UAW RETIREE
Medical Benefits Trust

April 27, 2011

Via E-Mail

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

Re: *Listing Standards for Compensation Committees*, File No. S7-13-11

Dear Ms. Murphy:

We write to comment on the Securities and Exchange Commission's proposed rule, "Listing Standards for Compensation Committees" (the "Proposed Rule"; the release proposing the Proposed Rule is referred to as the "Proposing Release"), which directs the national securities exchanges to prohibit the listing of any equity security of an issuer that does not comply with listing standards regarding compensation committee independence and compensation advisers. The Proposed Rule would also require additional proxy statement disclosure regarding compensation consultants. The $55 billion UAW Retiree Medical Benefits Trust (the "Trust") provides medical benefits for 850,000 UAW retirees and is the largest non-governmental purchaser of retiree health care.

Given the gatekeeper role securities exchanges play by establishing the conditions under which many corporations may access the capital markets, we believe the Commission should use its influence to communicate to the exchanges the kinds of listing standards that will best serve investors. Specifically, we believe the stock exchanges should consider defining independence to:

- Include directors whose only tie to the issuer (other than his or her directorships) is stock ownership; and
- Exclude directors who have financial, familial and employment relationships with members of the issuer's senior management.

We also encourage the Commission to fill some gaps in its compensation consultant disclosure standards so that investors have full information about conflicts of interest. The Commission's rules should define a conflict of interest involving a compensation consultant to include consideration of the ratio of fees received by the consultant or her firm for executive compensation consulting to fees received for other kinds of consulting services. Issuers should also be required to consider equity ownership and other incentive pay arrangements within a

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consulting firm that could provide incentives for cross-selling non-executive compensation consulting services.

Compensation Committee Independence

Robust board oversight of executive compensation is crucial to help ensure that compensation policies and practices promote long-term value creation and that executive compensation is adequately tied to company performance. The Proposed Rule would direct the national stock exchanges to develop a definition of independence applicable to compensation committee members after considering "relevant" factors.

Only two factors for the exchanges to consider are specified in the Proposed Rule: (i) the source of compensation of a director, including any consulting, advisory or other compensatory fee paid by the issuer to such director; and (ii) whether the director is affiliated with the issuer, a subsidiary of the issuer, or an affiliate of a subsidiary of the issuer. While these factors are not unimportant, we believe that they are incomplete.

The Proposing Release mentions concerns raised by some commenters that the independence definition to be adopted by the exchanges not preclude directors affiliated with significant investors from serving on the compensation committee, on the ground that such directors' interests are well-aligned with those of other shareholders. We agree that directors whose primary identification is with shareholders are well-suited to serving on the compensation committee. In particular, we would be disappointed if directors elected after being nominated by shareholders using the Commission's proxy access procedure (now on hold pending resolution of a legal challenge) were prevented from serving on compensation committees.

That said, the presence of other ties, in addition to shareholdings, should not be ignored in determining the independence of directors who own or are affiliated with owners of significant stakes. Private equity and venture capital firms may, in addition to owning stock, engage in significant transactions with an issuer, which could reduce alignment with other shareholders. The Commission should convey to the exchanges the need to consider all such ties.

We strongly agree with the suggestion in the Proposing Release that the exchanges might conclude that factors "linked more closely to executive compensation matters, such as relationships between the members of the compensation committee and the listed issuer's executive management, should be addressed in the definition of independence." In our view, relationships between directors and members of senior management or their families are at least as likely to impair objectivity on executive compensation as relationships between directors and the company.

Accordingly, financial relationships between the CEO, such as the director's receipt of compensation for providing services to the CEO or the director and CEO co-owning property, should thus be considered "relevant" factors when it comes to compensation committee membership. Compensation committee interlocks, in which the CEO of Company A sits on the compensation committee of Company B's board and the CEO of Company B sits on the

compensation committee of Company A's board, can interfere with directors' ability to represent shareholder interests in setting pay and should also be classified as relevant factors.

