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November 19, 2010

VIA E-MAIL: rule-comments@sec.gov

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

Re: Comments on Proposed Rules Relating to Shareholder Approval of Executive Compensation and Golden Parachute Compensation
Release Nos. 33-9153; 34-63124; File No. S7-31-10

Dear Ms. Murphy:

We respectfully submit this letter in response to the solicitation by the U.S. Securities and Exchange Commission for comments on the proposed rules relating to shareholder approval of executive compensation and "golden parachute" compensation arrangements (the "Proposed Rules"). The Proposed Rules are intended to implement Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank"), which amends the Securities Exchange Act of 1934 by adding Section 14A.

- The requirement under proposed Item 402(t) of Regulation S-K set forth in the Proposed Rules ("Proposed Item 402(t)") that a target company must disclose arrangements with the acquirer's named executive officers in a corporate transaction is inconsistent with Section 14A(b)(1), as added by Dodd Frank. That section requires disclosure only of arrangements between the person conducting the solicitation and any named executive

officers of the issuer or any named executive officers of the acquiring issuer if the person conducting the solicitation is not the acquiring issuer. This inconsistency is highlighted by the SEC in its release accompanying the Proposed Rules.

- Moreover, the requirement of the Proposed Rules that disclosure be made with respect to amounts payable in connection with "an" acquisition, etc. (*see* Proposed Item 402(t)(1)(ii)) is also inconsistent with Section 14A(b)(1), which requires disclosure only with respect to "the" particular transaction on which shareholders are voting.

- The inconsistencies described above are not only inconsistent with the words of Section 14A(b)(1) but also with its purpose. The purpose of Section 14A(b)(1) is to provide target shareholders with a description of amounts that the named executive officers of the target will receive in connection with a transaction, and decouple the shareholders' vote on the transaction itself from the vote on those amounts. Section 14A(b)(1) provides this decoupling because shareholders could plausibly approve of a transaction but not approve of the benefits to be provided to the target's named executive officers in connection with the transaction.

- The inclusion of acquirer information in a proxy statement for target shareholders is confusing and misleading. By bundling the compensation arrangements of named executive officers of the acquirer with those of the target's named executive officers, and requiring disclosure of arrangements in respect of any transaction rather than only the one subject to the vote, the vote is less meaningful because target shareholders will effectively be considering, and voting on, payments that might arise for the named executive officers of the acquirer in a future deal in addition to voting on the actual payments to named executive officers of the target in connection with the current transaction. The acquirer's compensation arrangements for its own named executive officers are highly unlikely to influence the attitude of the target's management toward the transaction, and including a description of them will only serve to confuse the target's shareholders and distract them from the true purpose of the vote.

- Practically speaking, it is unclear what the consequences would be to a target company if the information about the acquirer's named executive officers is inaccurate, particularly if the target company relied on the acquirer for this information.

- Additional clarity is also necessary with respect to the requirement in the Proposed Rules release that *any* revisions to golden parachute arrangements previously disclosed pursuant to Proposed Item 402(t) and approved by a shareholder say on pay vote at an annual meeting would result in the revised golden parachute arrangements being subject to the separate merger proxy shareholder vote [emphasis added]. The requirement for a second vote cannot be intended to capture amendments or revisions that reduce an executive's benefits under the previously approved golden parachute arrangements nor should the requirement for a second vote apply if the only revisions to the golden parachute arrangements were as a result of pay being increased or equity awards grants in the ordinary

course of business between filing the disclosure in the annual proxy and the merger proxy shareholder vote.

- Finally, the regulations appear to also go beyond the scope of the statute by requiring votes in connection with tender and exchange offers, which are not expressly included in the statute.

*   *   *

We would be pleased to respond to any inquiries regarding this letter or our views on the Proposed Rules generally. If you wish to discuss our comments or you have any questions with respect to this letter, please contact Michael J. Segal or Jeremy L. Goldstein at 212-403-1000.

Very truly yours,

WACHTELL, LIPTON, ROSEN & KATZ