DEBEVOISE & PLIMPTON LLP

919 Third Avenue
New York, NY 10022
Tel 212 909 6000
Fax 212 909 6836
www.debevoise.com

May 3, 2011

Via e-mail: rule-comments@sec.gov

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

Re: Release Nos. 33-9199; 34-64149 (File Number S7-13-11)

Dear Ms. Murphy:

We respectfully submit this comment letter in response to Release Nos. 33-9199; 34-64149, dated March 30, 2011 (the "Proposing Release"), in which the Securities and Exchange Commission (the "Commission") has requested comments on proposed new rules and rule amendments to implement the provision of Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. In the following discussion, we have responded to specific questions set forth in the Proposing Release. The comments set forth in this letter reflect our views and not necessarily those of any of our clients.

Discussion of the Proposals-Proposed Listing Requirements:

Independence Requirements-II.A.2.

- **The proposed independence factors that must be considered relate to current relationships between the issuer and the compensation committee member, which is consistent with the approach in Rule 10A-3(b)(1) for audit committee members. Should the required factors also extend to a "look back" period before the appointment of the member to the compensation committee? (We note that the exchanges currently have look-back periods for their definitions of independence for purposes of determining whether a majority of the board of directors is independent.) For members already serving on compensation committees when the new listing standards take effect, should the required factors also extend to a "look back" period before**

the effective date of the new listing standards? If so, what period (e.g., three years or five years) would be appropriate? Should there be different look-back periods for different relationships or different parties? If so, what should they be, and why?

If the Staff chooses to adopt a look back period for members already serving on compensation committees when the new listing standards take effect, we do not believe that the look back period should extend to the period before the effective date of the new listing standards. It has been our experience that compensation committee composition is given a great deal of thought by boards of directors and, consequently, it would be unreasonably disruptive to impose additional standards upon the membership of these committees after they have been established. Accordingly, we believe that if the Staff chooses to require a look back for existing compensation committee members, the look back period should be phased in over time, with the first period of application corresponding to the end of the first year following the effectiveness of the new listing standards. For example, beginning on the first anniversary of the adoption of the new listing standards, the look back period with respect to existing compensation committee members could extend back one year to the date of effectiveness of the listing standards; and beginning on the second anniversary of the adoption of the new listing standards, the look back period could extend back two years. Similarly, we believe that there should be an equivalent phase in of the look back period for newly public companies (in particular for directors affiliated with large stockholders; as governance standards for privately held companies are understandably different than those for publicly traded companies and this would ease the burden on newly public companies that have eliminated arrangements that would otherwise bar compensation committee service in connection with their initial public offering). We do not believe that a look back extending more than two years into the past is necessary to establish the independence of compensation committee members. In our view, two years is a sufficiently long period so that the taint of any preexisting relationship would have lapsed. We also do not believe that different look back periods for different relationships or parties are productive or necessary. Differences of this nature are based on the false premise that it is possible to make meaningful distinctions about presumed conflicts without empirical evidence or study. Rather than make distinctions of this nature, we believe that a simpler, easier to comply with framework would provide more certainty to registrants and their stakeholders.

- **Large shareholders may be deemed affiliates by virtue of the percentage of their shareholdings. As noted above, some commentators have expressed the view that directors affiliated with large shareholders should continue to be permitted to serve on compensation committees because their interests are aligned with other shareholders with respect to compensation matters. Would a director affiliated with a shareholder with a significant ownership interest who is otherwise independent be sufficiently independent for the purpose of serving on the compensation committee? Would the interests of**

all shareholders be aligned with the interests of large shareholders with respect to oversight of executive compensation? Should our rules implementing Section 10C provide additional or different guidance or standards for the consideration of the affiliated person factor?

We agree with the commentators that have expressed the view that directors affiliated with large non-management shareholders should continue to be permitted to serve on compensation committees because their interests are aligned with other shareholders with respect to compensation matters. In our experience, directors affiliated with large shareholders, and directors affiliated with private equity investors in particular, typically understand better than most the true costs and benefits of compensation arrangements. In addition, because the value of their affiliated investors' investment relies, in significant part, on providing the appropriate incentives to management, but not allowing management to dilute the value of their investment through excessive compensation, the directors affiliated with these shareholders are particularly well suited to compensation committee service. In fact, it would in our view be a disservice to shareholders generally to exclude shareholders affiliated with large shareholders from compensation committee service generally because it would deprive all investors of the benefits of their experience and expertise in these matters.