Compensation Advisers

The Proposed Rule proposes two courses of action regarding compensation consultants. First, it directs the national stock exchanges to prohibit the listing of an equity security of an issuer that does not comply with a new listing standard, to be formulated by the exchanges, on the retention of compensation advisers. Second, it proposes new Commission disclosure requirements relating to compensation consultants.

The Proposed Rule specifies that listed issuers' compensation committees must consider certain independence-related factors (the "Adviser Independence Factors") prior to selecting compensation advisers, though the exchanges are free to specify additional factors. A compensation committee need not choose a consultant that is independent under the Adviser Independence Factors, but must only consider them.

Several of the Adviser Independence Factors are sensible in light of research and experience on compensation consultant conflicts of interest. But the ownership of the issuer's stock by the compensation consultant or her firm seems more suited to a determination of auditor independence than compensation consultant independence. Although the matter is not free from doubt, ownership of company stock might be expected to create greater alignment between a consultant and the company's shareholders and potentially reduce incentives to make recommendations that result in excessive pay. (With auditors, whose decisions could reduce a company's reported revenues or earnings, this alignment is potentially more problematic.)

Revenue concentration would be expected to produce a harmful conflict of interest only if the consultant engaged by an issuer's compensation committee believed that the committee wanted the consultant to recommend outsize pay packages and was reluctant to disagree for fear of losing the committee as a client. In other words, for a boutique consulting firm that only provides executive compensation consulting to compensation committees, the absence of other business to be obtained from the issuer largely mitigates conflict of interest concerns.

The Adviser Independence Factors included in the Proposed Rule omit the most important indicator of a conflict of interest: the ratio between the fees received by a firm for executive compensation consulting, on the one hand, and non-executive compensation consulting, on the other. The 2007 Oversight Committee study found that fee ratios skewed toward other kinds of consulting were associated with higher levels of pay. If executive compensation consulting is a less lucrative "foot in the door" to cross-sell other services, executive compensation consultants will feel significant pressure not to alienate a company's management. (A similar phenomenon was described in the post-Enron discussions regarding auditors' provision of non-audit services to companies where the audit was a loss-leading foothold for cross-selling.) Because smaller engagements may be viewed as a way to obtain larger ones, we do not believe that any numerical threshold or *de minimis* exclusion should apply to this consideration.

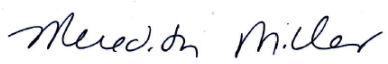
Where a firm does provide both executive compensation consulting and other kinds of consulting, issuers should be required to consider whether the employees providing executive compensation consulting own stock or hold options (or similar equity-based instruments) in the firm, or have other incentive compensation arrangements in which they benefit from the sale of non-executive compensation consulting services.

The Commission has proposed to broaden the disclosures required by Item 407(e)(3) of Regulation S-K, which currently requires certain disclosures regarding the use of compensation consultants. We support these proposed changes, which require disclosure about compensation consultants even if their (or their firms') only non-executive-compensation engagement involves consulting on broad-based plans or providing non-customized data. We urge the Commission to extend fee disclosure to those situations as well because not doing so gives shareholders an incomplete picture of the incentives of consultants and their firms. As well, we believe that the Commission should eliminate the $120,000 *de minimis* threshold for non-executive compensation consulting currently embedded in the fee disclosure requirement.

The Proposed Rule would require issuers to disclose the nature of any conflict of interest involving a compensation consultant whose advice the compensation committee obtained and how that conflict is being addressed. To provide guidance regarding the definition of "conflict of interest," the Proposed Rule incorporates the Adviser Independence Factors into Item 407(e)(3). For the reasons set forth above, we urge the Commission to add the ratio between fees paid for executive compensation and non-executive compensation consulting work, as well as equity ownership by and incentive compensation arrangements of executive compensation consultants in the firm that employs them, to the Adviser Independence Factors.

We are pleased to have this opportunity to make the Trust's views known to the Commission. If you have any questions, please don't hesitate to contact me at (734) 929-5789, ext. 210, or mamiller@rhac.com.

Sincerely,



Meredith Miller
Chief Corporate Governance Officer