Compensia

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Via E-Mail: (rule-comments@sec.gov)

November 18, 2010

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-9303
Attn: Elizabeth M. Murphy, Secretary

**Re: File No. S7-31-10**
**Shareholder Approval of Executive Compensation and Golden Parachute Compensation**
**(Release Nos. 33-9153; 34-63124)**

Dear Ms. Murphy:

This letter is submitted on behalf of Compensia, Inc. ("Compensia") in response to the Securities and Exchange Commission's request for comments on Release No. 33-9153 (published October 18, 2010 and referred to herein as the "Release") regarding proposed amendments to the Commission's rules to implement the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to shareholder approval of executive compensation and "golden parachute" compensation arrangements (the "Proposals").

Compensia, which is located in San Jose and Corte Madera, California, is a management consulting firm providing executive compensation advisory services to compensation committees and senior management of knowledge-based companies. Formed in 2003 by a group of leading executive compensation experts, we advise the board compensation committees of numerous technology, life sciences, and other companies, and have extensive experience designing and implementing executive and director remuneration programs. We understand how board compensation committees function and we have assisted many of our clients, which range from recent IPOs to Fortune 500 companies, in preparing and improving their executive compensation disclosure.

We support the Commission's objective of providing companies with comprehensive guidance for conducting the various shareholder advisory votes required by new Section 14A of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 951 of the Dodd-Frank Act. As requested, we are providing comments on several aspects of the Proposals using the numbered questions set forth in the Release. We appreciate the opportunity to comment on the Proposals.

## I. Shareholder Approval of Executive Compensation

Request for Comment No. 1: *Should we include more specific requirements regarding the manner in which issuers should present the shareholder vote on executive compensation? For*

*example, should we designate the specific language to be used and/or require issuers to frame the shareholder vote to approve executive compensation in the form of a resolution? If so, what specific language or form of resolution should be used?*

We do not believe that it is necessary for the Commission to provide more specific requirements regarding the manner in which issuers present the shareholder advisory vote on executive compensation. We believe that it is important to preserve flexibility for companies to structure the form or language of the resolution to be voted on by shareholders in any manner that they deem appropriate (including the use of multiple resolutions) as long as the resolution (or resolutions) relate to all of the executive compensation disclosure required pursuant to Item 402 of Regulation S-K.

Request for Comment No. 6: *Should we amend Item 402(b) to require disclosure of the consideration of the results of the shareholder advisory vote on executive compensation in CD&A as proposed? If not, please explain why not.*

We recommend that the Commission forego its proposal to amend Item 402(b) of Regulation S-K to require disclosure of the consideration of the results of the shareholder advisory votes on executive compensation in the Compensation Discussion and Analysis. While we understand the intent of the proposal, we are concerned that, in the vast majority of situations where shareholders have approved the executive compensation program, the resulting disclosure will quickly devolve into "boilerplate," lengthening the Compensation Discussion and Analysis without adding any meaningful insights for investors. We also are concerned that it will be difficult, if not impossible, to ascertain the degree to which changes to compensation policies or practices were the result of or influenced by the results of previous shareholder advisory votes on executive compensation. Finally, where a majority of shareholders have voted against an executive compensation program, we believe that a company will be highly motivated to highlight and explain its response to the vote in order to avoid a future unfavorable vote.

Request for Comment No. 7: *Should the requirement to discuss the issuer's consideration of the results of the shareholder vote be included in Item 402(b)(1) as a mandatory principles-based topic, as proposed, or should it be included in Item 402(b)(2) as a non-exclusive example of information that should be addressed, depending upon materiality under the individual facts and circumstances? In this regard, commentators should explain the reasons why they recommend either approach.*

As explained in our response to Request for Comment No. 6, we do not believe that a mandatory requirement to discuss an issuer's consideration of the results of the shareholder advisory votes on executive compensation in the Compensation Discussion and Analysis is warranted. Accordingly, if the Commission decides to proceed with such a disclosure requirement for the Compensation Discussion and Analysis, we recommend that the requirement be included in Item 402(b)(2) of Regulation S-K as a non-exclusive example of information that should be addressed, depending upon materiality under the individual facts and circumstances, rather than in Item 402(b)(1) of Regulation S-K as a mandatory "principles-based" topic. We believe that

this approach is sufficient to enable companies to address the subject in their Compensation Discussion and Analysis when the results of the shareholder advisory votes were a clear factor in the addition, deletion, or change of a compensation policy or practice, while minimizing the risk of "boilerplate" disclosure.

