TOWERS PERRIN

September 11, 2009

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

Dear Ms. Murphy:

RE: FILE NO. S7-13-09
PROPOSED RULE - PROXY DISCLOSURE
AND SOLICITATION ENHANCEMENTS

Towers Perrin appreciates the opportunity to provide comments to the Securities and Exchange Commission on its proposed amendments to the disclosure requirements for executive and director compensation. Towers Perrin is a global professional services organization whose Human Capital Group provides executive compensation consulting to more clients than any other firm.

We applaud the Commission's objective of improving the disclosure of compensation and governance policies and programs to enhance shareholders' ability to make informed voting and investment decisions. We offer the following comments in support of that objective.

Presentation of Compensation Data to Inform Investment and Voting Decisions

While there are numerous ways to present compensation data, we believe that there are four perspectives that investors find relevant when making their investment and voting decisions:

- Compensation decisions made by the compensation committee or board in the applicable fiscal year
- Amounts earned or realized by executives during the fiscal year
- Current value of outstanding awards
- Amounts that might be realized upon termination events

We believe that the first of these four perspectives is crucial and should be reflected in the Summary Compensation Table. To that end, we have a number of suggestions that would help focus this table on the compensation decisions made during the applicable fiscal year.

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The second perspective focuses on the outcome of prior compensation decisions. The proposed Summary Compensation Table is, in fact, a combination of compensation decisions made in the applicable fiscal year and amounts earned, which we believe prevents readers from having a clear sense of either compensation decisions or amounts earned unless they spend significant effort to find relevant information in the CD&A and accompanying tables.

Much of the information required to provide the third perspective is already provided in the current Outstanding Equity Awards at Fiscal Year-End Table, but requiring disclosure of outstanding non-equity incentive plan awards and the addition of an intrinsic value column at the extreme right would make it more complete.

The last perspective is largely covered in the Potential Payments upon Termination or Change-in-Control section of the proxy. We believe a consistent tabular format to display the information would facilitate cross-company comparability and understanding. In that respect, amounts that hypothetically could be earned in a change-in-control or other termination event (including the value of payments due upon triggering "walk-away" provisions and voluntary resignation) should be quantified.

More detail on our suggestions is provided below. While our discussion addresses our suggestions for improving disclosure of compensation for the named executive officers, the same suggestions apply to the Director Compensation disclosure.

Tabular Disclosure of Executive and Director Compensation

In general, we agree with the Commission that equity-based compensation should be reported in the Summary Compensation Table and Director Compensation Table as grant-date fair values. As noted in the Commission's Discussion of the Proposed Amendments, this approach provides investors with better insight into the compensation decisions made by a company than the current requirement. However, investors may also be interested in the amounts actually realized by executives in a particular year and, as proposed, the Summary Compensation Table and Director Compensation Table continues to report a mixture of compensation decisions, amounts earned, and amounts accrued for a particular fiscal year. We believe that this mixture confuses readers; we urge you to consider separating grant-date "expected value" tables from earned "payout value" tables.

Specifically, we suggest that the Commission consider focusing the Summary Compensation Table on the compensation decisions made in a particular fiscal year and provide a separate table with information on amounts earned during the recently completed fiscal year. This second table could be named "Compensation Earned" and would show the amounts realized from the vesting of stock awards and option exercises, as well as amounts earned from non-equity incentive plan awards and discretionary bonus payments in the recently completed fiscal year. Other tables

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reporting similar information — such as the table for Option Exercises and Stock Vested — could be scaled back or eliminated, as appropriate.

Summary Compensation Table

When compensation committees and boards make decisions about compensation, these decisions are typically made based on some target value for each executive, to be paid if target performance is attained. Ideally, the target values for incentive awards should be disclosed in a table that reflects the compensation decisions made by the company in the last fiscal year. We believe that a targeted value can also be determined for many other elements in the current Summary Compensation Table. For example, the Salary column could reflect the amount set for that fiscal year, rather than the amount actually paid (which frequently is a combination of prior-year and current-year decisions). For expediency, however, we recommend that you retain the current method for determining the values in the Change in Pension Value and Nonqualified Deferred Compensation Earnings column and All Other Compensation column. An alternative would be to delete these columns from the Summary Compensation Table altogether, thereby making the “Total” column consistent with the amount used to determine the named executives.

