

May 18, 2011

**By E-mail: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)**

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

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

Ladies and Gentlemen:

Vinson & Elkins L.L.P. submits this letter in response to the request for comments made by the Securities and Exchange Commission in Release Nos. 33-9199 and 34-64149 (collectively, the “Release”). The Release proposes a new rule and rule amendments to implement provisions of Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which adds Section 10C to the Securities Exchange Act of 1934 (the “Exchange Act”).<sup>1</sup> The proposed rule would, among other things, require exchanges to establish listing standards that require each member of a listed issuer’s compensation committee to be “independent” as defined in the listing standards of the exchanges adopted in accordance with the proposed rule.<sup>2</sup> Specifically, our comments address the definition of “controlled company” in Section 10C(g).

The current proposed definition of “controlled company” reads as follows: “an issuer that is listed on an exchange *and holds an election for the board of directors of the issuer* in which more than 50 percent of the voting power is held by an individual, a group or another issuer.”<sup>3</sup>

We represent a number of limited liability companies that do not hold elections for their board of directors. Many of these entities are “controlled companies” as defined by the New York Stock Exchange (the “NYSE”) Listed Company Manual, which reads “[a] listed company of which more than 50% of the voting power for the election of directors is held by

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<sup>1</sup> Release Nos. 33-9199; 34-64149 (March 30, 2011).

<sup>2</sup> Id.

<sup>3</sup> Id. (emphasis added).

an individual, a group or another company . . .”<sup>4</sup> As “controlled companies” for purposes of the NYSE Listed Company Manual, these limited liability companies are not required to have a compensation committee and are entitled to other corporate governance exemptions under Section 303A of the NYSE Listed Company Manual. However, under the Release’s proposed definition of “controlled company” (and that contained in Section 10C of the Exchange Act) limited liability companies which do not hold elections for their board of directors may not technically qualify as “controlled companies” because the proposed definition includes “. . . that [the company] hold[s] an election for the board of directors . . .” as an element of the definition.<sup>5</sup> Accordingly, if the definition of “controlled companies” is adopted as proposed, these limited liability companies might be required to incur unnecessary expense to hold meaningless elections for the sole purpose of technical compliance with the Section 10C definition or face inadvertent failure to satisfy continued listing standards of the exchanges.

We respectfully request that the definition of “controlled companies” be aligned with the current NYSE definition and contemplate that a controlled company might not hold director elections. Therefore, we recommend that Rule 10C-1(c)(2) incorporate the following definition of “controlled company”: “a listed company of which more than 50 percent of the voting power for the election of directors is held by an individual, a group or another company.”

If you have any questions about this letter, please contact Ramey Layne at 212-237-0135 or Raegan Muse at 713-758-4450.

Very truly yours,

/s/ VINSON & ELKINS L.L.P.

Vinson & Elkins L.L.P.

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<sup>4</sup> Section 303A.00 of the New York Stock Exchange Listed Company Manual.

<sup>5</sup> Release Nos. 33-9199; 34-64149 (March 30, 2011).