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Hewitt

September 15, 2009

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Secretary Murphy:

Subject: Release Numbers: 33-9052 and 33-60280, File No. S7-13-09

Hewitt is pleased to submit comments on the Securities and Exchange Commission's ("Commission" or "SEC") proposed rules issued July 10, 2009 as Release Numbers 33-9052 and 33-60280, File No. S7-13-09 titled "Proxy Disclosure and Solicitation Enhancements" ("Release").

Hewitt Associates (NYSE: HEW) is well positioned to provide insight into these proposed rules. We provide leading organizations around the world with expert human resources consulting and outsourcing solutions to help them anticipate and solve their most complex benefits, talent, and related financial challenges. Hewitt works with companies to design, implement, communicate, and administer a wide range of human resources, retirement, investment management, health care, compensation, and talent management strategies. We serve as a trusted human capital advisor to more than 3,000 companies around the globe. Hewitt also has one of the largest executive compensation practices in America, allowing us to see firsthand the strengths and weaknesses of current corporate governance and executive compensation practices.

Let us be clear: Hewitt believes greater transparency is essential to protect shareholder interests and to enhance corporate governance. Increased transparency into how and why public companies compensate their executive officers and directors is especially important. Some commendable progress has already been made in this area. The Commission's 2006 amendments[1] to the disclosure rules substantially enhanced the breadth, quality, and substance of public companies' disclosures on executive and director compensation. As a result of these enhancements, investors can better assess whether a public company's executive compensation programs and policies are aligned with shareholder interests, support the company's business strategy, and pay for performance.

Now, the Commission's proposed amendments to the compensation and corporate governance disclosure rules represent a logical *and necessary* expansion of current disclosure rules—measures that would deliver the enhanced corporate transparency that is needed. With the exception of the New Disclosure Regarding Compensation Consultants as currently proposed, we fully support the purpose and objectives of the Commission's proposed amendments. In particular:

- We support an expanded discussion of what constitutes risk and how compensation programs address important business risks.
- We support the disclosure of grant date fair value of stock-based awards in the Summary Compensation Tables.

[1] Release No. 33-8732 (Aug. 29, 2006)[71 FR 53518]; Release No. 33-8765 (Dec. 22, 2006)[71 FR 78338]

- We support the proposed enhanced director and nominee disclosures.
- We support the proposed disclosures on corporate leadership structure.

While we agree with the intent of the Compensation Consultant Disclosure proposal, we strongly encourage an alternative approach—detailed below—which we believe will enhance transparency and improve investors' understanding of the consulting relationship. The current proposal will effectively deter compensation committees from engaging multiservice consulting firms as board executive compensation advisors, which is not in the best interest of issuers or their shareholders. The proposed changes would effectively reward boutique firms, many of which are at the center of a number of the most egregious executive pay practices highlighted by the financial services industry meltdown.

Our proposed alternative recommends disclosures that focus on the fundamental issue at stake: whether compensation committees are receiving quality, objective advice that is not subject to inappropriate influence by management. Hewitt supports the introduction of a threshold that will trigger the appropriate level of disclosure when fees reach the level that they might reasonably trigger the potential for a conflict of interest. The proposed threshold measures the concentration of overall firm revenues generated from any one client, which, if exceeded, would require a more robust disclosure of selection protocols as well as the consultant firm's fees unrelated to executive compensation. We believe this is a superior alternative to support sound corporate governance.

Understanding the role of the executive compensation consultant is critical to this discussion. Simply taking the disclosure rules that apply to auditors and adapting them for compensation consultants ignores the stark differences between these roles. Simply put, Boards are not even required to hire executive compensation consultants. In a 2009 review of 959 of the *FORTUNE 1000*, Hewitt found that 11 percent did not report the use of an executive compensation consultant at all. And for those who do choose to use an advisor, compensation committees often receive input from multiple sources and are not required to act on the input. Unlike audit opinions, executive compensation advice is a discretionary service, not a mandatory regulatory obligation. Further, consultants do not issue formal opinions regarding the appropriateness of compensation programs ultimately approved by the compensation committee. Executive compensation consultants can provide critical information on competitive marketplace practices and design strategies that help compensation committees make informed business judgments around executive pay. However, a consultant is never a substitute for sound corporate governance and independent judgment on the part of the board.

As addressed in detail below, the proposed consultant fee disclosure rule creates more problems than it attempts to solve. Specifically:

- The need for the proposed rule is based, in large part, on faulty and incorrect data, while ignoring more current and accurate academic studies.

- The proposed rule will reduce both the ability and willingness of multiservice firms to continue to provide executive compensation advice, significantly reducing the quality and breadth of compensation advice available to corporate boards at a time when they need it more than ever.

- The rule improperly favors boutique consulting firms, essentially rewarding many of the same firms that advised a majority of the companies with recently publicized executive pay abuses in the financial services industry.

- The rule incorrectly categorizes executive compensation services provided to management.

- The rule fails to consider how Hewitt and other multiservice firms have already instituted multiple safeguards to mitigate perceived conflicts of interest with client companies.

We will first address the proposed Compensation Consultant Disclosure in detail, including our proposal for a more effective approach. We will then address the other provisions of the Release, including providing comments in response to certain questions posed in the Release.

Hewitt's Response to the New Disclosure Regarding Compensation Consultants
The Commission is proposing amendments to Item 407 of Regulation S-K to require disclosure of fees paid to compensation consultants and their affiliates when those consultants and affiliates play any role in determining or recommending the amount or form of executive and director compensation *and also provide* any *other services to the company.*

Hewitt supports the SEC's intention to improve clarity and transparency for investors. Indeed, we have been a frequent contributor to that regulatory dialogue. However, for the reasons set forth below, we do not support the proposed disclosure requirements. Disclosures should provide relevant proof that the compensation committee has performed its due diligence in selecting an objective advisor and has applied recommended standards to avoid actual and potential conflicts of interest. We offer an alternative disclosure approach that we believe more appropriately addresses the SEC's objectives.

The proposed disclosure of consultants' fees presumes that the provision of additional services by compensation consultants and their affiliates creates a conflict of interest that may call into question the objectivity of the consultants' executive pay recommendations to the compensation committee. Institutional investors, who are concerned that advice to board compensation committees may be "influenced" by the provision of these additional services, appear to be the driving force behind the proposed disclosure. Specifically, the Release cites a rulemaking petition ("Rulemaking Petition") of 21 institutional investors[2] and comments to Executive Compensation and Related Party Disclosure, Proposing Release No. 33-8655 (January 27, 2006).[3]

We understand that institutional investors want greater assurances that boards are making sound pay decisions for their executives and appropriately aligning their pay to performance. There are ways to meet their need for information without disrupting the competitive landscape. We acknowledge the concerns of institutional investors, but believe they are overstated. We assert that any perceived conflict can be effectively addressed through enhanced disclosure requirements that are business model-neutral.

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[2] See Rulemaking Petition No. 4-558 (May 12, 2008) at http://www.sec.gov/rules/petitions.shtml.