Compensation Earned in the Last Fiscal Year

The second perspective that we believe investors would consider is based on the amounts that executives actually earn or realize in a given fiscal year. This information would allow investors to evaluate the outcome of earlier decisions made by the compensation committee and board. When considered in conjunction with our suggested disclosure of targeted pay, an investor can evaluate the effectiveness of the pay-for-performance relationship.

We suggest that a “Compensation Earned” table be created containing the same column headers as the Summary Compensation Table. The values that should be provided for the Stock Awards and Option Awards columns, however, would be replaced with those currently provided in the Option Exercises and Stock Vested Table. If the number of shares acquired is provided in a footnote to this suggested table, the Commission could consider eliminating the Option Exercises and Stock Vested Table altogether. The amounts currently reported in the All Other Compensation and the Change in Pension Value and Nonqualified Deferred Compensation Earnings columns in the Summary Compensation table would be restated in this proposed table (if the Commission chooses to retain these columns in the Summary Compensation Table).

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Distinguishing Between Annual and Long-Term Non-Equity Incentives

The current and proposed Summary Compensation Tables do not provide a distinction between annual and long-term non-equity incentives. In our experience, compensation committees and boards consider these two elements separately. If one of the Commission's objectives is to provide better insight into the compensation decisions made by a company's board or compensation committee, then it should consider combining the annual portion of the current Non-Equity Incentive Plan Compensation column with the Bonus column and disclose the long-term portion of non-equity incentives in a separate column. Appropriate footnote disclosure should be provided to distinguish between the discretionary bonus amounts and the annual incentive amounts based on pre-established performance targets. In addition to providing better insight into compensation decisions made, this approach would allow investors to see how much emphasis is placed on short-term incentives which have often been cited as a possible contributor to excessive risk-taking.

Reporting Equity Awards for Services in the Relevant Fiscal Year

The Commission has requested comments related to the timing of disclosure of equity grants. Specifically, some companies provide equity awards that relate to services within a particular fiscal year, but have a FAS 123(R) grant date that is after the fiscal year ends.[1] This is a minority practice; for most companies, the FAS 123(R) grant date is within the relevant fiscal year. However, there are notable exceptions that warrant consideration. For example, a common practice among companies in financial services is to provide an annual incentive opportunity based on dollar values that would be earned for performance during the relevant fiscal year. If the entire amount were settled in cash after the fiscal year ends, the disclosure under the current and proposed rules would be clear and the entire amount would be shown in the Summary Compensation Table.

As proposed, the Stock Awards and Option Awards columns of the Summary Compensation Table would report the grant date fair value (as defined in FAS 123(R)) of equity awards granted during the relevant fiscal year, even if the grant relates to performance in the prior year. Continuing with our example, if a portion of the annual incentive is settled with a grant of stock instead of cash after the fiscal year ends, the disclosure of the amount paid in stock would be disclosed in compensation tables a full year later than portions of the annual incentive paid in cash under the Commission's proposed approach – even if the actual cash payment is made after the fiscal year ends.

We suggest that the Commission require that the disclosure of Stock Awards and Option Awards be aligned with the year for which the award is earned – even if the FAS 123(R) grant date is after the relevant fiscal year. This would ensure that the timing of disclosure is not dependant on the form of payment. In its request for comment on this

[1] We use the term FAS 123(R) to mean the guidance now called ASC 718.

matter, the Commission appears to express some concern that an approach to disclose equity awards granted for services in a relevant fiscal year can be applied in a manner that distorts the determination of the named executive officers. We believe that the ability to "game" who is named in the tables is not unique to the form of payment; the time at which cash-based payments are reported can also lead to distortion. Moreover, if a company has an ongoing policy to grant share-based payments after the relevant fiscal year ends, its disclosure would tend to be consistent from year to year, and any deviation from this disclosure would need to be discussed in the Compensation Discussion and Analysis for the Named Executive Officers. Insufficient discussion of the inconsistency should provide the Commission and investors with a signal that the determination of the named executive officers could have been manipulated.

A plausible alternative to reporting grant date fair values would be to report the fair value of share-based payments as of the "service inception date" as defined in FAS 123(R). This approach establishes a "bright line" test for inclusion. It is effective for awards that are based on some pre-determined objectives; in that respect, it would not provide the same amount of rigor for discretionary grants of equity awards that relate to performance for the prior year (but then again, neither does any other proposed approach).

