September 12, 2009

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

Via email: rule-comments@sec.gov

Re: File No. S7-13-09; Release Numbers: 33-9052, 34-60280; IC-28817

Dear Secretary Murphy,

On behalf of Pax World Management Corp. (Pax World), adviser to Pax World Funds, with over $2.3 billion in global assets under management, we are writing to submit comments on the Securities and Exchange Commission's (SEC) proposed rule entitled "Proxy Disclosure and Solicitation Enhancements," File No. S7-13-09.

Pax World wholeheartedly supports the SEC's efforts to expand and clarify corporate governance and compensation disclosures. Accurate and timely information is the cornerstone of efficient financial markets. We have chosen to comment on several, though not all, of the SEC's proposals in this letter: links between compensation and long-term risk, revisions to the summary compensation table, enhanced director and nominee disclosure, company leadership structure and the board's role in the risk management process reporting of voting results on form 8-K, and disclosure regarding compensation consultants. In general, we are pleased to see the SEC considering these steps to strengthen and protect the rights of investors.

Links Between Compensation and Long-term Risk

The last two years have given investors ample reason to believe that corporate disclosures and practices around executive compensation are insufficient to enable a reasonable investor to appropriately account for risk in portfolio construction, particularly those risks that may appear over the long-term. For investors to understand the risk profiles of the companies they may invest in, we must have better tools to assure that management is fully transparent about those risks, and not just those that may arise in the near future. This is particularly true as new financial instruments arise that are so complex that they are difficult for anyone but their creators to understand. As Richard Bookstaber, author of *A Demon of Our Own Design: Markets, Hedge Funds, and the Perils of Financial Innovation* notes, "we have gotten to the point where even professionals may not understand the instruments."[1]

[1] Bryant Urstadt, "The Blow-Up," *Technology Review*, November/December 2007.

Compensation practices are often identified as one of the key factors behind the most recent financial crisis. In its April 2009 report, the Financial Stability Forum noted:

> "Compensation practices at large financial institutions are one factor among many that contributed to the financial crisis that began in 2007… it is essential that steps also be taken immediately to make compensation systems as a whole sound going forward. To date, most governing bodies… of financial firms have viewed compensation systems as being largely unrelated to risk management and risk governance. This must change."[2]

In the UK Financial Services Authority's (FSA) newly-promulgated rules regarding executive remuneration, the authors note,

> "Inappropriate remuneration policies can lead to excessive risk taking in almost any area of financial risk – for example, credit, market, liquidity or operational risk. They can also lead to the risk of serious misconduct, and of fraud – for example, by increasing the temptation for employees to mis-state or exaggerate their performance and mis-mark the valuation of positions."[3]

We understand that risk is an essential component of financial markets, but we also agree with the SEC's premise that corporations have done a poor job—or no job at all—of linking the propensity to take risk with executive compensation. Bebchuk and Spamann posit that equity-based pay or options on equity created powerful incentives for banks to issue more debt, and that the increased leverage created "powerful incentives" to take excessive risk.[4] Another recent paper by Aviv and Landskroner[5], found that "common" executive compensation composed of equity-based instruments and fixed cash compensation "leads to a concave relationship between assets risk and compensation value and creates an incentive for the executive to choose corner solutions that either lead to an excessive risk taking or to a freeze out of the lending activity to the public." In fact, both things happened in the recent financial crisis, to the detriment of economies around the globe.

In sum, Pax strongly supports the SEC's proposal to amend the requirements for the Compensation Disclosure and Analysis (CD&A) to provide information on how compensation plans can affect a company's risks and risk management. The SEC's proposed list of situations that could trigger this expanded CD&A disclosure is appropriate, and we agree with the SEC that this proposed list of situations is not exclusive. We would also suggest that the SEC add to this list situations in which incentive pay (e.g., pay linked to performance targets) is a significant share of

---

[2] Financial Stability Forum, "FSF Principles for Sound Compensation Practices," 2 April 2009.

[3] Financial Services Authority, "Reforming Remuneration Practices in Financial Services: Feedback on CP 09/10 and Final Rules," August 2009.

[4] Lucian Bebchuk and Holder Spamann, "Regulating Bankers' Pay," Harvard University John M. Olin Center for Law, Economics and Business, Discussion Paper No. 61, 6/2009.

