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September 15, 2009

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

Re: Comments on Proposed Rules Regarding Proxy Disclosure and Solicitation Enhancements (File No. S7-13-09)

Dear Ms. Murphy:

We are responding to the request of the Securities and Exchange Commission (the "Commission") for comments about proposed amendments to its rules regarding executive compensation and corporate governance proxy statement and Form 10-K disclosure (the "Proposed Amendments")[1] to be promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). We appreciate the opportunity to comment on certain of the matters addressed by the Proposed Amendments.

Many of the Proposed Amendments address, directly or indirectly, how a company's governance and certain other practices take into account or are affected by the company's risk profile. We agree that the risks a company faces and how its structure and processes are designed to manage them should be a focus of the Commission's disclosure rules. We question, however, whether the Proposed Amendments, even taken together with the Commission's other related rules, are the optimal way to elicit disclosure that assists an investor in evaluating how a company addresses these issues. As drafted, the Proposed Amendments are likely to produce boilerplate and lengthy disclosures that will not necessarily fit together well with the risk factor disclosures called for by Item 501 of Regulation S-K ("Reg S-K"), the quantitative and qualitative disclosures about

[1] Release No. 33-9052 (July 10, 2009), which can be found at http://www.sec.gov/rules/proposed/2009/33-9052.pdf (the "Proposing Release").

risk called for by Item 305 of Reg S-K and the Management Discussion and Analysis disclosure called for by Item 303 of Reg S-K.

We agree that recent events call for rethinking of disclosure regarding risk. However, while it would be a more time-consuming exercise, we believe that the importance of these issues for the investing public is such that they merit additional consideration. In our view, the limited approach reflected in the Proposed Amendments and past Commission rulemaking actions no longer serves the public as well as could be the case if the Commission evaluates the extent to which the existing risk-related disclosure rules could work together as an integrated framework for addressing risk issues. A comprehensive review of the Commission's risk-oriented disclosure rules would permit the Commission to reflect further about the types of disclosures most likely to result in a thoughtful, coherent picture of the various aspects of a company's risk profile and management. While the recent financial crisis may appear to favor more immediate Commission action, we believe that investors are better served in the long run if the Commission takes the opportunity now to harmonize, coordinate and, where likely to produce better disclosure, expand its rules in this area.

I. Refocus Enhanced Compensation Discussion and Analysis ("CD&A") Disclosure Towards Companies' Approach to Managing Risk Arising from Compensation Practices

We support the Commission's proposal to require annual disclosure concerning the link between risk and compensation policies and practices. However, we believe that the Proposed Amendments' disclosure approach should be modified in one important way. We believe that, if adopted as written, the Proposed Amendments likely would lead primarily to either boilerplate disclosure of little value or to an overly expansive discussion on risk management generally, which we believe was not the Commission's intention in proposing the enhanced CD&A disclosure.[2]

The Commission's approach focuses on whether "risks arising from . . . compensation policies and practices [for employees generally] may have a material effect on the company."[3] This standard requires a judgment about when compensation programs have created material risks and is more properly the purview of a company's risk factor disclosure. We recommend that the Commission refocus its approach on disclosure about whether and how a company's compensation programs and practices motivate performance without encouraging excessive risk-taking inimical to the long-term interests of shareholders. This standard, by contrast to the proposal, acknowledges the fact that compensation programs, particularly incentive programs, are intended at least in part to promote risk-taking in the context of a company's business and strategy and that

[2] On July 1, 2009 at the Commission's Open Meeting, Meredith Cross, Director of the Division of Corporation Finance, stated the following in response to Commissioner Kathleen L. Casey's questions on whether there is enough understanding in terms of what "risk" encompasses and the sorts of "risk" the disclosure should address: "I think that the sorts of risk the disclosure is intended to address are those that would be material to the company. [The Commission is] not seeking information just about the risk management practices overall or compensation practices overall. We want this to be a very targeted, tailored disclosure aimed at things that the company does for its compensation that might materially affect its financial conditions, results, operations, that sort of thing – its risk in the classic sense of material to the company." *See* http://www.connectlive.com/events/secopenmeetings/.

[3] Proposing Release at 9.

managing a business at times involves managing risk (rather than avoiding it), managing the balance of reward versus risk for investors and avoiding risk that is excessive under that reward versus risk balance. The optimal role of the CD&A should be to seek focused disclosure of how compensation figures in that overall management function.

