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May 19, 2011

Via email: rule-comments@sec.gov

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

**Re: Proposed Rules Relating to Listing Standards for
Compensation Committees – File No. S7-13-11**

Dear Ms. Murphy:

This letter is in response to Release No. 33-9199 (the “Proposing Release”) in which the Commission solicits comments on proposed rules to implement the provisions of Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, relating to compensation committee listing standards.

We support the Commission’s proposal to permit stock exchanges to establish their own independence criteria, taking into consideration the factors set forth in the statute. The stock exchanges have spent considerable time and resources over the past 10 years to develop, interpret and apply listing standards relating to compensation committee independence and, in our experience, they possess a deep and practical understanding of the considerations that should be taken into account in setting broadly applicable rules in this regard.

In fact, as discussed further in Comments 1 and 2 below, we believe the Commission’s final rule should clarify, for the avoidance of doubt, that the stock exchanges have the authority, in their discretion, to implement phase-in schedules and to create exceptions for particular categories of companies beyond those listed in the rule. This will allow the stock exchanges to bring to bear their considerable practical experience in developing and applying corporate governance standards to their listed companies. In addition, as discussed in Comment 3 below, we would recommend clarifying changes to the proposed compensation adviser independence rule to ensure that

it does not unduly impair communications between the compensation committee and in-house or company counsel.

Comment 1: Rule 10C-1 or the adopting release should clarify that the stock exchanges may, in their discretion, provide for phase-in or transition periods for the new listing standards.

The Commission's proposed rule does not itself set forth phase-in periods or transition periods for the stock exchange rules. The Proposing Release provides that each exchange must have final rules approved by the Commission no later than one year after publication of the final Commission rule, but is silent on when the stock exchange listing standards must be made applicable to listed companies. The approach of not setting forth particular deadlines for the effectiveness of the stock exchange rulemaking is consistent with the Commission's overall approach of deference to the stock exchanges for the details of implementation.

We believe it would be helpful, however, for the final rule or the adopting release to expressly confirm that the stock exchanges may provide for a transition period following the Commission's approval of the new listing standards. As a practical matter, such a transition period will be necessary to enable companies to find qualified independent directors to serve on their compensation committees, to the extent changes are necessary. The stock exchanges have significant experience in assessing the impact that their new standards will have on companies and the amount of time needed for companies to comply, including experience gained in their adoption and implementation of enhanced corporate governance listing standards in 2003 and 2004. The appropriate transition period will depend in large part on the substance of the new listing standards, and so should be established by the stock exchanges in conjunction with the development of the new listing standards.

Similarly, the final Commission rule or the adopting release should confirm that the stock exchanges may provide for a delayed or phased-in effectiveness of the compensation committee listing standards for companies in particular situations, such as those listing upon an initial public offering, those emerging from bankruptcy, those ceasing to be controlled companies and those transferring from another exchange.¹ Again, the appropriate phase-in or grace periods will depend on the details of the new listing standards, and the Commission's rulemaking should leave no doubt that the stock

¹ The stock exchanges have provided for delayed effectiveness of certain of their listing standards for companies in these and other circumstances. *See, e.g.*, Paragraph 303A.00 of the NYSE Listed Company Manual and Nasdaq Stock Market Rule 5615(b).

exchanges have the discretion to determine the timing of the application of the new standards to companies in these or other circumstances.

Comment 2: Rule 10C-1 should clarify that the stock exchanges may, in their discretion, exempt categories of issuers other than those expressly set forth in the rule.

Proposed Rule 10C-1(b)(1)(iii) specifies certain categories of issuer that would be exempt from the compensation committee independence requirements, and provides that a stock exchange may exempt “a particular relationship with respect to members of the compensation committee . . . taking into consideration the size of an issuer and any other relevant factors.” More broadly, proposed Rule 10C-1(b)(5), captioned “General Exemptions,” provides that an exchange “may exempt from the requirements of this section certain categories of issuers, as the [exchange] determines is appropriate, taking into consideration the potential impact of such requirements on smaller reporting issuers.”

We do not believe that the intent of Rule 10C-1(b)(5) is to limit the “general” exemptive authority of the exchanges to apply only to companies of a particular size, notwithstanding the reference to smaller reporting issuers in the final clause. However, we suggest that the final rule make this clear. We note that the exchanges have specified other categories of issuers (including closed-end investment companies) from some or all of their corporate governance listing standard requirements.² The extent to which particular categories of issuers should be exempted from some or all aspects of the listing standards, or should be subject to lesser or otherwise differing standards, will necessarily depend on the substance of the listing standards, and therefore these determinations should be made by the exchanges in conjunction with the development of the listing standards.

Comment 3: Rule 10C-1 should clarify that compensation committees are not required to consider the independence of in-house legal counsel or legal counsel or other advisers retained by the issuer or management.

Proposed Rule 10C-1(b)(2) provides that the compensation committee “may, in its sole discretion, retain or obtain the advice of a compensation consultant, independent legal counsel or other adviser” of a listed issuer. The Proposing Release helpfully clarifies that this authority to engage independent counsel does not *require* that the committee retain independent legal counsel and, in particular, does not preclude a

² See, e.g., Paragraph 303A.00 of the NYSE Listed Company Manual and Nasdaq Stock Market Rule 5615(a).

compensation committee from “obtaining advice from in-house counsel or outside counsel retained by the issuer or management.”

Proposed Rule 10C-1(b)(4) provides that a compensation committee “may select a compensation consultant, legal counsel, or other adviser to the compensation committee” only after considering particular independence-related factors. We believe that, consistent with the distinction specified above with respect to Rule 10C-1(b)(2), this requirement to consider an adviser’s independence is not intended to apply to in-house counsel or outside counsel or other advisers retained by the issuer or management, even if the compensation committee consults with or receives advice or other information from such counsel or other advisers. In our experience, the ability to discuss matters and receive information from in-house or outside counsel to the issuer helps the compensation committee more fully understand the legal implications of the matters they are considering and allows them to make more fully informed decisions. Requiring the compensation committee to consider the “independence” of company counsel (whether in-house or external) before consulting with them would be a pointless exercise in the situation where this counsel is not purported to be a separate independent adviser.

* * *

We appreciate this opportunity to comment on the proposed rulemaking, and would be happy to discuss any questions with respect to this letter. Any such questions may be directed to Robert Reeder (212-558-3755), Marc Trevino (212-558-4239) or Glen Schleyer (212-558-7284) in our New York office.

Very truly yours,

SULLIVAN & CROMWELL LLP