



Via Email

April 20, 2011

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

Re: File Number S7-13-11, Listing Standards for Compensation Committees

Dear Ms. Murphy:

I am writing on behalf of the Council of Institutional Investors (Council), a nonprofit association of public, union and corporate pension funds with combined assets exceeding \$3 trillion¹. Council members are large, long-term shareowners responsible for safeguarding the retirement savings of millions of American workers. The purpose of this letter is to respond to your request for feedback on the Securities and Exchange Commission's (Commission or SEC) proposed rules concerning listing standards for compensation committees.

As the Financial Crisis Inquiry Commission's recent report stated, executive pay at banks "often rewarded the quick deal, the short-term gain—without proper consideration of long-term consequences." Significant responsibility resides with the compensation committees that approved poorly structured pay packages that encouraged the get-rich-quick mentality and overly risky behavior that helped bring the capital markets to their knees. Therefore, we fully agree with the intention of the Dodd-Frank Wall Street Reform and Consumer Protection Act to ensure that compensation committees include only independent directors.

Fully-independent compensation committees should help ensure that executive pay decision-making is free of actual or perceived conflicts of interest that could color committee members' judgment. Below, we provide factors that we encourage the Commission to direct the stock exchanges to consider when they define which directors may serve on compensation committees.

We also support the concept of timely and complete disclosure related to conflicts of interest among pay advisers. As detailed below, the Council strongly believes that individual compensation advisers and their firms should be independent of the client company, its executives and directors and should report solely to the compensation committee. Advisers who count on lucrative actuarial or employee benefits contracts

¹ For more information about the Council and its members, please visit our Web site at <http://www.cii.org>.

from senior management may be inclined to recommend overly-generous pay packages for those executives.

The Council's specific comments on the Commission's proposed rules follow:

Separate Compensation Committees

The Council believes that all public companies should have compensation committees. Executive compensation is so important to the long-term health of the company and so complex that it deserves special, ongoing attention by a dedicated working group of the board. Also, a committee environment may promote increased board expertise on compensation through broader, deeper and more-frequent conversations on pay developments, trends, programs and practices within and outside the organization.

Independent Director Definition

The Commission's proposal says that in setting independence requirements for compensation committee members, the exchanges are to consider relevant factors, including, but not limited to: (1) the source of a director's compensation, including any consulting, advisory or other compensatory fee paid by the company to the director; and (2) whether a director is affiliated with the company, a subsidiary of the company or an affiliate of a subsidiary of the company.

We agree that these factors are important. However, we urge the Commission to add several additional factors to the list of those the exchanges should consider, as they too represent relationships that could interfere with the exercise of independent judgment by directors.

Directors are elected as fiduciaries of shareowners, and the Council believes that the qualification and ability of directors to exercise fiduciary duties on behalf of investors can be significantly affected by the relationships directors have, including relationships between directors and with company executives. Director independence is highly important for the compensation committee; the Council believes independent pay panel members are better equipped to make unbiased decisions that are in the best long-term interests of companies and their shareowners. Therefore, we urge the Commission to also direct the exchanges to consider the following factors when defining the independence standards for compensation committee members:

- **Family linkages.** A director's judgment may become clouded if he or she has, for example, a family member who is or recently has been employed by the company or by an affiliate of the company. Independent judgment could also become colored if a director's relative has a personal contract with the company or has ties to a significant competitor of the company.

- **Ties to executive officers.** A director may lose objectivity in his/her oversight role if he/she, for instance, is associated with a firm that is a paid adviser to one of the company's executive officers or if he/she is associated with a non-profit organization that receives significant grants from one of the company's officers. Other examples include if the director is part of an interlocking directorate in which the CEO or other officer of the company serves on the board of a third-party entity (for-profit or not-for-profit) employing the director, or if the director delegates his/her decision making power as a director to management.
- **Relationships with other directors.** A director may have ties to another director that could threaten objectivity and promote inappropriate voting blocks. For instance, a director may have been instrumental in the nomination of his/her friend or business associate to the board, and the new board member may feel obliged to vote in line with the patron out of gratitude or in the interest of preserving the friendship or business relationship.

For further details on the Council's views on assessing director independence, please see our corporate governance policies' independent director definition (appended to the end of this letter).

Types of Pay Advisers to be Covered by Conflict Disclosure

The Council believes that the Commission's proposed rules on conflict disclosure should cover any outside expert providing advice to the compensation committee. Conflicted external pay advisers—whether they are compensation consultants, legal advisers, or other advisers—cannot reasonably be depended upon to give primacy to the best interests of the company and its shareowners.

Frequency of Disclosure on Compensation Adviser Conflicts of Interest

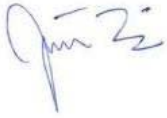
Council policy holds that disclosure related to compensation adviser independence should be annual. Yearly disclosure would help investors understand on a timely basis whether the work of the compensation adviser has raised any conflicts of interest and, if so, the nature of the conflict and how the conflict is being addressed. Since conflicted pay advice can lead to slanted recommendations at odds with shareowners' best interests, timely disclosure on conflicts is needed to allow investors to adequately monitor compensation committee performance.

Exemptions and Effective Dates

The Commission's proposal covers important topics relevant to all exchanges and public companies. Therefore, the final rules should apply to all exchanges and public companies without exception, and should be effective for the 2012 proxy season.

If you have any questions or need any additional information, please feel free to contact me at (202) 261-7088 or justin@cii.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Justin Levis".

