Watson Wyatt Worldwide

September 15, 2009

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Subject: Proxy Disclosure and Solicitation Enhancements (File No. S7-13-09)

Ladies and Gentlemen:

Enclosed are comments under the Securities and Exchange Commission's (the "Commission") Proposed Amendments to the Proxy Disclosure Requirements for Executive and Director Compensation, focusing specifically on § 229.407 (Item 407) Corporate Governance, regarding the disclosure requirements on the role of compensation consultants. These comments represent the views of Watson Wyatt Worldwide, an international consulting firm providing executive compensation, actuarial and other consulting services. We have sent a comment on the issue of revising the Summary Compensation Table and expanding the Compensation Discussion and Analysis under separate cover.

Please contact Steven Seelig at 703-258-7623 if you have further questions regarding our comments.

Best regards,

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I. Introduction

Our comment letter begins with an Executive Summary, and then addresses the fact that academic research repeatedly has established that multi-service firms such as Watson Wyatt do not have clients whose executive pay levels are higher than those serviced by firms that provide only compensation consulting services (so-called "boutiques"). We next address the safeguards our firm has in place to assure our clients our advice as compensation consultants is not influenced by any other relationships our firm has to provide other human resources consulting services to management. We next provide a Preferred Alternative Disclosure we would urge the Commission to adopt that would provide shareholders significantly more insight into the decision-making process of compensation committees in hiring and working with their compensation consultants, and a second Alternative Proposal that addresses the issue of disclosures when compensation consulting is provided to management rather than the compensation committee.

Our comments next focus on the fact the proposed rules will tend to be anticompetitive and will reduce efficiencies the multi-service firms help to promote in the marketplace. We then seek to clarify that the role of compensation consultants as advisors to compensation committees is limited, as is our influence on executive pay decisions made by compensation committees. Finally, we respond individually to each specific request for comment from the Commission included in the Proposing Release.[1]

II. Executive Summary

For the reasons stated in our comments below, Watson Wyatt urges the Commission to adopt an alternative to the proposed rule regarding disclosure requirements for compensation consultants that will better accomplish the goal articulated by the Commission in its Proposing Release to provide shareholders more information "to better assess the compensation decisions of the board."[2]

Criticism of multi-service firms that provide advice to compensation committees is based entirely on the theory that a conflict of interest might arise, rather than on evidence that a conflict of interest in fact exists. The theory is that a multi-service consultant advising the compensation committee would fail to provide objective advice and would enhance management's compensation levels in an effort to establish, preserve or enhance consulting fees from other engagements with management. In truth, however, academic research repeatedly has established that use of a single firm to provide consulting services to the compensation committee, as well as other human resources consulting to the company, does not correlate with an increase in

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[1] Release No. 33–9052 (Jul. 17, 2009) [74 FR 35086].

[2] "In addition, the proposed amendments would require a description of any additional services provided to the company by the compensation consultants and any affiliates of the consultants. These disclosures are intended to enable investors to assess any incentives a compensation consultant may have in recommending executive compensation and better assess the compensation decisions made by the board." Release No. 33–9052 (Jul. 17, 2009) [74 FR 35086].

executive compensation.[3] On the contrary, clients of supposedly independent, "boutique" consulting firms have been found to pay executives significantly more than companies that use multi-service consultants.[4]

A rule that requires disclosure of fees only and that applies only to multi-service firms inevitably reinforces and, worse, endorses the misperception that this information alone indicates and can be used by investors to assess the existence of a conflict of interest and lack of objectivity. The following comments illustrate why the proposed regulation that requires disclosure of fees will only reinforce the misperception that a conflict of interest exists, and will not result in an informative disclosure as to whether, or to what extent, the potential for a conflict of interest exists.

Further, we believe the proposed fee disclosure is an inaccurate and insufficient standard for assessing objectivity or conflicts of interest and would have unintended consequences, including impairing competition in the industry, reducing registrant choice and cutting off a key source of thought leadership and innovation in executive compensation. It may also have the unintended consequence of increasing the cost of hiring multi-service firms to perform other human resources-related consulting work, and would produce inefficiencies by expanding the market share of firms whose retention has been shown to correlate with *increased* levels of executive compensation.

III. Academic Studies Have Concluded Multi-Service Firms Do Not Recommend Higher Pay Levels

Fundamentally, our firm believes the Commission's proposal to require fee disclosure only for multi-service firms that provide both compensation consulting to the compensation committee and other services to registrants is based on a flawed premise: that multi-service firms recommend higher compensation levels than do those of "boutiques". The theory, phrased by the Commission in terms of objectivity and conflicts of interest, is that a consultant from a multi-service firm advising the compensation committee would fail to provide objective advice and would seek to raise management's compensation levels in an effort to establish, preserve or enhance consulting fees from other engagements with management. The argument would follow that if multi-service firms are required to disclose all of their fees to shareholders, as is proposed

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[3] (1) *The 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;

(2) *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

(3*) 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.

[4] *The Role and Effect of Compensation Consultants on CEO Pay* at p. 3

by the Commission, the result would be that executive pay levels would tend to moderate because multi-service firms would be under increased scrutiny and would be dissuaded from acting on their conflicts by recommending higher pay.

There are a number of problems with this theory itself, the paramount of which is that *no evidence exists that executive pay has risen due to the advice provided by multi-service firms*, as discovered in separate and independent academic studies that tested this theory. In fact, these studies have found the companies that hire "boutique" firms commonly thought of as independent actually have clients with higher pay levels than the companies who use multi-service firms, after adjusting for company size.

For example, the Armstrong, Ittner and Larcher study concludes:

> [W]e find no support for claims that CEO pay is higher in "conflicted" consultants that also offer additional non-compensation related services.[5]

Similarly, the Cadman, Carter and Hillegeist study concludes:

> Overall, we do not find evidence suggesting that potential conflicts of interest associated with cross-selling incentives are a primary driver of excessive CEO pay. Reputation and credibility incentives can limit consultants' desires to act on cross-selling incentives. Similarly, safeguards put in place by compensation committees, such as requiring prior approval of or prohibiting the provision of non-EC services by the consultant, can limit the consultants' ability to act on their incentives. Taken together, our findings suggest that concerns about compensation consultant independence are overstated.[6]

The Cadman, Carter and Hillegeist study used a sample of 2007 proxy disclosures from 880 companies in the S&P 1500 to support their conclusion and raise several other interesting points.