Specifically, the focus of the expanded CD&A disclosure should therefore be the methods that compensation committees use when establishing targets and designing compensation programs and particular incentives so as to manage the risk arising from those programs and incentives.[4] This approach, which is centered around compensation function and design, will lead to more tailored and meaningful disclosures that are the proper focus of CD&A. In particular, this approach will avoid disclosures about non-compensatory mechanisms, including risk management policies and procedures, that a company may implement as part of its overall risk management functions but that have less direct relevance to a company's compensation objectives and program design.

Consistent with the foregoing, we also believe that the Proposed Amendments seem overly reflective of a reaction to the recent financial industry turmoil. We expect that many companies operating outside the financial industry will be challenged to find relevant analogies to the "situations" described in the second sentence of proposed Item 402(b)(2) of Reg S-K.[5] As a result, they may be inclined to conclude that the new requirement is not relevant to their circumstances, as the types and nature of the risks they face are not comparable to those faced in the financial industry. We would, therefore, delete the sentence referring to those situations from Item 402(b)(2) of Reg S-K as proposed. We also recommend that the Commission revise the examples of issues to be discussed in the disclosure listed in proposed Item 402(b)(2) of Reg S-K so that they instead encourage companies to consider ways in which targets can be set, and compensation programs and particular incentives designed, so as to affect the degree of risk that they may imply. The disclosure could address the following, to the extent material under the company's circumstances:

- the relative diversification of performance criteria under the company's plans;
- particularly if the Commission retains an approach that goes beyond the named executive officers ("NEOs") (see below), the relative mix of targets oriented toward business unit, product line or company-wide performance;
- whether the company follows an "all-or-nothing" or an incremental approach in setting amounts payable upon achievement of particular performance criteria;
- the relative reliance by the company on stock price appreciation in incentive plan design and whether the company has implemented long-term stock holding requirements;
- the relative balance of short- versus long-term performance criteria in the company's compensation programs;

[4] *See* Executive Compensation Disclosure: Observations on Year Two and a Look Forward to the Changing Landscape for 2009, John W. White, Director of Division of Corporate Finance, October 21, 2008, which can be found at http://www.sec.gov/news/speech/2008/spch102108jww.htm.

[5] Proposing Release at 9.

- the company's implementation of "clawback" provisions or similar arrangements to deter inappropriate behavior; and
- the relative mix of fixed versus variable compensation components.

These elements are already part of the analytical focus of CD&A, and our proposal would encourage companies to consider how they are used with a view to achieving an acceptable level of risk arising from their compensation programs.

Finally, we do not object in principle to the concept that the proposed risk-focused disclosure address employees other than a company's NEOs through a discussion of incentives created under a company's broad-based plans. However, we believe that this feature of the Proposed Amendments, as drafted, may be interpreted to require disclosure about plans, programs or agreements that are immaterial or otherwise highly unlikely to raise significant issues of risk. One likely consequence would be to shift to the compensation committee, as part of the company's disclosure controls and procedures and its responsibility to discuss the CD&A with management, increased responsibility for monitoring performance elements of such plans. Currently this responsibility is typically and appropriately within the authority of the responsible senior executives. To avoid this additional burden if the Commission retains an approach that calls for information beyond the NEOs, we recommend that the requirement apply only to plans that, by virtue of their design, coverage and potential payout, could encourage behavior that has material consequences to the company.

II. Equity Award Disclosure

Equity-Based Awards Should Be Presented in the SCT Based on the Full Grant Date Fair Value of Each Year's Awards, Computed in accordance with FAS 123R

We support the Commission's proposed amendment to Item 402(c)(2)(v) and (vi) and Item 402(k)(2)(iii) and (iv) of Reg S-K regarding the manner of disclosure of the Stock Awards and Options Awards columns of the Summary Compensation Table (the "SCT"),[6] which would require disclosure of the total grant date fair value of equity-based compensation awards, calculated in accordance with Accounting Standards Codification 718 Compensation—Stock Compensation (formerly, Statement of Financial Accounting Standards No. 123 (revised 2004), "Share-Based Payment") ("FAS 123R"), for the fiscal year in which the awards are granted. The disclosure rule would revert back to the approach required at the time that the current SCT format was originally adopted, in August 2006, which approach was revised in December 2006.[7] Given the role of the SCT – disclosure of compensation paid or awarded in a relevant year – we believe that the revision instituted by the December 2006 Release was ill-advised as it undercut one purpose of the SCT by obfuscating the value of equity-based awards, which are of course a principal element of executive compensation. We view the change back to the original disclosure approach for equity-based awards as a welcome development because the SCT will present a clearer picture of compensation

[6] While we reference only the Summary Compensation Table in our letter, to the extent applicable, we intend our comments to apply also to the Director Compensation Table.

