

MERCER



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

November 15, 2010

Subject: Comments on Section 952, Compensation Committee Independence in Title IX,
Subtitle E of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Ms. Murphy:

Mercer is submitting comments in response to a request by the Securities and Exchange Commission to the public for input into its initiatives to implement regulations required under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act). In this letter, we comment on Section 952 of Subtitle E of Title IX of the Act as it relates to a compensation committee's selection of a compensation consultant, legal counsel or other adviser.

Mercer is a leading global provider of consulting, outsourcing and investment services, with more than 25,000 clients worldwide and approximately 10,000 in the United States. Mercer consultants help clients maximize the effectiveness of their benefit programs and optimize workforce performance by providing human resources and related financial advice, products, and services, including compensation consulting services, to corporations, boards of directors, and board compensation committees concerning the compensation of executives and directors. Mercer provides executive compensation consulting services to companies around the globe, including U.S. publicly-traded companies. We have extensive experience designing and implementing executive and director remuneration programs. As a result, we understand how compensation committees function and we have assisted countless companies in improving their executive compensation disclosure under the current reporting requirements.

Mercer is a wholly-owned subsidiary of Marsh & McLennan Companies, Inc. (MMC). Mercer operates with a separate management structure from other MMC-owned companies. In addition to Mercer, MMC is the parent company of a number of the world's leading risk experts and specialty consultants, including Marsh, an insurance broker and risk advisor; Guy Carpenter, a risk and reinsurance specialist; and Oliver Wyman, a management consultancy. With approximately 52,000 employees worldwide and annual revenue of \$10.5 billion, MMC provides analysis, advice and transactional capabilities to clients in more than 100 countries.



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Summary of Mercer's comments on Section 952

Section 952 of the Act requires compensation committees to consider independence factors to be identified by the Commission when selecting compensation consultants, legal counsel and other advisers. These factors must be "competitively neutral" among categories of consultants, legal counsel and other advisers and "preserve the ability of compensation committees to retain the services of [firms] of any such category." These factors must include the following:

- Other services provided to the company by the adviser's employer
- Fees paid by the company to the adviser's employer as a percentage of that employer's total revenues
- Conflict-of-interest prevention policies and procedures of the adviser's employer
- Any business or personal relationship between the adviser and a compensation committee member
- Any company stock owned by the adviser

In addition, proxy statements must disclose whether the compensation committee retained a consultant and, if so, whether the work raised any conflicts of interest, including the nature of any conflict that did arise and how it was handled.

Our comments are summarized as follows:

- We believe it is critical that the Act's language regarding competitive neutrality serve as a guiding principle for the Commission's consideration of independence factors.
- We agree that compensation committees should consider several factors in selecting and evaluating the objectivity of their compensation consultants, legal counsel and other advisers, particularly whether a consulting firm or other adviser has adopted policies and procedures to minimize the potential for the firm's relationship with a client to inappropriately influence executive compensation advice.
- We request clarifications of the five factors included in the statute; offer comments to assist the Commission in implementing the new requirements; and suggest additional factors to be considered.
- We agree with the conflicts-of-interest disclosure requirement.



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Competitive neutrality

We strongly support the statute's requirement that the factors identified by the Commission be "competitively neutral" among categories of consultants, legal counsel and other advisers, and believe it is an important aspect of the new provisions. Competitive neutrality is important to ensure that compensation committees can choose an adviser that is most suitable to their specific needs. It is clear that Congress recognized the importance of giving compensation committees a choice of advisers and that SEC rules should not limit choice by focusing on one factor to the exclusion of other factors that are equally significant in assessing the objectivity of an adviser's recommendations and advice.

We believe the current requirements to disclose the amount of fees received from the company by the compensation consulting firm for performing other services are sufficient. Additional emphasis on fees might perpetuate the false premises that (1) multiservice firms, such as Mercer, are unable to provide objective advice to their compensation committee clients and instead enhance management's compensation levels in an effort to establish, preserve or enhance consulting fees from other engagements with management and (2) single service boutique firms recommend lower pay for management and, therefore, the use of such firms should escape investor or regulatory scrutiny.

