MERIDIAN
COMPENSATION PARTNERS, LLC

October 19, 2010

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

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549

Re: File No. DF Title IX – Executive Compensation
Preliminary Comments on Executive Compensation Provisions of Subtitle E of Title IX of the Dodd Frank Wall Street Reform and Consumer Protection Act

Dear Ms. Murphy:

Meridian Compensation Partners is pleased to provide these comments to the Securities and Exchange Commission ("Commission") on the following sections of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Act"):

- Sec. 951. Shareholder vote on executive compensation
- Sec. 952. Compensation committee independence
- Sec. 953. Executive compensation disclosures
- Sec. 954. Recovery of erroneously awarded compensation

Meridian Compensation Partners is one of the largest independent executive compensation consulting firms in North America. We provide trusted counsel to Boards and Management at hundreds of large public and private companies. We consult on executive compensation design issues, corporate governance matters and related disclosures. Our consultants have decades of experience in developing pay solutions that are responsive to shareholders, reflect good governance and align with company performance.

Shareholder Vote on Executive Compensation Disclosures (Section 951 of the Act)

Section 951 of the Act amends the Securities and Exchange Act ("Exchange Act") by adding new section 14A which requires issuers to give their shareholders the right to vote on the following matters:

- At least once every three years, shareholders must be allowed to make a non-binding advisory vote on an issuer's executive compensation, as disclosed in the issuer's proxy materials. Exchange Act section 14A(a)(1).
- At least once every six years, shareholders must be allowed to make a non-binding advisory vote on whether the shareholder vote on an issuer's executive compensation should occur every 1, 2, or 3 years. Exchange Act section 14A(a)(2).
- Shareholders must be allowed to make a non-binding advisory vote on "golden parachute" arrangements disclosed in proxy or consent solicitation materials which seek shareholder approval of

an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of the issuer ("Corporate Transaction"), unless such arrangements were previously included in the issuer's executive pay disclosure that was subject to a shareholder vote. Exchange Act section 14A(b)(2).

The disclosure of golden parachutes arrangements must show the aggregate total of any type of compensation (whether present, deferred or contingent) that is based on or otherwise relates to a Corporate Transaction involving the issuer that may (and the conditions upon which it may) be paid or become payable to or on behalf of any named executive officer of the issuer. Exchange Act section 14A(b)(1).

Meridian Compensation Partners' Comments

We are not commenting on new Exchange Act sections 14A(a)(1) or 14A(b)(2). However, we believe issuers would benefit from the Commission adopting rules clarifying the vote requirement under Exchange Act section 14A(a)(2) and the required disclosure under Exchange Act section 14A(b)(2). On July 18, 2010, the Commission issued proposed rules on Exchange Act section 14A(a)(2). We note the Commission's proposed rule relative to our recommended rulemaking.

- **Vote on Executive Compensation (Exchange Act Section 14A(a)(1))**. We recommend the Commission adopt rules providing that the vote required under Exchange Act Section 14A(a)(1) does not require an issuer to file preliminary proxy material with the Commission.

  The Commission has proposed amending Rule 14a-6(b)(a) to provide for the foregoing.

- **Vote on Frequency of Vote on Executive Compensation (Exchange Act Section 14A(a)(2))**. We recommend the Commission adopt rules clarifying whether an issuer is required to permit shareholders to vote on each of the vote frequency alternatives or whether an issuer may choose which of the three vote frequency alternatives to put to a shareholder vote (e.g., issuer permits shareholders to vote solely on whether to vote on executive compensation every three years).

  If issuers are required to permit shareholders to vote on each of the three vote frequency alternatives, the application of Rule 14a-4(b) to such vote requirement may be problematic. Rule 14a-4(b) requires a corporate proxy to give shareholders the "opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect to each separate matter referred to therein as intended to be acted upon, other than elections to office." This rule suggests that each vote frequency alternative would be treated as a separate matter and therefore, would be subject to a separate shareholder vote. We recommend the Commission consider modifying Rule 14a-4(b) to treat the vote frequency alternatives as a single matter; thereby, permitting an issuer to list on its corporate proxy ballot each of the three vote frequency alternatives and requiring shareholders to choose among the three alternatives (or to abstain or disapprove all alternatives).