[3] See letters regarding File No. S7-03-06 from CalPERS, CalSTRS, New York State Common Retirement System, Florida State Board of Administration, New York City Pension Funds, PGGM, ABP, Hermes, Universities Superannuation Scheme, UniSuper, London Pensions Fund Authority, F&C Asset Management, Co-operative Insurance Society, Illinois State Board of Investment, Ontario Teachers Pension Plan, Public Sector and Commonwealth Super, and Railpen Investments (Apr. 10, 2006); CFA Institute for Financial Market Integrity (Apr. 13, 2006); and Denise Napier, Connecticut State Treasurer (April 10, 2006) at http://www.sec.gov/rules/proposed/s70306.shtml.

The Proposed Rule Relies on Incorrect and Faulty Data

The Rulemaking Petition and the Release cite a study done by the Majority Staff of the U.S. House of Representatives Committee on Oversight and Government Reform.[4] In fact, this is the only study cited by the SEC or by the Rulemaking Petition in support of the underlying contention that a conflict exists. This study examined the use of consultants by the *FORTUNE 250* and the fees that consulting firms received for compensation consulting and other services (using fee data provided by those consulting firms). The study wrongly concludes that, because executive compensation consulting fees received by the full-service firms are often dwarfed by the fees received for other services, compensation consultant conflicts of interest are "pervasive." The study errs further in stating that "there appears to be a correlation between the extent of consultant's conflict of interest and the level of CEO pay."

It is unfortunate that the Commission used this study as the basis for proposing fee disclosure. The report's serious flaws include:

- The Majority's own report concludes that the correlations they researched "do not prove" a causal relationship between consultant engagements and CEO pay.
- The Majority report did not even attempt to compare compensation differences between companies that used boutique firms versus multiservice firms.
- The Majority's report failed to control for critical influencing factors, most notably, company size, when comparing CEO compensation with fees paid for other services. Larger and more complex companies often pay more than smaller companies for similar services, and also often pay higher compensation for similar leadership roles. Correlating higher pay with higher service fees describes nothing about the advisory relationship, only that larger companies pay higher compensation than smaller companies.

As the Minority's report in response pointed out: "…without providing evidence, the Majority assumes that anytime a firm provides executive compensation advice, and has another business contact with a public company, a conflict of interest automatically arises. However, this overly broad definition fails to account for measures that the firm or the company has instituted to preserve independence and provide unbiased advice."

Three studies[5] performed by noted academicians—with no ties to consulting firms and no political interests or agenda—have concluded that the level of CEO pay is not attributable to the use of a consulting firm that provides multiple services.

[4] United States House of Representatives, Committee on Oversight and Government Reform, Hearing on Executive Pay: The Role of Compensation Consultants (December 5, 2007).

[5] See Cadman, Brian D., Carter, Mary Ellen and Hillegeist, Stephen A., The Incentives of Compensation Consultants and CEO Pay (February 1, 2009). Journal of Accounting and Economics, Forthcoming. Available at SSRN: http://ssrn.com/abstract=1103682; Armstrong, Chris S., Ittner, Christopher D. and Larcker, David F., Economic Characteristics, Corporate Governance, and the Influence of Compensation Consultants on Executive Pay Levels (June 12, 2008). Rock Center for Corporate Governance Working Paper No. 15. Available at SSRN: http://ssrn.com/abstract=1145548; Cadman, Brain D., Carter, Mary Ellen and Hillegeist, Stephen A., The Role and Effect of Compensation Consultants on CEO Pay (March 2008). Murphy, Kevin J. and Sandino, Tatiana, Executive Pay and "Independent" Compensation Consultants (April 28, 2009). Marshall School of Business Working Paper No. FBE 10-09. Available at SSRN: http://ssrn.com/abstract=1148991

- In *Incentives of Compensation Consultants and CEO Pay,* the authors conclude that they are unable to find widespread evidence of higher pay levels or lower pay-performance sensitivities for clients of multiservice firms.

- In the study *Executive Pay and "Independent" Compensation Consultants,* the authors state that they recognize the increasing efforts of consultants to self-police in order to protect their reputations. They note that the reputation risks are arguably the highest for multiservice firms because they have the "most to lose" if they violate the trust of boards and shareholders. Importantly, the authors offer a "cautionary tale" for those who support broader fee disclosure. "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."

The foundation of the proposed rule is based on the faulty presumption that because a firm renders multiple services, the executive compensation consultant may be "conflicted" and "influenced." The implication is that "conflicted" consultants are responsible for "excessive" compensation levels, which ignores the lack of credible empirical evidence to support this assumption. There is also no evidence to suggest that compensation consultants with perceived conflicts act in other than an ethical and honest manner. For all of the reasons outlined above, the stated rationale for the proposed rules on fee disclosure is insufficient to support its adoption.

Many critics overlook the fact that the sheer size of multiservice firms helps minimize potential conflicts because fees from executive compensation services are a small fraction of overall firm revenues. In contrast, the boutique consulting firms have fewer clients and derive all of their income from the fees they are paid for executive compensation consulting.

If we need to remove ourselves from a client because of a question regarding their practices or judgment, we know that such an action will not harm our reputation or hurt the firm financially. In contrast, the fees a boutique consulting firm receives from any single client are likely to constitute a much higher percentage of their total revenues, and consequently, they may be less inclined to walk away from a client engagement when they otherwise should.

The Proposed Rule Will Reduce Both The Ability And Willingness Of Multiservice Firms To Continue To Provide Executive Compensation Advice

The executive compensation practices of multiservice firms are likely to quickly disappear if the proposed disclosure rule is adopted in its present form. This is not hyperbole. Based simply on the anticipation of a fee disclosure requirement issued by the SEC, we have already observed a significant increase in boards either moving consulting relationships away from Hewitt solely because we provide other unrelated services. In addition, some clients are removing Hewitt from consideration for board consulting services merely on the prospect that we might some day provide other services to the company. Even in their proposed state, the revised rules have spurred companies to avoid the disclosure entirely rather than refute the false presumptions created by fee disclosure.

The net effect of the proposed rules is that windfall benefits will accrue to the boutique consulting firms reducing the quality and breadth of advice available to corporate boards at a time when such advice is needed more than ever. This will happen for two reasons: clients will exclude multiservice firms from consideration to avoid the disclosure "stigma" and multiservice firms will find it increasingly difficult to retain

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their business and experienced resources without sacrificing other parts of their business. The SEC should strive to be business model-neutral whenever possible, which this proposal clearly is not. The alternative we propose does provide relevant transparency to shareholders while preserving the competitive landscape.

The Proposed Rule Will Improperly Influence Public Companies to Exclude Multiservice Consulting Firms in Their Selection of Compensation Consultants
Public companies' selection of compensation consultants will be greatly influenced by the proposed fee disclosure requirement. Compensation committees will conclude that the public reporting of fees creates an impression, albeit a false one, that the mere existence of a broader relationship with a multiservice firm compromises the objectivity of the executive compensation consultant.

