when factors extend to the employer and that language is not included for stock ownership. Is this an appropriate interpretation of this factor? If not, why and how should this phrase be interpreted? Should it also cover the person that employs the adviser?

The omission of stock ownership by the person that employs the adviser seems to be an unintentional mistake by Congress. Since the employer usually has the ability to influence the behavior of the adviser through threatening to fire the adviser, it would be contrary to the intent of the independence rules not to consider stock ownership by the person that employs the adviser. In addition, from the point of view of compliance effort, it will be harder to track stock ownership of the employees of the advisory firms due to their grater number than to track stock ownership by the advisory firms and their affiliates (i.e. directors, officers and major shareholders).

Should we define or clarify the meaning of the phrase "business or personal relationship," as used in proposed Rule 10C-1(b)(4)(iv), and if so, how?

Yes. Since the definition is not delegated to the national securities exchanges, the Commission should at least provide examples of business or personal relationships. The independence standards for board members of the NYSE and of the NASDAQ could serve as an example for certain business or personal relationships.

Would the proposed requirements have any unintended effects on the compensation committee or its process to select a compensation adviser? If so, please explain.

Compensation committees that are overly concerned with the appearance of a lack of independence may prefer to only retain compensation advisers that do not provide other services to the company or that have a lot of other clients (i.e. no revenue concentration).

Should we adopt rule amendments to Regulation S-K to require listed issuers to describe the compensation committee's process for selecting compensation advisers pursuant to the new listing standards? Would information about the compensation committee's selection process – how it works, what it requires, who is involved, when it takes place, whether it is followed – provide transparency to the compensation adviser selection process and provide investors with information that may be useful to them as they consider the effectiveness of the selection process? Or, would such a requirement result in too much detail about this process in the context of disclosure regarding executive compensation?

No. I believe such a requirement would result in too much detail. Providing whether there are any potential conflicts of interest and how they are being addressed is what matters most to investors.

Should the exchanges be required to establish specific procedures for curing defects regarding compliance with compensation committee listing requirements apart from those proposed? If so, what should these procedures be? Should there be a specific course for redress other than the delisting process?

No. The existing procedures for curing defects in the independence of board members are sufficient.

Should our rule, as proposed, allow exchange rules that would permit the continued service of a compensation committee member who ceases to be independent for reasons outside the member's reasonable control? If so, should our rule impose a maximum time limit for such continued service? Should our rule require that the issuer use reasonable efforts to replace the member who is no longer independent as promptly as practicable?

The rule should impose a maximum time limit for the continued service of a compensation committee member who ceases to be independent for reasons outside the member's personal control. It should only be possible up to the next election for this board member or for one year, whichever is shorter.

Should our rule include specific provisions that set time limits for an opportunity to cure defects other than for instances where a compensation committee member ceases to be independent for reasons outside the member's reasonable control? If so, what time limits would be appropriate?

No.

Should companies that have just completed initial public offerings be given additional time to comply with the requirements, as is permitted by Exchange Act Rule 10A-3(b)(1)(iv)(A) with respect to audit committee independence requirements?

Yes. If it is fine for audit committee independence requirements, it should also be fine for compensation committee independence.

Should we exempt certain exchanges or associations from Section 10C of the Exchange Act? If so, why, and which exchanges or associations should we exempt and why?

No. Only exchanges that do not list equity securities should be exempt.

Would we need to exempt an exchange from Section 10C if we also exempt the class of securities listed on such exchange?

No.

We read Section 10C as applying only to issuers with listed equity securities, and our proposed rules are consistent with that view. Should we instead mandate that the requirements of Sections 10C(b) through (e) be applied to a broader range of issuers, including issuers with only listed debt securities or issuers with other types of listed securities? Why or why not?

The cash flows to investors in debt securities are usually not materially negatively impacted by excessive executive compensation because they receive interest before the shareholders receive their dividends.

Is our proposed exemption for securities futures products and standardized options necessary or appropriate in the public interest and consistent with the protection of investors?

Yes.