  The Commission has proposed amending Rule 14a-4 to provide for the foregoing.

- **Golden Parachute Disclosure (Exchange Act Section 14A(b)(2)**. With respect to the disclosure of golden parachute arrangements required under Exchange Act section 14A(b)(2), we recommend the Commission consider adopting rules that are substantially similar to Item 402(j) of Regulation S-K (i.e., requires an issuer to disclose potential post-employment payments to named executive officers on account of a change in control). This would ensure consistency and comparability between the disclosure of golden parachute arrangements that are made in proxy or consent solicitation material seeking shareholder approval of a Corporate Transaction and proxy material advising shareholders of an issuer's annual meeting at which shareholders will vote on the election of directors.

The Commission has proposed amending Schedule 14A to require disclosure of golden parachute arrangements in accordance with proposed Item 402(t) of Regulation S-K. The Commission noted that Item 402(j) of Regulation S-K is not broad enough to cover the disclosures required under Exchange Act section 14A(b)(2), The Commission also considered and rejected as too administratively burdensome on issuers the notion of amending Item 402(j) to include all the elements of compensation required to be disclosed under proposed Item 402(t). Nonetheless, we still believe there is merit in providing a uniform approach to the disclosure of golden parachute arrangements and we will provide the Commission our comments regarding its proposed rulemaking on golden parachute disclosures.

Compensation Committee Standards (Section 952 of the Act)

Section 952 of the Act amends the Exchange Act by adding new section 10C that sets forth standards applicable to compensation committees. Under Section 952, the Commission is directed to issue rules no later than 360 days after enactment of the Act to require national securities exchanges and national securities associations to prohibit the listing of any issuer (subject to certain limited exceptions) that does not comply with compensation committee standards to be promulgated by the Commission on the following matters:

- Independence of Compensation Committee Members. Exchange Act section 10C(a).
- Independence of Compensation Consultants and Other Compensation Committee Advisors. Exchange Act section 10C(b).
- Compensation Committee Authority Relating to Compensation Consultants. Exchange Act section 10C(c).
- Authority to Engage Independent Legal Counsel and Other Advisers. Exchange Act 10C(d).
- Compensation of Compensation Consultants, Independent Legal Counsel, and other Advisers. Exchange Act 10C(e).

Meridian Compensation Partners' Comments

We have no comments on new Exchange Act sections 10C(a), 10C(c), 10C(d) or 10C(e). Our comments are limited to new Exchange Act section 10(C)(b) which provides that an issuer's compensation committee may only select a compensation consultant, legal counsel or other adviser ("Adviser") to the compensation committee after taking into account the five factors listed in Exchange Act section 10C(b)(2), as well as any other factors the Commission identifies through rulemaking. We believe issuers would benefit from the Commission adopting rules clarifying three of these five factors, as discussed below:

- **The amount of fees received from the issuer by the Adviser, as a percentage of the Adviser's total revenue (Exchange Act section 10C(b)(2)(B).** For purposes of determining an Adviser's total revenue and the amount of total fees received by the Adviser from the issuer, we recommend that the Commission adopt rules defining the term "Adviser" on a consolidated corporate-wide basis which we believe is consistent with the intent of Exchange Act rule 10C(b)(2)(B). Under this definition, the Adviser would be the entity that employs the employee or employees who are rendering services to an issuer, as well as any parent corporation, subsidiary corporations, partnerships, affiliates or any other entities that are or would be considered part of the Adviser's consolidated group for financial reporting purposes.

- **Any business or personal relationship of the Adviser with a member of the compensation committee (Exchange Act section 10C(b)(2)(D).** The terms "business relationship" and "personal relationship" as used in Exchange Act rule 10C(b)(2)(D) are inherently ambiguous and require rulemaking for clarification and therefore, are recommending the Commission adopt rules defining those terms.

