William H. Ferguson
Senior Partner
Global Segment Leader for Rewards

MERCER

777 South Figueroa Street, Suite 1900
Los Angeles, CA 90017
+1 213 346 2240
will.ferguson@mercer.com
www.mercer.com

Attn: Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

May 2, 2011

Subject: Comments on proposed compensation committee and adviser independence rules under new Section 10 of the Securities and Exchange Act of 1934 (as added by the Dodd-Frank Wall Street Reform and Consumer Protection Act)

Dear Ms. Murphy:

Mercer is submitting comments in response to a request by the Securities and Exchange Commission to the public for input into its proposed rules on compensation committee and adviser independence under new Section 10 of the Securities and Exchange Act of 1934 (the Act) as added by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).

Mercer, a wholly-owned subsidiary of Marsh & McLennan Companies, Inc., is a leading global provider of consulting, outsourcing and investment services, with more than 25,000 clients worldwide and approximately 10,000 in the United States. Mercer consultants help clients maximize the effectiveness of their compensation and benefit programs and optimize workforce performance by providing human resources and related financial advice, products, and services, including compensation consulting services, to corporations, boards of directors, and board compensation committees concerning the compensation of executives and directors. Mercer provides executive compensation consulting services to companies around the globe, including U.S. publicly-traded companies. We have extensive experience designing and implementing executive and director remuneration programs. As a result, we understand how compensation committees function and we have assisted countless companies in improving their executive compensation disclosures.

Summary of Mercer's comments

Section 10C(b) of the Act specifies that the independence factors identified by the Commission must be competitively neutral among categories of consultants, legal counsel and other advisers and "preserve the ability of compensation committees to retain the services of [firms] of any such category." These factors must include the following:

- Other services provided to the company by the adviser's employer

- Fees paid by the company to the adviser's employer as a percentage of that employer's total revenues
- Conflict-of-interest prevention policies and procedures of the adviser's employer
- Any business or personal relationship between the adviser and a compensation committee member
- Any company stock owned by the adviser

In addition, proxy statements must disclose whether the compensation committee retained or obtained advice from a consultant and, if so, whether the work raised any conflicts of interest, including the nature of any conflict that did arise and how it was handled.

On March 30, the Commission proposed rules to implement these requirements. This letter presents Mercer's comments on the proposed rules, which are summarized as follows:

- The Commission's rules should further the Act's requirement that the independence factors be competitively neutral among types of advisers.
- The five articulated factors, particularly whether a consulting firm or other adviser has adopted policies and procedures to minimize the potential for the firm's relationship with a client to inappropriately influence executive compensation advice, provide sufficient guidance to compensation committees to determine adviser independence.
- We support the Commission's decision not to adopt "bright line" tests in conjunction with the independence factors.
- Disclosure of either an "appearance of" or "potential for" a conflict of interest is neither appropriate nor necessary.
- Disclosure related to a compensation committee's process in engaging an adviser is not necessary.

Section 10C(b) – Compensation Adviser Independence Factors

The Commission's rules should further the Act's requirement that the independence factors be competitively neutral among types of advisers. Competitive neutrality is critical to giving compensation committees the opportunity to choose an adviser that is most suitable to their specific needs, and we believe the five factors articulated under Dodd-Frank give committees sufficient guidance, without the need for specific "bright line" tests.

It is clear that Congress recognized the importance of giving compensation committees a choice of advisers and that committees should not be required to focus on one factor to the

exclusion of other factors that are equally significant in assessing the objectivity of an adviser's recommendations and advice. We also believe there are other important factors compensation committees should consider in making hiring decisions, including:

- The depth of knowledge and experience of the adviser and his or her firm
- The adviser's experience in delivering high quality and timely advice
- The technical and regulatory expertise of the consultant and his or her firm
- The consultant's ability and history in interacting effectively with the committee
- The firm's ability to provide global perspective and expertise
- The firm's ability to provide broad human capital expertise in areas within the committee's purview, such as succession planning

In response to specific requests for comments in the proposal, we offer the following comments:

"Other Services"

We believe that the competitive neutrality of the requirement to consider "other services" provided to the issuer by the firm that employs the compensation consultant, legal counsel and other advisers could be strengthened by excluding advice related to broad-based, non-discriminatory plans and surveys from the definition of "other services." This would (i) align the rules on independence factors with the exclusion in the existing proxy rules on compensation consultant fee disclosure and (ii) recognize that broad-based plans are typically outside the regular purview of most compensation committees.

