

April 14, 2006

Ms. Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-9303

RE: FILE NUMBER S7-03-06: PROPOSED AMENDMENTS TO CORPORATE GOVERNANCE DISCLOSURE REGARDING THE NAMING OF COMPENSATION CONSULTANTS

Dear Ms. Morris:

On February 8, 2006, the SEC published for public comment amendments to the disclosure requirements for executive and director compensation, related party transactions, director independence and other corporate governance matters, and security ownership of officers and directors. Proposed Item 407(e)(3) of Regulation S-K calls for companies to disclose information about the company's retention of executive compensation consultants.

In particular, if adopted, companies would have to provide a narrative description of *"the registrant's processes and procedures for the consideration and determination of executive and director compensation"* including ... (iii) *"Any role of compensation consultants in determining or recommending the amount or form of executive and director compensation, identifying such consultants, stating whether such consultants are engaged directly by the compensation committee (or persons performing the equivalent functions) or any other person, describing the nature and scope of their assignment, the material elements of the instructions or directions given to the consultants with respect to the performance of their duties under the engagement and identifying any executive officer within the registrant the consultants contacted in carrying out their assignment."*

In our capacity as executive compensation consultants, this letter provides Towers Perrin's views about proposed Item 407(e). Separately we provided comments about Item 402 related to the disclosure of executive and director compensation.

### **Executive Summary**

We fully support the notion of giving shareholders and compensation committees all of the information they require to carry out their respective roles – and to do so in a

transparent and user-friendly manner. But we are unclear about the intended purpose and practicality of the proposed Item 407(e) disclosure.

We believe there is a general misperception about the role and influence of executive compensation consultants, which is reflected by the proposal and elsewhere. In order for any new disclosure rules to be constructive, we believe they should be developed around clearly articulated objectives and grounded in an accurate understanding of the facts. In our opinion, we respectfully suggest the proposed Item 407(e) proposal falls short.

Before requiring companies to publicly disclose information about their use of compensation consultants, we strongly encourage the SEC to clearly articulate its objectives for such disclosure and develop any requirements with an accurate understanding of how most companies use compensation consultants. We would be pleased to help with that process in any way that the SEC would find constructive.

The remainder of this letter provides information about the role of compensation consultants and our questions and concerns about the current proposal. We greatly appreciate the opportunity to provide this input.

### **Role of Compensation Consultants to Boards and Compensation Committees**

*Scope and roles vary from company to company.* Unlike auditors, companies and compensation committees are not required to retain the services of compensation consultants, and when they do, the nature and scope of such services vary considerably from company to company. There is no standard engagement or minimum requirements. In some cases, consultants are asked to do little more than to supply data about competitive practices or to calculate the value or cost of a particular award, with little or no interaction with the committee. At the other extreme, consultants attend most or all compensation committee meetings, develop materials for the committee's review (e.g., tally sheets and other analyses), serve as a sounding board, technical expert and/or advisor to the committee's chair and other members, and provide other input to the committee's decision making process. Engagements can range from as little as 40 hours per year to over 500 hours.

Many committees use several pay advisors for different purposes -- including lawyers and consultants -- and the roles of such advisors often overlap. Occasionally committees engage more than one compensation consultant for different purposes -- e.g., for broader sources of data, specialized expertise, and/or for a broader perspective or second opinion. Such second opinions can be a useful way for a committee to assess the objectivity of its regular consultant's advice if this is ever in question.

Unlike the situation with auditors, compensation committees normally do not ask compensation consultants for formal opinions or endorsements of compensation decisions, since there are no documented and widely accepted “generally accepted compensation principles” or “generally accepted compensation auditing standards” along the lines of “generally accepted accounting principles” or “generally accepted auditing standards.” Recommendations are often solicited from and provided by consultants, but consultants are rarely asked to provide an opinion on the reasonableness of the actions subsequently taken by the committee following such recommendations.

*Reporting relationship and accountability.* Increasingly, executive compensation consultants are retained by a company’s board of directors – normally by the compensation committee. In many cases, the compensation consultants (or other members of the consultant’s firm) provide other services for the company. Where this happens, we believe the committee should be aware of this other work so it can evaluate whether it impairs the consultant’s ability to provide objective services to the committee. In general, we find compensation committee members to be experienced business people who are fully capable of assessing the reasonableness and objectivity of the executive compensation consultant’s input to the committee. The committee’s judgment and oversight, coupled with strong consulting firm business conduct protocols, help to ensure an appropriate degree of objectivity.