As a result, many companies will feel compelled to switch from a multiservice firm to a boutique consultant in order to avoid fee disclosure (which is not required under the proposed regulations if a boutique consulting firm is used). This is similar to what occurred to the accounting firms as a result of the Sarbanes-Oxley Act of 2002 requiring detailed disclosure of fees for audit and other services. Companies avoid using the firm that provides the audit for other services even if they are well qualified. There is no reason to believe there will be a different result for the multiservice consulting firms.

A shift from the multiservice firms to the boutiques for executive compensation services will have a detrimental effect on companies and their boards currently served by multiservice firms. The compensation committees will not have access to the best resources they need to make informed decisions about executive pay. Today, in spite of erosion in market share that has already occurred in reaction to the proposed disclosure rules, a Hewitt review of public company proxies in July 2009 showed that nearly 55 percent of *FORTUNE 1000* public companies that disclosed retention of an executive compensation consultant by their board, disclosed that they work with a multiservice consulting firm.

This is no surprise because multiservice firms offer rich resources that cannot be easily replicated, including global, proprietary compensation data, international networks of consultants, access to specialists across multiple related disciplines, and industry-specific specialization and experience. Boutique firms struggle to match this array of resources. Boards of directors will be left with a much narrower selection of providers, some less qualified, to meet an increasingly complex and demanding set of governance standards.

Multiservice Firms Will Find It Increasingly Difficult To Retain Their Business And Experienced Resources Without Sacrificing Other Parts Of Their Business
The proposed rule will create an uneven playing field. There is a mistaken belief that multiservice firms will simply adopt the approach used by accounting firms of dividing their clients based on the types of services they provide. This assumes that multiservice consulting firms will accept an exclusive relationship with a client to provide executive compensation services to the board and forego providing other services. However, the accounting firm model will not work for the multiservice consulting firms. Unlike audit engagements, the fees to provide executive compensation consulting services are relatively small compared to the fees for providing other human resource consulting and administration services.
Also, unlike auditing engagements, which tend to last for several years and are not subject to significant provider turnover, companies can easily replace their executive compensation consultants. The multiservice consulting firms will avoid providing executive compensation services if it prevents them from being engaged or even having the opportunity to pursue other services that are likely to generate substantially more fees for a longer period of time.

In contrast to the accounting firms, where the services are primarily limited to audit and tax services, multiservice consulting firms provide a varied and broad array of services. It is not uncommon for a company to engage different multiservice firms for different services; for example, one consultant may be engaged to provide outsourcing services and another consultant may be engaged to provide actuarial services. Given that the multiservice consulting firms provide multiple services to nearly all of the *FORTUNE 1000* companies, it would be virtually impossible for them to maintain an executive compensation practice based on a standard of exclusivity.

In the case where a multiservice firm provides compensation consulting services and benefit administration services to the same public company, that company would be required to disclose fees paid for executive compensation consulting services and benefit administration services and to describe the additional services provided. From this disclosure, our competitors, many of whom are not subject to these requirements because they do not provide executive compensation consulting services, could immediately determine our pricing for benefit administration services.

Proprietary pricing data represents critical market intelligence which our competitors could use to potentially underbid us for existing and potential projects. As a result, we would lose engagements at existing clients and fail to win engagements at potential clients that are likely to be longer in duration and have greater associated fees than executive compensation consulting services. Therefore, the proposed rules would have a material adverse effect on the willingness of multiservice firms to continue to provide executive compensation consulting services.

The Proposed Rule Clearly Favors Boutiques Over Multiservice Firms While Failing to Consider the Disproportionate Representation of Troubled Financial Institutions by Boutiques

The proposed rules will cause a radical shift in the marketshare for compensation consultants. Today the majority of *FORTUNE 1000* companies that use a consultant work with an advisor from a multiservice firm. Under the proposed regulation, these companies will almost exclusively be served by boutiques in the future.

Certainly concerns raised by investors and regulators over financial institutions' failures to adopt appropriate compensation policies that reflect sound risk management principles is a primary, although by no means the only, driver for the changes sought in the proposed rules. Of the six financial services firms referenced in a recent *Washington Post* article on executive compensation abuses, each that reported the use of an executive compensation consultant was advised by boutique compensation consulting firms.[6] Further, earlier this month, the Institute for Policy Studies' annual compensation survey expressed strong concerns of certain pay practices at the 20 largest financial institutions receiving government financial assistance.[7] Approximately one-half of those institutions whose boards reported the use of an outside compensation consulting firm used a boutique firm.

Hewitt cannot comment on the actual practices of organizations for which it does not consult, nor do we intend by our comments to suggest in any particular situation any other consulting firm behaved less than honorably. But given the substantial involvement by boutique firms in serving the compensation committees

[6] "Wall St. Jacks Up Pay After Bailouts," Tomoeh Murakami Tse, *Washington Post*, July 23, 2009.

[7] Anderson, Sarah, Cavanagh, John, Collins Chuck, and Pizzigati, Sam, 16th Annual Executive Compensation Survey, "America's Bailout Barons: Taxpayers, High Finance, and the CEO Pay Bubble," Institute for Policy Studies. Available at http://www.ips-dc.org/reports/executive_excess_2009.

of organizations whose pay practices have been questioned by others, it is difficult to see how rulemaking that will favor such firms over multiservice firms will appropriately address the SEC's stated objectives.

The Rule Incorrectly Categorizes Executive Compensation Services Provided To Management
The proposed rule requires fee disclosure if a compensation consultant plays a role in providing executive or director compensation services and that consultant's firm also provides additional services. Thus, if an executive compensation consultant is engaged by management, and not the compensation committee, and that consultant's firm also provides other services, fee disclosure is required.

We propose that, to the degree the Commission requires disclosure of services across two categories, the rules should distinguish exclusively between services provided under an engagement with the board and additional services provided by the same firm under engagements with management.

The proposed rule's current service definitions pose yet another condition that disadvantages the multiservice firms and benefits the boutiques. Not only will compensation committees be reluctant to engage compensation consultants as advisors to the compensation committee, but, to avoid a perceived conflict of interest, management will also be reluctant to engage multiservice firms for important executive compensation services. Once again, narrowing the types of consultants available for companies to choose from is neither appropriate nor necessary to achieve the SEC's stated objectives.

The Rulemaking Petition clearly states that investors are concerned about the potential conflict of interest that exists when the board advisor's firm is hired to provide other services to the company. Extending the fee disclosure requirement to executive compensation consulting services for management when other services are provided to the company is not reasonably related to the issue of potential conflict. If a consultant is hired by management rather than the board, no potential conflict of interest can exist with the board.

In developing executive pay proposals for board consideration, company management should have unfettered access to compensation experts, legal counsel, accountants, business valuation advisors, and other third parties who can lend credibility to their proposals. We believe that there is universal agreement that it is the board's responsibility to critically evaluate management's compensation proposals and decide whether or not to approve those proposals.