Request for Comment No. 8: *Should the proposed requirement for CD&A discussion of the issuer's consideration of previous shareholder advisory votes be revised to relate only to consideration of the most recent shareholder advisory votes?*

If the Commission decides to proceed with a disclosure requirement for the Compensation Discussion and Analysis (whether such requirement is included in Item 402(b)(1) or 402(b)(2) of Regulation S-K, we recommend that the discussion of the issuer's consideration of previous shareholder advisory votes on executive compensation relate to all previous shareholder advisory votes, rather than such the most recent shareholder advisory vote. We believe that this is the most appropriate approach since a decision to add, delete, or change a compensation policy or practice may evolve over time, rather than be the result of a specific vote (particularly if that result is a favorable one). In our experience, some changes to an executive compensation program, whether structural or operational in nature, take place gradually. While we expect that the shareholder advisory vote on executive compensation will constitute an additional data point to be taken into consideration by a company or its board of directors, it may take more than one vote before the "message" that is being sent by shareholders is understood and an appropriate response is formulated. We are concerned that, if the disclosure requirement is limited to just the most recent shareholder advisory vote, the potential benefits from the required disclosure may be lost.

## II. Shareholder Approval of the Frequency of Shareholder Votes on Executive Compensation

Request for Comment No. 11: *Should a new issuer be permitted to disclose the frequency of its say-on-pay votes in the registration statement for its initial public offering and be exempted from conducting say-on-pay and frequency votes until the year disclosed? For example, if an issuer discloses in its initial public offering prospectus that it will conduct a say-on-pay vote every two years, should we exempt it from the requirements of Section 14A(a)(1) and 14A(a)(2) for its first annual meeting as a reporting company?*

We recommend that a new issuer be permitted to disclose the frequency of its shareholder advisory votes on executive compensation in the registration statement for its initial public offering and be exempt from conducting "Say-on-Pay" and "frequency" votes until the year disclosed. In our experience, the vast majority of companies making the transition to public company status are also engaged in revamping their executive compensation programs to reflect that status. Consequently, it would be largely an unproductive exercise for both the company and its shareholders to require a shareholder advisory vote at its initial annual meeting of shareholders on an executive compensation program that is likely to change substantially.

Of course, by stating when it intends to conduct its first shareholder advisory vote on executive compensation, a company will be setting a self-imposed deadline for completing any changes to its executive compensation program.

Request for Comment No. 19: *Should we, as proposed, permit the exclusion of shareholder proposals that seek to provide say-on-pay votes more or less regularly than the frequency endorsed by a plurality of votes cast in the most recent vote required under Rule 14a-21(b), as described above? Are there other circumstances under which shareholder proposals relating to the frequency of say-on-pay votes should be considered substantially implemented and subject to exclusion under Rule 14a8(i)(10)?*

We believe that there is at least one circumstance under which the Commission should permit the exclusion of shareholder proposals that seek to provide "Say-on-Pay" votes more frequently than the frequency selected by the company under the exclusion set forth in Exchange Act Rule 14a-8(i)(10), even though the company's decision doesn't comport with the frequency endorsed by a plurality of votes cast in the most recent vote required under proposed Exchange Act Rule 14a-21(b). This would involve a vote where, although the plurality of votes cast endorse an annual "Say-on-Pay" vote, the majority of the votes cast reflect a preference for a periodic vote (either every two years or every three years).