*Interaction with management.* To carry out their role effectively for the committee, compensation consultants should not be isolated from management who implement policies and programs approved by the committee. We believe the consultant should be retained by the board/compensation committee, but work with management on behalf of the committee.

*Decision-making rights.* Consultants don’t make decisions about the compensation of senior executives – boards and compensation committees do. In doing so, boards and compensation committees must make tradeoffs between often competing objectives – e.g., the extent to which pay should be “at risk” vs. the need for pay to be used to retain an executive. Answers rarely are “black and white” or “right or wrong.” This forces boards and compensation committees to use their business judgment in making decisions under the particular circumstances that they face.

Consultants aren’t always asked to offer advice, and any advice they offer is non-binding. Compensation committees are free to follow the consultant’s advice precisely, not at all, or something in between. What’s more, consultants are sometimes hired by compensation committees after earlier decisions were made (with or without input from earlier consultants), or to address a committee’s specific concerns at the time (e.g., a significant severance or retention problem) without having a broader mandate. While compensation consultants bear responsibility for the accuracy of their analyses, they

shouldn't be held responsible for things they weren't engaged or paid to do. Nor should they be held responsible for the committee's earlier or current decisions given the lack of decision rights held by the consultant.

### **Our Questions and Concerns About the Proposal's Intended Meaning and Purpose**

As noted earlier, we believe the proposal does not clearly articulate its purpose, and does not seem to fully reflect the wide ranging nature of the role of consultants. For example:

- *What does the term "consultant" mean under the proposal?* Does it refer to an individual person or the firm for which the individual works? What about law firms that provide similar or related services for the committee? How does a committee that employs more than one consultant to perform various types of services (e.g., for competitive data, second opinions, etc.) reflect such practices in the proxy? Is there a "minimum threshold" (i.e., number of hours or scope) that a consultant needs to satisfy to be considered a "consultant" for purposes of the proposal?
- *What does the term "assignment" mean under the proposal?* Does it relate only to the work performed directly for the board or committee or for broader work? What if work was done by the consultant in a prior reporting period, but not the current period?
- *Does the proposal truly seek to limit the consultant's interactions with management?* We believe that requiring identification of all executive officers contacted by the consultant during the assignment would block essential communication and potentially undermine the consultant's ability to provide useful input to the board/compensation committee. Compensation consultants can't operate effectively in a vacuum. They need to function as the board's or committee's eyes and ears and fully understand the context in which the compensation program will operate. How can consultants properly understand whether current or proposed programs will accomplish the board's or compensation committee's objectives if they don't understand the business and operating environment? In our view, consultants must have contact with management in order to properly represent the compensation committee's interests. This aspect of proposal doesn't seem practical or constructive.
- *Does the proposal implicitly contemplate that companies should retain compensation consultants who would provide some sort of "opinion" for shareholders (similar to an auditor's opinion)?* As mentioned earlier, not all compensation committees retain consultants currently, and when they do, the nature, scope and cost of services can vary greatly from company to company. If all compensation committees were required to

retain compensation consultants and to have such consultants do sufficient work to be able to render a formal opinion about the company's pay programs, this would be quite expensive and burdensome for companies without a clearly commensurate benefit for shareholders. Further, before being able to render any sort of meaningful formal "opinion," widely accepted professional standards would have to be developed, which would take considerable time to complete.

- *Has the SEC contemplated that by having companies name compensation consultants that it might imply that the consultant endorses all aspects of a company's program?* By naming a compensation consultant in a company's filings, we are concerned that investors may inappropriately assume that the consultant endorses all of company's compensation programs or decisions or has responsibility for them. As noted earlier, this isn't true.

In summary, we support the notion of transparency and enhanced disclosure of executive compensation. Further, we do not object in concept to a potential requirement to name a committee's executive compensation consultant if it is crafted in an appropriate manner and serves a valid governance purpose. This type of requirement has been used reasonably well in the United Kingdom for several years. But before mandating such a requirement, we believe the SEC should spell out the requirement's intended objectives, and allow interested parties to comment on both the objectives themselves and the tactics proposed for accomplishing them. As configured, we fear the current proposal might give rise to disclosures that are misleading to investors and cause other negative, unintended consequences.

Thank you for the opportunity to provide this input. We would be pleased to discuss this matter further with members of the staff or help in any way that we can.

Sincerely,



Gary M. Locke  
Managing Director  
952-842-5646  
gary.locke@towersperrin.com



Paula H. Todd  
Managing Principal  
203-326-4748  
[paula.todd@towersperrin.com](mailto:paula.todd@towersperrin.com)