For the vast majority of equity-based grants, the service inception date and the grant date are identical. However, under FAS 123(R) it is possible to have a service inception date that precedes the grant date if: (a) an award is authorized, (b) service begins before a mutual understanding of the key terms and conditions of a share-based payment award is reached, and (c) either of the following conditions applies: (1) the award's terms do not include a substantive future requisite service condition that exists at the grant date or (2) the award contains a market or performance condition that, if not satisfied during the service period preceding the grant date and following the inception of the arrangement, results in the forfeiture of the award.

If the Commission chooses to follow our suggested approach of showing compensation decisions, the fair value of the stock portion of an incentive plan award could be determined as of the service inception date which, in our above example, would precede the grant date. This assumes that the award is approved and can be forfeited prior to the grant date due to performance during the relevant fiscal year. Reliance on the service inception date provides a sufficiently rigorous standard to avoid discretion with respect to the timing of disclosure, which, in turn, would improve cross-company comparability. The targeted value of the cash-based portion of the incentive would be disclosed as of the same date, ensuring additional consistency in the timing of the disclosure.

As we noted above, reporting for purely discretionary equity awards would not benefit from relying on the service inception date. In these situations, the service inception date and grant date are both likely to fall after the relevant fiscal year. Effectively, these awards are no different than a discretionary cash bonus that would be reported in the

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Bonus column of the Summary Compensation Table and would be reported for the relevant fiscal year even if paid after the year ended.

Impact of Performance Conditions on the Determination of Fair Value

One of the Commission's requests for comment indicates that under the proposal, all stock and option awards would be reported in the Summary Compensation Table at "full grant date fair value," including awards with performance conditions. The Commission then appears to express concern that this proposal could discourage companies from tying stock awards to performance conditions since the full grant date fair value would be reported without regard to the likelihood of achieving the performance objective.

The discussion in the request for comment indicates that the Commission intends to require that companies disclose the value of equity incentive plan awards at the maximum level of achievement, not the amount based on the probable outcome of that performance condition as of the service inception date or grant date (as required under paragraph 44 of FAS 123(R)). This is not entirely clear from the discussion provided. However, our interpretation appears to be consistent with the response to Q&A 120.05 of the Compliance and Disclosure Interpretations recently issued by the Division of Corporation Finance. Under this assumption, it is not clear from the discussion how awards with market conditions are impacted by the proposed approach.

Again, if one of the objectives of the Commission is to provide better insight into the compensation decisions made by a company's board or compensation committee, then it should not require that the maximum amount be disclosed in the Summary Compensation Table.

We believe that requiring disclosure of the full grant date fair value (which we are interpreting to be the maximum amount for equity incentive awards with performance conditions) would discourage companies from using these types of awards since there is an increased likelihood that the compensation decisions would be misinterpreted. For example, a company might ordinarily grant a stock award containing non-market "performance conditions" (as defined in FAS 123(R)) that would pay 100,000 shares at target performance and 200,000 shares if performance attains or exceeds some maximum performance. If the rule required that the maximum level of performance should always be assumed to occur, (i.e., basing it on 200,000 shares in our example), the company would have the same value disclosed as it would if 200,000 shares of stock were granted that vest solely on the passage of time.

Clearly the service-based award is worth more than an award that is based on satisfaction of both service and performance conditions, and yet either would result in the disclosure of an identical value in the Summary Compensation Table for an executive. This could lead some companies to conclude that they might as well grant the award with the higher value if they are going to get the same negative press for either award.

Attempting to apply the "full grant date fair value" concept with an equity incentive plan award containing so-called "market conditions" (as defined in FAS 123(R)), would result in a meaningless value completely inconsistent with the FAS 123(R) requirements (again, assuming the full grant date fair value is the same as reflecting the maximum number of shares that can be paid).

The valuation of equity incentive plan awards with market conditions under FAS 123(R) can be complex, often involving simulation techniques that consider both the value of a share and the number of shares paid out under particular scenarios. The end result is a per-unit value that incorporates a weighted-average payout assumption rather than an automatic assumption that the maximum performance level will be achieved. This per-unit value, multiplied by the target number of shares, would be recognized without any adjustments to reflect actual performance. To mandate that the maximum number of shares that can be earned be multiplied by the per-unit fair value of an award with market conditions (which, as noted, already includes a weighted average payout within the calculation itself) would systematically overstate the value that would be recognized as compared to the fair value of the award under FAS 123(R) and would have no relationship whatsoever with the compensation decisions made by the compensation committee or board.