In this situation, we believe that it would be unduly harsh to preclude a company from excluding a shareholder proposal seeking an annual "Say-on-Pay" vote when the company has substantially implemented the wishes of a majority of its shareholders by holding either a biennial or triennial vote. While we understand the advantages of the clear standard set forth in the proposed Note to Exchange Act Rule 14a-8(i)(10), in our view a company should not have to bear the expense of responding to a shareholder proposal that reflects the position of a minority of its shareholders simply because it received a plurality of the votes cast on the matter.

Request for Comment No. 24: *Would the amendments to Form 10-Q and 10-K, as proposed, allow an issuer sufficient time to analyze the results of the shareholder votes on the frequency of shareholder votes on executive compensation and reach a conclusion on how it should respond? Should the issuer's plans with respect to the frequency of such shareholder votes instead be required to be disclosed no later than in the Form 10Q or Form 10-K for the next full time period ended subsequent to the vote (for example, if the vote occurs in the second quarter of the issuer's fiscal year, the disclosure would be required no later than in the Form 10-Q for the third quarter)?*

We recommend that an issuer's plans with respect to the frequency of shareholder advisory votes on executive compensation be required to be disclosed at a date later than currently proposed. We are concerned that the current proposed deadline for disclosing such information (in the quarterly report on Form 10-Q covering the period during which the shareholder advisory vote occurs, or in the annual report on Form 10-K if the shareholder advisory vote occurs during the issuer's fourth quarter) will not allow sufficient time for a company and its board of directors to analyze the results of the shareholder advisory vote on the frequency of the shareholder advisory

vote on executive compensation and reach a conclusion on how it should respond. In our experience, a board of directors or, more likely, its compensation committee, may not have a meeting scheduled within a few weeks of its annual meeting of shareholders (typically, the board of directors and its committees will have met immediately before or at the time of the annual meeting). Thus, to allow for a proper analysis of the vote and consideration of the alternatives presented, we recommend that the Commission select a time period that will allow for the board of directors to incorporate this new item into its existing meeting agenda (for example, such as in the quarterly report on Form 10-Q or annual report on Form 10-K for the next full time period ended subsequent to the vote).

## III. Issues Relating to Both Shareholder Votes Required by Section 14A(a)

Request for Comment No. 26: *Should we amend Rule 14a-6(a) under the Exchange Act as proposed so that issuers are not required to file a preliminary proxy statement as a consequence of providing a separate shareholder vote on executive compensation in accordance with Rule 14a-21(a)? If not, please explain why not.*

We recommend that the Commission amend Exchange Act Rule 14a-6(a) as proposed to clarify that issuers are not required to file a preliminary proxy statement as a consequence of providing a separate shareholder advisory vote on executive compensation in accordance with proposed Exchange Act Rule 14a-21(a). Given the likely standardized form of the resolution providing for such a shareholder advisory vote, we do not believe that the benefits of a preliminary filing requirement outweigh administrative burdens and preparation and processing costs associated with the filing and processing of proxy materials that are unlikely to be selected for review in preliminary form.

Request for Comment No. 27: *Should we amend Rule 14a-6(a) under the Exchange Act as proposed so that issuers are not required to file a preliminary proxy statement as a consequence of providing a separate shareholder vote on the frequency of shareholder votes on executive compensation in accordance with Rule 14a-21(b)? If not, please explain why not.*

We recommend that the Commission amend Exchange Act Rule 14a-6(a) as proposed to clarify that issuers are not required to file a preliminary proxy statement as a consequence of providing a separate shareholder advisory vote on the frequency of shareholder votes on executive compensation in accordance with proposed Exchange Act Rule 14a-21(b). Given the likely standardized form of the resolution providing for such a shareholder advisory vote (as outlined in the proposed amendment to Exchange Act Rule 14a-4), we do not believe that the benefits of a preliminary filing requirement outweigh administrative burdens and preparation and processing costs associated with the filing and processing of proxy materials that are unlikely to be selected for review in preliminary form.