The increased focus on this responsibility is the very reason boards and compensation committees have increasingly engaged their *own* compensation advisor to evaluate management recommendations. We accept shareholder scrutiny of these board advisor relationships, but requiring management's advisors to disclose other unrelated services and confidential fees veers meaningfully from the investor concerns the Commission seeks to resolve. The existing requirements and the other proposed revisions in the Release are sufficient to ensure that a compensation committee is independent and will act objectively. As noted in the Release, "developments such as the enactment of the Sarbanes-Oxley Act of 2002 and corporate-governance related listing standards of the major stock exchanges have brought about significant changes in the structure and composition of corporate boards." The listing standards imposed new independent director requirements and enhanced independence standards. The other proposed revisions in the Release would also require disclosure for each director and each director nominee of the particular experience, qualifications, attributes or skills that qualify that person to serve as a director or as a member of any board committee. According to the Release, these revisions are "aimed at helping investors determine whether a particular director and the entire board composition is an appropriate choice."

The Commission should allow the independent compensation committee to discharge its oversight responsibilities and should not impose disclosure requirements that restrict the committee's selection to compensation consultants whose firms must agree to perform no other services for the company.

Hewitt and Other Multiservice Firms Have Already Implemented Protocols to Mitigate Against Either an Actual or a Perceived Conflict of Interest

Hewitt employs a number of safeguards and procedures to avoid conflicts of interest when consulting with a board on executive compensation matters. A disclosure requirement that focuses solely on fees and does not acknowledge the effective actions we and other multiservice firms have taken to protect our reputation for objectivity.

Over the last several years, we have increasingly separated our executive compensation engagements from the engagements for our firm's other services. Our North American executive compensation consulting practice is segregated into a single, separate business unit within Hewitt as a way to enhance our ability to serve our executive compensation clients more efficiently and effectively. As part of that structure, our executive compensation consultants' incentives are paid solely based on the results of the executive compensation business unit and their own individual performance, and are not based on any other services Hewitt performs, nor on Hewitt overall. Our executive compensation consultants do not participate in Hewitt equity incentives.

Where we are the consultant to a board of directors, we do not engage in or reward cross-selling other Hewitt services. In addition to this organizational separation, procedures we routinely employ include:

- *Separate account management.* Our multiservice client relationships are managed by professional account executives who are not involved in providing consulting services to the client's board of directors.
- *Separate agreements* with our compensation committee clients, distinct from agreements for our other services. We do not embed executive compensation services in our other service agreements.
- *Summary disclosures* to compensation committee clients of Hewitt's total services to the company and associated fees. Many committees who use Hewitt as their independent advisor also monitor or approve any additional engagements with our firm.
- *Not offering more favorable financial terms for executive compensation consulting services* to companies that also retain us for additional administrative or consulting services. Executive compensation services are not used as a "loss leader" in order to retain an engagement for other services.
- *We only work for the board committee or the company.* We do not represent individual executives or negotiate employment contracts on their behalf.
- *Confidentiality requirements* and a mandatory, rigidly enforced corporate Code of Conduct.
- *A strict policy* against investing in client organizations.
- *Additional safeguards or policies* as appropriate to satisfy individual client needs and governance policies; for example, approval policies or procedures around the extension of the committee's charge to Hewitt to perform other services for the company.

We are already in the process of sharing our protocols with institutional investors. In our discussions, many were pleased to learn that Hewitt already has mechanisms in place that establish separate business units with pay incentives that are not reliant on the volume of services provided for non-consulting work. In particular, one well-known institutional investor leader recently congratulated us on establishing internal systems to mitigate potential conflicts of interest between our firm and our clients.

Alternative Approach to the Proposed Fee Disclosure

Hewitt supports the SEC's efforts to improve clarity and transparency to investors. We acknowledge that institutional investors want sufficient information to evaluate for themselves whether potential conflicts of interest exist. We propose an alternative disclosure that we believe will be more effective in achieving the expressed desires of investors. We recommend establishing a threshold measure that triggers additional disclosures in situations where a potential conflict is perceived as more likely. The basic tenets of this approach are:

- *Shareholders should be informed of advisory relationships.* Proxy statements should continue to disclose the names of all third-party advisors a compensation committee has retained related to executive compensation services. The disclosure should continue to include a summary of the committee's charge to each advisor.
- *Disclosures should ensure that compensation committees continue to have the practical ability to select a compensation consultant from among both boutique and multiservice firms.* A level playing field should be preserved so that all firms are able to compete for the right to provide executive compensation consulting services to either management or the board of directors and the compensation committee. Public companies should have the freedom to exercise this choice without the stigma of a disclosure that implies the existence of a potential conflict of interest.
- *Concern over potential conflicts of interest should be limited to situations where the board is receiving executive compensation consulting advice and management has engaged the compensation consultant's same firm to provide other services.* This is easy to ascertain and would be based solely on who engages the compensation consultant.
- *Compensation committee should be provided with all the information needed to adequately assess and evaluate any potential conflicts of interest of the compensation consultant.* The compensation committee is the only party accountable to shareholders for its decisions. It uses a range of information to make its determination, including fees charged for compensation committee and management consulting services, the governance policies and safeguards of the compensation consultant, the company's governance policies, and the committee's judgment of the independence of the advice and expertise they have received from the consultant.
- *A threshold requirement should be implemented that, if exceeded, results in a more in-depth and expanded disclosure.* We believe that a threshold requirement should be established to identify potential conflicts of interest. We believe that the most appropriate threshold is a specified percentage of the fees paid for all services rendered by the compensation consultant relative to the compensation consultant's firm's total revenues. This information provides investors with the necessary information to assess whether a compensation consultant is able to walk away from an executive compensation engagement without significant financial impact. We note that a threshold approach is applied by the New York Stock Exchange in assessing director independence and has been applied by some issuers in assessing the independence of compensation consultants.

- *The disclosure should include a requirement to discuss a compensation committee's decision not to engage any compensation consultant.* This is important information to investors. Boards of directors, and the committees, have an obligation to receive expert advice if it is necessary to make informed business decisions. If company management has engaged a compensation consultant and the compensation committee is not receiving separate and objective advice, disclosure of that decision should be required.

- *A more effective disclosure is one in which the compensation committee is required to disclose the process and criteria for selecting or determining whether to retain a compensation consultant as an advisor to the compensation committee.* The compensation committee would determine if the total fees paid to the compensation consultant for all services provided to the registrant and its affiliates during the preceding fiscal year exceeds 0.5 percent (for example) of the total revenues of the consultant from all sources. If this threshold is passed, the disclosure would be expanded to also disclose the general nature of services provided, the aggregate fees for those services and the protocols established by the compensation committee to ensure that the consultant is able to provide quality and objective advice and is not inappropriately influenced by management. Appendix A contains suggested language revising Item 407(e). Appendix B is an example of a disclosure, developed in cooperation with three other multiservice firms that provide executive compensation services, if the suggested language in Appendix A were to be implemented. We believe the proposed language will provide investors with all the information necessary to assess whether the compensation consultant has a potential conflict of interest.

