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These comments pertain to the Commission's proposed rulemaking regarding additional proxy disclosure and solicitation enhancements.

We agree with the Commission's goal of full and proper disclosure of information regarding executive compensation and other matters to assist shareholders in making informed decisions. We support the notion that the proxy should focus on enhancing shareholder ability to make informed investment decisions but believe that given the unique perspective of each shareholder, and their own assessment of risk, the proxy alone can not serve as the complete source of information to address all concerns. We believe that some of the proposed rules will provide safeguards; however others we believe will not enhance transparency and could potentially cloud investor perception.

Turning to the specific proposals:

***Section A – Enhanced Compensation Disclosure:***

1. With regard to the expansion of the Compensation Discussion and Analysis (CD&A) to cover overall compensation policies:
  - a. It will be difficult, at best, for companies to determine what "compensation policies or practices may give rise to prudent risk or risks that have a material effect," as there is no objectively defined standard for "prudent risk," nor for "materiality." Businesses by their nature are designed to take on risk, with the board having overall accountability for the strategic oversight of the company, and therefore the risk profile of the business. With respect to compensation design, potential risk exists on both ends of the spectrum; a given bonus plan can create an environment that promotes prudent risk-taking behavior, while the absence of one can create an inappropriate risk of talent drain that erodes a company's competitiveness. Without the ability to establish a standard of business risk by industry, company size, and/or business model, risk assessment is left to the specific investor and shareholder. Determining whether a compensation plan gives rise to prudent risk, or inappropriate risk, requires a broader understanding of decision rights within an organization, degrees of accountability and the nature of the total compensation philosophies and schemes at a company. Does a bonus plan based on sales give rise to excessive risk? Do stock options granted to all employees lead to shorter-term-focused decision making rather than longer-term? To the extent that either of these measures encourage an employee to take actions that could enhance stock price or increase sales, they *could* increase risk. However, these decisions are by individuals within a set of controls by the institution as a whole. The extent to which it is believed that any incentive scheme leads to excessive risk taking and that said risk is material is not possible to predetermine; it can be assessed only on the basis of outcomes. As a result, rather than chance being out of compliance, companies may end up taking the same "regulatory compliance" (or "kitchen sink" approach) that the Commission has sought to eliminate from CD&As and previous sets of proxy disclosure rules for executives. The resulting information overkill will tend to create a barrier to investor understanding of management and board



decision-making rather than achieving the intended goal of improved transparency, and providing better information to shareholders. The Commission itself has noted that an unintended consequence of the previous round of increased disclosure has been greatly expanded CD&As, which in many cases does little to actually improve shareholder understanding of executive compensation.

- b. A company's internal risk assessment of its compensation plans is only as good as the company's procedures to ensure procedures, policies and controls are not circumvented. Absent a salary-only compensation system, there will always be prudent risk encouragement in any compensation system, and this supports shareholders' desires for performance-based compensation for shareholder alignment. The system cannot, and should not, be established to govern all possible circumstances, as if all companies should be treated as outliers.
  - c. We believe that requiring an affirmative statement that no additional disclosure is required exposes the company to increased securities litigation, while providing investors nothing in the way of increased understanding of the company's policies and/or risk profile.
2. Finally, there is the issue of materiality. Will the knowledge that a company provides a certain compensation program materially affect the investment decisions of a potential investor? We do not believe that is the case.
  3. With regard to the modification to the summary compensation table to reflect the FAS123R cost of an award at the time of the award, rather than amortizing the cost over the vesting period, we support the Commission on this point. Compensation should be disclosed and reflect the year that it is awarded.
    - a. The one potential issue this raises is with regard to performance-based equity plans. We believe this can be addressed by showing the *target* value for these plans at the time of grant. This will place all plans on an equal footing, since, for example, stock options, while carrying a fixed FAS123R cost, have an indeterminate value to the participant until such time as the options are exercised. It is important to note that the FAS123R expense that is currently disclosed, does not reflect the value realized by an executive and as such, can misinform an investor as to the actual value of equity compensation provided to the named executive officers.