- There is no consistent evidence that the clients of the multi-service firms (Mercer, Towers Perrin, Hewitt and Watson Wyatt) compensate their executives more highly than the clients of so-called "independent" firms.[7]
- Clients of the two largest "independent" consulting firms pay significantly greater levels of equity and total compensation than either clients of the top four multi-service consultants, or other independent consultants.[8]
- Congressman Waxman's study, which found contrary results, failed to control for economic determinants of pay (most notably company size), and therefore its conclusions alleging conflicts among the multi-service firms should be interpreted with caution.[9]

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[5] *Economic Characteristics, Corporate Governance, and the Influence of Compensation Consultants on Executive Pay Levels* at p.1.

[6] *The Incentives of Compensation Consultants and CEO Pay* at p. 26.

[7] Id.

[8] *The Incentives of Compensation Consultants and CEO Pay* at p. 14.

Watson Wyatt acknowledges that shareholders may be interested in the process by which executive compensation is determined by corporate compensation committees and the Board. However, the studies cited demonstrate there is simply no factual basis to support that an *actual conflict of interest exists* in the relationships companies have with multi-service firms. There are several reasons for this result - we discuss later in this comment letter the additional steps our firm has taken to ensure there is no incentive for our consultants to provide anything other than objective and independent advice.

Watson Wyatt believes that in developing this rule to provide information to shareholders, it is important for the Commission to ensure that the rule is balanced and that the required disclosures will be helpful to shareholders in understanding how the compensation setting process works. Based on the findings of the academic studies, the proposed disclosure will do nothing to enhance shareholders' understanding of why their company executives are paid what they are. Respectfully, the Commission should not adopt a rule that would impose millions of dollars in direct costs, and severely affect competition in an industry, without determining that there is a concrete need for the rule. This was the conclusion reached by the court of appeals in the recent decision involving annuities. [10]

IV. How Watson Wyatt Helps Assure That Our Consultants Provide Objective Advice

The reason multi-service firms including Watson Wyatt are comfortable in recommending the Commission adopt the Preferred Alternative: Qualitative Compensation Consultant Disclosure cited in the following section, is our confidence that compensation consultants at our firms are not and cannot be influenced by other working relationships that our firms might have to provide management-side human resources consulting to registrants.

Watson Wyatt has in place a number of protections that help assure that fees paid for other engagements do not create a conflict of interest and that our consultants act independently, and provide objective and unbiased advice to their compensation committee clients:

I. **Professional Standards:** Watson Wyatt has in place professional standards that include a Code of Business Conduct and Ethics to protect against any conflicts of interest. We have in place "WorkExcellence standards" that require a minimum of two associates in every project to ensure accuracy, objectivity, completeness, and sound judgment and seeks to eliminate the possibility that our advice would be influenced by any perceived conflict of interest.

II. **No Compensation Tied to Cross-Selling:** Our compensation programs for consultants also support objectivity. Compensation consultants are not paid commissions, nor are their bonuses determined based on sales of other services to clients.

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[9] *The Incentives of Compensation Consultants and CEO Pay* at p. 3

[10] *See Am. Equity Inv. Life Ins. Co. v. SEC*, 572 F.3d 923, 935-36 (D.C. Cir. 2009).

III. **Corporate Size Mitigates Potential for Conflicts:** No single client represents more than a fraction of a percent of firm revenue and therefore, no client is in a position to threaten the financial security of our firm if we fail to provide the advice they want. In contrast, "boutiques" tend to have a significant percentage of their total revenue tied to one or a few clients, which can tend to encourage advice that would be favorable to their retaining that client.

IV. **Engagement Protocols**: We disclose to our compensation committee clients the nature of our firms' relationship with the client organization so they can be fully apprised of this information when making the decision to hire us as their compensation advisors. For each of our compensation committee engagements where our firm also provides consulting services to management, we have in place Engagement Protocols that include requiring clear reporting relationships with the compensation committee and rules regarding information sharing with management team members. These engagement protocols also:

1. Confirm Watson Wyatt has been engaged by the committee to provide executive and Board of Directors compensation related advice;
2. Clarify that the committee has the sole authority to retain and terminate the consulting relationship, and to approve Watson Wyatt's fees;
3. Reinforce that although the committee may request input from the company's management team in the consultant selection and evaluation process, the committee has the final say on which consultant to retain;
4. Assure the committee approves the procedures for meetings and communication with management, including a discussion of any topics that should be reviewed with the committee members in advance; and
5. State affirmatively that we work for the committee and that our advice will be discussed with the committee in executive session outside the presence of senior management.

Having in place these safeguards has been found by the research to have had the intended result of assuring our firm provides objective advice free from conflicts of interest. Based on its research, the Cadman, Carter and Hillegeist study stated the point succinctly:

> To the extent that consultants' reputation incentives and organizational processes, along with safeguards instituted by boards are effective, compensation consultants will retain their independence and provide objective advice.[11]

The steps that Watson Wyatt has taken to alleviate concerns regarding any appearance of a conflict of interest are not unique and are consistent with those taken in other industries. For example, in a recent United States Government Accountability Office Report to Congressional

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[11] *The Incentives of Compensation Consultants and CEO Pay* at p. 8.

Requesters, [12] the GAO concluded that the proxy advisory firm RiskMetrics (formerly Institutional Advisory Services (ISS)) had in place sufficient "firewalls" so that the Commission has not identified any major violations in its examinations of whether conflicts of interest existed with its registered investment advisory role and its consulting services to help corporations develop management proposals and improve their corporate governance. The report found:

> ISS officials said that they have disclosed and taken steps to help mitigate this potential conflict. For example, ISS publicly discloses information about the potential conflict on its Web site and firm policy requires relevant disclosures to its institutional investor clients. In addition, ISS officials explained that the proxy advisory and corporate consulting businesses have separate staff, operate in separate buildings, and use segregated office equipment and information databases.[13]

As with the situation addressed in the GAO report, we believe that disclosure more particularly addressed to the issue of procedures used to avoid any appearance of a lack of objectivity or conflict of interest will provide more meaningful and useful information to assure investors that no conflicts of interest exist when we provide consulting services to both the compensation committee and to management and will not have the anti-competitive effects of the Commission's proposed fee disclosure.