  We recommend that any definition of "business relationship" exclude any non-commercial relationships between an adviser and a member of an issuer's compensation committee; provided that such relationships do not result in material monetary or economic gain to one or both of these parties. Examples of non-commercial relationships could include both parties serving on the same not-for-profit board of trustees, rendering volunteer service on behalf of the same charitable organization, undertaking fundraising activities for the same tax-exempt entity, or making a monetary or in-kind contribution to the same charitable organization.

  We also recommend that the Commission define "personal relationship" as a "familial relationship" between the individual consultant, legal counsel or other adviser and a member of the compensation committee. We recommend familial relationship be limited to direct lineal descendants.

- **Any stock of the company owned by the Adviser (Exchange Act section 10C(b)(2)(E).** To remove any doubt regarding the application of the stock ownership factor in Exchange Act section 10C(b)(2)(E), we recommend the Commission adopt rules providing that this factor is to be applied on an individual consultant basis, not on a firm-wide basis. Applying the stock ownership factor on a firm-wide basis would be virtually impossible to effectively administer. We also recommend that the stock ownership factor not consider stock held by an individual consultant in a mutual fund or other comingled fund over which the consultant exercises no discretion as to the investments of such funds.

Executive Compensation Disclosure (Section 953 of the Act)

Section 953 of the Act amends Section 14 of the Exchange Act to require issuers to make the following proxy disclosures pursuant to rules to be issued by the Commission:

- **Disclosure of executive pay versus performance**. Under this disclosure requirement, an issuer must disclose the relationship between executive compensation actually paid and the financial performance of the company, taking into account any change in the value of shares of stock and dividends of the company and any distributions. This disclosure may be made through a graphic representation.

- **Disclosure of CEO pay ratio**. Under this disclosure requirement, an issuer must disclose the following employee pay information:

  - The median annual "total compensation" of all employees of the company, except the chief executive officer;
  - The annual "total compensation" of the chief executive officer; and
  - The ratio of the median annual total compensation of all employees to the total compensation of the chief executive officer.

  An employee's "total compensation" is determined in accordance with Item 402(c)(2)(x) of Regulation S-K.

Meridian Compensation Partners' Comments

We believe issuers would benefit from the Commission adopting rules clarifying the application of the foregoing disclosure requirements, as discussed below.

- **Disclosure of executive pay versus performance**. For issuers to make proper disclosure of executive pay versus performance, Commission rulemaking is required to define several undefined terms set forth in this disclosure requirement and to provide guidance as to the appropriate manner in which pay is to be compared to performance. In that regard, we recommend the Commission consider adopting rules that provide for the following:

  - **Subject executive officer.** We recommend the Commission limit the application of the pay versus performance disclosure solely to an issuer's principal executive officer. Limiting this disclosure to principal executive officers would facilitate comparisons among and between issuers as well as minimize the administrative burden that would otherwise be associated with making the pay versus performance disclosure for each named executive officer.

  - **Methodology to compare pay versus performance**. We recommend the Commission adopt rules providing that an issuer disclose the relationship between its principal executive officer's total compensation, as defined under the proxy disclosure rules but excluding changes in pension value and above-market earnings on deferred compensation, and the issuer's total shareholder return over the five-year period ending on the last day of the fiscal year, or if less, the period over which the current principal executive officer has held that position. This disclosure should be made in a graphical format comparing the principal executive officer's compensation trend to total shareholder return over the applicable period. Issuers should be invited to include supplemental schedules showing the relationship between its principal executive officer's compensation and other performance metrics that the issuer believes are relevant.

- **Disclosure of CEO pay ratio**. We believe the disclosure of the CEO pay ratio will provide investors with little or no meaningful information about an issuer's executive or employee pay practices. We further believe that what value this information may have to investors is far outweighed by the administrative burden and associated costs borne by issuers in accumulating the compensation data necessary to make the CEO pay ratio disclosure. In particular, issuers with global operations generally maintain multiple and complex payroll systems that are not structured to easily accumulate and analyze the data required to calculate the median pay level for worldwide payrolls. It is important to note that this circumstance is not limited to large issuers but also includes many issuers of modest revenue size and market capitalization.

