April 28, 2011

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

Dear Ms. Murphy,

Subject: Comments on Proposed Rules Relating to Listing Standards for Compensation Committees Release Nos. 33-9199; 34-64149; File No. S7-13-11 (the "Release")

We respectfully submit this letter in response to the solicitation by the U.S. Securities and Exchange Commission (the "Commission") for comments on the proposed rules and rule amendments relating to Listing Standards For Compensation Committees and Corporate Governance disclosures under Section 229.407(e)(3)(iii) of Regulation S-K (the "Proposed Rules"). The Proposed Rules are intended to implement Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank"), which amends the Securities Exchange Act of 1934 by adding Section 10C.

Aon Hewitt is the world's pre-eminent human resources consulting and outsourcing firm with the resources, expertise, and global reach to solve the most pressing and complex people challenges that organizations face today. In our view, providing a full range of services to our clients allows us to be both fully informed and objective about the needs and interests of our clients.

We appreciate the opportunity to offer these comments and hope that the Commission finds our observations and recommendations useful in developing final rules. Our comments provided below are limited to those sections of the Proposed Rules that we believe have a direct impact on consulting and other engagements with our clients; namely, "The Compensation Adviser Independence Factors" and "Compensation Consultant Disclosure and Conflicts of Interest" sections of the Proposed Rules. To help facilitate your review of our comments along with the comments of others, we have listed the specific requests for comment you made in these two sections along with our responses.

As you read through our comments, you will find there are three major areas of concern:

- First, we believe that the five independence factors specifically mandated by Dodd Frank (as well as any additional factors included in an exchange's listing standards) should be considered collectively, and neither the standards nor the disclosures mandated by the Commission should directly or indirectly single out any single factor as one that deserves special attention. In other words, the filer should be instructed to look at all five factors in their totality and to use them collectively to determine whether or not they believe there is the potential for a conflict of interest. The simple presence of one factor should not lead to the immediate conclusion that there is a conflict.

Consulting | Talent & Rewards
100 Half Day Road | Lincolnshire, IL 60069
t +1.847.295.5000 | f +1.847.295.7634 | aonhewitt.com

- Second, we believe that required proxy disclosures (and related instructions) should be constructed in a competitively neutral manner. As explained below, we believe the existing disclosures under Item 402(e)(iii) are not competitively neutral.
- Finally, we believe clarification of key terms (e.g., "adviser," "provide advice," and "business or personal relationships") is essential and should reflect a notion of materiality with respect to the issue of independence.

Request for Comment on Compensation Adviser Independence Factors

- 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?

  We believe that the five factors, when taken together as a group, comprise a "competitively neutral" approach to determining independence. However, we think certain factors are not competitively neutral on an individual basis. For example, "the provision of other services to the issuer by the person that employs the compensation consultant" is not competitively neutral since multi-service firms are the only ones for which this standard is relevant; conversely, the percentage of fees received would similarly discriminate against a small firm. Therefore, we think it is imperative that instructions to these rules emphasize how the factors should be considered as a group and that no one factor should be singled out as a determining factor of independence.

  We also believe that any disclosure requirements imposed by the Commission must be competitively neutral as well. The existing disclosures under Item 407(e)(3)(iii), as well as the proposed amendments to Item 407(e)(3)(iii), are not, in our view, competitively neutral. As currently structured, the fee disclosure burden falls entirely on multi-service firms. Requiring multi-service firms to disclose financial information related to the compensation consulting in cases where a compensation committee has concluded there is no conflict of interest results in a bias against multi-service firms which in fact may be best qualified to assist a compensation committee. Furthermore, it is not competitively neutral because it allows other service providers to know the cost of services. This information could be used to another provider's competitive advantage (e.g., through bidding for work at lower fee levels).

  In light of the independence discussion mandated under Dodd Frank, we question whether the current fee disclosure (in dollars) under Item 407(e)(3)(iii) should be required. (Note: Dodd Frank mandates disclosure of the "nature of the conflict" when there is an actual conflict of interest and does not require disclosure of specific conditions relating to potential conflicts of interest.) We strongly concur that the Committee should be solely responsible for determining whether or not there is a conflict. If they have determined that there is no conflict on the basis of the facts available to them, that should preclude the requirement for further disclosure.

If, however, the Commission still believes it is necessary to provide shareholders with financial information that it considers relevant to potential conflicts of independence, then we recommend a disclosure framework that is competitively neutral. Such a framework should include a disclosure threshold based on a level of materiality that is relevant to the adviser (e.g., 1% of annual revenues rather than $120,000 in absolute dollar terms), and it should result in disclosure by all types of advisers (and not, through its construction, by a single type of provider). This type of framework is unbiased and would be less likely to result in the reader automatically concluding that one type of adviser is more likely to have a potential conflict of interest than another.

- 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?

  See above comment.

- 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?