V. Recommended Alternative Disclosures

A. Preferred Alternative: Qualitative Compensation Consultant Disclosure

Watson Wyatt joins with the three other multi-service human resources consulting firms (Towers Perrin, Mercer and Hewitt Associates) in proposing the Preferred Alternative Disclosure that follows. If adopted by the Commission, this disclosure would far better accomplish the goal of providing shareholders significantly more insight into the decision-making process compensation committees undertake in hiring and working with their compensation consultant, and how the compensation committee assures itself that it receives objective and unbiased advice, than would a more perfunctory disclosure of fees the consulting firm charges for services provided to the registrant.

We understand the theory of "Board capture" – that directors are unwilling and unable to contradict the pay recommendations made by CEOs – but do not believe it exists, based on our experience. Virtually every one of our compensation committee clients make objective and independent pay decisions in executive sessions that are not attended by CEOs. Naturally, absent disclosure addressing the process itself, there will be skepticism about how it happens. This is the reason we are urging the Commission to adopt the more expansive disclosure requirements described above rather than the blunt and uninformative instrument of fee disclosure.

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[12] *CORPORATE SHAREHOLDER MEETINGS: Issues Relating to Firms That Advise Institutional Investors on Proxy Voting,* GAO-07-765, June 2007.

[13] Id at p. 2.

The comments that follow will provide much more detail on the reasons we believe this is the case, and why the current proposal would be anticompetitive in nature and could reduce efficiency and choice for registrants.

The Preferred Alternative Disclosure would describe the steps taken by the compensation committee to determine if the consultant is able to deliver objective advice. Among the factors that it may be appropriate to address are whether the consultant to the Committee provides other services to the Company; the fees paid for all services to the company if over a specified threshold; actions and internal processes that the consultant has implemented to protect against conflicts of interest and preserve objectivity; and protocols governing the interaction between the consultant, the compensation committee and management.

As a key element of this Preferred Alternative Disclosure, the rule would include a required disclosure of fees charged by compensation consultants and their firms for all services rendered to the company, but only when such fees exceed a certain threshold of the firm's consolidated gross revenues. The threshold Watson Wyatt would recommend would be at 0.5 percent of our firm's consolidated gross revenue.

This approach to defining situations where the question of independence is material to the interests of shareholders has precedence in the corporate governance rules of the New York Stock Exchange regarding its Board of Director independence standards.[14] The rule provides that a director is not independent if:

> The director is a current employee, or an immediate family member is a current executive officer, of a company that has made payments to, or received payments from, the listed company for property or services in an amount which, in any of the last three fiscal years, exceeds the greater of $1 million, or 2% of such other company's consolidated gross revenues.

It should be noteworthy to the Commission that this standard applies to the determination of whether an individual can be considered an independent member of a corporate board of directors. In contrast, the proposed rule fails to contemplate use of a threshold similar to what the Commission has approved for assessing potential conflicts of interests. Under principles of agency rulemaking (*e.g.*, the Administrative Procedure Act "arbitrary and capricious" standard), it is appropriate to consider this alternative approach that has been used by the Commission to address a perceived question of "independence" in another context.

We recognize the desire of the Commission to enable shareholders to better understand the relationship of compensation consultants to the compensation committee and the company. However, we believe adoption of a rule that would require disclosure of fees when they are above a threshold, as is applied to independent directors, would provide a far more reasonable rule that would not impair competition and reduce registrant choice.

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[14] New York Stock Exchange approved by the SEC on November 4, 2003, and amended on November 3, 2004, other than Section 303A.08, which was filed separately and approved by the SEC on June 30, 2003.

Finally, we would like to point out that the rule as proposed ignores the notion that a concentration of fees within a compressed client base can also result in conflicts of interest. Stated simply, a small firm's very existence may be threatened if its client becomes unhappy with the advice it receives, which can make it more likely the advice would be given to appeal to the client. In the compensation consulting context, this would mean a smaller firm would be more likely to provide advice that is favorable to CEOs, and that a firm that specializes only in executive compensation advice may not attract a large clientele if it has a reputation of being overly tough on CEO compensation (since many compensation committee members are current or former CEOs of other companies).

To evaluate whether a firm's economic relationship with a client could potentially give rise to biased advice, any disclosure of fees should focus on the consulting fees as a percentage of firm revenues and be accompanied by a discussion of what relationships and other factors the Compensation Committee evaluated in assessing a firm's independence or objectivity. This would enable observers to evaluate the extent of potential conflicts of interest when a consultant's fees are concentrated in only a few clients.

[Please see **Appendix 1** for text of the regulatory language we would recommend the Commission adopt as the Preferred Alternative. Also, please see **Appendix 2** for a sample disclosure under the Preferred Alternative]

B. Management Services Alternative Proposal: To Clarify Disclosure Requirements Where Compensation Consulting is Provided Only to Management

Without regard to the action the Commission may take on the Preferred Alternative Proposal discussed in the previous section, we urge the Commission to amend the proposed rule to clarify that multi-service firms that provide both compensation consulting and other human resources consulting services to management, and are not engaged by the board, are exempt from any disclosure requirements.

We understand the Commission's desire to give shareholders more insight into the decision-making process regarding executive compensation, as cited in the proposing release.[15] However, we believe the Commission's proposed rule is overbroad and goes far beyond what is requested in the Petition for Rulemaking, cited in Footnote 87 of the Proposing Release, from Denise L. Nappier, Treasurer, State of Connecticut, et. al.[16]

Ms. Nappier's letter stated:

> We believe a potential conflict of interest exists at companies in which consultants are hired to do work for both a company's management and its compensation committee.

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[15] Release No. 33–9052 (Jul. 17, 2009) [74 FR 35086].

[16] Petition for Rulemaking, 4-558, Request for rulemaking requiring companies to disclose in the proxy statement the fees associated with all engagements for a single company and any ownership interest a consultant working for the compensation committee may have in the parent consulting firm,(May 12, 2008).

> When a consultant performs such services as benefits management on the one hand, and advises the board's compensation committee on executive pay matters on the other hand, we believe that the consultant's integrity may be jeopardized.