  To ease this administrative and financial burden while still achieving the objectives of the disclosure requirement, we recommend the Commission seek a technical amendment to the Act to modify this disclosure requirement in the following respects:

  - **Limit subject employees.** The disclosure requirement should be limited to U.S. based employees. By excluding foreign pay practices that often differ substantially from U.S. pay practices, this limitation would significantly enhance the comparability of the disclosure among and between issuers.

— **CEO pay ratio based on average employee compensation**. The CEO pay ratio should be determined based on average compensation (not median compensation) paid to all U.S. based employees. The determination of average compensation should exclude changes in pension value, over-market earnings on deferred compensation and compensation that otherwise would be subject to disclosure in the "All Other Compensation" column of an issuer's Summary Compensation Table. As a general matter, issuers should find calculating average employee compensation significantly less burdensome than calculating median employee compensation, especially if the foregoing forms of compensation were excluded from the definition of compensation. Additionally, we believe the disclosure of the CEO pay ratio based on average employee compensation is consistent with the intent and purpose of the Act's amendment to Section 14 of the Exchange Act.

If the Commission does not seek the foregoing technical amendment to the CEO pay ratio disclosure, we recommend the Commission adopt rules permitting an issuer to use reasonable estimation techniques to determine median compensation for all employees and, when estimation techniques are employed, requiring disclosure and explanation of the estimation technique in the issuer's proxy material. The rules should permit issuers to use estimation techniques to determine all forms of compensation, including annual changes in pension value, if required.

Recovery of Erroneously Awarded Compensation and Disclosure Regarding Employee and Director Hedging (Section 954 of the Act)

Section 954 of the Act amends the Exchange Act by adding the following new provisions regarding recovery of erroneously awarded compensation and disclosure regarding employee and director hedging:

- **Recovery of Erroneously Awarded Compensation (Exchange Act Section 10C(a) and (b)).** The Commission is directed to issue rules to require national securities exchanges and national securities associations to prohibit the listing of any issuer that does not comply with the following requirements for recoupment of erroneous incentive awards:

  — In the event that a public company is required to prepare an accounting restatement due to material noncompliance with any financial reporting requirement under the securities laws, the company must recover any "excess" incentive-based compensation (including stock options awarded as compensation) paid to any current or former executive officers during the three-year period preceding the date of such restatement ("3-year look back period"). Excess incentive-based compensation is equal to the amount by which incentive compensation previously paid to the executive officer exceeds what would have been paid to the executive officer under the restated financial statements. Exchange Act section 10C(b)(2).

  — The disclosure of the recoupment policy. Exchange Act section 10C(b)(1).

- **Disclosure Regarding Employee and Director Hedging (Exchange Act section 14(j)).** The Commission is directed to issue rules to require an issuer to disclose in its proxy material whether any employee or member of its board of directors, or any designee of such employee or board member, is permitted to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars and exchange funds) that are designed to hedge or offset any decrease in the market value of equity securities:

— Granted to the employee or member of the board as compensation, or

— Held, directly or indirectly, by the employee or member of the board.

Meridian Compensation Partners' Comments

We have no comments on the required proxy disclosure regarding employee and director hedging. However, we believe issuers would benefit from the Commission adopting rules clarifying the application of new Exchange Act section 10C(b)(2). However, rules that provide principled-based guidance, which inevitably give rise to a broad range of often conflicting interpretations, would be particularly ill-suited to clarifying section 10C(b)(2).

Due to the potential complexities and uncertainties surrounding the application of the recovery requirements to highly varied and differentiated circumstances, we believe it is critical for the Commission to adopt highly specific rules that provides clear and unambiguous guidance. The rules should provide both issuers and their executive officers unequivocal direction as to the types of incentive-based compensation that may be subject to recovery, the timing as to when incentive-based compensation is considered received by an executive officer, the manner in which "excess" incentive-based compensation is calculated and the efforts issuers should undertake to recover excess incentive-based compensation. Equally important, such rules should provide illustrative examples of the forms of compensation that are not subject to the recovery rules.