[5] Alon Raviv and Yoram Landskroner, "The 2007-2009 Financial Crisis and Executive Compensation: Analysis and a Proposal for a Novel Structure," June 15, 2009. Who published or where?

employees' or executives' remuneration—for example, 30% or more. Sizable incentive pay has been shown to be both asymmetric—responsive to upside performance but also sticky on the downside—and a significant factor in risk-taking. As the Financial Stability Forum noted:

> "Recent practice has not been consistent with the principle that ***compensation outcomes must be symmetric with risk outcomes*** because the bonus component of compensation has been much more variable upward in response to good performance than downward in response to poor performance, especially poor firm-wide performance. In years of losses by the firm as a whole, most employees' bonuses at most firms have continued at a significant portion of boom-year levels. In other words, the size of firms' bonus pools showed much more inertia than did economic performance. Firms justified this mainly by arguments that employees need incentives to work effectively even in bad years, that many employees and business units perform well even in bad years for the firm, and that employees will move to another firm if bonuses fall far below recent levels...Because weak relative performance may be punished, and taking more risk, especially tail risk, is a way to boost short-run performance, the asymmetry of bonus practice encourages taking of excessive risk. It also reduces the incentive to draw attention to excessive risk taking by others, since the sensitivity of the employee's compensation to losses caused by others is reduced. Moreover, during booms, bonus amounts ratchet up each year as a result of both benign conditions and increased risk-taking, unlike fixed salaries."[6]

The same appears to be true for equity-based compensation. Sanders and Hambrick[7] examine the relationship between the size of CEO stock options and company strategic behavior and performance, and conclude that "CEO stock options engender high levels of investment outlays and bring about extreme corporate performance (big gains *and* big losses), suggesting that stock options prompt CEOs to make high-variance bets, not simply larger bets. Finally, we find that option-loaded CEOs deliver more big losses than big gains."

This evidence is persuasive enough that we believe the SEC should explicitly include some measure of the proportion of incentive pay to base pay as a factor that would trigger expanded CD&A.

The SEC also proposes that these or other triggers would only prompt increased disclosure if "the materiality threshold is triggered." We agree that materiality is an appropriate concept to use, but it is also a notoriously difficult one. The SEC itself has explicitly declined to define materiality in terms of a quantitative threshold, and instead urges a more conceptual definition: "The staff reminds registrants and the auditors of their financial statements that exclusive reliance on this or any percentage or numerical threshold has no basis in the accounting literature or the law…Materiality concerns the

---

[6] Financial Stability Forum, op. cit., pp. 11-12.

[7] Wm. Gerard Sanders and Bernard C. Hambrick, "Swinging for the Fences: The Effect of CEO Stock Options on Company Risk-Taking and Performance," *Academy of Management Journal*, 2007.

significance of an item to users of a registrant's financial statements. A matter is 'material' if there is a substantial likelihood that a reasonable person would consider it important."[8]

The SEC proposes a non-exclusive list of issues that may have material effects, which is useful, but could also have the effect of limiting disclosure. Most companies are reluctant to share more than they are required about executive compensation, in part because the public-outrage factor around executive compensation is so high. By providing a list, the SEC might inadvertently encourage companies to provide CD&A disclosure *only* in the circumstances described. Since there is considerable latitude in defining materiality, rather than simply leaving the decision as to whether or not additional CD&A is warranted in terms of materiality, we suggest that the SEC require that companies who choose not to provide expanded CD&A disclosures at least be required to explain how they reached the conclusion that the links between compensation and materiality are *not* material. Given the magnitude of the current financial crisis, the fact that financial crises seem to be getting progressively more frequent and more severe, and the increasingly strong consensus that compensation was one significant factor that led to the most recent crisis, we believe that a "comply or explain" approach is warranted here.