As we indicated in our Sept. 15, 2009 [comment letter](#) regarding the proposed rules on proxy disclosure of fees, there is no evidence that companies that use multiservice firms have higher CEO pay or that those that use single service boutiques have lower pay. In fact, at least three independent academic studies have rigorously analyzed the data and found no correlation between the consulting firm's business model and US CEO pay levels.¹

The large multiservice firms have in-depth technical and regulatory expertise, global knowledge and presence, financial resources to invest in substantial databases and

¹The Incentives of Compensation Consultants and CEO Pay, by Brian Cadman (David Eccles School of Business University of Utah), Mary Ellen Carter (Carroll School of Management Boston College) and Stephen Hillegeist (INSEAD), February 2009; Executive Pay and "Independent" Compensation Consultants, Kevin J. Murphy (Marshall School of Business, University of Southern California), Tatiana Sandino (Leventhal School of Accounting, Marshall School of Business, University of Southern California), April 28, 2009; and Economic Characteristics, Corporate Governance, and the Influence of Compensation Consultants on Executive Pay Levels, Christopher S. Armstrong (The Wharton School, University of Pennsylvania), Christopher D. Ittner (The Wharton School, University of Pennsylvania), David F. Larcker (Stanford University Graduate School of Business, Rock Center for Corporate Governance), June 12, 2008



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research, and depth of talent to staff complex projects such as merger and acquisition transactions. As companies are being asked to assess risk in their incentive plans and implement say on pay, multiservice firms have the analytic tools and the business consulting expertise to assist them. Diminished choice will have implications for a competitive market in compensation consulting services and would hamper the ability of compensation committees to hire the most appropriate and effective consultant.

Five factors

We have the following specific comments on the five factors denoted in the statute:

Other services

With respect to the requirement to consider other services to the issuer by the firm that employs the compensation consultant, legal counsel and other advisers, we recommend that the Commission clarify the definition of "other services" to exclude providing advice related to broad-based, non-discriminatory plans and surveys, similar to the exclusion in the proxy rules on compensation consultant fee disclosure.

We also recommend that, with respect to affiliated organizations, the provision of "other services" be limited to those services provided by affiliated organizations that provide human resource-related services and not include other affiliates outside the human resources realm. For example, an affiliate of Mercer might provide services to a company but the individual Mercer consultants working for the company are often unaware of the affiliate's relationship with the company and the company's management team may be unaware of the relationship between Mercer and the affiliate. Under that fact pattern, there is no opportunity for a conflict of interest and the affiliation should not be a factor the committee would have to consider.

Fees as a percentage of revenue

We recommend that fee disclosure be triggered where the consulting firms' or other advisers' revenues from the company (including fees from the committee) exceed 0.5% of the consulting firm's total revenues (not including the revenue of affiliates). This threshold should apply to all firms providing services to compensation committees and seems to us to be the level at which individual client revenues may have a recognizable impact to any type of firm.



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We do not believe the factors should compare fees for executive compensation services with fees paid by the company to the consultant's firm for other services. The existence of a disparity between the amount of fees received for committee compensation advice and the amount received for other services does not alone indicate that the committee received biased advice. For example, a single service boutique firm's financial stability may be threatened if it provides advice that a client does not want to hear and yet, under current rules, the lack of disclosure of other fees paid (since there are no other services) would create an inappropriate inference to shareholders that there is no conflict.

