MERIDIAN
COMPENSATION PARTNERS, LLC

May 19, 2011

Via E-Mail (rule-comments@sec.gov)

Ms. Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549 1090

Re: File No. S7-13-11—Listing Standards for Compensation Committees
Comments on Proposed Rules to Implement the Provisions of Section 952 of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010

Dear Ms. Murphy:

Meridian Compensation Partners, LLC ("Meridian") is pleased to provide these comments to the Securities and Exchange Commission ("Commission") on the Commission's proposed rules to implement the provisions of Section 952 of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act").

Meridian is one of the largest independent executive compensation consulting firms in North America. We provide trusted counsel to Boards and Management at hundreds of large public and private companies. We consult on executive compensation design issues, corporate governance matters and related disclosures. Our consultants have decades of experience in developing pay solutions that are responsive to shareholders, reflect good governance practices and align with company performance.

Compensation Adviser Independence Factors

Proposed Rule 10C-1(b)(4) would direct the national securities exchanges to adopt listing standards that require the compensation committee of a listed company to select a compensation consultant, legal counsel or other adviser ("Adviser") ***only*** after taking into consideration the five independence factors set forth in Section 10C(b)(2) of the Securities Exchange Act of 1934 ("Exchange Act"). Based on its interpretation of Section 10C(b)(2), the Commission's proposed rule does not include a materiality or bright-line numerical threshold that would determine whether a particular independence factor must be considered by a compensation committee. In addition, the Commission does not propose any additional independence factors. The national securities exchanges would be permitted to add other independence factors that must be considered by compensation committees of listed issuers.

We have the following comments regarding Proposed Rule 10C-1(b)(4):

- We agree with the Commission that Exchange Act Section 10C(b) does not contemplate that the Commission establish materiality or bright-line numerical thresholds that would determine whether or when an independence factor must be considered germane by an issuer's compensation committee. We believe the intent of the statute is best served by providing an issuer's compensation committee wide latitude in determining the extent to which it should take into consideration any particular independence factor.

- We agree with the Commission's observation that the factors set forth in Exchange Act Section 10C(b) are generally comprehensive; thereby, obviating the need for the adoption of additional independence factors.

- When selecting an adviser, a compensation committee must consider "the amount of fees received from the registrant by the person that employs the Adviser, as a percentage of the total revenue of the person that employs the Adviser." Exchange Act Section 10C(b)(2)(B). The term "person" is defined in Exchange Act Section 3(a)(9) to mean a "natural person, company, government, or political subdivision, agency, or instrumentality of a government." This definition would not necessarily include affiliates of the "person" that employs the Advisor. In contrast, for purposes of determining whether disclosure of fees is triggered under Item 407(e)(3), fees paid to the compensation consultant and any of its "affiliates" are taken into account. Given the similar nature of the disclosure required by Item 407(e)(3) and the independence factor set forth in Section 10C(b)(2)(B) and the similar purposes of the disclosure and the independence factor, we recommend that the Commission adopt rules under Section 10(c)(b)(2)(B) to provide that fees include amounts paid to any "affiliate" of the person that employs the Advisor. To provide further clarity, we recommend that the Commission define the term "affiliate" to have the same meaning as "affiliated person" under Section 2(a)(3) of the Investment Act of 1940.

- The terms "business relationship" and "personal relationship" as used in Exchange Act Section 10C(b)(2)(D) are inherently ambiguous and therefore, require rulemaking for clarification. In that regard, we recommend the Commission adopt rules that provide for the following:

  — The term "business relationship" is defined to expressly exclude any non-commercial relationship between an Adviser and a member of an issuer's compensation committee; provided that such relationship does not result in significant monetary or economic gain to one or both of the parties. Examples of non-commercial relationships could include both parties serving on the same not-for-profit board of trustees, rendering volunteer service on behalf of the same charitable organization, undertaking fundraising activities for the same tax-exempt entity, or making monetary or in-kind contributions to the same charitable organization. In addition, it would be helpful for the Commission to provide illustrative examples of common business relationships that, standing alone, would not give rise to a conflict of interest. For example, it is fairly common for a compensation consultant to be retained or to provide advice to two or more companies whose compensation committees include common members. We do not believe such a circumstance results in a conflict of interest. However, absent guidance from the Commission on routine and common business relationships between compensation committees and their Advisers, some compensation committees might consider otherwise benign relationships as giving rise to a potential conflict of interest. This outcome could needlessly limit a compensation committee's choice of compensation consultants.

  — The term "personal relationship" is defined solely as a "familial relationship" between the Adviser and a member of the compensation committee. We recommend familial relationship be limited to direct lineal descendants.