Alternatively, would it further the goal of investor protection to adopt Rule 10C-1 without the proposed exemption for securities futures products and standardized options?

No.

Should the Commission exempt any types of issuers, such as registered management investment companies, foreign private issuers or smaller reporting companies, from some or all of the requirements of Section 10C? If so, why? Instead, should the Commission, as proposed, defer to the exchanges for exemptions from Section 10C's requirements, rather than propose and adopt exemptions in our rules?

The Commission should not exempt foreign private issuers or smaller reporting companies from some or all of the requirements of Section 10C(b) through (e). In addition, section 10C(f) seems to require the Commission to defer to the exchanges for exemptions for certain categories of issuers.

Should the Commission issue additional guidance to the exchanges as to the factors that should weigh in favor of granting exemptions? What concerns, if any, should the Commission be aware of in reviewing exemptions proposed by the exchanges?

Potential conflicts of interest are also important for compensation consultants of foreign private issuers. The exchanges will hopefully not be able to grant exemptions to the board of directors of foreign private issuers from the duty to consider the independence of compensation consultants and to make certain disclosures about those consultants to investors.

Rather than exempt any category of issuers, should the Commission require the exchanges to give additional time to certain types of issuers to comply with the requirements of Section 10C, such as companies that have just completed initial public offerings? Or, should we defer to the exchanges to provide temporary exemptions, as proposed?

The Commission should defer to the exchange to provide temporary exemptions to companies that have just completed initial public offerings.

Should we provide a definition of "limited partnership" in our proposed rules? If so, what should it be?

No. The legal term limited partnership is well understood.

Should we define the scope of "companies in bankruptcy proceedings"? If so, what should that scope be?

No. The term is clear.

Do we need to clarify, as proposed, that in the case of foreign private issuers with two-tier boards of directors, the term "board of directors" means the supervisory or non-management board?

Yes. This is an appropriate clarification that is also useful for audit committees. The Commission already did this in its rules for audit committees in regulation S-K.

Should the Commission, as proposed, defer to the exchanges to identify and propose the types of particular relationships to be exempted from the independence requirements? If not, why not?

Yes.

Should we give guidance to the exchanges on how they should analyze relationships to determine whether an exemption is warranted or not?

No. The existing independence requirements for members of the board of directors seem to have worked well in practice.

Some of the exchanges, in their existing compensation committee listing standards, permit a listed issuer with a compensation committee comprised of at least three members to include one director who is not independent and is not a current officer or employee, or immediate family member of a current officer or employee, on the compensation committee for no more than two years if the issuer's board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required in the best interests of the company and its shareholders. Should our proposed rule expressly permit the exchanges to continue this practice by exempting certain relationships from the independence requirements, based on the conditions outlined above? Should our proposed rule expressly prohibit the exchanges from continuing this practice?

The Commision's rules should expressly prohibit this practice.

What issues should an exchange consider in proposing an exemption?

No comment.

Exchange Act Rule 10A-3 requires listed issuers that avail themselves of an exemption from the audit committee independence requirements to disclose such reliance on an exemption in the listed issuer's proxy statement and Form 10-K or, in the case of a registered management investment company, Form N-CSR. Should we similarly require any issuer availing itself of any of the exemptions set forth directly in Section 10C(a)(1) of the Exchange Act or any exemption granted by the relevant exchange to disclose that fact in its proxy statement and Form 10-K or, in the case of a registered management investment company, Form N-CSR or another form? Under current rules, an issuer is required to identify any compensation committee members who are not independent. In light of this requirement, is a specific requirement to note reliance on an exemption unnecessary?

No.

If a listed issuer's board of directors determines, in accordance with applicable listing standards, to appoint a director to the compensation committee who is not independent, including as a result of exceptional or limited or similar circumstances, should we require the issuer to disclose the nature of the relationship that makes that individual not independent and the reasons for the board of directors' determination,

Yes.