### ***Section B – Enhanced Director and Nominee Disclosure***

We generally support the enhanced disclosure for Directors and Nominees

### ***Section C – New Disclosure about Company Leadership Structure and the Board's Role in the Risk Management Process***

1. In general we support the disclosure of the choice of leadership structure. We generally support the notion of separating the role of Chief Executive Officer and Chair, with the Chair being a non-executive position as a member of the board.
2. The requirement to specifically address the issues surrounding risk and the reporting of risk, we believe, requires additional definition by the Commission. As noted above and as a practical matter,



all business involves responsible risk-taking of some degree and it would be near impossible to establish a standard given the variances in business models today.

#### ***Section D – New Disclosure Regarding Compensation Consultants***

We believe many of the proposed compensation consultant disclosures will not support the goal of enhanced investor decision-making.

As a starting point, the Compensation Committee already has a fiduciary duty to the shareholders. Its selection of a consultant or any advisor reflects that fiduciary duty. Committees craft the specific criteria within the selection process that meets their needs. They evaluate a range of considerations, including other relationships between the consultant and the company. Compensation Committees make their determination, based on their judgment, of who will most effectively provide the services the Committee needs in performing their fiduciary duty. In some cases, consultancies that provide a wide range of compensation consulting services are the more effective and efficient choice for a Compensation Committee because they have a better understanding of the organization and business, and the implications of the advice they provide. Compensation Committees have the final accountability for the decisions they make, based on the advice from their advisor, or by using their best judgment, irrespective of the direction they might receive.

Ensuring Compensation Committee's receive independent and unbiased advice we believe has little to do with a specific business model for a firm, and more to do with the process and procedures established between the Committee, management and the advisor when performing services. We do not believe that by simply providing additional disclosure of non-executive compensation consulting arrangements performed by an executive compensation advisor that this will serve to provide additional safeguards to investors. In fact, improving the process, procedures and controls in place to address executive compensation issues we believe would have a greater impact on the committee's execution of their fiduciary responsibilities than limiting the focus to a consultant's independence.

We also believe there is a gray area in terms of what constitutes "executive" compensation. For example, in most technology companies, more than 50% of employees receive stock options or equity compensation. Does work on equity programs constitute "executive compensation" or "other employee compensation," or does the work need to be allocated between the two? Does a compensation survey that includes both executives and non-executives constitute "executive compensation" or "other employee compensation"?

Finally, as a practical matter, most "board" consultants perform services for both the board and management to ensure the requisite information is provided to the committee to make informed decisions. To mandate complete independence between the two would, in effect, double the cost of providing services, creating needless additional cost for companies.

To elaborate, and with regard to other specific issues raised in the proposed regulations:

1. The fact that other services may be provided by the compensation consulting company is not dispositive of a potential conflict of interest. Rather, the issue is whether there is any potential benefit to the consultant who serves the Committee. A consultant who derives a significant portion of their income from one client is in fact less independent of that client than a consultancy providing a range of services to many clients. Further, we do not believe that the potential for conflict-of-interest is any greater for compensation consultants than for other advisors to the board. Given the



fees involved with other service providers (e.g., attorneys, investment advisors, etc.) the level of compensation paid to compensation consultants is not material.