  We do not believe it is necessary to expand the list of factors that might have a material impact on the independence of a consultant. We do believe, however, that the rules (or instructions to the rules) should specifically introduce a notion of materiality with respect to the compensation for which advice may be provided. If a compensation committee obtains advice from a consultant solely with respect to a portion of an officer's compensation that is immaterial to the total amount of compensation that the officer receives, or an aspect of the compensation that is relatively immaterial (e.g., beneficiary designations), there should be no need to examine the independence of the consultant.

- 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?

  Though we believe such a relationship could be relevant in certain circumstances (e.g., the issuer's Chief Executive Officer and the consultant to the compensation committee are related by marriage), we believe the five factors mandated by Dodd Frank are sufficient to illustrate the types of factors where independence may be compromised. Compensation committees bear the ultimate responsibility for choosing factors that are relevant to determining the independence of particular advice it has obtained, and we do not believe expanding the number of factors is useful or necessary.

- 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?

We believe the language in Section 10(C)(b)(2) is unambiguous. Therefore, expanding the scope to cover the relationships of the person employing the adviser is both unnecessary and unproductive. Particularly in the context of a large multi-service organization such as Aon Hewitt, it is highly unlikely that the individual adviser in an engagement would be aware of a business or personal relationship a member of the compensation committee or an executive officer of the issuer has with one of the senior executives of Aon Hewitt. We believe adding such a factor will result in time spent needlessly looking for something that is unlikely to have any relevance to determining the independence of the adviser. We would agree that asking the consultant to disclose to the committee any personal or business relationship that they believe could affect their independence is acceptable.

- 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 percent?

  As indicated by our earlier remarks, we do support the consideration of materiality. However our experience with the materiality level selected for fee disclosure ($120,000 of other services) suggests that any level specified by the Commission could have unintended consequences. In the case of large, global, multi-service providers, we believe that compensation committees may forego obtaining the best available advice simply to avoid disclosing fees even though the amount of fees and/or concentration of fees in any one service area are clearly immaterial to the independence question. With respect to an issuer's stock owned by a consultant, one must first question as to whether stock ownership is a good or bad thing. Most companies require executives and Directors to own stock because they believe it provides a sense of shared interest with stock holders. Why is it a bad thing for consultants to the Board to own company stock?

  Therefore, we would suggest that "materiality" be set in a meaningful manner. For example, if the services provided to a Committee or to a company, constituted more than 5 percent of the consulting firm's revenue, that could be considered "material." For items such as stock ownership, again, there should be a threshold of materiality, but it should ideally be a bright line—e.g., $100,000 of stock—rather than an individualized target (10% of net worth) which would be difficult, if not impossible to enforce.

  The key needs to be at what point does the potential lack of objectivity rise to a level where it must be taken into account?

- 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?

  We believe law firms are in the best position to answer this request for comment. By the same token, we believe that if the perception of a lack of objectivity is at issue, it should apply in a uniform manner to all advisers.

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

  We do not believe clarification is necessary.

- 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?

  We agree with the Commission's belief that the factor should not be extended to the person that employs the adviser.

  Along the same line, we think it would be helpful for the Commission to clarify that the term "adviser," when used in the context of examining any of the independence factors, refers only to the individual(s) who have primary responsibility for providing the advice to the compensation committee. Without this clarification, some may improperly interpret the term to include other staff assigned to assist these individuals.

  Also, the Commission should clarify that stock ownership does not include stock of the issuer held in a mutual fund, exchange-traded fund, independently managed portfolio, etc.

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

  We believe it would be helpful to clarify the phrase "business or personal relationship." We do not, for example, think that a business or personal relationship that is more casual in nature (such as a relationship based on common membership is a service organization) is relevant. It might be helpful to limit the factor of both business and personal relationships to those that would "more likely than not have a material adverse affect on an individual's independence." Again, since the objective is to address those issues which might impair the objectivity of the relationship, the focus should be on those business or personal relationships where a threshold of materiality has been reached.

- 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?

We do not believe requiring a disclosure describing the compensation committee's process for selecting advisers will provide information that is useful to investors. We believe the proxy disclosures, in many cases, are already too lengthy. In addition, in light of the enormous amount of time and resources issuers and their advisers already spend on various narrative sections of the proxy, we believe there will be a tendency to use a boilerplate description of the selection process that will be of little utility to the investor.

Request for Comment on Compensation Consultant Disclosure and Conflicts of Interest

- 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?

  We agree with the Commission's recommended approach to these items for reasons similar to those described in the Release.

- 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?

  Without the context of the other required proxy disclosures, we do not believe amending Forms 20-F and 40-F for this limited purpose will be useful.

- 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?

  We believe it is preferable to integrate the new disclosure requirements with the existing requirements, but we also believe the existing disclosure requirements under Item 407(e)(3))(iii)(A) and (B) have already achieved the desired result and should not be changed. Issuers and consulting firms have already made significant adjustments to their business practices in light of the existing Item 407(e)(3)(iii) requirements and requiring these parties, in some cases, to make additional adjustments simply because the wording of existing rules is changed to mirror the language under Dodd Frank is costly and unnecessary. (In particular, the proposed change in wording from "engage a compensation consultant" to "retain or obtain the advice of a compensation consultant" is not, in our view, needed.)