We believe the need for highly-specific guidance would be satisfied if the Commission adopts rules that provide for the following:

- **Definition of incentive-based compensation subject to potential recovery.** To make clear the form of "incentive-based compensation" subject to the recovery provisions under Exchange Act section 10C(a), we recommend the Commission adopt rules that define "incentive-based compensation" as any form of compensation which is contingent upon the achievement of one or more pre-determined and objective "performance goals" that expressly relate to and are derived from one or more financial or stock price metric set forth in an issuer's financial statements filed with the Commission. For example, financial metrics would include, but not be limited to, return measures (e.g., return on invested capital, return on net assets), absolute measures (e.g., gross revenues, operating income, EBITDA), and earnings measures (e.g., basic earnings per share, diluted earnings per share) of an issuer or such financial metrics relative to a peer group.

  To provide additional guidance regarding the definition of "incentive-based compensation," we recommend the Commission consider including in its rules the following non-exclusive list of forms of compensation that would **not** be treated as incentive-based compensation for purposes of the recovery provision:

  — Base salary;

  — Inducement bonus awards paid solely upon the acceptance of an employment offer (or paid in installments over a period of time subject solely to the completion of a specified service period);

  — Retention bonus awards paid solely upon the completion of a specified service period;

- Bonus awards paid solely in the discretion of an issuer's compensation committee or board of directors;
- Bonus awards paid solely upon the satisfaction of one or more non-financial metric performance goal including, but not limited to, subjective metrics (e.g., demonstrated leadership), strategic metrics (e.g., consummation of a merger transaction or major divestiture), operational metrics (e.g., completion of a manufacturing plant, increase in market share), or share price (e.g., total shareholder return);
- Awards of restricted stock or restricted stock units that meet the following requirements: (i) the grant of such awards is not contingent upon the achievement of one or more pre-determined and objective financial metric and (ii) the vesting of such awards is solely contingent upon the completion of a specified period of employment service and/or attainment of one or more non-financial metric performance goal;
- Awards of stock options and stock appreciation rights that meet the following requirements: (i) the grant of such awards is not contingent upon the achievement of one or more pre-determined and objective financial metric and (ii) the vesting of such awards is solely contingent upon the completion of a specified period of employment service and/or attainment of one or more non-financial metric performance goal;
- Perquisites and personal benefits provided solely on account of the job position of the executive officer;
- Non-qualified plan benefits that accrue based on a pre-determined objective formula, discretionary employer contributions, contributions of the executive officer, or length of service;
- Cash severance benefits and other related severance benefits payable solely upon one or more of the following events: (i) an employment termination event (e.g., involuntary termination; good reason termination), (ii) a change-in-control, or a (iii) change-in-control followed by a qualifying employment termination event;
- The payment or provision of benefits under traditional health and welfare programs including, but not limited to, group medical, dental and optical health care insurance coverage, long-term disability insurance coverage, group term life insurance, accidental death and dismemberment insurance coverage, travel insurance, and dependent care assistance programs; and
- Any payments or benefits received under a tax-qualified retirement plan.

■ **Definition of when incentive-based compensation is deemed "received."** We recommend the Commission adopt rules providing that incentive-based compensation is deemed to be "received" during the 3-year look-back period on the earlier of (i) the date such compensation is paid to the executive officer or (ii) the date such compensation is "earned" by the executive officer.

For the foregoing purposes, "earned" would mean when an executive officer obtains a non-forfeitable interest in a compensatory award. For example, awards of performance-based stock options and restricted stock units would be considered earned in the year in which such awards vested due to the achievement of pre-determined financial metrics (not the year in which the stock option was exercised or restricted stock unit was settled). This definitional approach avoids the possibility that an award which vests but remains unpaid during the 3-year look-back period escapes possible recovery by the issuer. As discussed more fully below, in the case of a vested but unpaid incentive-based award that becomes subject to recovery, since no amounts have been paid to the executive officer the recovery method would be necessarily limited to the forfeiture of such award.