We have and will address the fundamental question raised by the letter, that the integrity of the advice from a multi-service firm compensation consultant is jeopardized when services are provided to the compensation committee and management, in other sections of this comment letter. Instead, for purposes of this discussion only, we would focus the Commission on the precise request being made by Ms. Nappier et al. They have expressed no concern about situations where the consultant advises company management on compensation matters and also provides other services such as benefits management to the company. From the petitioner's perspective, the concerns expressed about eliminating conflicts of interest *with management* should not exist when compensation consulting services are being provided *to management*. The Commission should also recognize it is a common practice for the "boutique" firms to engage the multi-service firms to provide them with expertise (surveys, actuarial support, etc.) that they do not have.

Furthermore, because the market anticipates that the Commission's rules will be adopted and apply with respect to engagements in the current year, we have already begun hearing from clients for whom we provide management services other than compensation consulting, who believe the proposed rule would prevent them from even using survey and research data provided by Watson Wyatt or its affiliates in setting compensation for their workforce. We fear these comments presage a flood of clients who would sever their consulting relationship with Watson Wyatt simply because we provide data services for them.

This type of data is used by virtually every corporation in America to set compensation, whether provided by Watson Wyatt or one of the other multi-service firms. If the Commission adopts a rule that applies only to multi-service firms and effectively equates raw fee data to a lack of objectivity, these clients will not be willing to disclose the fees for all the services we provide them, despite the fact that they will have great difficulty finding this information in the future. For example, large multi-national companies often use each of the multi-service firms for different human resources consulting needs. These companies would have to choose whether to disclose the fees for those services or simply do without the data services we and the other firms provide.

Within our Watson Wyatt Data Services subsidiary, we compile detailed compensation data from over 1,200 publicly traded companies and more than 13,500 organizations in the U.S. alone. Of the publicly traded companies surveyed, over 600 of them are Fortune 1,000 companies. Adopting a rule that would, in fact, limit Watson Wyatt's ability to provide either human resources consulting services or data would be devastating to our business.

For these reasons, we urge the Commission consider the following Management Services Alternative regarding compensation consulting services provided to management. Note: Our proposing this Alternative should not be viewed by the Commission as minimizing the vigor with which we advocate adoption of the Preferred Alternative described above in Section V.A.

Management Services Alternative: Watson Wyatt urges the Commission to adopt an amended version of the proposed rule to clarify that firms that provide executive compensation consulting

services to corporate management, rather than those that advise the Board's compensation committee, would have no disclosure requirements whatsoever. This approach would not go beyond that requested by Ms. Nappier et al, and would address the data and research issues discussed above.

VI. Proposed Rules Will Impair Competition and Reduce Registrant Choice

We urge the Commission to consider that the proposed rule will impair competition and reduce registrant choice.[17] As a consequence, it also will cause inefficiency.[18] The proposed rule is anti-competitive since it favors a "boutique" consulting model over the multi-service firm model. As proposed, fee disclosure would apply only to multi-service firms since the "boutique" firms take the position that all the work they do for a company is for the compensation committee, even when they work directly with a company's human resources department and cover compensation matters well beyond the named executive officers. This proposed disclosure requirement puts the multi-service firms at a competitive disadvantage since "boutiques" can, and have already, [19] used "no disclosure required" as a marketing tool.

Because the proposed regulation endorses the misconception that payment of fees for any services not rendered to the compensation committee creates conflicts of interests and results in a lack of objectivity, the proposal already has had a direct and negative effect on Watson Wyatt's compensation consulting business, as many clients and numerous prospects have determined they would prefer to hire a "boutique" firm as their compensation consultant solely to avoid the need to disclose fees. Simply proposing a regulation to require disclosure of fees already has reinforced the misperception that conflicts of interest exist. Companies have been forced to make the difficult decision to fire a trusted advisor by a desire to simply avoid having to disclose any fees for consulting services, even when expressing to us a continued desire to work with us and absolutely no actual experience of a conflict of interest that impaired our objectivity. The view we've heard is that compensation committees, already under significant pressure from pay critics, would rather take a path of least resistance that would require no fee disclosure.

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[17] Section 23(a)(2) of the Exchange Act (15 U.S.C. 78w(a)(2)) requires the Commission, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. This rule also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

[18] Section 2(b) of the Securities Act (15 U.S.C. 77b(b)), Section 3(f) of the Exchange Act (15 U.S.C. 78c(f)) and Section 2(c) of the Investment Company Act (15 U.S.C. 80a–2(c)) require the Commission, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

[19] July 15th Letter from James L. Reda to Watson Wyatt client Re: The Importance of Independent Executive Compensation Consulting Advice in Connection With [client name redacted]. In his letter, Mr. Reda states "**Simply put, because our firm's focus is solely within the executive compensation arena, our clients never need to question the independence of any advice we provide**. At James F. Reda & Associates, our policy of independence is built into our business model. Since we offer no additional unrelated services to management, directors can be sure that our compensation solutions are free of conflicts of interest." [Copy Attached]

Despite our concerns about the anticompetitive nature of these rules and the significant lost revenue that Watson Wyatt has and will continue to experience if this rule is finalized, the balance of our comments in this section focus on the costs to our clients and other registrants as their access to multi-service consulting firm compensation consultant is limited and perhaps might be eliminated. Since these rules significantly affect how and by whom executive compensation consulting services are sold to the registrants, they also could influence both the cost and the quality of services companies will have available to them.

Simply stated, the proposed rule would dramatically reduce client choice by steering companies away from consultants with the needed competence and capabilities that the multi-service firms offer. Compensation committees would be limited to "boutique" or specialty consulting firms, which are domestic in scope and have limited investment resources, data and research capability, and depth of expertise.

We have heard from some critics that these concerns are overblown and that multi-service firms will realign their relationships in the same way the Big 4 accounting firms did following enactment of the Sarbanes-Oxley limits on their services. We do not believe that analogy applies here for several reasons. Unlike the situation with audit engagements for the Big 4 accounting firms, the fees for consulting to compensation committees are very small compared to the fees for providing other human resource consulting products and services, including retirement, health benefits, and broad employee compensation. For Watson Wyatt, a typical executive compensation annual consulting engagement will fall in the range of $100,000 to $200,000 while the other services can be in the several million dollar range. This contrasts markedly from the circumstances of the audit firms, that might be able to generate multi-million dollar engagements from their attest services, or similar fees from the equally lucrative internal audit or tax and business consulting services sold to non-attest clients. Accordingly, the risk of disrupting existing relationships and impairing efficiency, competition, and the quality of compensation consulting services is real, whereas multi-service firms' supposed incentive to shade their work for the compensation committee has not been substantiated in the academic literature and is addressed by the controls and safeguards discussed earlier in these comments.