2. In terms of setting a threshold for reporting, we support the notion that the threshold should be set at a level of materiality for either the consultant or the company. If a consulting company derives more than for example 5% of its income from a particular client that is a matter of materiality. To the extent that a consultant is overly reliant on a company, they may be less-than-objective in their actions, as the implications of losing the client would be severe. By the same token, if the fees spent with a consultant rise to the level of materiality for the company (again, using a percentage of revenue), then reporting is appropriate. We believe that if an individual consultant standard is established, it should be reviewed on a case-by-case basis by the consulting firm, and should be addressed within the policies and procedures of the specific consultancy, rather than be set by regulation.
4. Disclosing “contemplated services” is speculative at best and will not provide a safeguard against conflicts of interest.
5. With regard to reporting aggregate fees, we do not believe this information can in any way inform an investor’s decision, because it lacks the necessary context of specific services and fee arrangements out of which it arose. Disclosure of fee arrangements can also lead to anti-competitive behavior within the industry, which we believe will benefit neither the investor nor the consultancy. In addition, as noted above, executive compensation fees alone in many instances are not “material” when compared to fee arrangements of other board advisors, including outside counsel and auditors.
6. We support the requirement that the company disclose the manner in which the compensation consultant is selected, including the role of the Committee and management in this process.
7. We support the requirement for Compensation Committee approval of the provision of other services by the consultant to the company.

#### ***Section E - Reporting of Voting Results on Form 8-K***

We generally support the acceleration of reporting of voting results, with the following specific caveats:

1. We would support only the reporting of *final* voting results, rather than preliminary results. This would prevent premature reporting from influencing the final outcome of a vote.
2. There will be some slight incremental cost from an additional filing. However, we believe this would be *de minimus*, especially in the context of providing quicker information to investors.

#### ***Section F – Proxy Solicitation Process***

We express no opinion on these proposals



### ***Section G – Transition***

We recommend that while generally being applicable to the 2010 proxy season, that the rules when adopted not be effective for proxies issued within 90 days of the final rules adoption to allow adequate clarification and transition time.

### ***Section H – Other Requests for Comment***

Turning to the additional questions raised in this section of the proposals:

1. We do not believe that it is appropriate to eliminate any of the existing disclosures based on the new proposals.
2. We believe broadening disclosure past the Top 5 or CEO, CFO and other top 3 will not enhance disclosure that will influence an investor's decision. We do not advocate broader inclusion of individual pay levels past the "Top 5" which will subject more individuals to public scrutiny, not to mention competitive harm in the retention of key management staff.
3. We strongly oppose the notion of requiring the disclosure of current year performance targets. Because these are often matters that are proprietary and are not required to be disclosed in the 10-K, the disclosure of these targets could cause competitive harm to companies by providing additional information to competitors. The possible unintended consequence of this forced disclosure would be the increasing use of "discretionary" plans that required no disclosure.
4. We strongly believe that the CD&A should continue to be "furnished" rather than "filed." There is already a strong tendency in CD&As to be "boilerplate" to ensure that all legal issues are addressed, rather than giving a true understanding of the underlying compensation process. To the extent that they are "filed," this tendency will increase, CD&As will become even longer while providing little, if any, additional meaningful information.
5. We do support the suggestion that compensation expertise be noted for committee members. Just as the Audit Committee denotes financial expertise, similar standards should be considered for other board committees as well whether they are technical/scientific, human resources or compensation, or nominating and governance.
6. We support disclosure as to whether companies have "hold to retirement" or "retention" requirements.
7. We believe that "pay equity ratios" are meaningless to an investor for making informed financial decisions. They only serve a political purpose of highlighting the supposed excesses of executive pay and have no impact on an investor's decisions.
8. The number of compensation plans a company has is meaningless in determining the implications and impact of its compensation policy. For example, some companies have individualized programs for each sales person which can mean that a 100-person sales force could have 100 compensation plans. This does not elucidate the nature, and expected impact of the company's pay philosophy, and adds limited value to inform an investor's decisions.



9. We do not believe that a quantification of the value of a tax gross-up to the executives is appropriate. Such a disclosure would require that executives furnish personal tax information to the company, in order to provide an accurate assessment of the value, which serves no investor purpose.

We hope that these comments have been useful to the SEC, and would be happy to further discuss any of the points raised in this letter.

Best regards,

A handwritten signature in black ink, appearing to read "Linda E. Amuso".

Linda E. Amuso

President

A handwritten signature in black ink, appearing to read "Ted Buyniski".

Ted Buyniski  
Senior Vice President