We also urge the SEC to continue its long tradition of urging companies to explain compensation in plain English. Not only should the elements of compensation and their links to risk be clear, so should the performance targets that trigger incentive payments, and the strategic goals that underpin the performance targets. Investors need to understand management's long-term strategic goals in order to assess the appropriateness of the measures and targets used to trigger executive pay. In many cases, incentive pay is triggered by some concept of outperformance, though the variety of metrics used, and the opaque and unhelpful language often used to describe them, gives investors little concrete basis on which to judge the appropriateness of compensation plans. Incentive pay should be clearly and concisely linked to strategic plan objectives, and performance goals (and whether a named executive officer met those goals) should be clear. We echo the conclusions of Jensen and Murphy, in a recent paper examining how to fix compensation:

> "…managers should explain how and why they will be able to outperform their market. Some will argue that making this all clear to the analysts will reveal valuable information to their competitors. "[t]o this, we have a simple response: If your strategy is based on your competitor not knowing what you are doing … you cannot be successful in the long run no matter who knows what."[9]

In addition, we believe that the expanded compensation disclosures should apply to all companies, not just to large accelerated filers, and to all industries. While we have just

[8] US Securities and Exchange Commission, "SEC Staff Accounting Bulletin: Codification of Staff Accounting Bulletins," Modified 9/21/2006.
[9] Michael C. Jensen and Kevin J. Murphy, "Remuneration: where we've been, how we got to here, what are the problems, and how to fix them," European Corporate Governance Institute, Finance Working Paper No. 44/2004, July 2004.

seen the damage that can be done by creating complex financial derivatives whose risks are not fully known, there are many other circumstances that could encourage significant risk-taking. If Bebchuk and Spamann are correct, any company's CEO might be able to expand his pay through the use of greater leverage, and if Sanders and Hambrick are correct, many CEOs have learned how to "earn" their stock-based incentive pay through investment outlays that increase the volatility of corporate earnings, and more on the downside than on the upside.

The SEC asks, "if a company determines that disclosure under the proposed amendments is not required, should we require the company to affirmatively state in its CD&A that it has determined that the risks arising from its broader compensation policies are not reasonably expected to have a material effect on the company?" We answer with a firm "yes." In the turmoil following the stock market's free fall in the third and fourth quarters of last year, several senior executives denied personal knowledge of the factors that led to the crash. Of course, we understand that it is impractical for any single person to understand the intricate details of every facet of a business, but senior executives—who are often paid handsomely for the challenging task of steering these corporate supertankers—should understand the links between compensation and risk,. Nothing establishes responsibility for this as well as an affirmation in financial filings.

Revisions to the Summary Compensation Table

The SEC has proposed modifications to the summary compensation table in an effort to "provide investors with a single total figure that includes all compensation and is comparable across fiscal years and companies." This is a worthy objective, but the SEC's proposal to substitute the aggregate grant date fair value of stock awards and option awards for the current requirement - the financial statement recognition, or expensed cost, of equity awards – does not accomplish what it intended. The substitute measure still does not provide investors with a single figure that includes all compensation in the year in question, though the substitution does help to provide investors with a single measure of the compensation committee's *intended* awards during the fiscal year. However, it is common (and appropriate) for current-year option grants to have longer vesting periods, and somewhat less common for them to be subject to longer holding periods. The substitution still does not provide investors with a complete picture of all current compensation, but mixes current with contingent future compensation. We agree with the proposal of Paul Hodgson, a compensation expert at The Corporate Library, who wrote in an earlier letter to the SEC on the topic:

> "Simply put, the SEC's Summary Compensation Table currently includes a mix of both current, actual compensation and future, unrealized compensation…It has been reported that the Commission is now considering including the 'grant date present value' of equity awards rather than the expensed cost in this table. If this is true, then we will still have a mix of apples and oranges – it will just be a different variety of orange. The Commission will still be trying to square the circle with future compensation continuing to be included in the Summary

> Compensation Table alongside earned compensation. This is at best a sideways step and not a forward move.
>
> Such a proposal is all the more difficult to understand because the Commission clearly understood from the beginning that the Summary Compensation Table was largely intended to present compensation paid currently, current earnings from other compensation plans, and 'the dollar value of all other amounts earned during the fiscal year pursuant to incentive plans.' Why, then, should it also include amounts 'expensed' in the year but not earned, or the estimated value of grants made in the year?"[10]

Hodgson proposes two tables, one for compensation received in a fiscal year. The first, which Hodgson calls "Realized Compensation," would include base salary, an itemized list of "all other compensation," cash bonus, value of any vested time-restricted stock, value of any stock options exercised, any long term incentive plan (LTIP) payout, and changes in pension value or non-qualified long-term compensation. The second table, termed "Realizable Compensation," includes all compensation awarded that may be realized in the future.

We find this a useful way to present executive compensation, and we believe that it would be better to have two tables describing compensation over clearly delineated time periods than one table that mixes both current and potential compensation.