- **Definition of end of 3-year look-back period**. The recovery provisions provide that the 3-year look-back period ends on the "date on which the issuer is required to prepare an accounting statement" but does not indicate or make clear when such date occurs. Therefore, we recommend the Commission adopt rules that specify the date on which an issuer is required to prepare an accounting restatement due to material noncompliance of the issuer with any financial reporting requirement under the securities laws.

- **Demand for recovery**. An issuer's compensation committee (or it functional equivalent) should be charged with the responsibility of determining whether and, to what extent, excess incentive-based compensation has been paid to or earned by an executive officer. After making this determination, the compensation committee should be required to issue a letter to the affected executive officer either (i) demanding repayment of any excess incentive-based compensation paid to the executive officer or (ii) notifying the affected executive officer of the issuer's intent to cause the forfeiture of vested but unpaid excessive incentive-based awards held by the executive officer ("Recovery Letter") (see discussion below regarding method of recovery in this circumstance).

- **Determination of "excess" incentive-based compensation involving selected equity-based compensation.** With respect to the determination of an executive officer's "excess" incentive-based compensation related to equity-based compensation, we recommend that the Commission adopt rules that provide for the following:

  - **Restricted shares which vested upon an erroneous financial metric.** In the case of restricted shares that vested upon the achievement of an erroneous financial metric, excess incentive-based compensation should be equal to the fair market value of the shares on the date of vesting.

  - **Restricted share units which vested upon an erroneous financial metric.** In the case of restricted share units that vested upon the achievement of an erroneous financial metric, excess incentive compensation should be determined in the following manner:

    - For RSUs that are settled upon vesting, excess incentive-based compensation would be equal to the aggregate fair market value of cash and shares received on the date of vesting.

    - For RSUs that are settled after vesting but prior to the executive officer's receipt of a Recovery Letter, excess incentive-based compensation would be equal to the aggregate fair market value of cash and shares received on the date of settlement.

    - For vested RSUs that have not been settled as of the date the executive officer receives a Recovery Letter from the issuer, the entire RSU would be considered excess incentive-based compensation subject to forfeiture.

— **Stock options/stock appreciation rights (SARs) which vested upon an erroneous financial metric.** In the case of stock options/SARs that vested upon the achievement of an erroneous financial metric, excess incentive compensation should be determined in the following manner:

  - For stock options/SARs that were vested and exercised prior to the date the executive officer received a Recovery Letter from the issuer, the amount of the excess incentive-based compensation would be equal to the stock options'/SARs' "spread" at the time of exercise (i.e., the excess of the fair market value of a share of company stock underlying the option/SAR over the exercise price/base price per share multiplied by the number of shares subject to the option/SAR).

  - For vested stock options/SARs that have not been unexercised as of the date the executive officer receives a Recovery Letter, the entire stock option/SAR would be considered excess incentive-based compensation subject to forfeiture.

- **Methods of recovery.** With respect to an excess incentive-based compensation award that has been earned but not yet paid to an executive officer at the time the executive officer receives a Recovery Letter, the forfeiture of such award should be considered a recovery of such excess incentive-based compensation under Exchange Act section 10C(b)(2). In all other cases, repayment by the executive officer of the excess incentive-based compensation demanded in a Recovery Letters should be the sole means by which an issuer may recover such compensation.

- **Reasonable efforts and de minimis amounts.** An issuer's compensation committee should be required to expend reasonable efforts to recover excess incentive-based compensation paid to or earned by current or former executive officers. However, if an issuer's compensation committee determines, in good faith, that the estimated cost (e.g., litigation expenses) to recover excess incentive compensation would likely be equal to or greater than the amount of such excess incentive-based compensation, then the compensation committee may cease making recovery efforts. In that regard, we recommend the Committee adopt a de minimis standard that would provide that issuers may, but are not required to, recover excess incentive-based compensation that does not exceed a minimum threshold amount.

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We appreciate the opportunity the Commission has afforded the public to comment on the Dodd-Frank Act in advance of the Commission's rulemaking. We welcome the opportunity to discuss with the Commission and its staff our comments provided herein.

Best regards,

Meridian Compensation Partners, LLC

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