  — The terms "business relationship" and "personal relationship" are applied solely with respect to the individual Adviser who is rendering services to the registrant's compensation committee.

- To remove any doubt regarding the application of the stock ownership factor in Exchange Act Section 10C(b)(2)(E), we recommend the Commission adopt rules providing that this independence factor is to be applied **solely** with respect to the individual Adviser who is rendering services to the issuer. This approach is consistent with the plain language of the statute as well as its underlying intent of identifying circumstances that could give rise to potential conflicts. This intent would not be furthered by requiring compensation committees to consider stock ownership of employees who provide no services to the issuer (such a requirement would prove especially burdensome on large multi-line consultancies which would be required to periodically poll thousands of employees as to their stock ownership).

  We also recommend that the stock ownership factor not relate stock held by an individual Adviser in a mutual fund or other commingled fund over which the Adviser exercises no investment discretion.

Compensation Consultant Conflicts of Interest Disclosure

The Commission proposes to combine current Item 407(e)(3) of Regulation S-K and Exchange Act Section 10C(c)(2) into one disclosure requirement that would apply to Exchange Act registrants subject to the Commission's proxy rules. The trigger for disclosure differs under Item 407(e) and Exchange Act Section 10C(c)(2). The combined rule would adopt Section 10C(c)(2) disclosure trigger which occurs when a registrant has "retained or obtained" the advice of a compensation consultant during the registrant's last completed fiscal year.

If disclosure is triggered under Exchange Act Section 10C(c)(2), an issuer is required to disclose whether the consultant's work raised any conflict of interest and, if so, the nature of the conflict and how it is being addressed, without regard to the existing exceptions in Item 407(e)(3). That is, the disclosure requirement would be applicable in circumstances where the compensation consultant provides to an issuer only advice on broad-based plans or only advice on non-customized benchmark data.

We have the following comments regarding the Commission's proposed revisions to Item 407(e):

- We agree with the Commission's approach to implementing Exchange Act Section 10C(c)(2) by combining current Item 407(e) and Section 10C(c)(2) into one disclosure requirement. We further agree with the Commission that the combined rule should incorporate a single trigger for disclosure (i.e., when a compensation committee retains or obtains the advice of a compensation consultant). We believe the combined rule with the single trigger for disclosure would benefit issuers and investors by simplifying the disclosure requirement and enhancing the clarity of the disclosure. In contrast, the complexity of the disclosure would increase and the clarity of the disclosure would suffer if the Commission retained the existing disclosure requirements without modification and added the new requirements under Section 10C(c)(2) without integration into the existing requirements.

- We believe that the exclusions under Item 407(e)(3) should apply to the new disclosure requirements and should continue to apply to existing disclosure requirements. The exclusions represent a commonsense approach to identifying work that does not rise to the level of providing advice to the compensation committee of an issuer on the amount or form of compensation paid to executives and, as such, the work does not raise potential conflict of interest concerns. This view has been previously confirmed by the Commission ("the provision of such work by a compensation consultant does not

raise conflict of interest concerns that warrant disclosure of the consultant's selection, terms of engagement or fees").[1] The absence of potential conflicts of interest obviates the need to extend the new disclosure requirements under Section 10C(c)(2) to cover the provision of advice on only broad-based plans or advice on only non-customized benchmark data. Therefore, it would be appropriate to extend the exclusions under Item 407(e)(3) to the new disclosure requirements.

- The Commission has inquired whether it should require fee disclosure for other types of potential conflicts of interest, such as revenue concentration, in light of Section 10C(c)(2)'s requirement that the factors considered by the compensation committee before engaging compensation advisers be competitively neutral. We believe the current fee disclosure regime along with the other compensation committee disclosure requirements provide investors adequate information regarding potential conflicts of interest. Moreover, under Proposed Rule 10C-1(b)(4)(ii) compensation committees are required to make their own inquiries regarding revenue concentration to assess the presence of potential conflicts of interest. However, if the Commission should require registrants to disclose fees paid to a compensation consultant that exceed a certain threshold concentration, then we would recommend that such disclosure be limited to whether the fees paid exceed such a threshold, not the specific dollar amount. Otherwise, the disclosure of fees paid together with the concentration ratio would permit third parties to determine the annual revenues of the compensation consultancy. For a privately held firm, this would reveal non-public proprietary information about the consultant. We believe that such information should remain confidential. Requiring the disclosure of whether fees paid exceed a specified threshold would strike the proper balance between providing adequate disclosure on potential conflicts to investors and protecting confidential and proprietary information about the compensation consultant.