We request comment on our proposed implementation of the requirements of Section 10C(c)(2). Is it appropriate to limit Section 10C(c)(2)'s disclosure requirement to proxy and information statements for meetings at which directors are to be elected? If not, why not? Is it appropriate to extend Section 10C(c)(2)'s disclosure requirement to controlled companies and those Exchange Act registrants that are not listed issuers, as proposed? If not, why not?

Section 10C(c)(2)'s disclosure requirements should be included in annual reports unless a proxy or information statement for meetings at which directors are to be elected will be filed shortly after the end of the fiscal year. In other words, investors should receive this information on an annual basis even if elections of directors do not happen every year.

Section 10C(g) expressly states that this section (and not just a subsection) shall not apply to any controlled company. Unless the Commission can clearly demonstrate that this was against Congress clear intent that is reflected in documents and statements from the legislative history, it would not be appropriate to extend Section 10C(c)(2)'s disclosure requirement to controlled companies. However, it is appropriate to extend 10C(c)(2)'s disclosure requirement to other domestic issuers and foreign private issuers that are not listed issuers.

Should we amend Forms 20-F and 40-F to require foreign private issuers that are not subject to our proxy rules to provide annual disclosure of the type required by Section 10C(c)(2)? Why or why not?

Yes. In fact foreign private issuers should be required to provide the corporate governance disclosures, including disclosure that relate to the board of directors, the nominating committee, the compensation committee and the audit committee, executive compensation disclosures and related party disclosures of regulation S-K. I see no reason why investors and potential investors in foreign private issuers should receive less disclosure and should receive less protection. Particularly, foreign private issuers should be required to disclose the individual compensation of the individual executive officers unless this is expressly prohibited by foreign law (private confidentiality agreements between issuers and executive officers should not matter). Disclosures are usually permitted by foreign law while hard requirements for the existence and powers of committees may conflict with foreign corporation laws or securities laws.

Is it preferable to integrate the Section 10C(c)(2) disclosure requirements with the existing requirements of Item 407(e)(3), as proposed, or, instead, should we add the new requirements without modifying the existing requirements of the item?

Yes it is preferable to integrate the Section 10C(c)(2) disclosure requirements with the existing requirements of Item 407(e)(3) as proposed.

Should we extend any of the current exclusions under Item 407(e)(3) to the new Section 10C(c)(2) disclosures? Conversely, should we eliminate altogether the exclusions under Item 407(e)(3)?

No.

Are there any additional disclosures concerning conflicts of interest involving the activities of compensation consultants that would be beneficial to investors?

Yes. Certain private or business relationships between the person that employs the adviser and the executive officers and between the person that employs the adviser and the members of the compensation committee should be disclosed. In addition, stock ownership by the person that employs the adviser should be disclosed if it is material.

Is additional clarification necessary regarding the phrase "obtained the advice"? Does our proposed instruction provide adequate guidance to issuers on how to interpret that phrase?

Additional clarification regarding the phrase "obtained the advice" is not necessary.

Do the five factors in proposed Rule 10C-1(b)(4)(i) through (v) help issuers determine whether there is a "conflict of interest"? Should we define the term "conflict of interest"? If so, how? Are there other factors that should be considered in determining whether there is a conflict of interest? If so, should these factors also be identified in the proposed instruction?

Certain private or business relationships between the person that employs the adviser and executive officers and between the person that employs the adviser and members of the compensation committee should be considered. In addition, stock ownership by the person that employs the adviser should be considered if it exceeds minimum materiality thresholds.

Because a compensation committee may be reluctant or unable to definitively conclude whether a conflict of interest exists, should we also include the appearance of a conflict of interest in our interpretation of what constitutes a "conflict of interest" that must be disclosed under our proposed rules? Why or why not? Should we include potential conflicts of interest in our interpretation? Why or why not? We note that our 2009 amendments to Item 407(e) did not conclude that there was a conflict of interest posed by a consultant providing additional services to the issuer, only that there was a potential conflict of interest.

The disclosure of a potential conflict of interest, which would include the appearance of a conflict of interest, seems appropriate. Compensation advisers with intact ethics may operate without their independence being impaired in fact even if others may perceive the appearance of a conflict of interest.