Policies and procedures

We believe that the adviser's policies and procedures designed to prevent potential conflicts of interest are the most important factors for committees to consider in evaluating the objectivity of the compensation consultant, legal counsel or other adviser. In particular, we believe the following types of policies and procedures are important to consider:

- Procedures to manage potential conflicts related to the consulting relationship that are incorporated into engagement letters required for all client relationships,
- Policies prohibiting the lead consultant who provides services to the committee from reporting to an individual with direct responsibility for expanding services to the client.
- Procedures for establishing and documenting clear reporting relationships between the consultant and the committee, and rules regarding whether and how information and recommendations are shared with management team members,
- Policies stating that consultants may not be paid bonuses or commissions for sales of other services to companies and their compensation may not depend on the compensation programs they design or the advice they give, and
- Policies prohibiting consultants from providing gifts or entertainment to or receiving gifts or entertainment from the company and/or compensation committee members

These types of policies and procedures can minimize the potential for the consulting firm's or other adviser's relationship with a company to inappropriately influence executive



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compensation or other advice and should be factors considered by compensation committees in evaluating the independence of their advisers.

Business and personal relationships

We agree that business and personal relationships between the compensation consultant, legal counsel or other adviser and a member of the compensation committee are an important factor to consider but we recommend that consideration be limited to the relationships of the lead consultants on the project, not all employees of the consulting firm.

We suggest that the Commission consider more fully defining the term "business or personal relationships," possibly by providing examples to guide compensation committees. One example might address the not-uncommon situation where an individual serves as chair of the compensation committees of several companies and retains the same individual consultant to assist all of these companies' committees. There are numerous other possible scenarios the Commission could address to help committees think through the implications of various "business or personal relationships." Finally we recommend an exception for affiliations in professional organizations (for example, WorldatWork or National Association of Stock Plan Professionals).

Stock ownership

We recommend that the Commission clarify the requirement to consider stock of the company owned by the compensation consultant, legal counsel or other adviser to indicate it is stock owned only by the individual consultants or adviser working for the company and stock owned by the adviser's firm as a whole, but not stock owned by each individual consultant or adviser employed by the firm if they are not involved in the work for the company. Also, stock ownership should be limited to stock owned directly and should exclude indirect ownership through vehicles such as mutual funds or managed accounts over which the consultant has no discretionary control. We also suggest that the Commission consider an ownership threshold for this factor to reduce the burden of monitoring stock ownership levels.

Additional factors to consider

While the factors listed in Section 10C(b)(2) of the Act will assist compensation committees in determining if their consultants, legal counsel and other advisers may have potential



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conflicts of interest, we believe there are other important balancing factors compensation committees may consider in making hiring decisions. These include the depth of knowledge and experience of the adviser and his or her firm, the adviser's experience in delivering high quality and timely advice, the firm's ability to provide data and information about peer compensation pay practices, the technical and regulatory expertise of the consultant and his or her firm and the consultant's ability to interact effectively with the committee. The firm's capabilities for providing more effective service to the committee by integrating these areas may be considered by the compensation committee in its decision-making process, and we recommend that a requirement that the company disclose the balance of these factors be included in the Commission's rule proposal. The Commission should also encourage compensation committees to disclose other factors they considered in choosing their consultants, legal counsel and other advisers, such as global perspective and expertise, and broad human capital expertise in areas within the committee's purview, such as talent management, succession planning and human capital strategy.

Proxy disclosure addressing conflicts of interest

Section 10C(b)(2) requires that proxy statements disclose whether the compensation committee retained a consultant and, if so, whether the work raised any conflicts of interest, including the nature of any conflict that did arise and how it was handled. We recommend the Commission provide guidance on this requirement to clarify steps that could be taken by the consulting firm to mitigate potential conflicts of interest. For example, Mercer has adopted processes and procedures to minimize the potential for the firm's relationship with a client to inappropriately influence executive compensation advice. We believe that the academic studies cited earlier are evidence that the standards have worked.

- In addition to its overall Code of Conduct, Mercer has adopted **Global Business Standards** (copy attached) to manage any potential conflicts related to executive compensation consulting. These are incorporated into our engagement letters, which are required for all client relationships.
- Specifically, we establish and document clear **reporting relationships** between the consultant and the committee, and rules regarding whether and how **information and recommendations are shared** with management team members.
- We **disclose** to our compensation committee clients Mercer's relationship with the client organization, including fees and services.



