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**To: Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission**

**Re: Proposed Rules under Section 952 of the Dodd-Frank Wall Street
Reform and Consumer Protection Act of 2010**

Additional Comments

Date: April 29, 2011

On March 30, 2011, the United States Securities and Exchange Commission (the “SEC”) issued two Releases (Release Nos. 33-9199 and 34-64149, together, the “Releases”) setting forth Proposed Rules promulgated under Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”). The explanatory language contained in the Releases requests public comments on certain aspects of the Proposed Rules. In this memorandum, I am expanding on the comments I gave to the SEC on April 6, 2011.

Definition of Legal Counsel “Engaged” by an Issuer’s Compensation Committee

An interesting issue has arisen as to the determination of when legal counsel is “engaged” by an issuer’s compensation committee for purposes of the application of the independence requirements of Proposed Rule 10C-1(b)(4). Generally, this provision requires that certain independence factors must be taken into account and considered by an issuer’s compensation committee before it can engage legal counsel.

One commentator suggested that only counsel “formally” engaged by the compensation committee should be subject to the independence standards. Thus, it is argued, the receipt by the compensation committee of legal advice from the issuer’s in-house legal counsel or outside counsel selected by management should not be conditioned upon the committee’s consideration of the applicable independence standards.

“Formal” engagement of legal counsel is a meaningless distinction. Clearly, it is a compensation committee’s receipt of advice by the issuer’s in-house and outside counsel (who are beholden to the issuer’s management) that so concerned Congress. Exempting in-house counsel and management-selected outside counsel from the independence requirements of Section 952 of Dodd-Frank would render the statute completely meaningless and hollow. Accordingly, for purposes of Proposed Rule 10C-1(b)(4), any attorney giving advice or assistance to a compensation committee, whether formally or informally, should be deemed to have been “engaged” by the compensation committee for purposes of the independence requirements.

However, I do not suggest that in-house counsel or management-selected outside counsel should have no role to play in a compensation committee’s deliberations in order for the compensation committee to be able to assert that it is utilizing independent legal counsel. Independent counsel can supplement, and not necessarily replace, a compensation committee’s ongoing relationship with in-house and management-selected outside counsel. Independent legal counsel can provide unbiased and substantive input on various key issues, yet work with the issuer’s outside counsel and in-house attorneys to effectively develop reasonable and sound executive compensation programs and policies. Thus, so long as a compensation committee has engaged independent legal counsel to, at the very least, work in conjunction with the issuer’s in-house and outside counsel, the underlying spirit of Section 952 of Dodd-Frank should be deemed to have been satisfied.

Thank you for your time and consideration. Please do not hesitate to contact me if you have any questions or comments.