Request for Comment No. 28: *Should we amend Rule 14a-6(a) under the Exchange Act so that issuers are not required to file a preliminary proxy statement as a consequence of providing any*

*other separate shareholder vote on executive compensation? If so, please explain in what circumstances.*

We recommend that the Commission amend Exchange Act Rule 14a-6(a) to clarify that issuers are not required to file a preliminary proxy statement as a consequence of providing any other separate shareholder advisory vote on executive compensation. We believe that some companies will go beyond the vote required by new Section 14A(a)(1) of the Exchange Act to provide their shareholders to vote on discrete aspects of their executive compensation program. We expect that these votes will be used as a means of gathering feedback on specific aspects of an executive compensation program (such as incentive compensation or post-employment compensation) that will not be readily available from shareholder advisory vote on executive compensation in accordance with proposed Exchange Act Rule 14a-21(a). Assuming that a company has otherwise complied with the requirements of proposed Exchange Act Rule 14a-21(a) (either through a wholly separate shareholder advisory vote or the use of multiple shareholder advisory votes that cover all of the executive compensation disclosure required by Item 402 of Regulation S-K), we do not believe that the benefits of a preliminary filing requirement outweigh administrative burdens and preparation and processing costs associated with the filing and processing of proxy materials that are unlikely to be selected for review in preliminary form.

## IV. Disclosure of Golden Parachute Arrangements and Shareholder Approval of Golden Parachute Arrangements

Request for Comment No. 32: *Should Item 402(t) disclosure be required only in the context of an extraordinary transaction, as proposed? Should we extend the Item 402(t) disclosure requirement to annual meeting proxy statements generally, or in annual meeting proxy statements in which the shareholder advisory vote required by Section 14A(a)(1) is solicited? Would this disclosure be useful in annual meeting proxy statements in the absence of an actual transaction, or are the existing compensation disclosure requirements applicable to annual meeting proxy statements sufficient? Should we amend Item 402(j) to cover the matters required by Section 14A(b)(1) that are not otherwise required by that Item, rather than adopt proposed Item 402(t)?*

We recommend that the Commission retain the existing compensation disclosure requirements applicable to annual meeting proxy statements as contained in Item 402(j) of Regulation S-K rather than change those requirements to reflect the scope of the information contemplated by proposed Item 402(t) of Regulation S-K. It appears that the only substantive differences between the information required by Item 402(j) and proposed Item 402(t) involve the disclosure of agreements and arrangements that do not discriminate in scope, term, or operation in favor of executive officers and perquisites and other personal benefits in amounts less than $10,000. In our view, these items are *de minimis* in nature and, therefore, their reporting does not warrant what would be, for all practical purposes, a significant change in the current reporting of potential post-employment compensation. We believe that most companies have developed effective presentations of this information for compliance purposes and that their investors are familiar with these presentations. We simply don't see any substantial benefit to requiring

companies to use a different (albeit standardized) template for presenting their estimated payments and benefits under severance and change-in-control arrangements or for requiring the addition of the enumerated items to the currently reported information. If anything, we recommend that the Commission amend proposed Item 402(t) to permit the exclusion of *de minimis* amounts of perquisites and other personal benefits from disclosure. We do not believe that the exclusion of immaterial amounts of perquisites or other personal benefits would be inconsistent with the purpose and objectives of new Section 14A(b)(1) of the Exchange Act.

Request for Comment No. 38: *Should employment agreements that named executive officers of the target issuer enter into with the acquiring issuer for services to be performed in the future be excluded from the table, as proposed? Are such agreements used to induce target executives to support the transaction? Should such employment agreements instead be required to be quantified and included in the table? If such agreements should be quantified, should they be quantified separately, such as in a separate table, or is there a better way to present such agreements? If quantification is appropriate, should we specify how employment agreements should be quantified, for example by requiring a reasonable estimate applicable to the payment or benefit and disclosure of material assumptions underlying such estimates, or a valuation based on projected first year annual compensation, or average annual basis, or a present value for this compensation? If so, please explain.*

We recommend that, as proposed, the Commission exclude employment agreements that named executive officers of the target issuer enter into with the acquiring issuer for services to be performed in the future from the tabular disclosure contemplated by proposed Item 402(t) of Regulation S-K. In our experience, such agreements are not typically used as an inducement for the named executive officers to support the transaction. Further, information about such agreements will be included in the executive compensation disclosure of the acquiring company to the extent that the individuals become named executive officers of that entity.