Compensation Consultant Disclosure of Fees

Under existing Item 407(e)(3)(iii)(A), certain disclosures (including the disclosure of consultant fees in certain circumstances) are triggered if a compensation consultant "played any role" in determining or recommending the amount or form of executive and director compensation. The proposed conflict of interest disclosure requirement would be triggered when a registrant's compensation committee (or management) "retains" or "obtains" the advice of a compensation consultant. The Commission proposes to amend the trigger for disclosures under Item 407(e)(3)(iii)(A) to be the same as the proposed trigger for disclosure of conflicts of interest.

Pursuant to a proposed instruction to the amended rule, the phrase "obtained the advice" would relate to whether a compensation committee or management has requested or received 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.

We have the following comments regarding the Commissions proposed revisions to Item 407(e)(3)(iii)(A) and the proposed instructions thereto.

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[1] See footnote 103 to the proposed rules.

- As previously discussed, we agree with the Commission that the same trigger for disclosure should be used with respect to conflicts of interest disclosures and the disclosures required under Item 407(e)(3)(iii)(A).

- We strongly disagree with the proposed instruction to Item 407(e)(3). The purported intent of the proposed instruction is to distinguish between a compensation consultant "retained" by a compensation committee and a non-retained compensation consultant from whom the compensation committee obtains advice. The proposed instruction takes an extreme approach in making this distinction by focusing on rare and exceptional business practices of compensation consultants rather than normative practices. The result of this approach is to create confusion rather than clarity regarding the application of Item 407(e)(3). Therefore, the instruction in its current form is likely to lead to unintended interpretations and applications of Item 407(e)(3), as discussed below.

  The disclosures under Item 407(e)(3) would be required if one of two circumstances were present: (i) the compensation committee "retained" a compensation consultant or (ii) the compensation committee "obtained" advice from a compensation consultant. The former circumstance needs little clarification. The second circumstance is less straightforward but the context clearly suggests that it may occur even though the compensation committee has not "retained" the consultant providing the "obtained" advice. The proposed instruction affirms this view by noting that the "obtained advice" disclosure trigger does not require the "formal engagement of the consultant." However, the full scope of the proposed instruction does not reflect actual business practices. It would be a rare and exceptional circumstance under which a compensation consultant provides advice to a compensation committee or management without the existence of a formal or informal client relationship. It would be equally rare and exceptional for such advice to be provided on a gratuitous basis.

  Despite the apparent dearth of practical circumstances that could be covered by the proposed instruction, the instruction could be broadly construed to cover circumstances that clearly fall beyond the intended scope of the statute. Arguably, the instruction could cover advice obtained by a compensation committee solely by reading published materials of a compensation consultant or by listening to a public speech or presentation given by a compensation consultant. Further, the instruction could cover third-party data providers used by compensation consultants who are retained by compensation committees or management. For example, it is not uncommon for a retained compensation consultant to include in work product data obtained from third-party providers of financial or compensation benchmark data. Despite the absence of any client relationship or the payment of any fees, these third-party data providers could be covered by the proposed instruction. We do not believe fee disclosure (as well as other applicable compensation committee disclosures) is intended to be triggered under the foregoing circumstances.

  We recommend the proposed instruction be revised to better reflect actual business practices and to avoid unintended interpretations of the proposed rules. Specifically, we suggest that the proposed instruction to Item 407(e)(3) be revised in its entirety to read as follows:

  > "For purposes of this paragraph, a compensation committee (or another board committee performing equivalent functions) or management has 'obtained the advice' of a compensation consultant if such committee or management has directly requested or received advice from a compensation consultant; provided, that at the time the compensation committee or management

obtained the advice from the compensation consultant it had a bona fide 'commercial relationship' with the compensation consultant. The determination of whether a bona fide commercial relationship exists shall be made based on the surrounding facts and circumstances. However, a bona fide commercial relationship shall neither require the formal retention of the compensation consultant by the compensation committee or management nor a written agreement evidencing the retention of the compensation consultant by the compensation committee or management."

This instruction is broad enough to likely cover the overwhelming percentage of scenarios under which a compensation committee or management is likely to obtain advice from a non-retained compensation consultant; thereby, satisfying the intent of Section 10C(c)(2).

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We appreciate the opportunity the Commission has afforded the public to comment on its proposed rules implementing Section 952 of the Dodd-Frank Act. We welcome the opportunity to discuss with the Commission and its staff our comments provided herein.

Best regards,

Meridian Compensation Partners, LLC

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AAINT/Technical Updates

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