Furthermore, unlike the multi-million dollar audit firm engagements, compensation committee engagements often are not long-term and may change when there is turnover on the compensation committee. Finally, and perhaps most importantly, the analogy to audit services reflects the misconceptions of how compensation consulting engagements work. We simply provide advice to our clients while auditors verify and attest to the financial statements of their clients (See Section VII. for a detailed discussion of the role and function of a compensation consultant).

The result will be that multi-service human resources consulting firms like Watson Wyatt will avoid providing executive compensation services completely if it potentially forecloses them from being engaged for or bidding on other work. Thus, if the Commission seeks to address the question of consultant objectivity and independence only through fee disclosure, without taking into account the actions that have been taken to prevent the appearance of potential conflicts from becoming actual conflicts, and without addressing other potential conflicts of interest issues that can arise with "boutique" firms, the rules would have negative consequences without advancing standards for true independence and objectivity.

If access to multi-service firms is limited by the proposed rule, companies will lose the broad insights, robust data and analyses, extensive technical expertise (e.g., accounting, tax, disclosure and governance), and globally integrated resources that help them address a range of complex and often interrelated business issues. This depth and breadth of knowledge is the reason multi-service firms have played a critical role in providing services to the compensation committees of America's largest, most complex companies. These companies will incur significant costs to replicate what we have created as we continue to lose clients if the proposed rule is adopted.

Multi-service firms like Watson Wyatt are not the only ones who take this view. In his study on *Executive Pay and "Independent" Compensation Consultants,* Professor Murphy states the potential economic effect on registrants succinctly:

> Thus, we present a cautionary tale for current demands by some legislators and activists requesting that firms disclose fees paid for non-executive-pay related services provided by the compensation consultant, or further demanding that executive compensation consultants refrain from providing any non-executive-pay services to their client firms. Following the auditing-independence analogy, we suspect that such requirements would lead companies to avoid using the same consultants for executive pay advice and other services, in spite of the fact that some compensation consultants (with their substantial firm-specific knowledge) might be the efficient provider of such services. [20]

The following bullet points provide a synopsis of the benefits companies enjoy from working with a multi-service compensation consultant that may be lost if the proposed rule is adopted:

- **Resources and Investment**: Watson Wyatt continues to devote a significant portion of its profits to invest in cutting-edge intellectual capital, analytic tools, and extensive proprietary data and research. As a recent example, we have devoted several thousand man-hours on research to better understand those elements of pay architecture that could cause excessive risk taking by executives.[21] Development of this research already has benefited our TARP clients that are required to attest to properly designed pay programs, but will also be used by clients who must provide a disclosure regarding the risk profile of their pay programs, assuming this becomes a requirement in the final regulations.

- **Data Development**: As investors and regulators focus more attention on broader pay practices, access to broad, comprehensive survey data becomes even more crucial to informed decision making. "Boutique" firms do not have the resources to establish proprietary surveys - they purchase surveys published by the global multi-service firms. Within our Watson Wyatt Data Services subsidiary, we compile detailed compensation data from over 1,200 publicly traded companies and more than 13,500 organizations in

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[20] *Executive Pay and "Independent" Compensation Consultants* at page 8.

[21] *Going Beyond Conventional Wisdom: Designing Executive Pay to Balance Risk and Performance*, Watson Wyatt Insider, June, 2009, http://www.watsonwyatt.com/us/pubs/insider/showarticle.asp?ArticleID=21310

the U.S. alone. Of the publicly traded companies surveyed, over 600 of them are Fortune 1,000 companies.

- **Global Focus and Experience**: Complex global companies demand advisors who have in-depth knowledge of local practices in key geographies around the world. Watson Wyatt operates in 34 countries and is able to provide our U.S.-based clients operating globally with the knowledge and expertise of compensation rules and practices in each of these jurisdictions. This is a need that cannot be met by the "boutique" firms currently operating in the United States, and will inevitably result in increased costs to these companies as they try to replicate this information from other sources.

- **Expertise in Diverse Subject Areas:** Our clients also benefit from the cadre of consultants with broad expertise who can lend support on specific issues and provide additional depth and breadth on the complex issues compensation committees must address. For example, we routinely call on consultants from our retirement, talent management and merger and acquisitions businesses to provide needed expertise. This expertise cannot be found within "boutique" firms, and will create added costs as clients seek to replicate this expertise from other sources.

Finally, we would point out to the Commission that the value multi-service firms bring to the marketplace is well-recognized, and has recently been expressed as an issue of primary concern by the House of Representatives as part of H.R. 3269, the Corporate and Financial Institution Compensation Fairness Act of 2009, passed by the House on July 31, 2009.[22] Although section 3(c) of H.R. 3269 would require the Commission to establish independence standards for compensation consultants and other committee advisors,[23] the House was careful to direct the Commission in section 3(d)(3) that: "In promulgating regulations under this subsection or any other provision of law with respect to compensation consultants, the Commission shall ensure that such regulations *are competitively neutral among categories of consultants and preserve the ability of compensation committees to retain the services of members of any such category* [italics added]." This language strongly advocates an independence standard that would not prejudice multi-service firms in their ability to continue to compete in the marketplace.

The legislative history provides additional language in a parenthetical clarifying the House position in support of competitive neutrality:

> In promulgating rules under this section, or any other provision of law with respect to compensation consultants, the SEC must ensure that such rules are competitively neutral among categories of consultants *(e.g., firms that only provide compensation advisory services to compensation committees of a public company and multi-disciplinary firms that also provide other services to public companies)* [italics added] and preserve the

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[22] Corporate and Financial Institution Compensation Fairness Act of 2009, H.R. 3269, 111th Cong., 1st Sess. (2009).

[23] "(c) Independence Standards for Compensation Consultants and Other Committee Advisors- Any compensation consultant or other similar adviser to the compensation committee of any issuer shall meet standards for independence established by the Commission by regulation."