Closing Remarks on Proposed Disclosure
The Securities Exchange Act of 1934, section 23(a)(2), requires that the Commission must consider the impact that any new rule would have on competition and prohibits the Commission from adopting any rule that would impose a burden on competition that is not necessary or appropriate to achieve the intended purpose. For the reasons set forth above, the proposed fee disclosure rule is not competitively neutral. However, the alternative suggested by Hewitt clearly demonstrates that it is entirely feasible for the Commission to achieve its stated objectives of addressing potential conflicts of interest in a manner that will be competitively neutral.

Hewitt firmly believes that the alternative we have proposed will better achieve those objectives than the currently proposed rule. While the competitively neutral rule of the Exchange Act is long-standing, Hewitt believes it is significant that as recently as August 2009, the U.S. House of Representatives included a provision in H.R.3269, the CORPORATE AND FINANCIAL INSTITUTION COMPENSATION FAIRNESS ACT OF 2009, directing the Commission to ensure that all of its rules and regulations under the proposed executive compensation legislation be business model-neutral. They specifically direct the SEC to preserve the opportunity for boards to select consultants from among all classes of consultants, irrespective of the business models they use. In summary, the proposed rule is not business model-neutral and will, in practical effect, discourage boards from selecting consultants from among multiservice firms, forcing multiservice firms out of this line of business.

Given these indisputable competitive ramifications, the availability of alternatives such as those we have proposed in this response, and the absence of compelling empirical data to support the need for the proposed rule in its current form, we ask the SEC to give effect to the charge of both section 23(a)(2) of the Securities Exchange Act of 1934 and the recent House-passed legislation.

Although covered in detail above, please note that Appendix C contains our responses to the specific “Request for Comment” questions on consultant fee disclosures.

In the remainder of this letter addresses the other primary provisions of the proposed rule:

I. Disclosures Regarding Risk Policies in the Compensation Discussion and Analysis (CD&A)
II. Disclosure of Grant Date "Fair Value" of Equity Grants in the Summary Compensation and Director Compensation Tables
III. Enhanced Director and Nominee Disclosure
IV. Disclosure Regarding Company Leadership Structure
V. Other Request for Disclosure

I. Disclosures Regarding Risk Policies in the Compensation Discussion and Analysis (CD&A)
The Commission is proposing amendments to Item 402(b) of Regulation S-K which would expand the CD&A requirements to include a new section that will provide information about how a public company's overall compensation policies for employees create incentives that can affect the company's risk and management of that risk. As part of this disclosure, a public company would be required to discuss and analyze its broader compensation policies and overall actual compensation practices for employees, generally, including nonexecutive officers, if risks arising from those compensation policies or practices may have a material effect on the company. In the Release, the Commission notes certain situations which may trigger discussion and analysis of risk policies, including where business units of a company have significantly different risk profiles, pay structures, or financial attributes.

The Commission believes that the disclosure of a company's overall compensation policies in certain circumstances can help investors identify whether the company has established a system of incentives that can lead to excessive or inappropriate risk taking by employees.

We generally support the Commission's proposed amendments to Item 402(b) of Regulation S-K and agree with the Commission's rationale for the proposed amendments. However, we believe certain aspects of the proposed amendments should be revised to facilitate and enhance compliance. The suggested revisions are included below in our comments to the following questions posed by the Commission in the Release.

Commission question. Would expanding the scope of the CD&A to require disclosure concerning a company's overall compensation program as it relates to risk management and/or risk-taking incentives provide meaningful disclosures to investors?

Hewitt comment. We believe the proposed risk disclosures on compensation programs would significantly enhance corporate transparency for the benefit of investors.

Commission question. Should [the proposed risk disclosure requirement] be limited to companies of a particular size, like large accelerated filers?

Hewitt comment. We believe the proposed amendment to Item 402(b) of Regulation S-K should be limited to public companies that are large accelerated filers.[8] In our experience, relative to other public companies, large accelerated filers are more likely to:

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[8] An issuer is a "large accelerated filer" once it has met all of the following conditions for the first time at the end of its fiscal year: (i) had, as of the last business day of its most recently completed second fiscal quarter, an aggregate worldwide market value of voting and non-voting common equity held by its non-affiliates of $700 million or more; (ii) had been subject to the reporting requirements of Sections 13(a) or 15(d) of the Securities Exchange Act of 1939 ("Exchange Act") for a period of at least 12 calendar months; (iii) has filed at least one annual report pursuant to Sections 13(a) or 15(d) of the Exchange Act; and (iv) is not eligible to use Forms 10-KSB and 10-QSB for its annual and quarterly reports. Rule 12b-2.

1. Maintain relatively complex pay programs and policies which may give rise to material risks;

2. Be structured into multiple business units, each of which may have significantly different risk profiles, pay programs, and financial attributes; and

3. Have the technical resources to identify, assess, and manage risks associated with pay programs. Limiting the proposed amendments to the CD&A requirements to large accelerated filers would still cover public companies with market capitalizations that represent the overwhelming majority of the aggregate market capitalization of all U.S. equities.[9]

Commission question. If a company determines that the disclosure under the proposed amendments is not required, should we require the company to affirmatively state in its CD&A that it has reasonably determined that the risks arising from its broader compensation policies are not reasonably expected to have a material effect on the company?

Hewitt comment. Under the circumstances described above, a public company should not be required to make an affirmative declaration with respect to this item. The requirement of an affirmative declaration is inconsistent with current rules, which do not require a public company to make a special affirmative declaration with respect to items not disclosed due to the materiality threshold or other pertinent reasons. By requiring public companies to make an affirmative declaration with respect to this single area of disclosure (i.e., risk disclosure), investors may infer that the Commission is placing special emphasis on risk disclosure over other disclosure areas. Furthermore, given the inherently subjective nature of assessing and managing risk, a special affirmative declaration may give investors a false sense that a public company's compensation programs and policies pose no material risks.

II. Disclosure of Grant Date "Fair Value" of Equity Grants in the Summary Compensation and Director Compensation Tables

The Commission is proposing amendments to Item 402(c)(2) of Regulation S-K which would revise the Summary Compensation Table (SCT) disclosure of stock awards and option awards to require disclosure of the aggregate fair value of awards computed in accordance with Statement of Financial Accounting Standards No. 123 (revised 2004) ("SFAS 123R"), and rescind the requirement to report the full grant date fair value of equity awards in the Grants of Plan-Based Awards Table ("Grants Table").[10]

Among other reasons for the proposed amendments to Item 402(c)(2) of Regulation S-K, the Commission believes that reporting the grant date fair value of equity awards in the SCT is more informative to investors because it better reflects compensation decisions.