[7] *See* Release No. 33-8732A (August 29, 2006), which can be found at http://www.sec.gov/rules/final/2006/33-8732a.pdf and SEC Release No. 33-8765 (December 22, 2006), which can be found at http://www.sec.gov/rules/final/2006/33-8765fr.pdf (the "December 2006 Release").

decisions in the relevant year and makes the determination of the NEOs more predictable and sensible.

The Transition Rule Should Require Recomputation of Each Preceding Fiscal Year Required to be Included in the SCT

We support the Commission's goal to facilitate year-over-year comparisons in a cost-effective way. We believe the best approach for accomplishing this objective is to require recomputed disclosure for each preceding fiscal year, so that the Stock Awards and Options Awards columns would present the applicable full grant date fair values, and Total Compensation would be recomputed correspondingly. We believe that this approach, even if it results in changes to previously reported numbers, will provide investors with a clear apples-to-apples comparison of the year-over-year changes in the annual compensation of the NEOs and a better understanding of the direction of a company's executive compensation practices and policies. Furthermore, we agree with the Commission that the identity of NEOs for any preceding fiscal year should not be affected as a result of recomputed Total Compensation amounts.

Disclosure of Performance-Based Equity Awards in the SCT Should Be Consistent with the Accounting Treatment under FAS 123R

The Commission requested comment as to whether, under the approach to disclosing performance-based equity awards adopted in the Proposed Amendments, companies would be discouraged 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."[8] We believe the approach would in fact prove to be a substantial disincentive for companies to grant performance-based equity awards, particularly awards with difficult performance conditions. We note in this regard that a recent Compliance and Disclosure Interpretation ("C&DI") by the staff of the Division of Corporation Finance concluded that in determining the grant date fair value reportable in respect of a performance-based award (in one column of the Grants of Plan-Based Awards Table, as required by the current rules) the maximum performance threshold should be assumed.[9] It would appear, therefore, that the combination of the approaches reflected in the C&DI and Proposed Amendments would require companies to disclose, for performance-based equity grants, the grant date fair value assuming payout at maximum performance, even if in fact achievement of even minimum performance was determined to be not probable (*i.e.*, if the performance conditions were particularly difficult). A requirement to report the award at the maximum will result in a disclosure of an amount that is, in most cases significantly greater than the actual amount that will be paid under the award and, in all cases, significantly greater than the actual value of the award.

Instead, we believe that the best disclosure approach would be one that follows the principle underpinning the Proposed Amendments in this area to value awards consistently with FAS 123R by reflecting the FAS 123R treatment of the value of the award for financial reporting

[8] Proposing Release at 22.

[9] Reg S-K C&DIs, Question 120.05 (May 29, 2009), which can be found at http://sec.gov/divisions/corpfin/guidance/regs-kinterp.htm.

purposes, taking into account market and performance conditions. Our suggested approach should result in disclosure that most clearly communicates the intention of a company's compensation committee in respect of the amount of compensation to be delivered through performance-based equity awards, utilizing the methodology carefully constructed for financial reporting purposes. Our suggested approach is also most consistent with the disclosure rules currently in effect for the Outstanding Equity Awards at Fiscal Year-End Table. Instruction 3 to the disclosure rules for that Table provides, generally, that threshold performance should be used for the purpose of disclosing year-end performance-based equity award values, unless the previous fiscal year's performance exceeded the threshold level of performance.[10] We also would note that this approach would call for revisiting the approach of the C&DI discussed above, which appears to us to be inconsistent with FAS 123R.

Disclosure of Equity Awards Should Be Made in the Year in Which the Related Services Are Rendered

The Commission requested comment as to whether disclosure of an equity award should appear for the year in which the award is granted or for the year in which the services to which the award relates were performed.[11] We recommend that the Proposed Amendments be changed so that the disclosure for a given fiscal year reflect the aggregate grant date fair value of equity awards granted for services rendered in such fiscal year, even if the actual grant occurred after fiscal year end. We believe that this approach would provide clearer disclosure by making the approach for equity awards consistent with the required disclosure approach for bonuses (cash and non-cash). We do not believe that there is any policy reason that justifies a difference in the timing of reporting compensation earned in a given fiscal year depending upon whether it is made in the form of a bonus or an equity award.