We also suggest that the SEC should require that the annual report of the compensation committee also include a discussion of grant dates for both qualified and nonqualified stock options. We have seen far too many instances of exceptionally fortunate choices of option grant dates, some of which have resulted in investigations, settlements or penalties by the SEC for options backdating, or shareholder lawsuits, or some combination of these. We believe it would be in the best interests of investors if all companies established firm, fixed option grant dates and announced those dates in advance, and also adopted policies regarding the timing of company news in relation to those grant dates (which would help to eliminate spring-loading). If the SEC is not prepared to take the step of requiring all companies to establish such grant dates and policies regarding the release of news, we encourage the SEC to require all compensation committees to report on whether they have policies regarding grant dates, and if so, what is contained in those policies.

We believe that the SEC should enforce expanded disclosure of total firm compensation, not just the compensation of the top five Named Executive Officers (NEOs). Pax World views the compensation practices and total amounts paid to the CEO compared with other top officers, and compared with rank-and-file employees, as critical evidence of the quality of management and Compensation Committee oversight. Because Pax World searches for companies that focus on sustainable business practices and durable financial

---

[10] Paul Hodgson, "Letter to the SEC on Compensation From the Corporate Library," June 8, 2009. Posted at http://blog.thecorporatelibrary.com/blog/2009/06/letter-to-sec-on-compensation-from-the-corporate-library.html.

performance, we are very interested in seeing both detailed and aggregated summary data regarding overall compensation practices within a firm, and comparisons to peer groups on overall compensation practices. All too often, discussions of compensation philosophy are narrowly focused on CEO pay. As long-term investors, we would like to see more detail about what the Compensation Committee of the board is doing to oversee firm-wide pay practices, and whether a disparity in compensation practices of top officers compared to other employees may, of itself, pose enterprise risk.

We would also urge the SEC to encourage broader and better disclosure from companies and their compensation committees about how executive and board compensation is tied to metrics of enterprise-wide Environment, Social, and Governance (ESG) risk. For many companies, ESG risks pose systemic risks to financial performance, including egregious health and safety incidents, environmental liability, discrimination lawsuits, and predatory practices and marketing, amongst others. Few US firms provide quality disclosure about how performance in these areas is tied to compensation. A "comply or explain" approach to this topic would be very useful for long-term investors seeking to analyze enterprise-wide risks for firms, and how compensation practices incentivize improved performance in such areas.

Enhanced Director and Nominee Disclosure

We agree with the proposed amendments to Item 401 of Regulation S-K to expand the disclosure of qualifications of director nominees. The proposed expanded disclosures should pertain to all candidates for a board—both board- and shareholder-nominated. Pax World often assesses the total pool of experience and value-added attributes directors bring to the table, including board diversity, a nominee's history of stakeholder or shareholder engagement, industry knowledge, market or consumer familiarity, director commitments, past legal or director controversy, and many other issues. We welcome the SEC's focus on this important area—one that is vital to investors' ability to elect vibrant, thoughtful, highly-skilled boards.

We agree that a more robust discussion of director nominees' qualifications would be useful to investors casting votes on director elections. We support requiring candidates to disclose directorships—private, public and nonprofit—for the past seven years, not five. We also support provisions requiring that candidates disclose involvement in legal proceedings for the preceding 10 years, instead of five years. The expanded timeframe and widened scope of board commitments will aid investors in determining potential conflicts of interest between board candidates and major suppliers, major customers, competitors, or financiers of the corporation in question.

Other legal proceedings within the past 10 years that should be disclosed to enhance investor voting decisions on board candidates include:

- A director being charged with or found guilty of mail or wire fraud
- Judicial findings
- Disciplinary findings or sanctions by SROs and similar entities
- Bankruptcy of a firm while candidate was a director or NEO

- Pension Benefit Guaranty Corp. takeover of corporate pension while candidate was a director or NEO
- Personal bankruptcy filing by a director.

Candidates should be allowed space for adequate discussion of the particular details of a circumstance, so that investors can make an informed decision on the merits of a director. For instance, if the candidate was a director at a company that filed for bankruptcy, it is very relevant to know that the director was only on the board for two months preceding the event, as opposed to five years.