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- **Our compensation programs** for consultants also support objectivity. Executive compensation consultants are not paid bonuses or commissions for sales of other services to clients. (Consultants may, however, benefit from the overall performance of Mercer's parent company, MMC, to the extent they hold MMC stock and it appreciates in value.) Consultants' compensation does not depend on the compensation programs they design.
- **Our reporting structure** also supports objectivity. Executive compensation consultants do not report to client relationship managers or to consultants in other lines of business. They report through our human capital line of business, of which executive compensation is one segment.
- Executive compensation consultants are required to **report to our leadership** any effort on the part of management or another Mercer consultant to influence our executive compensation advice. This is consistent with our primary core value, integrity – holding ourselves “to the highest standards for ethical behavior, fairness and compliance with the law.”

We also work with our clients to establish any additional safeguards tailored to meet their specific needs or concerns. We believe that our Global Business Standards mitigate the potential for our compensation committee consultants to be inappropriately influenced by management.

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We thank the Commission for the opportunity to comment on its rulemaking initiatives. We would be happy to discuss our comments or to answer any questions about our comments. I can be reached at +1 (213) 346-2240.

Sincerely,

A handwritten signature in black ink that reads 'William H. Ferguson'.

William H. Ferguson
Senior Partner
Global Segment Leader for Rewards



Executive Remuneration Services Global Business Standards

Mercer is committed to providing objective advice to all of our clients. Ensuring the objectivity of consulting advice on executive remuneration is a corporate governance issue around the globe and is critical to our role as a trusted advisor to our clients. Accordingly, Mercer has adopted these Global Business Standards for its Executive Remuneration Services to manage potential conflicts of interest and to preserve the integrity of our advice. Our Executive Remuneration Services encompass all forms of remuneration (cash, equity, benefits and perquisites) for executives as well as for members of organizations' governing boards. The Global Business Standards address how we (i) manage the executive remuneration consulting relationship, (ii) ensure the quality of executive remuneration consulting services and (iii) structure our business to manage potential conflicts of interest.

Managing the relationship

A clearly defined client relationship provides the foundation for ensuring the objectivity and integrity of our advice. At the beginning of each engagement, our consultants establish with clients a clear mutual understanding of our role and client reporting relationship, premised on our commitment to providing objective advice.

An engagement letter documents the key elements of the assignment and relationship: roles, responsibilities, scope of services, fees, timeframe and client reporting relationships including how and to whom information and recommendations are communicated. The engagement letter also sets out the parties' expectations regarding certain disclosures, such as information about other services provided by Mercer to the client.

Ensuring the quality of our advice

Mercer is committed to providing the highest quality advice to our clients. To ensure that our professional standards are upheld, executive remuneration consulting services are performed only under the direction of a Human Capital business principal. All consulting advice is peer reviewed pursuant to Mercer's global professional standards before it is rendered. In addition, the structure of ongoing executive remuneration consulting relationships is subject to annual review to ensure that it continues to best serve the interests of the client and properly preserves the objectivity of our advice.

Structuring our business

The structure of our business not only facilitates the seamless exchange of our best thinking but also demonstrates to employees and clients the integrity of our advice. Our Human Capital business is accountable for all of Mercer's executive remuneration consultants. Our Human Capital business leaders – not client relationship managers – evaluate performance and determine remuneration for all executive remuneration consultants. Consultants are not compensated based upon client revenue from other lines of business or other MMC companies other than to the extent that all employees of MMC benefit from the overall success of MMC and its subsidiaries.

Mercer's Human Capital business leadership requires our consultants to seek guidance from them whenever there is any question that our objectivity or integrity is at risk of being compromised. Consultants may discontinue executive remuneration consulting relationships where apparent or actual conflicts that would impact the quality or objectivity of our advice cannot be resolved to both our clients' and our satisfaction.