The SCT Should Disclose Compensation and not Wealth Accumulation

The Proposing Release requested comments about a rulemaking petition received by the Commission regarding the reporting of equity compensation in the SCT.[12] In summary, the rulemaking petition suggests disclosure in the SCT of the annual change in value of awards, instead of the approach reflected by the Proposed Amendments. We believe that this would obfuscate, rather than clarify, the current compensation that the SCT was intended to reflect, and strongly urge that it not be adopted. We believe that the approach advanced by the rulemaking petition is not sensible, insofar as it would result in including amounts in the SCT that combine, on the one hand, the value of wealth accumulated by executives arising from compensation previously paid or awarded and, on the other hand, the value of compensation paid or awarded by a company in a given year. If the Commission determines that disclosure of information concerning wealth accumulation arising from equity awards would provide useful information, then we suggest that a column be added to the Outstanding Equity Awards at Fiscal Year-End Table showing the aggregate increase or decrease in the value of outstanding equity awards at the relevant fiscal year-

[10] Instruction 3 to Item 402(d)(2) of Reg S-K.

[11] Proposing Release at 21.

[12] Proposing Release at 23.

end.[13] The value of outstanding awards could be measured in the manner suggested in the rulemaking petition.

III. The Proposed Additional Disclosure About Director and Nominee Qualifications Would Not Result in Meaningful Additional Disclosures and Should be Deleted or Revised

We do not support the Commission's proposed amendment to Item 401 of Reg S-K that would require additional disclosure detailing for each director and nominee the experience, qualifications, attributes or skills (collectively, "qualifications") that qualify him or her to serve as a director and member of a board committee.

We do not believe that this requirement, in the form proposed, will result in disclosures that meaningfully improve voting decisions, but will invite boilerplate disclosures of limited or no value. Furthermore, this information will often be discernible from information that is already required under the Commission's proxy rules. For example, a director who is or was a senior manager at a public company within the registrant's industry will be described as having leadership skills and relevant industry knowledge – qualifications that will be evident from the recitation of his or her employment history in the currently required biographical disclosure. Qualifications will also be evident from other required disclosures, such as those about the individual's independence or designation as an audit committee financial expert. To require, for example, that a company indicate that a director who is a chief financial officer of another company has experience in internal control, financial statement reporting and risk management seems hardly likely to illuminate voting decisions. In the same vein, while we believe diversity among directors is an important value and one that receives significant support among public companies, we believe additional disclosure specifically directed at diversity would be equally unhelpful.

It is also not clear to us that this disclosure will enhance an understanding of the effectiveness of a company's board of directors (or even an individual director's contribution as such), which depends in many ways as much on the board's ability to function as an effective body as on the qualifications of any particular person. The Commission's own history of enforcement actions yields many examples of boards with eminently qualified directors that failed to exercise effective oversight. We doubt that a listing of qualifications will provide meaningful information that will aid investors in distinguishing the "good" boards from all the rest.

Based on the foregoing, we believe the potential benefit of the proposed disclosures is negligible and will likely invite repetitive and boilerplate disclosures in a document that has ballooned in size in recent years. The Commission should resist the urge to increase disclosure requirements that add still more time and cost to the process of preparing the proxy statement and increase the potential for information overload where, as here, a concomitant public benefit is

[13] We note that requiring disclosure of information concerning wealth accumulation arising from equity awards could provide the undesirable incentive of discouraging executives from owning company equity. It also highlights the question of why investors should be interested in wealth accumulation arising from equity compensation, but not from current cash compensation.

clearly lacking. This is particularly the case given that retail investors' participation in the annual meeting process has been in steady decline.

If the Commission nonetheless believes that this information is important, we recommend that it limit the disclosure to the first time an individual is proposed for election to the board of directors. As an alternative to the Commission's approach, we would also support a requirement calling for all biographical details to be provided over a longer period (*e.g.*, for 10 years as in the case of the Commission's proposed disclosure about litigation proceedings involving directors and nominees), or requirements to disclose board committees on which the director or nominee serves or has served at other public companies and his or her educational background. We believe that this information would provide better, and less generic, information about the persons being advanced as directors. We also believe that the final rule should be explicit in its application to all directors and nominees included in the company's proxy statement, and note that any final version of the Commission's proposed proxy access rules should be adjusted accordingly to require that this information be provided by shareholder proponents with no resulting liability to the company.