While the Commission's request for comment about this issue implies that it believes maximum performance should be assumed in determining the "full" grant date value of an award, that requirement is not clearly set forth in the proposed rule. As we've explained, such an assumption is inconsistent with the assumption used in this regard to determine the fair value of an award under FAS 123(R); however, if the Commission intends to proceed with a requirement to require disclosure on the basis of a "full" grant date fair value (though we strongly recommend against it), then we suggest that the Commission provide a more complete definition of this concept in the final rule.

Impact of Forfeiture Assumption on Fair Value Estimates

Under the current rules, the FAS 123(R) grant date fair values of equity awards are required to disregard the estimate of forfeitures related to service-based vesting conditions. This requirement was set forth in an Instruction to Item 402(c)(2)(v) and (vi) in the Interim Final Rules issued by the Commission in December 2006. This requirement to disregard forfeiture estimates from fair values does not appear to be retained in the proposed amendments to the rules. Towers Perrin believes that this requirement is sensible for proxy disclosure since FAS 123(R) guidance would require an estimate of forfeitures across broad populations of employees, whereas proxy disclosure is (and should be) much more specific to the applicable named executive officers. We suggest that the Commission clarify whether it intends to continue to require that companies disregard the estimate of forfeitures related to service-based vesting conditions when determining the fair value of equity-based awards.

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Reporting of Modified Equity Awards

The proposed Instruction 2 to Item 402(c)(2)(v)and(vi) addresses the treatment of previously awarded stock options or SARs that have been materially modified. The Commission should consider clarifying the rules to address the modification of any equity award, not just options or SARs. For example, performance conditions on equity incentive plan awards that pay full shares could be modified.

Transition to Grant Date Fair Values in the Summary Compensation Table

In the Discussion of the Proposed Amendments, the Commission indicates that it is considering requiring companies to present recomputed disclosure for each preceding fiscal year that is required to be included in the Summary Compensation Table. This approach would not require companies to include different named executive officers for any preceding fiscal year based on re-computing total compensation for those years.

We believe that the transition approach is reasonable since it would achieve the Commission's objective of preserving year-to-year comparability and compliance would not be onerous for the majority of companies. Grant-date fair values for equity awards granted to previously named executives would have been reported in the Grants of Plan-Based Awards Table for prior fiscal years. It is very likely that the grant dates for equity awards for executives named for the first time are the same as those of the other named executives; therefore the fair values of the equity awards are the same per unit. Even in infrequent situations where an executive's special equity grant that differs from the grants made to other named executives, the fair value needs to be determined for the company's financial statements and should be readily available for proxy disclosure.

Disclosing the Value of Outstanding Awards

The Commission has asked whether to consider requiring disclosure of the annual change in the value of outstanding awards in lieu of the proposed Summary Compensation Table and whether this information would be useful to investors.

We believe that the Summary Compensation Table should reflect the compensation decisions made by the compensation committee and board and should not reflect the change in value of outstanding awards. We do, however, believe that the full realizable (i.e., intrinsic) value of outstanding awards (equity and non-equity) as of fiscal year-end is valuable information for investors and should be provided in an alternative table. This is the third perspective we outlined at the beginning of our letter.

Under current and proposed disclosure rules, the Outstanding Equity Awards at Fiscal Year-End Table provides information that would allow investors to calculate the intrinsic value of equity awards at the end of a fiscal year. We would suggest that the table be expanded to provide the intrinsic value of outstanding equity and non-equity awards on a grant-by-grant basis. For awards that are based on performance or market

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conditions, the value should be based on the performance as of the end of the fiscal year. For example, for a three-year performance cash award, the value as of each fiscal year end prior to the settlement of the award would be based on the assumption that the actual level of performance to date remained constant during the reminder of the performance period. The Commission might also consider requiring that a total amount be computed for each named executive as the sum of all outstanding awards. The change in value of outstanding awards for executives named in consecutive proxy statements can be easily computed by comparing disclosure from one year to the next. Additionally, the Commission might consider requiring that the change in value be reported for each of the named executives.

Grants of Plan-Based Awards

We recommend that the Commission retain the requirement to report the fair value of each individual equity award in the Grants of Plan-Based Awards Table. The values disclosed in this table should be determined with the same methodology as used to develop the Stock Awards and Option Awards columns of the Summary Compensation Table; the sum of fair values provided in the Grants of Plan-Based Awards Table should tie to the values provided in the Summary Compensation Table, notwithstanding the Commission's concern that this disclosure would be duplicative. We also believe that the table should disclose the incremental fair value of equity awards that have been materially modified so that the financial impact of the modification is clear.