- 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)?

  We believe the current exclusions under Item 407(e)(3) should be extended to the compensation consultant disclosure mandated under Dodd Frank. We do not believe Congress was at all *concerned with these excluded services when the law was enacted, and we believe the goal of independence has already been accomplished with the existing structure. We also believe that eliminating the current exclusion will only result in unnecessary confusion and disruption to issuers and the advisers that serve them.*

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

  We believe that compensation committees have appropriately adapted their internal procedures to ensure that independent counsel, when sought, is in fact independent, and adding disclosures beyond that required under Dodd Frank would not be materially beneficial to investors.

- 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?

  This is one area where we believe clarification is essential. The phrase “obtained the advice” is vague and could be interpreted to include passive or casual activities that we do not believe are the focus of the Dodd Frank legislation. We believe the phrase “obtained the advice” is intended to mean a formal process concerning material components of executive-level (and not “broad-based”) compensation. Furthermore, we believe any interpretation of obtaining advice should reflect a significant expectation of reliance upon by the compensation committee. Merely asking an adviser for a point of view, without an expectation that it will be a significant factor in the decision-making process, should not be construed as obtaining advice. Additionally, obtaining advice should not include passive activities such providing a compensation committee articles and other materials written by consultants that are not specific to the issuer’s situation. Clearly, the intention is to identify those charged with the formal role of “independent” advisor. Companies and committees seek and receive input from many sources.

  Finally, obtaining advice of a compensation consultant should exclude the advice of management’s compensation consultant if the compensation committee has its own compensation consultant and that committee’s consultant is qualified to advise the committee on the same matter. (This treatment would be consistent with the current rules relating to the disclosure of fees paid to management’s compensation consultant when the compensation committee has engaged its own consultant.)

- 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?

  For reasons stated earlier, we believe the five factors provide sufficient guidance for determining if a conflict of interest exists. In addition, we think the Commission should provide an instruction to (proposed) Item 407(e)(3)(iii) that states “For purposes of this paragraph (e)(3)(iii) of this Item, a “conflict of interest” has been raised if, after taking into account all of the independence factors (for consultants and other advisers) required to be considered under the listing standards applicable to the registrant, the objectivity of the consultant or adviser has been or would be materially impaired with regard to the advice being sought.”

- 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.

  In our experience, compensation committees have not at all been reluctant or unable to conclude if a conflict of interest exists, and extending the rules to cover potential conflicts of interest is unnecessary. We do believe there would be much confusion over whether or not a potential conflict of interest exists, and we also believe including this in the rule framework would not be "competitively neutral."

- 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 percent of the adviser's annual revenues. Would this be appropriate?

  As we have stated earlier, the existing fee disclosure requirements are not competitively neutral as the burden falls (nearly) entirely on multi-service organizations. Adding a fee disclosure (in percentage terms) if an adviser's fees received from the issuer comprise more than 10 percent of annual revenues does nothing to change this. We believe, however, that disclosures under Item 402(e)(3) would become more competitively neutral if a similar test and similar percentage disclosure were used in place of the existing dollar fee disclosure under Item 402(e)(3)(iii). In other words, if the provision of other services comprise more than, say, 5 percent of the adviser's annual revenues, then the fees received from the issuer, ***in percentage terms****, would be disclosed.*

- 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 <u>consultants</u>. Should we also extend this disclosure requirement to other types of advisers to the compensation committee, such as legal counsel? Why or why not?

  We believe the rules relating to independence factors should consistently apply to any "independent" adviser to the compensation committee if the adviser assists the committee in making decisions relating to compensation of executive officers that an investor would reasonably consider as material. Further, by limiting disclosure to those deemed to be compensation "consultants," a unintended consequence could be that work is done and presented by legal counsel (or by those not traditionally considered consultants, such as academia) as a means of circumventing the disclosure rules.

- 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?

  We are not aware of any particular problems smaller reporting companies have had with the existing rules, and we do not believe the additional rules mandated by Dodd Frank will be any more burdensome on smaller reporting companies.

We appreciate the opportunity to provide the Commission with comments relating to its proposed rules under Section 952 of Dodd Frank, and we would be happy to discuss with the Commission and/or its staff any of our comments provided herein.

Sincerely,

Theodore R. Buyniski
Senior Vice President
Radford
An Aon Hewitt Company

Brian Dunn
Chief Executive Officer Global Compensation Aon Hewitt

Todd McGovern
Principal Aon Hewitt

David M. Sugar
Principal Aon Hewitt

DMS:mm
Aon Hewitt Comments on File Number S7-13-11
Sent via email: rule-comments@sec.gov