> ability of compensation committees to retain the services of members of any such category.[24]

Read together, the legislative language and history expresses a strong viewpoint that multi-service firms such as Watson Wyatt are not to be placed at a competitive disadvantage if the Commission were directed to define the term "independence" for compensation consultants. Adoption of the proposed rule regarding fee disclosure would fail to accomplish this goal of being competitively neutral and would, before the Commission was able to act on creating a workable definition of "independence," have a deleterious effect on multi-service firms' ability to provide compensation consulting services, for the reasons discussed earlier in our comments. While the House bill is not yet, and may never become, the law of the land, we believe the Commission should consider the bill's intent regarding competitive neutrality before it adopts a rule that is based on an inaccurate premise, serves only to reinforce common misperceptions and, by applying only to multi-service firms, places multi-service firms and their clients at a considerable disadvantage.

VII. Misconceptions about Compensation Consultants

Our role is to provide compensation committees with objective advice about pay structure, competitive pay levels, regulatory compliance, program design, pay for performance alignment, market best practices and how to present programs in communications and regulatory filings so they can make informed decisions. The information that we provide is only one factor that compensation committees consider when the committee makes its final decisions. The committee typically receives recommendations from management and from counsel, and committee members take into account the culture and historic practice at a company, competitive considerations, compensation practices within their specific industry, their own assessments regarding management's performance and management retention and their own experience and their experience as directors at other companies. Even when we are asked to make a recommendation, the committee is free to, and often does, make decisions that are not consistent with our recommendation.

To reiterate these points:

- We **do not negotiate** employment contracts or compensation arrangements.
- We **do not tell** compensation committees what decisions to make.
- We **do not determine** pay philosophy or pay levels, equity awards or incentive plan targets.
- We **do not decide** whether to hire or fire an executive nor do we determine the terms of employment or severance.

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[24] H. Rep. No. 236, 111th Cong., 1st Sess. 26 (2009).

VIII. Responses to Specific Requests for Comments

The following section provides specific responses to the requests for comments in the proposing release. In those cases where the responses to the questions are covered in preceding sections of our comments, we have provided cross-references for easy reference.

1. *Will this disclosure help investors better assess the role of compensation consultants and potential conflicts of interest, and thereby better assess the compensation decisions made by the board?*

No. While the disclosure may advise shareholders on situations where the compensation consultant's firm provides other services to the company, the proposed disclosure will do nothing to illuminate the role of the compensation consultant. This is because the proposed rules endorse the mistaken premise that such arrangements necessarily give rise to conflicts of interests and lack of objectivity and do nothing to take into account the types of protections a consulting firm may have in place to prevent there being any actual conflicts of interest, nor does the disclosure require a discussion of the process the compensation committee undertook in determining if the consultant can provide objective and unbiased advice. Moreover, by applying to only one type of compensation consultant – the multi-service firms – the proposed rules will drive conduct by encouraging firms to simply shift their engagements without providing shareholders with any information on whether the multi-service firm or a "boutique" firm in fact objective and free of conflicts of interest. Without a more in-depth disclosure requirement, the disclosure of other fees does nothing to permit shareholders to better assess the compensation decisions made by the Board. Please see Section V. above for a recommended disclosure that will better accomplish this goal.

2. *Would the disclosure of additional consulting services and any related fees adversely affect the ability of a company to receive executive compensation consulting or non-executive compensation related services? If so, how might we achieve our goal while minimizing that impact?*

Yes. There are several potential adverse effects this rule would have on the ability of a company to receive consulting services. As proposed, the rules would require disclosure of all fees charged by a consulting firm that provided any compensation services to either management or the compensation committee, regardless of how small the fees charged for the compensation consulting services. This likely would result in the following consequences:

1. Full-service firms would continue to find their opportunities to perform work for the compensation committee would diminish.

2. Full service firms also would find opportunities to provide any compensation consulting services to management would diminish.

3. Even companies that simply purchase our survey data to perform an analysis of pay levels for non-CEO level employees would require a disclosure of all other fees, according to the current proposal. This could cause multi-service firms to stop doing that survey work, driven by a desire to avoid the need for disclosure of other fees. Even if companies were willing to provide this disclosure of multi-service firm fees, this disclosure would be providing proprietary and confidential information regarding pricing to the marketplace. The results of this information being provided will manifest

themselves in the effects discussed in the following section discussing competitive and proprietary concerns.

Further discussion of this issue can be found in Section VI. above.

3. *Are there competitive or proprietary concerns that the proposed disclosure requirements should account for? If so, how should the amendments account for them if the compensation consultant provides additional services?*

Yes, we do have competitive and proprietary concerns. A required disclosure of the nature and extent of other services provided and the aggregate fees for these services will create a competitive disadvantage for multi-service firms that provide both compensation consulting and other services compared to those that provide only compensation consulting service or those that provide only other human resources consulting services such as actuarial services. For these and other reasons identified in this comment letter, we believe the Commission's evaluation of effects on efficiency and competition [25] is mistaken.

- **Firms that Provide Only Compensation Consulting Services**: This category of firms, we reference as "boutiques," will have advantages due to adoption of this rule.

    1. **Pricing: "**Boutiques" will have a competitive advantage to price their compensation consulting services if the disclosure rules permit them to understand the nature and extent of compensation consulting services provided, and the fees charged, by multi-service firms, whereas disclosure regarding their own fees is not made. This asymmetry in information will impair the bidding process for consulting services and may cause prices to rise.

    2. **Appearance:** By requiring multi-service firms to disclose fees and not having the same disclosure requirements for "boutique" firms, the proposed rule sends a strong message to compensation committees and companies that they should no longer hire multi-service firms for their compensation consulting services. This message is already resonating within the marketplace, with continued erosion of market share for Watson Wyatt and other multi-service firms, which we expect will accelerate exponentially should these rules become final.

- **Firms that Provide Only HR Services**: Firms that provide only HR Services and no compensation consulting services will have similar advantages as "boutiques." We believe this is the case even when fees are disclosed in the aggregate, since it a simple matter for our competitors to reverse engineer the fees charged for a specific service in most circumstances.

    1. **Pricing:** Firms that provide only HR Services will have a competitive advantage to price these other services just below those of multi-service firms that are required to disclose their fees. For example, if multi-service firms must disclose fees for actuarial services provided to advise on pensions plans, other actuarial firms will have asymmetrical information that enables them to structure their bid so as to undercut the multi-service firm's price, rather than to offer to the lowest

[25] Release No. 33–9052 (Jul. 17, 2009) [74 FR at 35101-35102].

profitable price as ordinarily occurs in the bidding process. This would give them a competitive advantage over multi-service firms yet could also cause them to offer *higher* prices than they might if they lacked this asymmetrical information.

