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Securities and Exchange Commission
Washington, D.C.

Via Email

Response to Request for Comment Regarding Proposed Changes in Proxy Disclosure (Release #33-9052)

Ladies and Gentlemen:

On behalf of Grahall Partners, an independent executive compensation consulting firm that provides compensation related consulting services nationwide, I hereby offer our Partnership's comments to the SEC's proposed changes to the current proxy disclosure rules. While Grahall generally supports the tenor and tone of the changes suggested by the SEC, we have also included our thoughts regarding how certain weaknesses in the disclosure process can be further improved without creating an excessive burden on public companies.

Our comments are broken down into 4 general subject areas: enhanced risk disclosure (as it directly relates to compensation), proposed changes to the summary compensation table, enhanced disclosure of director qualifications to serve on the Board (or its committees), and concerns regarding potential conflicts of interest with respect to executive compensation consultants who provide both compensation advice and other services to the same clients.

I. Enhanced Risk Disclosure

Grahall believes requiring a discussion of how the Board or Compensation Committee's assessment of all elements of its compensation programs (including any risk analysis) is an excellent idea whose adoption is well overdue. We note however that while we agree that compensation schemes can have an enormous impact on the character of an organization and the incentives faced by executives, we feel the turmoil in the financial markets which has prompted the heightened concern with risk, is primarily attributable to the lack of appropriate regulatory oversight, and not overly aggressive compensation design.

Why does this distinction matter? Well, as a proponent of compensation schemes which reflect a "Total Rewards" perspective, we wish to be perfectly clear that we support the SEC's proposed enhanced disclosure scheme with respect to all compensation programs administered by public companies - not only those programs solely or primarily applicable to executive officers, or which impact certain companies in certain industries. By so doing, we seek to validate the importance we believe that risk considerations play an appropriate compensation design. Where the risk posed by a compensation scheme is not properly conceived by the board, perceived by management, or actually understood by investors, then serious dislocations between investors and the company can result. True "pay-for-performance" not only entails higher pay for above market financial results, but an ongoing evaluation of how much risk an enterprise is exposing itself to achieve those results, irrespective of whether those risks were actually realized or not.[1]

Grahall believes that appropriate consideration of the "leverage" chosen by the Board/Committee is an integral element of any well thought out compensation design program, and is of critical importance to all stakeholders, including investors. Accordingly, we support full disclosure of risk/reward considerations by all filers irrespective of size, industry or which employees of the company are eligible to participate in the program.

Grahall also supports the SEC's proposal requiring an affirmative statement regarding the non-material impact of a reward design on risk and the financial condition of the filer. We believe this is critically important. Without such a requirement, many companies will simply ignore undertaking an analysis of the risk element, taking refuge in the fact that they can simply rely on a non-materiality defense in the unlikely event that they are ever engaged in litigation. Conversely, by requiring an affirmative statement from the Board or Compensation Committee on an annual basis, the SEC can effectively improve the nature of the "compensation conversation", and good governance will require every filer to fully consider how risk is impacted by each program as part of its annual governance and compensation review.

II. **Summary Compensation Table**

Grahall believes that proxy disclosure is critical to facilitating the ongoing improvement of compensation practices in U.S. public corporations and that the current system of proxy disclosure, while significantly improved with the advent of the CD&A, can still be significantly enhanced without imposing any material additional cost to filers. We also believe that the Summary Compensation Table is the lynchpin of executive compensation disclosure. A summary of our suggested improvements follow below.

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[1] This point is best understood by conceptualizing compensation in the insurance industry, as insurance companies must consistently evaluate the potential risk presented by both existing and new revenue streams, both on an individual basis, and with respect to any broader risk to the enterprise at large based on the entire enterprise's then-current risk portfolio.

First, Grahall agrees that the current method of valuing and disclosing equity awards is confusing to shareholders and has become increasingly ineffective. When extracting compensation data for comparative purposes, compensation professionals are forced to "adjust" these numbers to arrive at a normative figure that accurately depicts annual compensation which is the way most Boards, professionals, and shareholders wish these comparisons to be performed. While option valuation remains somewhat challenging with no "perfect" disclosure alternative available, we agree the best approach is to fully value equity awards on an appropriate grant date, and to attribute the value of such awards to the compensation year for which they are being awarded (without regard to the date such awards are actually granted). Thus, an award made in January of 2010 for the 2009 compensation year should clearly be reported as part of compensation for 2009.

Second, with respect to equity awards that are intended to represent compensation beyond the current fiscal operating period, Grahall supports additional rules changes which would require a company to indicate which awards are intended to apply to a multi-year period. Currently, compensation consultants attempt to distill this information by reading the employment agreement disclosure contained in the proxy, reviewing annual "grant patterns" or both. However, these methods are highly flawed, and many multiyear awards are not captured by this methodology. The failure to accurately characterize and adjust these awards (by annualizing the award value over a multiyear period) creates upward pressure on the compensation amounts disclosed and used for comparative purposes, potentially resulting in "market data inflation". Our proposal is simple: add a simple column to the current Summary Compensation Table which would require filers to indicate the number of years that each grant is intended to cover.

Third, with respect to disclosure of option repricings, or any similar cancellation and re-grant, we would suggest requiring disclosure of the full value of the current equity award and showing the then current value of the replacement award as an offset. In this way, shareholders can better assess the impact of the award. This requirement can be effectuated either with an additional column or with footnote disclosure.

Finally, while we agree with the SEC's observation (and many commentators concurring opinions) that shareholders may benefit from ongoing disclosure regarding executive officers' equity accretion somewhere in the proxy, we do not support including such accretion (or diminution) in equity value in the Summary Compensation Table. We believe doing so can seriously distort the compensation data, rendering it more difficult to ascertain what the compensation committee actually approved for the current year. Conceptually, we believe the Summary Compensation Table should be limited to decisions made by the Compensation Committee with respect to named executive officer compensation for the applicable year.