Hewitt generally supports the Commission's proposed amendments to Item 402(c)(2) of Regulation S-K and agrees with the Commission's rationale for the proposed amendments, but we do not agree with the proposal to rescind the requirement to report the full grant date fair value of equity awards in the Grants

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[9] At the time the Commission adopted rules defining large accelerated filers and imposing certain requirements on such filers, the Commission noted that companies meeting the definition of large accelerated filers represent nearly 95% of the U.S. market capitalization of all equities. Release Nos. 33-8644; 34-52989; (Dec. 27, 2005)[70 FR 76625].

[10] The Commission is proposing similar amendments to Item 402(k) of Regulation S-K, which would revise the Director Compensation Table (DCT) disclosure of stock awards and option awards to require disclosure of the aggregate fair value of awards computed in accordance with SFAS 123R, and rescind the requirement to report the full grant date fair value of equity awards in footnote disclosure to the DCT.

of Plan-Based Awards Table (“Awards Table”). In the Release, the Commission requests comments on several questions regarding the proposed amendments. Our comments are set forth below.

Commission question. Is the proposed Summary Compensation Table reporting of equity awards a better approach for providing investors clear, meaningful, and comparable executive compensation disclosure consistent with the objectives of providing concise analysis in the CD&A and a clear understanding of total compensation for the year? Would the proposals facilitate better informed investment and voting decisions?

Hewitt comment. The proposed amendments to the SCT would provide investors clear, meaningful, and comparable executive compensation disclosure consistent with the objectives of providing concise analysis in the CD&A and a clear understanding of total compensation for the year.

The proposed disclosure provides a much better representation of a named executive officer’s (NEO’s) equity-based compensation during a fiscal year, eliminates certain anomalous disclosures arising under current rules that only served to confuse investors (e.g., the possible disclosure of negative compensation amounts), and reflects the decision making of compensation committees in setting equity grant levels. Moreover, it is generally consistent with how many public companies, analysts, and investors view and assess NEO equity compensation and determine NEO total compensation for a fiscal year. For these reasons, the proposed amendments to the SCT would facilitate better informed investment and voting decisions by investors.

Commission question. If the Summary Compensation Table is amended as proposed, should the Grants of Plan-Based Awards Table disclosure of the full grant date fair value of each individual award be retained, rather than rescinded as proposed?

Hewitt comment. The Grants of Plan-Based Awards Table disclosure of the full grant date fair value of each individual award should be retained. Presenting the grant date fair value of each individual award provides investors with important information regarding specific decisions made by the compensation committee in granting individual equity awards. This information would not be present in the SCT under the proposed amendments in cases where a company has made multiple grants in the same year to an executive officer (i.e., the aggregate grant date fair value of all equity grants would be disclosed in the SCT, which would not permit investors to determine fair values of each individual grant).

Commission question. Would recomputation of prior years included in the 2009 SCT to substitute aggregate grant date fair value numbers for financial statement recognition numbers previously reported for those years cause companies practical difficulties?

Hewitt comment. We do not believe reporting equity compensation in the same manner for each fiscal year included in a public company’s 2009 SCT would present significant difficulties for public companies. The grant date fair value of prior year equity awards to a company’s NEOs should be known by the company, and, if not, easily determinable (for those 2009 NEOs who received equity grants as an NEO during any of the two previous fiscal years, the grant date fair value of such equity grants should have been disclosed in the company’s prior year(s) Grants Table).

Hewitt recommends that equity compensation disclosures should be presented in the same manner for each fiscal year included in a public company’s 2009 SCT (i.e., at grant date fair value). A uniform disclosure approach would eliminate investor confusion that would otherwise arise by showing equity

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compensation under different methodologies for different fiscal years and would preserve the Commission's objective of year-to-year comparability.

Commission question. Would the proposal discourage companies from tying stock awards to performance conditions, since the full grant date fair value would be reported without regard to the likelihood of achieving the performance objective?

Hewitt comment. We do not believe the proposed amendments to Item 402(c)(2) of Regulation S-K would discourage companies from granting performance-based equity awards. The design of equity awards (including equity awards subject to "performance conditions"[11]) is driven by a number of considerations, including a company's unique circumstances, business strategy, pay philosophy, competitive market practices, shareholder preferences, talent acquisition, motivation and retention considerations, corporate governance concerns, accounting considerations, and tax treatment, among others. Although disclosure rules may influence a company's decision on the design of equity incentive awards, our consulting experiences with hundreds of public companies suggest they will continue to make equity awards subject to performance conditions.

It is also important to note that under current disclosure rules, the SCT disclosure of an equity award subject to a "market condition"[12] is not adjusted each fiscal year to reflect changes in the likelihood of achieving the award's performance objectives. Rather, as with a stock option, the grant date fair value of such an award determines the amount disclosed in the SCT over the fiscal years that value is amortized and expensed for financial reporting purposes. Therefore, the proposed amendments would not have a potentially disadvantageous impact on the disclosure of equity awards subject to market conditions.

Commission question. If the proposal is adopted, is any disclosure other than that already currently required (e.g., in the Compensation Discussion and Analysis (CD&A), the Grants of Plan-Based Awards Table, and the Outstanding Equity Awards at Fiscal Year-End Table) needed to clarify that the amount of compensation ultimately realized under a performance-based equity award may be different?"

Hewitt comment. We do not believe additional disclosures are required to ensure investors understand that the amount of compensation ultimately realized under a performance-based equity award may be different than the amount disclosed in the SCT. Under current rules, investors are provided extensive disclosures (which include disclosures on the full life cycle of an equity award). These disclosures should permit investors to understand that a difference may arise between amounts disclosed in the SCT and amounts actually realized under a performance-based equity award.[13]

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[11] Under SFAS 123R, a performance condition is defined as "[a] condition affecting the vesting, exercisability, exercise price, or other pertinent factors used in determining the fair value of an award that relates to both (a) an employee's rendering service for a specified (either explicitly or implicitly) period of time and (b) achieving a specified performance target that is defined solely by reference to the employer's own operations (or activities). A performance target also may be defined by reference to the same performance measure of another entity or group of entities." SFAS 123R, Glossary (275, 276).

[12] Under SFAS 123R, a market condition is defined as "[a] condition affecting the exercise price, exercisability, or other pertinent factors used in determining the fair value of an award under a share-based payment arrangement that relates to the achievement of (a) a specified price of the issuer's shares or a specified amount of intrinsic value indexed solely to the issuer's shares or (b) a specified price of the issuer's shares in terms of similar (or index of similar) equity security (securities)." SFAS 123R, Glossary (274, 275).

[13] Such differences are not limited to performance-based equity awards but may arise (and are likely to arise) with respect to non-performance-based equity awards.

Furthermore, existing rules require that amounts actually realized under an equity award be disclosed in the Option Exercises and Stock Vested Table,[14] which an investor may compare with amounts previously disclosed in the Summary Compensation Table.

Commission question. In the Release, the Commission noted receipt of a rulemaking petition requesting revision to the Summary Compensation Table disclosure of stock and option awards. Instead of reporting the aggregate fair value of awards granted during the year, as we propose, the petition's suggested approach would report the annual change in value of awards, which could be a negative number if market values decline. The Commission asks numerous questions relating to the merits of the revisions suggested by the rulemaking petition.

