

Elizabeth M Murphy
US Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
USA

19th May 2011

By email: rule-comments@sec.gov

Re: File number S7-13-11 Listing Standards for Compensation Committees

Dear Ms Murphy

We appreciate the opportunity to provide comments on the proposed Listing Standards under File number S7-13-11. We welcome the SEC's efforts to improve the independence of compensation committees, in furtherance of the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010.

Railpen Investments carries out investment management for the Railways Pension Trustee Company Limited (RPTCL), the corporate trustee of the Railways Pension Scheme and other UK railway industry pensions schemes. RPTCL has total assets of around £18 billion, invested globally, and has around 350,000 beneficiaries. It follows that we take an active interest in the corporate governance standards in the many markets in which we invest, including the USA; indeed it is a cornerstone of our US corporate governance policy that all directors serving on compensation committees of US companies in which we invest be demonstrably independent¹.

We support the general purpose of the proposed rules, to strengthen the independence of committees tasked with overseeing executive compensation, and to increase the robustness and utility of disclosures regarding compensation practices. Effective compensation structures underpin any successful company that provides long term, sustainable returns to its shareholders. Such structures are an important element of robust corporate governance practices and serve as a window into wider board behaviours. As an extension of that, the independent oversight of compensation programmes should act as an important safeguard against egregious pay practices, which can undermine the alignment of the interests of company management and its shareholders.

We offer the following comments in response to the areas specified for comment in SEC's proposed rules:

¹ US Corporate Governance policy available at www.rpmi.co.uk ; pg. 5.

Application of independence criteria

- We support rule 10C-1(b) which would direct the adoption of listing standards by stock exchanges such that any committee of the board tasked with overseeing or having input into executive compensation should be required to be populated with independent directors. The name of the committee is not important; it is the function that it carries out that should be the material consideration.
- Equally, in the absence of such a committee, where compensation matters are recommended to the board by a majority of independent directors in a vote in which only independent directors participate, the independence test should also be applied to such directors. The need to ensure that there is a robust independent oversight of executive compensation decision-making should be paramount and not distracted, or indeed avoided, by technicalities based on nomenclatures or the practicalities of decision-making processes.
- We agree that there should be an opportunity, under Proposed Rule 10C-1(a)(3), to cure defects of independence requirements of compensation committee members (or any such body that oversees executive compensation) in the same, and very limited circumstances, as those adopted for curing violations of the independence requirements for audit committees.

Uniformity on definition of independence

- An important element of the UK's Corporate Governance Code is the distinct definitions of independence provided in the Code itself², which allows a benchmark for both companies and investors to ensure there is a general understanding of the areas that compromise independence.
- We consider it is vital that there is a similar set of independence criteria introduced in the USA, in order that there is clarity for both companies and their shareholders as to what situations or relationships present conflicts of interest or may serve to compromise an individual's independence. Given the importance of a balanced board with demonstrably independent directors to oversee and challenge management's decisions, we consider that it is timely for such a uniform definition to be considered, in order that a standard of independence emerges for US companies and their shareholders.
- It follows that a more effective mechanism to strengthen the independence of compensation committees, or those directors tasked with overseeing executive compensation, of US companies, and by extension the boards of US companies as a whole, would be to implement a uniform definition of independence, or at least some guidance on independence, across all exchanges. This would also serve to avoid a lack of consistency in the quality of the independence test across different exchanges.

² The UK Corporate Governance Code, June 2010: Provision A.3.1 sets out a range of scenarios which serve to compromise the independence of directors, including material business relationships, familial relationships and significant shareholdings etc. The Code is available at <http://www.frc.org.uk/corporate/ukcgcode.cfm>

Authority to Engage Compensation Advisers; Independence of Advisers

- Those tasked with overseeing executive compensation matters (whether it be a specifically constituted committee or group of directors) should, in its sole discretion, be able to retain and obtain the advice of independent compensation consultants, independent legal counsel and other advisers (collectively, "compensation advisers").
- It is important that compensation advisers are independent of the issuer and its employees and do not provide other advice, or provide their compensation advice as part of a suite of services (for example, within non-audit work).
- We would welcome affirmation that the compensation advisers are independent rather than disclosures of the appointment process and the considerations of their independence in that process.
- The advisers should only report to the committee that oversees executive compensation.

Exemptions

- We do not consider that exemptions of the listing standards to be implemented under Section 10C should apply to foreign listed companies who trade their securities on the US exchanges, or to smaller reporting companies.

Disclosure requirements

- Disclosures in the issuer's proxy statement should indicate whether the company's compensation committee retained or obtained the advice of a compensation consultant during the last completed fiscal year, the name of the consulting firm, the work performed, whether that work raised any conflicts of interest and if so, the nature of the conflict and how the conflict is being addressed.

We commend the SEC in its timely implementation of the provisions of the Dodd-Frank Act. If you have any questions about our response, please do not hesitate to contact myself or my colleague, Deborah Gilshan, Corporate Governance Counsel on +44 207 220 5000.

Yours sincerely

A handwritten signature in black ink that reads "Frank Curtiss".

Frank Curtiss
Head of Corporate Governance
Railpen Investments