If the SEC were inclined to expand disclosure to include an annual accounting of changes in an executive's equity values, we would suggest the creation of a new "Wealth Appreciation" table, which could list historic grants, appropriate strike prices, and current values at the conclusion of the compensation year, so that shareholders would have a simple straightforward and easy to understand tabulation of the executive's then-current equity position.

III. Director Qualifications

While Grahall believes that all directors that serve on the Boards of public companies should be highly qualified, ultimately it is the shareholders who must decide who to entrust with overseeing the company. Accordingly, the obligation to inform shareholders of the Board's assessment of a director/candidate's qualifications should be viewed as a critical element of the Board's fiduciary obligations to its shareholders, and the information contained in the proxy statement should help facilitate the fulfillment of that obligation.

Having said that, there is a current perception in the market for directors that securing excellence in directors has become increasingly more difficult, both because of a diminishing supply of qualified directors, and because of the increased perception of risk that serving on the board of a U.S. corporation currently entails. So there is a risk that enhanced disclosure of director qualifications could exacerbate this trend.

On balance though, Grahall believes enhanced disclosure of director qualifications is a desirable change, and we support the SEC requiring that filers disclose these qualifications. We also believe this should be done on an annual basis, not just when a director is initially elected to the Board. By requiring annual disclosure, shareholders can consider such qualifications each time they vote for a position, and will not have to parse through multiple years of prior filings to determine the appropriateness of a director's experience. Shareholders can also get a comprehensive "overview" of any synergies which may exist among the directors as a whole, and we'd encourage filers to illustrate and describe how the Board's size and composition is appropriate for the company given its business strategy and market position. Director's recent experiences, such as positions on other Boards of Directors, can also be updated on an annual basis. This annual requirement will place little if any additional burden on filers.

IV. Conflict Of Interest

Grahall's Partnership believes that neither real nor apparent conflicts of interest at compensation consulting firms are in the best interests of shareholders or the general public. Accordingly, we support the SEC's enhanced disclosure regarding conflicts of interest, and would propose the SEC consider even tougher disclosure rules, and place renewed emphasis on strict enforcement of the reporting rules.

As a firm with many members with decades of experience at each of the major compensation consulting firms, we have little doubt regarding the types of pressures that executive compensation practitioners may face to please clients, as we have each faced such pressures during our careers. We are also well aware of the significant pressure to "cross-sell" services across the rewards and benefits spectrum offered by our employers.

We believe these pressures were well discussed and summarized in the government's own recently completed study, commissioned by Congressman Henry Waxman in 2007. A very brief summary of that study's findings is instructive of our viewpoint:

- *The Conflict of Interest Problem is Pervasive*: Over 40% of the Fortune 250 solicited executive pay advice from consultants who also performed other services for those companies

- *Executive Compensation Consulting Fees Are Relatively Small* – The Waxman report states the average consulting fees for compensation were $220,000, while other services amounted to $2.3 million. Accordingly, consulting firms were paid ***11 times*** more money for providing benefits or consulting advice other than compensation advice

- *Consultants Aren't Adhering to the SEC's Existing Reporting Rules*: Over 2/3's of Fortune 250 companies hiring compensation consultants with conflicts of interest did not disclose those conflicts of interest in their SEC filings. Even worse, in many cases, consultants were affirmatively represented to shareholders as being "independent" when they in fact, were conflicted

- *Pay Is Higher at Companies Hiring Conflicted Consultants*: The Waxman report found that Median CEO salaries at companies who used conflicted consultants was ***67% higher*** than at companies who did not use conflicted consultants

While the existence of these problems does not surprise us, the pervasiveness and magnitude of the data contained in the Waxman report was nothing short of stunning to many practitioners in the compensation consulting field. While larger firms can always take refuge in the argument that a causal relationship between these factual observations cannot be proven, there is little doubt in the minds of Grahall's Partners that reforming and exposing conflicted consulting arrangements remains a critical aspect of the government's effort to improve the ability of Boards, Compensation Committees and shareholders to design, implement and maintain executive compensation programs that are fair and balanced.

Finally, we respectfully disagree with the SEC's proposed exclusion of fees relating to broad-based plans. Logically, if the potential loss of material income streams from the same client within a consulting organization exists, the source of the income stream is of little importance – it still has the potential to create a conflict of interest. We do however fully support the form of disclosure proposed by the SEC – the dollar value of all non-compensation based projects. We are aware that conflicted consultants have suggested disclosing such additional fees not in dollar form, but expressed as a percentage of the firm's total revenues. We oppose this suggestion, as it would potentially mask the potential for those additional projects and associated revenues to cause a conflict situation. The key inquiry, in our view, is the amount of compensation consulting fees *relative* to the aggregate amount of fees potentially at risk for other projects at the firm. This is the same standard used by the Waxman study.

Ideally, a compensation consultant should have equal access to both management and the Compensation Committee, and should be free to conduct its market evaluation and make recommendations without consideration of what other projects or income streams might be jeopardized by the conclusions reached, should those recommendations ruffle the wrong set of feathers. Grahall believes that this result is best accomplished by seeking advice from qualified independent consultants, and at an absolute minimum, shareholders should be aware of the nature of any potential conflict which could affect the advice the Board and Compensation Committee is receiving from its consultant.

We thank you for your time and consideration of the issues we have raised in this letter, and of course are available to discuss any of these items further to the extent you need additional clarification.

Very truly yours,

R. Garry Rogers, Esq.

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