Hewitt comment. We do not support the petitioner's requested revision to the SCT in lieu of the Commission's proposed amendments to the SCT. The petitioner's requested revision does not improve upon the current rules or the proposed amendments but has many of the shortcomings inherent in the current rules (e.g., would not reflect the decision making of compensation committees in setting equity grant levels, could include negative disclosures which investors are unlikely to find informative, and does not reflect the way many companies, investors, and analysts view equity awards and determine total compensation). Moreover, due to the potential volatility of equity values, reported total compensation from year to year could be subject to wide swings. A significant decline in the value of grants of restricted stock, restricted stock units, or performance shares could cause reported total compensation to be equal to or less than zero (or be substantially less than otherwise reported under the current rules or the proposed amendments). We do not believe investors would find such a disclosure informative for voting or investment decisions.

Much of the petitioner's requested revision is redundant with existing disclosures. Annual changes in the value of stock awards (e.g., restricted shares, restricted stock units, and performance shares) are reflected in the Outstanding Equity Awards at Fiscal Year-End Table.[15] In addition, amounts realized from the exercise of stock options and SARs and the vesting of stock awards are reflected in the Option Exercises and Stock Vested Table.[16] The in-the-money value of outstanding options and SARs is the sole item from petitioner's requested revision not disclosed under the current rules. However, the Commission could amend Item 402(d) of Regulation S-K to require the Outstanding Equity Awards at Fiscal Year-End Table to provide for such disclosure.

For the above reasons, we believe the Commission's proposed amendments to the SCT disclosure rules are superior to petitioner's requested revisions to the SCT.

III. Enhanced Director and Nominee Disclosure

The Commission is proposing amendments to Item 401 of Regulation S-K to expand the disclosure requirements regarding the qualifications of directors and nominees, past directorships held by the directors and nominees, and the time frame for disclosure of legal proceedings involving directors, nominees, and executive officers. Specifically, for each incumbent director and director nominee, the proposed amendments would require disclosure detailing the particular experience, qualifications, attributes, or skills that qualify that person to serve as a director of the company and as a member of any committee that the person serves on or is chosen to serve on, in light of the company's business and

[14] Item 402(g) of Regulation S-K.
[15] Item 402(f) of Regulation S-K.
[16] Item 402(g) of Regulation S-K.

structure. In addition, the proposed amendments would require disclosure of any directorship held by each incumbent director and director nominee at any time during the past five years at public companies.

Finally, the proposed amendments would lengthen from the past five years to the past ten years the time period covered by disclosures of certain legal proceedings that are material to an evaluation of a director, director nominee, or executive officer.

The Commission believes the proposed amendments to Item 401 of Regulation S-K would provide investors with more meaningful disclosure to help them in their voting decisions by better enabling them to determine whether and why a director or nominee is a good fit for a particular company, and to allow companies flexibility in disclosing material information on the background and specific qualifications of each director and director nominee, including information that goes beyond the five-year biographical requirement of Item 401.

We support the above-discussed proposed amendments to Item 401 of Regulation S-K and agree with the Commission's rationale for the amendments. In the Release, the Commission requests comments on several questions regarding these proposed amendments. Our comments are set forth below.

Commission question. Would director qualification disclosure for all of a company's board committees be useful to investors, or should the disclosures be focused on membership of certain key committees, such as the audit, compensation and nominating/governance committees?

> **Hewitt comment**. We believe director qualification disclosure for all of a company's board committees would be useful to investors. We do not believe investor interests would be adequately served by limiting the scope of such disclosure to select committees.

Commission question. Should we require the proposed director qualification disclosure less frequently than annually … or … should it be required each year?

> **Hewitt comment**. We support the annual disclosure of director qualifications. Annual disclosures would encourage public companies to actively review and revise such disclosures to ensure completeness and accuracy. In addition, annual disclosures would eliminate the need for investors to review multiple years of filings to determine the qualifications of incumbent directors.

Commission question. Would it be helpful to investors if we required companies to list and describe all committees of the board similar to the current disclosure requirements for audit, compensation and nominating/governance committees?

> **Hewitt comment**. Each board committee performs critical oversight functions for a public company. Therefore, we believe the disclosure of all board committees is essential to investor understanding of a public company's board structure and corporate governance function.

IV. Disclosure Regarding Company Leadership Structure

The Commission is proposing amendments to Item 407 of Regulation S-K and corresponding amendment to Item 7 of Schedule 14A that would require disclosure of a public company's leadership structure and why the company believes it is the best structure for it at the time of the filing. Under the proposed amendments, a public company would be required to disclose whether and why it has chosen to combine or separate the principal executive officer and board chair positions. If a company combines those roles and designates a lead independent director to chair meetings of the independent directors, then the company would also be required to disclose why the company has a lead independent director, as well as the specific role the lead independent director plays in the leadership of the company.

The Commission believes the proposed amendments would provide investors with insights about why a company has chosen a particular leadership structure and will increase the transparency for investors into how boards function.

We support the Commission's proposed amendments to Item 407 of Regulation S-K and corresponding amendment to Item 7 of Schedule 14A and the Commission's rationale for the proposed amendments. We also support the Commission's statement in the Release that the "new disclosure requirement is not intended to influence a company's decision regarding its board structure." We strongly believe that public company leadership structures should ***not*** be mandated but should be decided by each public company based on its unique set of circumstances.

In the Release, the Commission requests comments on several questions regarding these proposed amendments. Our comments are set forth below.

Commission question. Are the proposed amendments to Item 407 appropriate?

Hewitt comment. Given the central importance of the roles of principal executive officer and the chairman of the board, we believe it is important for a public company to inform investors as to the rationale for combining or separating those roles.

Commission question. Should we require disclosure of the specific duties performed by the board's chair or independent lead director?

Hewitt comment. Required disclosure of the specific duties performed by the board's chair or independent lead director would enhance investor understanding of the functioning of the board. These duties may not be well understood by many investors, particularly with respect to independent lead directors. Where the roles of chief executive officer and board chair reside with a single individual, we would suggest disclosure of the specific duties of the individual in his or her capacity as the chief executive officer and board chair to provide clarity between the individual's dual roles.

V. Other Requests for Comment

The Commission has requested comments on the advisability of pursuing certain possible reforms outlined in the Release, including the following:

Proposed reform: In order to improve the disclosure in proxy statements, requiring disclosure of the compensation paid to each executive officer, not just the named executive officers.

Hewitt comment. We do not believe the inclusion of compensation paid to each executive officer would improve the disclosure in proxy statements. Current rules already provide extensive and robust disclosure of compensation paid to the top three paid executive officers as well as the principal executive officer and principal financial officer. In addition, the rules require significant disclosure on the structure of and rationale for compensation programs covering named executive officers. These disclosures provide investors with meaningful insights into pay programs covering a company's most senior executive officers.