Finally, we recommend that the Commission take this opportunity to allow greater reliance on website disclosure for many areas of required proxy disclosure, including biographical details of directors and nominees. We believe that the website disclosures that have developed in the wake of the Sarbanes-Oxley Act and related stock exchange governance requirements have proven a useful and frequently accessed resource. Website disclosure of governance principles, board committee charters and codes of ethics has not only provided an effective means of educating investors about a company's oversight structure and practices, but it has prompted many companies to expand their website disclosures to include all of their governing instruments and other key board and management policies. The Commission should build on the success of these initiatives by permitting companies to make biographical disclosures on their websites, rather than in the proxy statement, particularly if the Commission elects to expand these disclosures.

Indeed, we believe that the time may have come for the Commission to implement rules that would move most of the often repetitive governance disclosures now included in the proxy statement to a "governance report" available through a company's website that could be subject to an updating requirement (*e.g.*, at least annually and not later than the first date on which the annual proxy statement (or other information statement) is available). While continuing to promote (and even enhance) transparency around a company's governance practices, this approach would substantially streamline the proxy statement, making it more accessible and likely to be read by investors, as well as better focused on the information most pertinent to the matters subject to a vote.

IV. Disclosure Concerning Company Leadership Structure and the Board of Directors' Role in Risk Management Process

The Proposed Amendments' Requirement to Disclose More About a Company's Leadership Structure Should be Deleted or Revised

We do not support the Commission's proposal to require additional disclosure about a company's leadership structure. While the Proposing Release appears to suggest that the focus of this requirement is on the structure of the board of directors, proposed Item 407(h) of Reg S-K leaves “leadership structure” undefined. As drafted, the proposed requirement is therefore extremely vague and is likely to invite both boilerplate and long-winded descriptions of a company’s hierarchy. It is, for example, unclear how deeply in a company’s organization the description must reach in order to comply with the requirement. It is also unclear whether a company must describe all the elements of its leadership structure, such as reporting lines by management to the board of directors (and even perhaps within management) and the like.

We also note that the only guidance in the proposal about what is called for relates to the separation of the roles of chief executive officer and chairperson of the board of directors, and it would appear that this may well be the true focus of this aspect of the Proposed Amendments. If this is the case and the Commission wishes to retain this requirement, we believe the proposal should be explicitly limited to this particular question and the related disclosure about the role of a lead director. That said, while recognizing that this topic has attracted significant attention in recent years, we question whether additional proxy disclosure on the topic is useful. The arguments on both sides of the question are well-rehearsed – there is extensive academic literature on the topic and plentiful commentary by proxy advisory firms and shareholder advocates. Indeed, as public companies have become increasingly subject to shareholder proposals to split these leadership roles, the argumentation on both sides of the issue has become rather standard as part of the body of precedent under Exchange Act Schedule 14A.

We are not persuaded that repetition of these arguments as a mandated part of each proxy statement – likely without material revision from year to year in the absence of a company’s change in approach – will enhance shareholders’ appreciation of the effectiveness of a company’s leadership. If the Commission retains a version of this requirement, we recommend that it permit companies to comply through website disclosure, in addition to limiting its scope to the separation of the roles of chief executive officer and chairperson of board of directors.

The Commission Should Clarify the Level of Detail Required in the Disclosure of the Board of Directors’ Role in Risk Management Process

While we do not oppose the Commission’s proposal to require more disclosure in proxy and information statements about the role of a company’s board of directors in risk management, we believe that the requirement should be revised.

As proposed, the requirement is exceptionally vague and could result in lengthy disclosure about all the ways a board of directors exercises its oversight function with respect to risk management, including through a listing and explanation of the various common risk management initiatives that are directly embedded in a board’s own processes (*e.g.*, enterprise risk management reviews and strategic and competitive reviews) or over which it exercises review and/or approval authority (*e.g.*, oversight of internal control over financial reporting and internal and external audit plans, including fraud detection and prevention, and oversight of compliance, insurance and comparable programs and policies). The more complex the business, the greater the variety and number of risks involved and the longer the disclosure, without necessarily providing investors with any real insight into the effectiveness of the company’s risk management. We believe that companies will be very challenged to provide disclosure that is both brief and meaningful. Finally, we believe that in cases where Item 305 of Reg S-K is applicable, unless the proposed requirement is narrowed and guidance as to the specific focus provided, there will be substantial unhelpful overlap and duplication.