2. **Appearance:** By requiring multi-service firms to disclose fees and not having the same disclosure requirements for firms providing other HR Services, some clients will decide they do not want fees for these services disclosed at all, which will result in multi-service firms losing market share from these clients.

4. *Are there additional disclosures regarding the potential conflicts of interest of compensation consultants that should be required? For example, would requiring disclosure of any ownership interest that an individual consultant may have in the compensation consultant or any affiliates of the compensation consultant that are providing the additional services to the company help provide information about potential conflicts? If so, why?*

Our Preferred Alternative to the proposed rules discussed in Section V., above would not mandate fee disclosure. However, in the event the Commission decides it would require fee disclosure, we believe the disclosure rules should be expanded to apply to "boutique" compensation consulting firms, but should not require any additional disclosure about ownership interests. The expanded disclosure should require all firms providing compensation consulting work to the compensation committee to disclose the fees generated for all work performed for the company if above a specified threshold of the firm's the total revenue. For example, a disclosure of the percentage of revenue for fees generated by a "boutique" would reveal a far higher percentage than the fees generated by a multi-service firm, which could have the result of the "boutique" providing less than objective advice to a company or compensation committee based on a desire to preserve an existing client relationship because a high percentage of their fees are concentrated with that client. Shareholders will be interested in situations where a consultant is captive to its fairly limited client base and would be better able to assess the objectivity of the advice provided by knowing that information. A disclosure of this revenue should create no competitive or proprietary concerns for the "boutiques."

5. *The proposed disclosure requirement calls for disclosure of services during the prior year. Should we also require disclosure of any currently contemplated services in order to capture a situation where the compensation consultant provides services related to executive pay in one year and in the next year receives fees for other services? If so, should we require that fees for the currently contemplated services be estimated? Is there a better way to require that information, for instance through the date of the filing? Should we require disclosure for the prior three years?*

We believe a rule that would include a disclosure about future or contemplated fees would continue to perpetuate the myth that a multi-service firm would be conflicted in ANY advice it provides to a company, regardless of the other services it provides or might provide to that company. This approach would perpetuate the false notion that a compensation consultant at a multi-service firm would propose higher compensation levels in order to help ingratiate its firm with management to be better poised to capture other HR consulting services. This hypothesis has been thoroughly discredited by independent academic studies we discuss in Section III. above.

6. *Is the proposed exclusion for consulting services that are limited to broad-based, nondiscriminatory plans appropriate? Should we consider any other exclusions for services that do not give rise to potential conflicts of interest? If so, describe them.*

Watson Wyatt disputes the premise of this question regarding fees being indicative conflicts of interest and therefore offers no comment on this question.

7. *Should we establish a disclosure threshold based on the amount of the fees for the non-executive compensation related services, such as above a certain dollar amount or a percentage of income or revenues? If so, how should the threshold be computed?*

We have provided the Commission with our Preferred Alternative Proposal that discusses the concept of a fee threshold in Section V. above.

8. *Would disclosure of the individual fees paid for non-executive compensation related services provided by the compensation consultants be more useful to investors than disclosure of the aggregate fees paid for non-compensation related service provided as proposed?*

Our response to this question is not to be read as an acknowledgment that Watson Wyatt agrees with the proposed rule that should require fee disclosure.

While we believe the current proposal to require fee disclosure would be competitively harmful to multi-service firms, we would be especially troubled by a requirement that fees for each of the other services provided by our firm are required to be disclosed, due to the same concerns we expressed in our response to Question 3 above.

9. *Would disclosure about the fees paid to compensation consultants and their affiliates help highlight potential conflicts of interest on the part of these compensation consultants and their affiliates? Is fee disclosure necessary to achieve this goal, or would it be sufficient to require disclosure of the nature and extent of additional services provided by the compensation consultant and its affiliates? Should disclosure only be required for fees paid in connection with executive compensation related services?*

For the reasons described in Section III above, we do not believe disclosure of fees paid to compensation consultants will help highlight potential conflicts of interest since the academic research indicates that no actual conflicts of interest actually exist for multi-service firms. The alternative proposals we have included above would far better accomplish this goal. As we noted in our comments above, any requirement that presumes a potential conflict of interest has had and will continue to have a negative effect on multi-service firms' ability to compete in the compensation consulting business. For this reason, we would not be in favor of a disclosure of the nature and the extent of additional services provided by multi-service firms because requiring this disclosure to be included implies there is an actual conflict of interest. As we have noted earlier, including a disclosure rule that presumes a conflict exists, when it has been refuted by independent academic studies, would be prejudicial to our ability to compete in the marketplace.

10. *Should we make any special accommodations in the proposed amendments to Item 407(h) for smaller reporting companies? If so, what accommodations should be made and why?*

We have no comment on this question.

11. Are there other categories of consultants or advisors whose activities on behalf of companies should be disclosed to shareholders? If so, what kind of disclosure would be appropriate?

Yes. The proposed rules do not include a provision that would require disclosure of advisors that may act on behalf of an incoming executive in negotiating the language of an employment agreement or other terms of employment. We recognize there are instances when a compensation consultant is involved in providing competitive compensation data in support of these negotiations; however, there are often members of executive search firms and/or legal counsel involved directly in negotiating these agreements on behalf of the executive or the Board where the compensation consultant has no involvement in the process. Many of the compensation agreements cited by press accounts and pay critics as providing excessive compensation are the product of negotiations where the company's or the compensation committee's pay consultant played no role. For example, it is not unusual to see negotiation of executive employment contracts handled only by attorneys who represent the executive and the company, with an advisory role being played by the executive search firm. We believe a rule that requires disclosure of relationships and economic interests held by any individual who received a fee in connection with the negotiation of an executive pay package would be helpful to shareholders.

Appendix 1: Preferred Alternative: Qualitative Compensation Consultant Disclosure

Proposed compensation consultant disclosure

Regulation S-K, Item 407(e) Compensation Committee:

§229.407 (Item 407) Corporate governance.

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(e) * * *

(3) * * *

(iii) Any role of compensation consultants in determining or recommending the amount or form of executive and director compensation (other than any role limited to consulting on any broad-based plan that does not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant, and that is available generally to all salaried employees) during the registrant's last completed fiscal year, identifying such consultants, stating whether such consultants were engaged directly by the compensation committee (or persons performing the equivalent functions) or any other person, describing the nature and scope of their assignment, and the material elements of the instructions or directions given to the consultants with respect to their performance of their duties under the engagement.