We agree that these expanded disclosure requirements should also apply to investment management companies registered under the Investment Companies Act, and that investment companies should include the items of disclosure in relevant forms, such as the Statement of Additional Information.

Furthermore, director disclosures should be made annually, even when a company has a staggered board, so that investors can assess the overall pool of qualifications and the overall quality of a board when making a decision for each candidate standing for election. The disclosure of board and individual director evaluations, and the process for such evaluations, should also be encouraged.

This list of expanded disclosures should be made public. Shareholders should have some opportunity to decide for themselves if certain past actions by director candidates are deemed material. Additionally, the SEC should not make exceptions for smaller companies regarding such disclosures and decisions of materiality.

Finally, we believe board diversity is a significant issue for boards. Board diversity typically does not happen organically. To gain board diversity, boards must be committed to seeking diverse candidates with diverse experience. In past decades, board uniformity seemed to be the goal, as CEOs surrounded themselves with directors who were very much like themselves, who had similar social and business ties, and who often knew each other—in order to create a board that stressed collegiality instead of discourse. US investors increasingly recognize that such boards often insulate management, and deter directors from asking tough questions. Boards should generally reflect the diversity of a firm's marketplace, customers, suppliers, and employees, if a firm wants to remain vibrant, dynamic, and nimble.

As Commissioner Luis Aguilar said, "… director candidates are often selected because of a connection to a current board member or member of management. … While I understand the impulse to nominate the familiar, I worry that this approach limits the talent pool for board members."[11] Aguilar cited a study by CalPERS, showing that companies with diverse boards outperform those with directors whose profiles are similar.

---

[11] Luis Aguilar, "Making Investors a Priority in Regulatory Reform," Speech in Boston, MA, April 17, 2009.

Pax World recently reviewed six academic papers examining the links between corporate performance and board diversity in the United States and two that examined board (or in one case, board and executive management) gender diversity in other developed markets. Those that performed statistical tests to examine the relationship between financial performance and gender diversity nearly all showed a positive association, and in most cases, the correlation was significant.[12] Studies examining racial diversity are rare, and Fairfax, who examined strictly racial diversity, cautioned that though the business case for board diversity has "some merit, those rationales have been oversold, creating expectations that directors of color cannot realistically fulfill."[13] Clearly board diversity alone will not solve the problems created by overly cozy relationships between directors and management, but we believe that the academic, peer-reviewed work that has been done supports the case that diverse boards are associated with financial outperformance.

Statutory requirements for board independence and the regulations of the major exchanges in the United States assure that at most companies, most directors and key committee members meet defined tests of independence, but it is also true that the real test of director independence is not defined as much by a set of characteristics, but by how those directors act. In the last ten years alone, we have seen ample evidence that American boards—which remain over 70% white and male—have often acted in ways that seem inconsistent with the interests of shareholders, and preferentially toward management. Change is needed.

Women and minorities are well over half the talent pool in the United States, and yet together they accounted for only 28 percent of board seats in the Fortune 100 in 2004.[14] The overall statistics for all publicly traded companies are likely worse. Over its history, Pax World has examined board diversity for hundreds of companies, and in our experience it is much more likely that the boards of large-cap companies will include at least one woman or minority, while those of mid- and small-cap companies are far more likely to be exclusively white and male. It is difficult to imagine how corporations can retain their competitive advantages, or find new ones, while ignoring the talent of over half the population. Since the relationship between diverse boards and financial outperformance appears to be positive and significant, we believe this is information that careful investors will wish to have. We appreciate the SEC raising board diversity in this rulemaking proposal, as we believe that board diversity is an important characteristic of well-functioning boards.

Company Leadership Structure and the Board's Role in the Risk Management Process

---

[12] See, for example, David A Carter, Frank D'Souza, Betty J Simkins, and W. Gary Simpson, "The Diversity of Corporate Board Committees and Firm Financial Performance," Department of Finance, Oklahoma State University, March 15, 2007; Niclas L. Erhardt, James D. Werbel and Charles B. Shrader, "Board of Director Diversity and Firm Financial Performance," *Corporate Governance* (11:2), April 2003; and Catalyst, "The Bottom Line: Corporate Performance and Women's Representation on Boards," 2007.
[13] Lisa M. Fairfax, "The Bottom Line on Board Diversity: A Cost-Benefit Analysis of the Business Rationales for Diversity on Corporate Boards," University of Maryland School of Law, Legal Studies Research Paper No. 2005-58.
[14] Aguilar, op. cit., p. 8.