Business and personal relationships

We recommend limiting the consideration of business and personal relationships with members of the compensation committee to the lead consultant(s), legal counsel or other adviser(s) to the committee, but not to those on the adviser's team serving the compensation committee. Such a requirement would prove potentially onerous to the adviser's firm and intrusive to more junior members of the adviser's team who rarely interact directly with the compensation committee or formulate recommendations on executive pay.

In addition, any consideration beyond the lead consultant(s) would prove potentially onerous for the company and committee. As noted, given the nature of the relationship beyond the

lead consultant(s), the significant level of administrative effort required to monitor these relationship outweighs any incremental improvement in the disclosure.

We do not believe the Commission needs to more fully define the term "business or personal relationships" as the myriad possible definitions and considerations are unlikely to be fully encompassed by such a definition. Rather, discretion should be left to the compensation committee, which is better suited to make this determination to align with the issuer's specific situation.

Stock ownership

We recommend that this factor be limited to stock of the issuer owned only by the lead compensation consultant(s), legal counsel or other adviser(s) to the compensation committee, but not stock owned by those on the adviser's team serving the compensation committee. Such a requirement would prove potentially onerous to the adviser's firm and intrusive to more junior members of the adviser's team who rarely interact directly with the compensation committee or formulate recommendations on executive pay.

We also recommend that stock ownership should be limited to stock owned directly and should exclude indirect ownership through vehicles such as mutual or index funds.

Compensation Committee Process

In general, we believe that the level of disclosure currently required related to a compensation consultant's role in advising compensation committees is adequate and appropriate for investors' purposes. Accordingly, we do not believe that Regulation S-K needs to be amended to require disclosure of a compensation committee's process for selecting advisers pursuant to the new listing standards. While some issuers may choose to disclose details of the compensation committee's process and considerations, this decision should be at the discretion of each issuer's compensation committee in relation to the degree of information they believe is necessary to explain their decision to engage their chosen adviser(s).

Additional Commentary: Compensation Consultant Disclosure and Conflicts of Interest

"Obtained the Advice"

We believe that the phrase "obtained the advice" should be clarified to specifically exclude provision of only broad-based plan consulting or non-customized compensation benchmark data. This would (i) align the definition with the exclusion in the existing proxy rules on compensation consultant fee disclosure, (ii) recognize that broad-based plans are typically outside the regular purview of many compensation committees, and (iii) avoid burdening companies and their advisers with additional administrative tasks that provide little value to investors.

Appearance of, or Potential, Conflict of Interest

As the Commission itself found in its 2009 amendments to Item 407(e), providing additional services to an issuer by a compensation consultant or an affiliate does not imply a conflict of interest. Accordingly, we do not believe that either the appearance of a conflict of interest or a potential conflict of interest should be included in the definition of "conflict of interest." Articulating such "appearances" and "potentials" would prove an arduous and inherently incomplete and subjective exercise, further complicating and distorting the interpretation and application of the rules. Such interpretation should be at the discretion of compensation committees to allow for the appropriate degree of disclosure and engagement with the issuer's investors.

Disclosure of Revenue Concentration

We believe that Section 10C(c)(2)'s requirement for competitive neutrality could be enhanced by requiring disclosure of additional information for all firms providing services to compensation committees. Since the only disclosure now required is fees for other services, the following information for all firms would improve the transparency and competitive neutrality of the disclosure:

- Adviser's revenue from the issuer (currently required only if other services provided are over the $120,000 threshold), and
- Adviser's revenue from the issuer as a percentage of the adviser's total revenues

This disclosure should apply to all firms providing services to compensation committees, regardless of how long the consulting firm has been in business.

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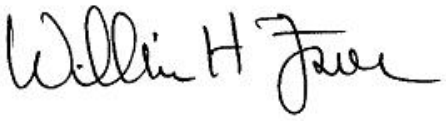
We thank the Commission for the opportunity to comment on its rulemaking initiatives. We would be happy to discuss our comments or to answer any questions about our comments. I can be reached at +1 (213) 346-2240.

Sincerely,



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