Request for Comment No. 49: *Should we exempt certain changes to golden parachute arrangements that have been altered or amended subsequent to their being subject to the annual shareholder vote under Rule 14a-21(a)? For example, should we require a separate vote under Rule 14a-21(c) if the only change is the addition of a new named executive officer not included in the prior disclosure or a change in terms that would reduce the amounts payable? Should we provide an exemption for golden parachute arrangements previously subject to an annual shareholder vote if the only change is the subsequent grant, in the ordinary course, of additional awards under an employee benefit plan, such as stock options or restricted stock, that are subject to the same acceleration terms that applied to those already covered by the previous vote? For example, if subsequent to the previous vote, additional equity awards are granted in the ordinary course pursuant to a plan, such as an annual option grant, and those awards are subject to acceleration in the event of a change in control on the same terms as earlier awards that were subject to the previous vote, should we exempt those subsequent awards? Should any other types of changes to golden parachute compensation arrangements be so exempted?*

We recommend that the Commission provide an exemption to proposed Exchange Act Rule 14a-21(c) for "golden parachute" arrangements previously subject to a shareholder advisory vote pursuant to proposed Exchange Act Rule 14a-21(a) if the only change is the subsequent grant, in the ordinary course, of additional awards under an employee benefit plan, such as stock options or restricted stock, that are subject to the same acceleration terms that applied to those already covered by the previous shareholder advisory vote. Since the period between the shareholder advisory vote on executive compensation and a potential merger transaction could be quite lengthy, we believe that the absence of such an exemption will, for many companies, render the exception contained in new Section 14A(b)(2) largely ineffective. Since most companies provide for periodic, if not annual, equity awards to their executives, there would be little reason to take advantage of the exception if they knew that subsequent awards would compel a shareholder advisory vote on "golden parachute" compensation in the event of a merger or other extraordinary transaction even if their pre-existing "golden parachute" arrangements had not been modified in the interim nor had they entered into any new arrangements.

## V. Treatment of Smaller Companies

Request for Comment No. 55: *Should we clarify in an instruction to Rule 14a-21, as proposed, that smaller reporting companies are not required to include a CD&A in their proxy statements in order to comply with our proposed amendments?*

We recommend that the Commission clarify in an instruction to proposed Exchange Act Rule 14a-21, as proposed, that smaller reporting companies are not required to include a Compensation Discussion and Analysis in their proxy statements in order to comply with new Section 14A(a)(1) of the Exchange Act. We believe that such an instruction is necessary to ensure that there is no confusion as to the level of disclosure that is required where a smaller reporting company is taking advantage of the scaled disclosure requirements of Item 402(l) of Regulation S-K.

We note, however, that some smaller reporting companies, even where taking advantage of the scaled disclosure requirements, provide a discussion entitled "Compensation Discussion and Analysis" (that is compliant with Item 402(b) of Regulation S-K in some or all respects) as part of their executive compensation disclosure. In such instances, where it is not clear from the disclosure itself that the smaller reporting company has elected to comply with Item 402(a) – (k) of Regulation S-K, we recommend that the Commission clarify whether this discussion is subject to the shareholder advisory vote required by new Section 14A(a)(1) of the Exchange Act.

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Once again, we appreciate the opportunity to comment on the Proposals, and respectfully request that the Commission consider the responses and recommendations set forth in this letter. We are prepared to meet and discuss these matters with the Commission and its Staff at its convenience. Any questions about this letter may be directed to the undersigned at (415) 462-2995.

Respectfully submitted,

Mark A. Borges
Principal