Pax World is also supportive of the SEC's proposal to require disclosure of corporate leadership structures and a narrative describing why the company believes such a leadership structure is appropriate. In particular, we believe it would be very useful to investors for companies to explain their choices on independent board chairs, and if (as is the case for many American companies) the CEO and board chair are the same person, why this is considered to be a beneficial management structure.

While European companies often, and increasingly, have independent board chairs and separate CEOs, American companies still cling to combined roles, despite the weight of both logic and increasing evidence that this model is not optimal. The logical argument for separation is that the roles of the board and management are quite different. If it were impossible for a CEO to enrich himself at the expense of shareholders, that might not be a significant problem—but in fact CEO compensation has taken a growing slice of corporate earnings, and expanding much faster than the earnings of other employees.[15] Yet for all this largesse, CEOs—particularly the better-compensated ones—have not been much of a bargain. The more central the CEO is—that is, the higher the pay of the CEO relative to the average of the entire executive team—the lower the value of the firm. Bebchuk, Cremers, and Peyer state, "higher CEO centrality is associated with lower firm value as measured by Tobin's Q, lower accounting profitability, lower quality of acquisition decisions, higher odds of opportunistically timed option grants to the CEO, lower CEO turnover, more luck-based pay, and lower firm-specific variability of stock returns."[16] Even if the *only* argument for separation of chair and CEO was financial, the case for combined roles would be shaky.

The argument for separating corporate leadership roles rests on solid logical foundations. Managers devise (with the board's help) firms' strategies and develop and implement plans to accomplish strategic and tactical goals, and boards are expected to look after the interests of shareholders and oversee management's accomplishment of its goals. For one person to perform both roles raises inherent conflicts of interest. A 2009 treatise from the Millstein Center for Corporate Governance and Performance at the Yale School of Management concluded that "independent chairmanship of a public company is now a growing successful model of corporate board leadership in the US and Canada…The independent chair curbs conflicts of interest, promotes oversight of risk, manages the relationship between the board and CEO, serves as a conduit for regular communication with shareowners, and is a logical next step in the development of an independent board."[17]

We would also like to reinforce that the only meaningful way that most boards can be independently led is through a truly independent board chair, not just CEO/Chair separation. Most large boards have some sort of lead director or presiding director, yet

---

[15] See, for example, Lucian Bebchuk and Jesse Fried, "Pay Without Performance: The Unfulfilled Promise of Executive Compensation," (Cambridge: Harvard University Press, June 2004), p. 1.
[16] Lucian A. Bebchuk, Martijn Cremers, and Urs Peyer, "CEO Centrality," Harvard University, John M. Olin Center for Law, Economics, and Business, Discussion Paper No. 601, 11/2007, Revised 5/2008.
[17] Millstein Center for Corporate Governance and Performance, "Chairing the Board: The Case for Independent Leadership in Corporate North America," Yale School of Management, 2009.

CEO influence, power, and centrality remain a significant problem. According to the American Bar Association's governance task force, only 16 percent of S&P 500 companies had an independent chair in 2008, but 95 percent had an independent lead or presiding director.[18] Lead directors are now common; true independence from powerful CEOs is not. While requiring companies to explain their leadership structures will not automatically correct this problem, it will give investors greater insight into the quality of director independence on the board.

Disclosure Regarding Compensation Consultants

Evidence on the impact of compensation consultants and executive pay is mixed. Two recent studies[19] found that there was no statistically significant relationship between CEO pay and the use of compensation consultants in the UK and US. In contrast, a report done for the US House of Representatives Committee on Oversight and Government Reform found the opposite, that among the Fortune 250, companies with compensation consultants with the largest conflicts of interest (defined as pay for other services with the same company) increased CEO pay over twice as fast as companies whose compensation consultants did not have conflicts of interest.[20]

The academic literature on conflicts of interest among compensation consultants is somewhat thin. However, the principle in question—whether large consulting fees for other services may create conflicts of interest—is familiar to anyone who remembers the corporate governance scandals of 2001 and 2002. Companies now routinely disclose the fees their auditors get for both audit and non-audit services, and we believe the same should be required for compensation consultants—indeed, for any service provider that provides multiple services or has significant ties to corporate leadership.

