



April 29, 2011

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

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

Dear Ms. Murphy:

The compensation of corporate executives ranks high in importance among a board of directors' responsibilities. Few decisions from the board are as visible or crucial. For these reasons, the National Association of Corporate Directors (NACD) takes a keen interest in the Securities and Exchange Commission's (SEC) newest proposal on standards for compensation committees.

Since 1977, NACD has devoted significant study to the processes compensation committees go through to create executive compensation packages. A seeming lack of connection between corporate performance and executive pay prompted us to convene Blue Ribbon Commissions (BRCs) on the compensation committee and related topics in 1993, 2003, and 2010, issuing reports these same years. Each of these reports provided the tools for board members to understand and ensure executive pay plans that link pay to performance. All of these publications were built on the cornerstone of independence—both for the compensation committee and for its advisors.

On the point of independence, our 2003 report, co-chaired by Hon. Barbara H. Franklin (undersigned) and retired Medtronic CEO Bill George, recommended that “all boards should have compensation committees, and these committees should be composed entirely of independent directors.” The report continued by stating, “The governance/nominating committee and the board should take account of personal friendships, prior business relationships, and even ties created by philanthropic activities between the CEO and the prospective committee member.” These types of relationships may interfere with the committee member's objectivity in evaluating CEO performance and setting executive pay.

Since publication of the 2003 report, the SEC and listing exchanges have required a number of new disclosures with the intent of adding transparency to the compensation process and to reign in oversized yet undeserved pay packages.

This latest SEC proposal is a welcome addition to the rules promoting compensation committee independence. However, there are some sections that the SEC may wish to reconsider, and NACD is grateful for this opportunity to comment on the proposed rule and requests that the SEC staff consider the following points.

P. 10, bullet points #1, #2, and #3

*The exchanges should not be required to only list issuers with compensation committees; instead, the SEC and exchanges should allow board discretion on how to fulfill the functions of a compensation committee, applying the new rules accordingly.* For several years, NACD has studied committee composition for public and private companies. While a compensation committee is considered a “key committee,” boards may not always use a committee for executive compensation.

At times, as the rule itself notes, the board may have a committee that oversees executive compensation in combination with other related functions; also, on some boards, compensation is considered by the board’s majority of independent directors in a vote in which only independent directors participate. The exchanges should describe these different approaches, and apply the new rule to all of them. The ultimate goal of the new rule should be to enhance independence while preserving flexibility, not to restrict board discretion or enable loopholes.

P. 18, bullet point #1

*Allowing the listing exchanges to consider relevant factors specified in Section 10C relating to affiliate relationships and sources of compensation is an appropriate approach.* The 2003 BRC report cited above lists similar criteria for determining a director’s independence for service on a compensation committee. Additionally, it is appropriate to allow the listing exchanges, instead of the SEC, to formulate their own independence definitions, as they have the most relevant experience in determining relationships that may cause conflicts of interest.

P. 27, bullet point #3

*The Commission should not adopt rule amendments to Regulation S-K to require listed issuers to describe the compensation committee’s process for selecting compensation advisers pursuant to the new listing standards.* Proxy statements have grown in length and complexity over the years—in some cases rivaling the Form 10-K statement in both dimensions. For many large companies, a Compensation Discussion & Analysis alone can reach up to 30 pages and beyond in some cases. Bearing in mind that improvement in corporate performance, not merely corporate governance, is the ultimate purpose of a company and its board, we would not support any requirements that add substantial length to the proxy statement without a corresponding value to shareholders. Explaining the rationale for selecting a particular compensation advisor seems excessive and without redeemable value.

Shareholders have little interest in knowing the minutiae of advisor selection. Knowledgeable shareholders will understand the decision-making process the compensation committee must go through when selecting its compensation advisor. A recitation and analysis of the five independence factors under Section 10C(b) seems burdensome and redundant.

P. 55, bullet point #3

*Additional clarification is necessary regarding the phrase “obtained the advice.”* In the proposed instruction, the phrase “obtained the advice,” is extremely broad and may require issuers to include information beyond the intent and scope of the proposed rules. According to the instruction, issuers must disclose the obtainment of advice if they “request or receive advice from a compensation consultant....regardless of whether there is a formal engagement of the consultant or a client relationship between the compensation consultant and the compensation committee or management or any payment of fees to the consultant for its advice.” This instruction alone is broad; add the fact that there need not be a formal engagement or payment of fees and the rule becomes burdensome.

The SEC needs to clarify what type of advice is actually covered under the rule. For example, NACD offers a publication that has executive compensation data in chart and table form for various industries and market-cap levels. Would this type of information require disclosure if a compensation committee member purchased it from our online bookstore—or downloaded it at no charge as a premium for membership? Additionally, the SEC needs to clarify what constitutes “advice.” NACD offers director education sessions to boardrooms and specific committees. Would the issuer have to disclose attendance at an NACD educational program focusing on compensation philosophies?

NACD is proud of its publications and services, but we believe that our members’ use of such information should be treated as confidential information. In some instances, a company’s peers could use such information as “competitive intelligence,” putting the company at a disadvantage in the marketplace.

**Conclusion**

NACD supports the general principles behind the new rules concerning compensation committee independence. With some changes as indicated above, these newly proposed rules can strengthen board oversight of executive compensation—a goal we share with you and the nation.

Sincerely,



Hon. Barbara H. Franklin  
Chairman  
NACD



Kenneth Daly  
President and CEO  
NACD