Compensation Adviser Independence Factors-II.A.4.

- **Should we 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? Would information about the compensation committee's selection process – how it works, what it requires, who is involved, when it takes place, whether it is followed – provide transparency to the compensation adviser selection process and provide investors with information that may be useful to them as they consider the effectiveness of the selection process? Or, would such a requirement result in too much detail about this process in the context of disclosure regarding executive compensation?**

We do not believe that Regulation S-K should be amended to require listed issuers to describe the compensation committee's process for selecting compensation advisers pursuant to the new listing standards. We believe that mandating such disclosure would add unnecessary and detailed disclosure to what is currently extensive disclosure regarding executive compensation generally. In addition, we believe that the disclosure regarding compensation consultant conflicts of interest required under Item 407(e)(3), particularly if amended as proposed, provides investors with the requisite information that will enable them to assess the potential conflicts a compensation consultant may have in recommending executive compensation, and the compensation decisions made by the board.

Opportunity to Cure Defects-II.A.5.

- **Should the exchanges be required to establish specific procedures for curing defects regarding compliance with compensation committee listing requirements apart from those proposed? If so, what should these procedures be? Should there be a specific course for redress other than the delisting process?**

As noted in the proposing release, most exchanges (including the NYSE and NASDAQ) currently have procedures to provide issuers with notice and opportunity for a hearing, an opportunity for an appeal and an opportunity to cure defects before their securities are delisted. However, the exchanges have gone further in the context of instances of audit committee non-compliance and have adopted specific rules/procedures to deal with those circumstances. Given the fact that the Exchange Act rules-based construct relating to compensation committee listing standards (specifically those relating to the independence of committee members) will be brought more closely in line with the existing construct applicable to audit committees by operation of the Proposed Rules, we believe that the exchanges should be required to adopt specific rules/procedures for curing defects regarding compliance with compensation committee listing requirements. Specifically, we believe that the exchanges should be required to adopt rules/procedures for curing such defects that are analogous to those with respect to curing defects regarding compliance with audit committee listing requirements. We believe that this approach would provide certainty for issuers and eliminate a potential increase in administrative complexity and burden around these types of events.

- **Should our rule, as proposed, allow exchange rules that would permit the continued service of a compensation committee member who ceases to be independent for reasons outside the member's reasonable control? If so, should our rule impose a maximum time limit for such continued service? Should our rule require that the issuer use reasonable efforts to replace the member who is no longer independent as promptly as practicable?**

We believe that it would be appropriate, as proposed, to allow exchange rules that would permit the continued service of a compensation committee member who ceases to be independent for reasons outside of the member's reasonable control. Further, we believe that it would be appropriate for the Proposed Rules to be revised to require that the exchanges adopt such a rule to maintain consistency between the rules regarding curing defects for violations of compensation committee listing standards and audit committee listing standards. We do not believe that there are any qualitative reasons for compensation committee members to be treated differently from audit committee members in this regard. As such, we do not believe that issuers should be required to use reasonable efforts to replace the member who is no longer independent as promptly as practicable to the extent that no analogous requirement applies to audit committee listing

standard defects. Finally, we believe that this approach would provide certainty for issuers and eliminate a potential increase in administrative complexity and burden around these types of events.

- **Should our rule include specific provisions that set time limits for an opportunity to cure defects other than for instances where a compensation committee member ceases to be independent for reasons outside the member's reasonable control? If so, what time limits would be appropriate?**

We believe that it would be appropriate for the Proposed Rules to be revised to require that the exchanges adopt such a rule to the extent that the exchanges have adopted a similar rule regarding curing defects regarding audit committee independence. Further, the time periods for curing such defects should be the same as between the rule applicable to compensation committee independence and audit committee independence. As noted above, we do not believe that there are any qualitative reasons for compensation committee members to be treated differently from audit committee members in this regard.