Disclosing compensation of lower-paid executive officers would not provide investors with any material information regarding a company's executive pay programs which is not already disclosed under the current rules. Further, the disclosure of pay levels of lower-paid executive officers would infringe upon these officers' reasonable expectation of privacy in regard to their compensation.

We thank the Commission for this opportunity to provide comments on its proposed rules titled "Proxy Disclosure and Solicitation Enhancements."

Sincerely,

Hewitt Associates LLC

Russell Fradin

Russell P. Fradin
Chairman and Chief Executive Officer

RF:nm
cc: Chairman Mary Schapiro, U.S. Securities and Exchange Commission
Commissioner Luis A. Aguilar, U.S. Securities and Exchange Commission
Commissioner Kathleen L. Casey, U.S. Securities and Exchange Commission
Commissioner Troy A. Paredes, U.S. Securities and Exchange Commission
Commissioner Elisse B. Walter, U.S. Securities and Exchange Commission
Ms. Meredith B. Cross, Director, SEC Division of Corporate Finance

Appendix A: Hewitt's Proposed Revision to Item 407(e)(3)

§229.407 (Item 407) Corporate governance.

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(e) * * *

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(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:

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

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

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

4. Performing an annual review of the consultant's work;

5. 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

6. 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.

Appendix B: 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.

Appendix C: Responses to "Request for Comment" Question on Consultant Fee Disclosure

In this section, we summarize our responses to questions posed by the Commission, which we addressed earlier in our response, and we answer those questions not specifically reflected in our comments.

Commission question. 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?

Hewitt comment. No. Providing detailed fee disclosures is not useful, because shareholders lack a context for evaluating potential conflicts of interest. A disclosure focused solely on fees is a blunt instrument that will have onerous and unintended consequences for compensation committees, their boards, and multiservice consulting firms. It is not effective as a tool to measure the potential for conflicts.

In addition to the rationale explained above, the proposed rules presume that if boards merely use "independent" boutique consulting firms, the perceived compensation outcomes will improve. We have cited independent academic research that clearly refutes that presumption. As additional reference, a recent *Washington Post* report on executive compensation abuses highlighted six companies, all of which either used a boutique consulting firm or no consulting firm at all.[17] Driving multiservice firms out of the board advisory business will only serve to limit board access to the very expertise and resources they need to meet higher governance standards.

Commission question. 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 the impact?

Hewitt comment. Yes. The disclosure of additional consulting services and related fees as proposed will change the competitive landscape, reducing the quality and breadth of advice available to corporate boards. This will happen for two reasons: Clients will exclude multiservice firms from consideration to avoid the "stima" of disclosure and multiservice firms will find it difficult to retain their current business and experienced resources without sacrificing other parts of their business. The result is that companies will not have access to the rich resources and full range of services that only a multiservice firm can provide. We suggest that a more effective disclosure for investors is a description of the process and procedures that the compensation committee actually uses as the basis for engaging a particular compensation consultant and assessing potential conflicts of interest.

Commission question. 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?

Hewitt comment. Yes. There are strong competitive and proprietary concerns. Disclosure of the fees for all services rendered in addition to fees for executive compensation services would have an adverse effect on our business for non-executive compensation services. It would disturb the competitive balance in the marketplace for other human resource consulting and administrative services by allowing existing competitors to use the information disclosed to more easily determine our client list for such services as well as the estimated pricing for these other services.

[17] "Wall St. Jacks Up Pay After Bailouts," Tomoeh Murakami Tse, *Washington Post*, July 23, 2009.

In addition, registrant companies will have difficulty meeting specificity requirements in describing other services without potentially revealing material confidential information—for example, fees related to evaluating a potential merger or acquisition, fees related to evaluating significant organizational changes, or revised compensation arrangements.

Commission question. 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?

Hewitt comment. We suggest, as noted above, an alternative disclosure that more effectively addresses potential conflicts of interest of compensation consultants. See Appendices A and B.

Commission question. 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 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?

Hewitt comment. No. Requiring disclosure of currently contemplated services is not necessary. It is highly unlikely that fees for executive compensation services will be incurred in one year and fees for other services will be incurred in another year. The engagements for other services like actuarial and benefits administration tend to be multiyear longer-term contracts. Although the amount of the fees for executive compensation services can vary from one year to the next, it is rare that a company would not engage the consultant for any executive or director compensation services.

The Commission should not require that fees for currently contemplated services be estimated. Once disclosed, it is assumed to be a fact and the decisions of investors should not be based on services that are contemplated but never executed. It is exceedingly difficult to determine whether services are "contemplated." Often, longer-term contracts can take months to negotiate and may or may not result in an engagement. The fees also may be the subject of the negotiations, and it would be inappropriate to disclose fees that are in the process of being negotiated.

Disclosure should not be required for the prior three years. We did not have the systems in place to track all of the fees related to a particular client three years ago. This is particularly the case with respect to work performed by our consultants located outside the United States. In addition, the information from three years ago may no longer be relevant. If implemented, disclosure should be on a prospective basis only.

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

Hewitt comment. Yes. The proposed exclusion for consulting services that are limited to broad-based, non-discriminatory plans is appropriate; however, we believe the categories of disclosure are not appropriate, as explained earlier. Executive officer participation in these plans is often limited, and the dollar value of these plans for the executive officers is generally immaterial to their total compensation. Consequently, management "influence" is limited and not likely to give rise to potential conflicts of interest.

Commission question. 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?

Hewitt comment. Yes. We discuss above why we believe it is critically important to have a disclosure threshold.

Commission question. 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 services provided as proposed?

Hewitt comment. No. Investors will not receive any incremental benefit from the disclosure of fees on an individual basis rather than an aggregate basis. The only information that is relevant is whether the compensation consultant provides services to both management and the compensation committee, and then, only if the total amount of the fees received from all services is material. In addition, our concerns with respect to disclosing proprietary pricing information articulated in our comment letter are further exacerbated if individual fee disclosure is required.

Commission question. 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?

Hewitt comment. As stated above, disclosure of the fees may actually be misleading in raising the prospect of potential conflicts of interest that do not exist in reality. It assumes that the total amount of the fees is the only factor the compensation committee evaluates when determining whether to engage or retain a compensation consultant, and it fails to establish an appropriate context for the fees. An appropriate context would be the total fees for all services provided by the compensation consultant relative to the compensation consultant's total revenues derived from executive compensation services.

We would support a requirement to disclose the total fees paid in connection with executive compensation-related services, provided it applies to all compensation consultants.

Commission question. 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?

Hewitt comment. If a potential conflict of interest exists, it is irrelevant whether the reporting company is "smaller." If investors are concerned with this issue, it should apply to all reporting companies.

Commission question. 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?

Hewitt comment. It is unclear from the current rules or the proposed revisions who is considered a "compensation consultant." For example, are lawyers or law firms that provide services related to executive compensation considered compensation consultants? We believe this should be clarified and that any party that provides services with respect to executive or director compensation should be covered by the rules.