(iv) If applicable, the compensation committee's (or persons performing the equivalent functions) process and criteria for selecting or determining whether to retain a compensation consultant as an advisor to the compensation committee (or persons performing the equivalent functions), including describing any role played by management in the selection or retention of

the consultant to the compensation committee. If the compensation committee (or persons performing the equivalent functions) has decided not to use a compensation consultant, explain the rationale for this decision.

(v) If the compensation committee reasonably determines that the total fees paid to the compensation consultant for all services provided to the registrant and its affiliates during the preceding fiscal year exceed one-half of one percent (.5%) of the total revenues of the consultant from all sources for that fiscal year, then disclose the general nature of all services provided; specify for such year the aggregate fees paid to the consultant for advisory services to the compensation committee (or persons performing equivalent functions) and the aggregate fees paid to the consultant for all other services provided to the registrant and its affiliates; and discuss the protocols established by the compensation committee (or persons performing equivalent functions) to ensure that the consultant is able to provide quality and objective advice and recommendations and is not inappropriately influenced by the registrant's management.

INSTRUCTION TO ITEM 407(E)(3)(V).

Aspects of the process for selecting or determining whether to retain a compensation consultant that should be addressed if applicable and material include: how the selection criteria are determined; how qualified consultants are identified to perform the required services; the process for screening and interviewing qualified candidates; and the role of management in the selection process. Criteria for selecting compensation consultants that should be addressed if considered and material include: level of experience in advising companies in the registrant's industry; understanding the registrant's business and nature of the compensation issues confronted by the registrant; adequate staffing, expertise and thought leadership required to perform the requested services; appropriate informational resources, data, research and tools to undertake the services requested; access to related expertise (such as accounting, tax, actuarial, and pension); global experience, understanding and presence; and ability to provide quality and objective advice and recommendations.

Protocols the compensation committee may have in place to ensure the consultant is able to provide quality and objective advice and recommendations that should be addressed if material and applicable include:

- Requiring that the consultant be directly hired and fired by and have a direct reporting relationship to the committee;

- Ensuring that the consultant has direct, unfettered access to the committee chair and committee members;

- Ensuring that the consultant meets in executive session without management of the registrant present;

- Performing an annual review of the consultant's work;

- Receiving an annual update from the consultant on the consulting firm's relationship with the registrant, to enable the committee to evaluate and monitor the nature of the relationship, including a summary of all services (and related fees) performed by the consulting firm for the registrant during the preceding fiscal year (including fees from all services provided to the registrant relative to the consulting firm's total revenue); and

- Reviewing the consulting firm's policies, procedures, and safeguards to ensure that the consultant who provides the executive or director compensations services to the compensation committee is not inappropriately influenced by the registrant's management.

Watson Wyatt Worldwide

Appendix 2: Sample Disclosure

Compensation Committee Disclosure: Role of the Compensation Consultant

How We Selected the Consultant

As permitted by the Compensation Committee (the "Committee") charter, the Committee has retained XYZ Firm as its executive compensation consultant to assist in the Committee's evaluation of the company's executive officer compensation program and incentive plan design. The Committee's consultant selection process included three steps. Board members were asked for potential candidates, the Committee worked with the Company's chief human resource officer to prepare a request for proposal sent to seven candidates, and the Committee made its selection following committee interviews of three finalists selected based on the proposal responses.

In making the decision to select the incumbent, the Committee was impressed with the consultant's industry knowledge and by her experience on several matters of particular importance to the Company's unique business circumstances. The consulting firm's database includes robust data relevant to the company. We were also influenced by the recommendations provided by other clients of the consultant, which noted the consultant had been both practical and creative in addressing difficult compensation and business issues. Finally, the individual consultant has a team and resources capable of meeting the Committee's needs in a timely and effective manner.

HOW WE WORK WITH THE CONSULTANT

The Committee, with management input, determines the work to be performed by the consultant. The consultant works with management to gather data required in preparing analyses for Committee review.

The Compensation Committee has the sole authority to retain and terminate the executive compensation consultant. In considering the advice provided by the consultant, and whether to retain the consultant, the Committee requires that the Company regularly inform the Committee of all work provided or to be provided by the consultant's firm in addition to the executive compensation services provided to the Committee, and the fees charged or to be charged for those services. Annually, the Committee evaluates the quality of the services provided by the consultant and determines whether to continue to retain the consultant.

Specifically, the consultant provides the Compensation Committee with market trend information, data and recommendations to enable the Compensation Committee to make informed decisions and to stay abreast of changing market practices. In addition, the consultant provided analysis on the alignment of pay and performance and assisted in the process of preparing this disclosure. While it is necessary for the consultant to interact with management to gather information and obtain recommendations, the Committee has adopted protocols governing if and when the consultant's advice and recommendations can be shared with management.

Ultimately, the consultant provides his recommendations and advice to the Compensation Committee in an executive session where company management is not present, which is when critical pay decisions are made. This approach ensures the Compensation Committee receives objective advice from the consultant so that it may make independent decisions about executive pay at the company.

OTHER CONSULTANT WORK WITH THE COMPANY

During our selection process, we were fully informed of the other services XYZ provides to the company. XYZ provides outsourcing and actuarial services to the company. The total fees paid to XYZ for all these services in 2009 exceeded the revenue concentration threshold in Item 407. The fees paid to XYZ for executive compensation consulting services to the Committee was $200,000 and for all other products and services was $3 million, above the threshold of .5% of the consulting firm's total revenues. The Committee is confident that the advice they receive from the individual executive compensation consultant is objective and not influenced by XYZ's relationship with the Company because of the rigorous procedures XYZ and the Committee have in place. These include:

- The consultant receives no compensation based on the fees charged to the Company for other services;
- The consultant does not participate in XYZ sales meetings regarding opportunities at the Company
- XYZ's Code of Conduct specifically prohibits the individual consultant from considering any other relationships XYZ may have with the Company in rendering her advice and recommendations; and
- The protocols for the engagement (described above in How We Work With the Consultant) limit how the consultant may interact with management

The Committee believes the consultant's qualifications, expertise and protocols ensure that the advice provided to the Committee is both objective and of the highest quality available.