We would also urge the SEC to require the Compensation Committee to report on its choice of peer group for assessing the pay of the named executive officers in any case in which the peer group selected to assess compensation is different than the peer group used to report relative financial performance. We have seen several examples of companies that use different peer groups to report financial performance and benchmark executive compensation, and we rarely see this disparity explained properly. According to RiskMetrics:

> "It is common for companies to utilize one peer group for benchmarking executive compensation and a different peer group for benchmarking shareholder return or corporate performance. However, such a practice generally reduces the disclosure value about the relationship between pay and performance because

[18] "Report of the Task Force of the ABA Section of Business Law Corporate Governance Committee on Delineation of Governance Roles – Responsibilities," August 1, 2009.
[19] Georgion Voulgaris, Konstantinos Stathopoulos and Martin Walker, "Compensation Consultants and CEO Pay: UK Evidence," The University of Manchester, Manchester Business School, June 2009; and Brian Cadman, Mary Ellen Carter and Stephen Hillegeist, "The Incentives of Compensation Consultants and CEO Pay," February 2009, posted at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1103682.
[20] United States House of Representatives, Committee on Oversight and Government Reform, "Executive Pay: Conflicts of Interest Among Compensation Consultants," Majority Staff, December 2007.

> meaningful comparison between any two benchmarked results is possible only by referring to the same peer group. In the worst case, the practice of 'dueling peer groups' may create the illusion that a company performs at or above the median with respect to its shareholder return, while it falls below the median with respect to the 'compensation' peer group."[21]

The use of different peer groups is bound to raise suspicion that each was hand-picked to (1) support high levels of executive compensation or (2) report superior financial performance. If there are alternative explanations, we believe it is incumbent on compensation committees and/or company management to offer them.

Reporting of Voting Results on Form 8-K

We are very supportive of the SEC's proposal to have companies disclose annual meeting and special meeting voting results in the Form 8-K, rather than 10-Q or 10-K. Requiring an issuer to report voting results within four business days of a meeting is a significant step towards investors receiving timely information of voting results overall. For years, shareholders have faced problems getting companies to disclose this information on a timely basis—particularly when a social issue proposal was being voted on, or there was a contested or controversial vote around board candidates. Companies should not be allowed to select a date—weeks or months into the future, when they can report vital voting results. This requirement should apply fairly and equally across companies, including smaller issuers.

Pax World has also seen evidence that voting result delays were intentional by companies in some cases—for instance, to delay reporting a result that in management's view was negative, to delay the disclosure of a controversial vote until it became less newsworthy, or to simply disclose the items management wanted public while obscuring the results of other voted items.

Data released months or weeks after a shareholder meeting also hinders investors from being able to hold boards or management accountable to the results of a vote. Companies should disclose preliminary results immediately, and in a contested or close situation, a company can still issue preliminary results with the caveat that results are subject to change until all votes are counted. At that time, final results would be made known. Pax World also believes that timely disclosure of voting results by issuers should not affect election results or specific proposal voting results because all votes should have already been cast, or in the mail, by the time the preliminary results were made public. Because the voting would have been closed at that point, the preliminary results being made public should not have an impact on the final vote. In the rare situation where a company chooses to keep the polls (and voting) open beyond the supposed adjournment of a shareholder meeting, that fact should be made public in a Form 8-K on a more timely basis than four business days after the event.

---

[21] Daniel Cheng and YiYen Wu, "Peer Group Benchmarking: Explorations in Executive Compensation," RishMetrics Group, 2008.

Additionally, each item and director to be voted on should be discussed in the 8-K disclosure--not the election of directors as one item. It is important for shareholders to see a breakdown of the vote for each director. US companies very often have the habit of announcing that all directors received at least a certain percentage of votes in support, or that all directors received their needed levels of support to remain. Pax World would encourage the SEC to specify that the 8-K filing within four business days of a shareholder meeting should contain the same information that the 10-Q or 10-K disclosure now requires.

We thank the Commission for the opportunity to comment on this important regulatory reform, and hope that the SEC will craft and implement rules that assist investors as they create portfolios of well-managed companies and vote proxies.

Sincerely,

/s/ Julie Fox Gorte
Senior Vice President for Sustainable Investing
Pax World Management Corp.

/s/ Tracey C. Rembert
Sustainability Analyst and Governance Advocate
Pax World Management Corp.