The Proposed Amendments also require disclosure about the impact of the board of directors' risk management role on "the company's leadership structure" without providing any guidance as to the scope of the term "leadership structure," adding a further element of confusion to the mix. Is this reference just to the board's own leadership structure (*e.g.*, how it has allocated review of risk issues to the full board relative to committees or whether it has established specific risk committees) or is it also intended to include management's own initiatives to devise a reporting hierarchy that is responsive to the range of risks faced by the company, or both? More important, the focus of this element of proposed Item 407(h) of Reg S-K on how the board's risk management role affects a company's leadership structure, as opposed to other aspects of board or committee operation, seems misplaced, and we suggest that this element of the proposal be deleted from any final version of the rule.

If disclosure about a company's leadership structure is retained, we believe that the Commission should clarify that it is not seeking an expansive report on risk management, particularly since such a report could implicate substantial confidentiality and competition concerns. We believe that it would also be appropriate for the Commission to emphasize that the disclosure should concern exclusively the role of the board of directors in the oversight of management's processes and procedures for managing risk, and not a discussion of the risks or risk management initiatives themselves. In this regard, we believe it would be appropriate to limit the scope of the term "leadership structure," at least for purposes of this requirement, to the board of directors' own structure and processes. We believe further that the Commission should also allow companies to satisfy this requirement, if it is retained, through website disclosure.

V. The Additional Disclosure with respect to Compensation Consultants Should Be Revised to Add a Materiality Condition with a Threshold

We question the utility of the additional proposed conflict of interest disclosure relating to compensation consultants, and believe that the absence of a materiality condition in the proposed new disclosure requirement makes the requirement impractical from a compliance perspective – a disclosure trap even for the wary. Specifically, we note that numerous affiliates within a corporate group of any size with a scattered employee population are likely to solicit independently the advice and services of compensation consultants and their affiliates to provide services, which may or may not be compensation-related services, on a routine and frequent basis. Many consultants and consulting firms are affiliated with other firms in ways that may not be obvious to their clients, including affiliation with businesses that provided services unrelated to compensation. Particularly for companies with non-U.S. employee populations, the risk of a failure to identify a discloseable relationship or payment, even for companies with very robust disclosure controls and procedures, seems unreasonably high under the proposed rule.

To balance the concern that the requirement is designed to address with the risks and the practical difficulties of compliance – particularly in light of the disclosure requirements about the role of consultants in the compensation process that already exist – we believe that two modifications are appropriate. First, we would support applying the requirement to subsidiaries rather than affiliates; this would still elicit whatever useful information is sought and would substantially ease compliance uncertainty. Second, we would suggest that the Proposed Amendments should be revised at a minimum to add a materiality condition with a reasonable bright-line threshold. This approach would enhance the Commission's goal of providing necessary information in a concise and meaningful manner by eliminating disclosure of insignificant relationships and focusing investors on matters that could present a material risk of a conflict of interest.

In setting such a threshold, we recommend that the Commission borrow from one of the existing bright line tests currently in effect under rules with a similar focus, such as the 2% (for New York Stock Exchange-listed companies) or 5% (for NASDAQ-listed companies) of gross-revenues test for disclosure of business relationships between a company and a director-affiliated entity that are, in effect, incorporated into Item 407(a) of Reg S-K. We see no argument for imposing a more stringent requirement for disclosure of business relationships between a company and its compensation consultants than is imposed for disclosure of business relationships between a company and its directors. An alternative approach would be to set the threshold based on the $120,000 per transaction materiality threshold under Item 404(a) of Reg S-K in respect of person transactions. In light of the clearer and more direct conflict of interest issue presented by the related person transactions described in Item 404(a) of Reg S-K, we believe that if this approach is adopted the threshold with respect to compensation consultant conflicts of interest should be set at a significant multiple of the current threshold.

* * *

We thank you for the opportunity to submit this comment letter. We would be happy to discuss with you any of the comments described above or any other matters you feel would be helpful in your review of the Proposing Release and the comments you receive. Inquiries may be directed to Alan L Beller, Janet L. Fisher, Arthur H. Kohn or Mary E. Alcock at (212) 225-2000.

Very truly yours,

CLEARY GOTTLIEB STEEN & HAMILTON LLP

cc: Securities and Exchange Commission
Hon. Mary L. Schapiro, Chairman
Hon. Kathleen L. Casey, Commissioner
Hon. Elisse B. Walter, Commissioner
Hon. Luis A. Aguilar, Commissioner
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