- **Should companies that have just completed initial public offerings be given additional time to comply with the requirements, as is permitted by Exchange Act Rule 10A¬3(b)(1)(iv)(A) with respect to audit committee independence requirements?**

We believe that IPO companies should be afforded the same "phase-in" for compliance with compensation committee listing standards as applicable to audit committee independence requirements under Exchange Act Rule 10A-3(b)(1)(iv)(A). As noted above, we do not believe that there are any qualitative reasons for compensation committee members to be treated differently from audit committee members in this regard. More generally, before completion of a company's initial public offering, the board of directors, and specifically the compensation committee, often will consist primarily, if not exclusively, of representatives of insiders and representatives of early stage investors. Further, the compensation committee of some new public companies may function more effectively if it can maintain historical knowledge and experience during the transition to public company status. In addition, companies coming to market for the first time may face particular difficulty in recruiting members that meet the relevant independence requirements. The difficulty of recruiting independent directors before an initial public offering, coupled with the uncertainty of whether the initial public offering will be completed, may discourage companies from accessing the public markets to grow their business and provide liquidity, as well as from achieving the other benefits of being a public company, if all of their compensation committee members must be independent at the time of the initial public offering.

Discussion of the Proposals-Implementation of Listing Requirements:

Securities Affected-Listed Equity Securities-II.B.2.a.

- **We read Section 10C as applying only to issuers with listed equity securities, and our proposed rules are consistent with that view. Should we instead mandate that the requirements of Sections 10C(b) through (e) be applied to a broader range of issuers, including issuers with only listed debt securities or issuers with other types of listed securities? Why or why not?**

We concur with the Staff's view that Section 10C was intended to apply only to issuers with listed equity securities and consequently we do not believe that it would be appropriate for the Staff to mandate that the requirements of Sections 10C(b) through (e) be applied to a broader range of issuers, including issuers with only listed debt securities. We note, that in the case of debt investors, their rights have generally been created by contract rather than by federal or state law. If debt investors were interested in limiting an issuer's flexibility with respect to compensation, they could do so at the time of their investment, by requiring that an issuer include specific governance related covenants in the contracts creating the debt instruments.

Discussion of the Proposals-Compensation Consultant Disclosure and Conflicts of Interest-II.C.:

- **We request comment on our proposed implementation of the requirements of Section 10C(c)(2). Is it appropriate to limit Section 10C(c)(2)'s disclosure requirement to proxy and information statements for meetings at which directors are to be elected? If not, why not? Is it appropriate to extend Section 10C(c)(2)'s disclosure requirement to controlled companies and those Exchange Act registrants that are not listed issuers, as proposed? If not, why not?**

We believe that it is appropriate to limit Section 10C(c)(2)'s disclosure requirements to proxy and information statements for meetings at which directors are to be elected. We do not believe that there would be meaningful value to shareholders in requiring that the disclosures be presented in other contexts. In addition, we believe that the costs and administrative burdens of requiring that the information be presented in other contexts would greatly outweigh the benefits to investors.

We do not believe that that it is appropriate to extend Section 10C(c)(2)'s disclosure requirement to controlled companies and those Exchange Act registrants that are not listed issuers, as proposed. In particular, we note that there is little value in requiring controlled companies, the majority of whose shares are owned by a single person or group and that are not required to have independent compensation committees, to disclose whether third-party consultants that are utilized by their independent committees

have any conflicts. In these circumstances, the composition of the compensation committee and board of directors is typically subject to the direction of the control person or group. Consequently, there does not appear to be additional value or protection for other shareholders in requiring extensive disclosures about conflicts of interest that consultants to the committee might have. In addition, if there were conflicts that rose to the level of related party transactions, they would be required to be otherwise disclosed pursuant to existing rules and regulations of the Commission.

We also believe that extending Section 10C(c)(2)'s disclosure requirements to Exchange Act registrants that are not listed issuers is unnecessary and is not required for compliance with the legislative mandate underlying Section 10C or for the protection of investors. This is because investors can choose to limit their investments to companies that are listed on an exchange. Also, there does not appear to be compelling evidence that Congress intended this part of Section 10C to apply to issuers that are not listed on an exchange.