Should we should require fee disclosure for other types of potential conflicts of interest, such as revenue concentration, in light of Section 10C(c)(2)'s requirement that the factors considered by the compensation committee before engaging compensation advisers be "competitively neutral"? For example, to address revenue concentration, we could require disclosure of an adviser's fees received from the issuer (in percentage terms) if such fees comprise more than 10% of the adviser's annual revenues. Would this be appropriate?

Yes, disclosure of an adviser's fees received from the issuer in percentage terms if such fees comprise more than 10% of the adviser's annual revenues seems appropriate and would provide relevant information to investors since investors may disagree with the compensation committee's views about the presence of a conflict of interest and this may influence their decisions to re-elect compensation committee members to the board of directors.

Although a listed issuer's compensation committee is required to consider independence factors before selecting any compensation adviser, Section 10C(c)(2) requires conflict of interest disclosure only as to compensation consultants. Should we also extend this disclosure requirement to other types of advisers to the compensation committee, such as legal counsel? Why or why not?

The disclosure requirements should not be extended to other types of advisers to the compensation committee because their advice typically has less of an impact on the decision about the magnitude of the compensation of executive officers.

As proposed, and consistent with current rules, Item 407(e)(3) would apply to smaller reporting companies. Should we exempt such companies from these disclosure requirements? Do many smaller reporting companies' compensation committees retain or obtain the advice of compensation consultants? Should an exemption be provided if the exchanges exempt such companies from the listing standards required by Section 10C?

Smaller reporting companies should not be exempt from Item 407(e)(3). Since this is only a disclosure provision, the exemption should not be provided if the exchanges exempt such companies from the listing standards required by Section 10C (i.e. from the requirement to have an independent compensation committee).

Do the proposed implementation dates provide sufficient time for exchanges to propose and obtain Commission approval for new or amended rules to meet the requirements of our proposed rules? If not, what other dates would be appropriate, and why?

Yes. Considering that the exchanges already have rules for the independence of members of the board of directors and for compensation committees and that they can also provide comments during the comment period of this proposed rule, a deadline of 90 days for the submission of proposed listing rules to the Commission seems appropriate.

What factors should the Commission consider in determining these dates?

No comment.

Should our rules also specify the dates by which listed issuers must comply with an exchange's new or amended rules meeting the requirements of our proposed rules? If so, what dates would be appropriate? Should there be uniformity among the exchanges with respect to the dates by which their listed issuers must comply with the exchanges' new or amended rules?

Yes. There should be a maximum date after the approval of the listing rules by the Commission until which issuers must comply with the new rules. The date should provide issuers with sufficient time to search for new independent candidates for the board of directors and to hold an annual general meeting to elect those candidates. There does not need to be uniformity among the exchanges. Exchanges that have their listing rules approved by the Commission earlier can also have their issuers comply earlier. However, most domestic issuers at the NYSE and the NASDAQ are already required to have independent compensation committees or at least boards with a majority of independent members. As a consequence, there should be few listed issuers that do not already have independent board with the necessary qualifications and knowledge to sit on a compensation committee.

Would a period beyond the proposed date be necessary or appropriate for compliance by smaller reporting companies? Are there special considerations that we should take into account for foreign private issuers?

The Commission should keep in mind that issuers that are established under the laws of a foreign country may be considered to be domestic issuers for purposes of the Exchange Act if the majority of the shareholders are U.S. persons. So conflicts with foreign laws could also be an issue for a small number of domestic issuers. Since the rules do not create an obligation for foreign private issuers to have independent compensation committees with the power to make certain decisions, there should be no conflicts with foreign corporation law and securities law. The corporation law of some foreign countries may not allow the board of directors to delegate the power to make legally binding decisions for the board of directors to committees of the board of directors. It may only allow committees to make proposals to the full board that have to be approved by the full board in order to be legally binding.

I appreciate the opportunity to comment on these matters and hope that my comments are useful in the rulemaking process.

Respectfully submitted,

Georg Merkl