Providing this information on a grant-by-grant basis in a single table would help investors more easily evaluate the pay-for-performance relationship for each of the awards individually and collectively, which would be especially useful if the executive pay is subject to shareholder vote. In addition, it would facilitate the discussion in the Compensation Discussion and Analysis for the Named Executive Officers related to the allocation of compensation between various elements of pay.

Compensation Discussion and Analysis of the Registrant's Overall Compensation Program as it Relates to the Registrant's Risk Management

The proposed amendments call for expanding the breadth of the compensation disclosure by essentially adding a second Compensation Discussion and Analysis to address how companies' overall compensation policies create incentives that affect the company's risk and how the company manages that risk. According to the Discussion of the Proposed Amendments, disclosure under this proposed rule would only be triggered if "the materiality threshold is triggered."

We appreciate the Commission's desire to increase transparency as a possible remedy for potential future financial crises; however, we are concerned that the increased length of the disclosure would not be justified at a majority of companies. For this reason, it would be very helpful to provide more guidance on the "materiality threshold" cited in the Discussion of the Proposed Amendments. The Commission could also note that

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companies whose compensation programs are not likely to create excessive risks could describe how that determination was made and how it would be periodically reviewed. Without an understanding of materiality, a company that has no legitimate reason to feel that its compensation structures would lead to excessive risk taking might be unduly influenced by this disclosure in ways that are harmful to the business (e.g., changing its compensation programs unnecessarily for the sake of “shareholder optics” rather than any fundamental business purpose).

Specifically, we are concerned that the proposed requirements will encourage companies to adopt compensation programs that reduce risk-taking, even when that action might inhibit execution of the company’s overall strategy. To prevent this outcome, we suggest that the Commission place more emphasis on taking *appropriate* risks when discussing the final rule, including an acknowledgement by the Commission that discussion also might be warranted if the company finds that its compensation policies are leading to excessive risk aversion.

We are also concerned that certain compensation vehicles would be inappropriately labeled as taboo and suggest that the Commission make it clear that risk should be evaluated from the perspective of the entire compensation package rather than individual pay components.

We agree that any discussion about the risk issues associated with compensation policies should cover a broader group of employees than the named executives. However, we recommend that the rules focus more on the disclosure of the processes used to evaluate the risk profile of compensation programs than on providing specific risk issues that are likely to be confidential.

Other Requests for Comment

We are concerned about year-over-year changes in the proxy-named executives, which impedes multi-year comparability and cohesion. One of the Commission’s requests for comment addressed whether disclosure of the compensation paid to each executive officer, not just the named executive offices, should be required. We do not believe that this is essential and might even be onerous for large companies that have a large number of executive officers. However, we do suggest that a full three fiscal years of information should be shown in the Summary Compensation Table for proxy-named officers, even in the first year that they become named.

We agree with the SEC’s proposal to require disclosure of performance targets on an after-the-fact basis in the CD&A. This disclosure would enhance investors’ understanding of the pay-for-performance link. However, for performance cycles in effect when the proxy statement is distributed, we do not advocate eliminating the instruction that provides for the exclusion of performance targets based on the potential adverse competitive effect on the company.

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Another request for comment asks whether companies should be required to disclose "hold to retirement" or claw-back provisions. Current Item 402(b)(2)(viii) guidance already addresses claw-back provisions explicitly. "Hold to retirement" provisions are not explicitly mentioned. Due to the principles-based nature of the rules, we believe that citing additional specific compensation features does not necessarily make sense; in a principles-based context, we believe the current list is intended to be illustrative rather than exhaustive. As such, "hold to retirement" provisions should be disclosed in the Compensation Discussion and Analysis, whether or not they are explicitly mentioned in Item 402(b)(2)(viii).

Finally, the Commission requested comment on whether disclosure of the total number of compensation plans should be required. We believe that this disclosure would be cumbersome to produce and of limited usefulness to readers. For example, a company that operates in many different countries might need to have specific compensation plans that address countries' unique tax, accounting and legal issues, while a company that operates entirely in a domestic market would not have as many plans. We are not sure how this information assists investor decision making. In fact, it could arguably provide an inappropriate distraction. It would, however, be useful to identify all of the plans in which the proxy-named officers participate to gain as much insight as possible into the company's commitments to them.

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We would be happy to further discuss our views or answer any questions you may have.

Sincerely yours,

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