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May 20, 2011

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

Re: File No. S7-13-11, Listing Standards for Compensation Committees

Dear Secretary Murphy:

The State Board of Administration of Florida (the SBA) welcomes the opportunity to provide comments on the Securities and Exchange Commission's (the Commission) proposed rules covering listing standards for compensation committees. The SBA manages the assets of the Florida Retirement System (FRS), the fourth largest public pension plan in the United States with 1.1 million beneficiaries and retirees. SBA assets under management, including the FRS and other client mandates, total approximately \$150 billion. The SBA's governance philosophy encourages companies to adhere to responsible, transparent practices that correspond with increasing shareowner value.

SBA staff fully supports the ongoing implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the general principles supporting the proposed new rules concerning compensation committee independence. As significant responsibility resides with compensation committees that approve and oversee compensation plans, the independence of committee members and their external advisors are necessary to help ensure that executive compensation decision-making is free of actual or perceived conflicts of interest that may impact committee members' judgment. As outlined in the SBA's governance policies, "External compensation consultants should be independent to ensure that advice is unbiased and uncompromised. Multiple business dealings or significant revenue from the company may impair the independence of a pay consultant's opinions, advice, or recommendations to the compensation committee."

On March 30, 2011, the Commission issued proposed rules to implement the provisions of Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which added Section 10C to the Securities Exchange Act of 1934 (the "Exchange Act"). Section 10C requires the SEC to issue final rules no later than July 16, 2011, which would direct the national securities exchanges and national securities associations to prohibit the listing of an equity security if the company is not in compliance with the provisions of Section 10C. Implementation of rule 10C would direct the exchanges to adopt listing standards applicable to any committee of the board that oversees executive compensation, whether or not the committee performs multiple functions and/or is formally designated as a "compensation committee."

The four major components to Section 10C and the SEC's proposed implementing rules are as follows:

*Independence of Compensation Committee Members—each member of the compensation committee of the board must be a member of the board of directors and must be independent. The national securities exchanges must consider the following two factors in developing a definition for independence: the source of compensation of a board member, including any consulting, advisory, or other compensatory fee paid by*

*the company to the board member; and whether the board member is affiliated with the company, a subsidiary of the company, or an affiliate of a subsidiary of the company.*

*Selection of Compensation Consultant, Legal Counsel, and Other Advisers— the compensation committee may only select a compensation consultant, legal counsel, or other adviser (collectively, the “advisers”) after consideration of a minimum of five specified independence factors: the provision of other services to the company by the person that employs the adviser (the “advisory firm”); the amount of fees received from the company by the advisory firm as a percentage of the advisory firm’s total revenue; the policies and procedures the advisory firm has in place to prevent conflicts of interest; any business or personal relationship of the adviser with a member of the compensation committee; and any stock of the issuer owned by the adviser.*

*Authority of Compensation Committee—the compensation committee has the sole discretionary authority to retain or obtain the advice of an adviser, and is directly responsible for the appointment, compensation, and oversight of the adviser’s work.*

*Compensation Consultant Disclosure and Conflicts of Interest—the compensation committee must disclose whether it retained or obtained the advice of a compensation consultant, and if the work of the compensation consultant raised any conflict of interest. If a conflict of interest is raised, the company must disclose the nature of the conflict and how the conflict is being addressed. If a conflict of interest is not raised, it is our understanding that the disclosure would need to state that no conflict is raised. The SEC acknowledged that a compensation committee may be unable or reluctant to definitively conclude whether a conflict of interest exists, and is requesting comment on whether the rules should also include the appearance of a conflict of interest in the interpretation of what constitutes a conflict of interest.*

**The following comments are provided for individual elements of the proposed rules, encouraging the Commission to direct the stock exchanges to consider when they define which directors may serve on compensation committees and other rules governing disclosure surrounding the use of consultants:**

#### **Independent Director Definition**

The Commission’s proposal says that in setting independence requirements for compensation committee members, the exchanges are to consider relevant factors, including, but not limited to: (1) the source of a director’s compensation, including any consulting, advisory or other compensatory fee paid by the company to the director; and (2) whether a director is affiliated with the company, a subsidiary of the company or an affiliate of a subsidiary of the company.

SBA staff supports these factors, and others including affiliations with members of management. A director may lose objectivity in his/her oversight role if he/she, for instance, is associated with a firm that is a paid adviser to one of the company’s executive officers or if he/she is associated with a non-profit organization that receives significant grants from one of the company’s officers. Other examples include, if the director is part of an interlocking directorate in which the CEO or other officer of the company serves on the board of a third-party entity (for-profit or not-for-profit) employing the director, or if the director delegates his/her decision-making power as a director to management.

#### **Covered Types of Pay Advisers**

SBA staff supports conflict disclosure that covers any outside expert providing advice to the compensation committee, including the disclosure of fees related to such services. Conflicted external pay advisers—whether they are compensation consultants, legal advisers, or other advisers—may not provide unbiased advice and recommendations consistent with the best interests of the company and its shareowners. Individual compensation advisers and their firms should be independent of the client company, its executives and directors and should

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report solely to the compensation committee. Advisers who count on lucrative actuarial or employee benefits contracts from senior management may be inclined to recommend overly-generous pay packages for those executives.

**Frequency of Disclosure on Compensation Adviser Conflicts of Interest**

SBA staff supports annual disclosure, which should help investors understand on a timely basis whether the work of the compensation adviser has raised any conflicts of interest and, if so, the nature of the conflict and how the conflict is being addressed. In short, timely disclosure of conflicts is needed to allow investors to adequately monitor compensation committee performance.

**Exemptions and Effective Dates**

SBA staff views the Commission's proposals as important topics relevant to all exchanges and public companies and, therefore, should apply to all U.S. exchanges and public companies, without exception for location or market capitalization. SBA staff urges final adoption of listing rule guidance prior to corporate filings made in 2012.

Thank you for your consideration and for the Commission's efforts in crafting the proposed rules. If you have any questions, please contact Michael McCauley, Senior Officer—Investment Programs and Governance, at (850) 413-1252, or [governance@sbafla.com](mailto:governance@sbafla.com).

Sincerely,



Ashbel C. Williams  
Executive Director & CIO

cc: Governor Rick Scott, as Chairman of the SBA  
Chief Financial Officer Jeff Atwater, as Treasurer of the SBA  
Attorney General Pam Bondi, as Secretary of the SBA