- **Should we amend Forms 20-F and 40-F to require foreign private issuers that are not subject to our proxy rules to provide annual disclosure of the type required by Section 10C(c)(2)? Why or why not?**

We do not believe that Form's 20-F and 40-F should be amended to require that foreign private issuers that are not subject to the proxy rules of the Securities and Exchange Commission provide annual disclosure of the type required by Section 10C(c)(2). We believe that requirements of the type specified by Section 10C(c)(2) would represent an unnecessary increase in the already burdensome disclosure requirements for foreign private issuers and would be inconsistent with the spirit of the current disclosure paradigm that does not require say-on-pay votes by shareholders of foreign private issuers and that otherwise ties compensation disclosure to a foreign private issuer's home country rules. Such amendments would also further discourage foreign private issuers from accessing the U.S. capital markets, limiting the investment opportunities available to U.S. investors.

- **Is it preferable to integrate the Section 10C(c)(2) disclosure requirements with the existing requirements of Item 407(e)(3), as proposed, or, instead, should we add the new requirements without modifying the existing requirements of the item?**

We believe that the integration of the Section 10C(c)(2) disclosure requirements with the existing requirements of Item 407(e)(3), as reflected in the proposed rules, is the preferable approach for the following reasons: (i) the Section 10C(c)(2) requirements are naturally related to the current requirement under Item 407(e)(3) and represent incremental additions to current disclosure requirements, (ii) two separate requirements would potentially add (a) duplicative and unnecessary disclosure to proxy statements and (b) incremental compliance burden for issuers and (iii) we believe that investors are

better served by having issuers present the disclosure regarding compensation consultants and conflicts of interest as an integrated piece of disclosure which they are more likely to do if the requirements are located in one S-K disclosure requirement.

- **Should we extend any of the current exclusions under Item 407(e)(3) to the new Section 10C(c)(2) disclosures? Conversely, should we eliminate altogether the exclusions under Item 407(e)(3)?**

We believe that Item 407(e)(3) as revised under the proposed rules should be revised to include the current exclusion under Item 407(e)(3)(iii) to the extent that the role of the compensation consultants is limited to: (i) consulting on a broad based non-discriminatory compensation plan or (ii) only providing information that is either not customized for the a particular registrant or customized based on parameters that are developed by a third party. We believe that the current exclusions under Item 407(e)(3)(iii) represent circumstances where this disclosure should not be required either because of the limited nature of the additional services or because of other factors that mitigate the concern that the board may be receiving advice potentially influenced by a conflict of interest. We further believe that the proposed disclosure requirement, if revised to include those exclusions, would provide investors with the requisite information that will enable them to assess the potential conflicts a compensation consultant may have in recommending executive compensation, and the compensation decisions made by the board.

Discussion of the Proposals-Transition and Timing-II.D.:

- **Do the proposed implementation dates provide sufficient time for exchanges to propose and obtain Commission approval for new or amended rules to meet the requirements of our proposed rules? If not, what other dates would be appropriate, and why?**

We believe that the exchanges should be afforded significant additional time following publication of the final rules in the Federal Register by which to provide to the Commission proposed rules or rule amendments. We do not believe that the 90-day period proposed affords the exchanges enough time to draft the proposed rules or rule amendments or to work through particular concerns or issues that may need to be analyzed and addressed by the proposed rules or rule amendments.

- **Should our rules also specify the dates by which listed issuers must comply with an exchange's new or amended rules meeting the requirements of our proposed rules? If so, what dates would be appropriate? Should there be uniformity among the exchanges with respect to the dates by which their listed issuers must comply with the exchanges' new or amended rules?**

We believe that it would be helpful for the Commission to establish a more concrete timeline setting forth dates by which listed issuers must comply with an exchange's new or amended rules meeting the requirements of the Commission's proposed rules. We believe that a longer time frame, such as a year, that gives issuers ample time to comply would be appropriate. In addition, in order to eliminate any potential regulatory arbitrage between exchanges and listed companies, we encourage uniformity among the exchanges with respect to the dates by which their listed issuers must comply with the exchanges' new or amended rules.

****

We appreciate the opportunity to comment on the Proposing Release. Please feel free to contact Matthew E. Kaplan at (212) 909-7334 or Steven J. Slutzky at (212) 909-6036 with any questions about this letter.

Very truly yours,

/s/ Debevoise & Plimpton LLP

Debevoise & Plimpton LLP