Justin Levis
Senior Research Associate



Council of Institutional Investors
The Voice of Corporate Governance

Corporate Governance Policies¹

7. Independent Director Definition

7.1 Introduction

7.2 Basic Definition of an Independent Director

7.3 Guidelines for Assessing Director Independence

7.1 Introduction: A narrowly drawn definition of an independent director (coupled with a policy specifying that at least two-thirds of board members and all members of the audit, compensation and nominating committees should meet this standard) is in the corporation's and shareowners' financial interest because:

- Independence is critical to a properly functioning board;
- Certain clearly definable relationships pose a threat to a director's unqualified independence;
- The effect of a conflict of interest on an individual director is likely to be almost impossible to detect, either by shareowners or other board members; and
- While an across-the-board application of *any* definition to a large number of people will inevitably miscategorize a few of them, this risk is sufficiently small and is far outweighed by the significant benefits.

Independent directors do not invariably share a single set of qualities that are not shared by non-independent directors. Consequently no clear rule can unerringly describe and distinguish independent directors. However, the independence of the director depends on all relationships the director has, including relationships between directors, that may compromise the director's objectivity and loyalty to shareowners. Directors have an obligation to consider all relevant facts and circumstances to determine whether a director should be considered independent.

¹ To review the full text of the Council of Institutional Investors' Corporate Governance Policies, please visit <http://www.cii.org/policies>.

7.2 Basic Definition of an Independent Director: An independent director is someone whose only nontrivial professional, familial or financial connection to the corporation, its chairman, CEO or any other executive officer is his or her directorship. Stated most simply, an independent director is a person whose directorship constitutes his or her only connection to the corporation.

7.3 Guidelines for Assessing Director Independence: The notes that follow are supplied to give added clarity and guidance in interpreting the specified relationships. A director will not be considered independent if he or she:

7.3a Is, or in the past five years has been, or whose relative is, or in the past five years has been, employed by the corporation or employed by or a director of an affiliate;

NOTES: An “affiliate” relationship is established if one entity either alone or pursuant to an arrangement with one or more other persons, owns or has the power to vote more than 20 percent of the equity interest in another, unless some other person, either alone or pursuant to an arrangement with one or more other persons, owns or has the power to vote a greater percentage of the equity interest. For these purposes, joint venture partners and general partners meet the definition of an affiliate, and officers and employees of joint venture enterprises and general partners are considered affiliated. A subsidiary is an affiliate if it is at least 20 percent owned by the corporation.

Affiliates include predecessor companies. A “predecessor” is an entity that within the last five years was party to a “merger of equals” with the corporation or represented more than 50 percent of the corporation’s sales or assets when such predecessor became part of the corporation.

“Relatives” include spouses, parents, children, step-children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, aunts, uncles, nieces, nephews and first cousins, and anyone sharing the director’s home.

7.3b Is, or in the past five years has been, or whose relative is, or in the past five years has been, an employee, director or greater-than-20-percent owner of a firm that is one of the corporation’s or its affiliate’s paid advisers or consultants or that receives revenue of at least \$50,000 for being a paid adviser or consultant to an executive officer of the corporation;

NOTES: Advisers or consultants include, but are not limited to, law firms, auditors, accountants, insurance companies and commercial/investment banks. For purposes of this definition, an individual serving “of counsel” to a firm will be considered an employee of that firm.

The term “executive officer” includes the chief executive, operating, financial, legal and accounting officers of a company. This includes the president, treasurer, secretary, controller and any vice-president who is in charge of a principal business unit, division or function (such as sales, administration or finance) or performs a major policymaking function for the corporation.

7.3c Is, or in the past five years has been, or whose relative is, or in the past five years has been, employed by or has had a five percent or greater ownership interest in a third-party that provides payments to or receives payments from the corporation and either:
(i) such payments account for one percent of the third-party’s or one percent of the

corporation's consolidated gross revenues in any single fiscal year; or (ii) if the third-party is a debtor or creditor of the corporation and the amount owed exceeds one percent of the corporation's or third party's assets. Ownership means beneficial or record ownership, not custodial ownership;

7.3d Has, or in the past five years has had, or whose relative has paid or received more than \$50,000 in the past five years under, a personal contract with the corporation, an executive officer or any affiliate of the corporation;

NOTES: Council members believe that even small personal contracts, no matter how formulated, can threaten a director's complete independence. This includes any arrangement under which the director borrows or lends money to the corporation at rates better (for the director) than those available to normal customers—even if no other services from the director are specified in connection with this relationship;

7.3e Is, or in the past five years has been, or whose relative is, or in the past five years has been, an employee or director of a foundation, university or other non-profit organization that receives significant grants or endowments from the corporation, one of its affiliates or its executive officers or has been a *direct* beneficiary of *any* donations to such an organization;

NOTES: A "significant grant or endowment" is the lesser of \$100,000 or one percent of total annual donations received by the organization.

7.3f Is, or in the past five years has been, or whose relative is, or in the past five years has been, part of an interlocking directorate in which the CEO or other employee of the corporation serves on the board of a third-party entity (for-profit or not-for-profit) employing the director or such relative;

7.3g Has a relative who is, or in the past five years has been, an employee, a director or a five percent or greater owner of a third-party entity that is a significant competitor of the corporation; or

7.3h Is a party to a voting trust, agreement or proxy giving his/her decision making power as a director to management except to the extent there is a fully disclosed and narrow voting arrangement such as those which are customary between venture capitalists and management regarding the venture capitalists' board seats.

The foregoing describes relationships between directors and the corporation. The Council also believes that it is important to discuss relationships between directors on the same board which may threaten either director's independence. A director's objectivity as to the best interests of the shareowners is of utmost importance and connections between directors outside the corporation may threaten such objectivity and promote inappropriate voting blocks. As a result, directors must evaluate all of their relationships with each other to determine whether the director is deemed independent. The board of directors shall investigate and evaluate such relationships using the care, skill, prudence and diligence that a prudent person acting in a like capacity would use.