STEVEN HALL & PARTNERS
EXECUTIVE COMPENSATION

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Via Email – rule-comments@sec.gov

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

Re: File Number S7-13-11, "Listing Standards for Compensation Committees"

Dear Ms. Murphy:

I am writing on behalf of Steven Hall & Partners, LLC. Our firm provides consulting services to companies and their boards of directors and compensation committees relating to the compensation of executives and directors.

In this letter, we are providing comments in response to the proposal by the Securities and Exchange Commission (the "Commission") of Rule 10C-1(b)(4) under the Securities Exchange Act of 1934, and the related request for comments set forth in Release Nos. 33-9199 and 34-64149, "Listing Standards for Compensation Committees," March 30, 2011.

Our principal concern with the Commission's proposal is that the Commission provides no guidance or context for evaluating the independence of advisers to compensation committee. Instead, the Commission simply declares that the Exchange Act Section 10C(b) list of independence factors propounded by Congress in Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act is "comprehensive," without explaining how the enumerated factors potentially could affect independence. Without additional guidance, compensation committees will tend to view any information that is within the scope of a declared "factor" as a negative consideration that potentially impairs the independence of any adviser.

In reality, much of the information that would be disclosed to a compensation committee by a potential adviser in response to the factors will be neutral or even favorable as regards the adviser's independence. For example, if a compensation committee were evaluating a compensation consultant and a committee member were serving on another board of directors which already had engaged the same consultant, that business relationship normally would not impair the independence of the consultant (just as the director's service to the other company would not impair his or her independence). In fact, the other relationship would give the director relevant first-hand experience as to the skill and independence of judgment of the consulting firm.

The inclusion of stock ownership by advisers as a factor affecting independence is particularly troubling. In our view, there is almost no circumstance in which stock ownership by

consultants or advisers would impair their independence from management. Logic tells us that stock ownership would give the consultant or adviser a broader perspective, more aligned with stockholders, and would, if anything, impel the consultant or adviser to give advice that promotes the best interest of the company and its stockholders (in many cases, that could be to encourage restraint in the amount of compensation for executive officers or directors). The consultant or adviser's interest in making a stock investment more valuable certainly would not cause him or her to give advice that is not independent of management.

Indeed, it is obvious that stock ownership is not a factor affecting the independence of the directors themselves serving on the compensation committee. As others have pointed out, we see stock ownership, even at high levels, as positively correlated with effective performance and even tough-mindedness by compensation committee members. We see no reason why stock ownership by advisers to the compensation committee would have any more adverse effect on the advisers' independence than it would on the independence of the directors serving on the committee. A company and its management cannot exercise control over a mere stockholder, and the adviser's economic interest as a stockholder would not lead to bad or distorted advice to the compensation committee. "Independence" means independence from the control or influence or management, not the complete absence of any relationship to the company as a whole.

Because the stock ownership factor is irrelevant, compensation committees will not be able to imagine why it is included as a factor. They will have no choice but to accord it weight out of fear that they are perhaps just not grasping the policy that underlies this mandate – to consider stock ownership as a factor affecting independence -- flowing from Congress through the Commission through the stock exchanges and into the lap of the compensation committee. The Commission should explicitly acknowledge that stock ownership by committee advisers has no meaningful effect on independence. Conversely, if the Commission thinks otherwise, it should explain how stock ownership could affect an adviser's independence.

We ask also that the Commission further explain its view that the list of Section 10C(b) factors is "comprehensive," in particular to explain how each factor could impair independence. This would greatly aid compensation committees in evaluating information that, while elicited by and within the scope of a given factor, does not indicate that the adviser's independence is in any way impaired.

Our responses to some of the specific issues on which the Commission has requested comment are set forth below. The Commission's requests for comment that we address are set forth in italics followed by our response:

Commission Request for Comment:

> *Section 10C(b) specifies that the independence factors identified by the Commission must be competitively neutral, but does not state how we should determine whether a factor is competitively neutral. Are there any issues that should be considered to determine or assess whether a factor is competitively neutral?*
>
> *Are the five factors identified in Section 10C(b) of the Exchange Act competitively neutral among different types of compensation advisers? If not, what modifications or adjustments should be made in order to make these factors competitively neutral? Are there specific categories of compensation advisers that would be adversely affected by the compensation committee's use of these factors to assess independence?*

Our Comment:

The factors are not competitively neutral; they affect some competitors more than others. A large consulting firm that provides services to a company beyond just advising the compensation committee is at a disadvantage compared to any other firm that solely provides consulting services to the compensation committee. These results from a valid concern that the firm's other services provided to management create a potential conflict of interest. Under the factors, a solo practitioner or very small consulting firm will be at a competitive disadvantage as compared to larger firms because the revenues from a given client presumably will be a larger percentage of total revenues. This results from the perhaps conceivable concern that a consultant will be less willing to act independently where doing so could imperil a greater portion of the consulting firm's income.

Because some compensation consulting firms do not provide non-consulting services but are relatively large so that the revenues of a given client are a smaller percentage of overall revenues than would be the case for a smaller firm, those firms are not at a competitive disadvantage under the independence factors listed.

The only way to reconcile the standard of "competitively neutral" with the obvious policy goals of Section 10C(b) is for the Commission to conclude that the enumerated factors identify valid considerations that further the underlying policies and do not leave out a factor affecting independence that is adverse for some consulting firms but not others.

Commission Request for Comment:

> *Are there any factors affecting independence that we should add to the list of factors identified in proposed Rule 10C-1(b) (4)? If so, what are they and why should they be included?*

Our Comment:

As a general matter, we believe that Section 10C(b) and Rule 10C-1b)(4) represent an ill-advised regulatory imposition on the governance of private corporations. So, the Commission should be cautious in broadening this incursion beyond the minimum required by the Congress.

The requirement that a compensation committee consider the company's fees paid to a firm as a percentage of the firm's overall fees seems to overlook the more significant issue of the amount of fees the consulting firm receives for services to the compensation committee as a percentage of the total fees the firm receives including fees for other services to the company. Notably, the factor calling for consideration of "the provision of other services to the issuer" does not specify that the amount of fees for services other than to the compensation committee be considered or the relative size of the fees for service to the committee compared to the fees for other services.

In our responses to comments below, we address additional information that may be relevant to the evaluation of advisers' independence.

Commission Request for Comment:

Would the existence of a business or personal relationship between a compensation adviser and an executive officer of the issuer be relevant in considering whether to engage the compensation adviser? If so, why? Should we add this to the required list of factors that must be considered?

Our Comment:

A business or personal relationship between a compensation adviser and an executive officer of the issuer could be relevant to a committee's considering whether the compensation adviser might have a motive for making recommendations that favor the interests of the executive officer over those of the company.

As stated above, we have no enthusiasm for the idea that Congress is telling the Commission to tell the stock exchanges to tell compensation committee members what factors they must consider when hiring advisers, so we are reluctant to endorse expanding the Rule beyond the factors listed by Congress. That said, we cannot agree with the Commission's assertion that the list is "comprehensive," as we would advise any compensation committee evaluating the independence of a would-be adviser on executive compensation to consider the business and personal relationships between that adviser (both individuals and their firm) and the executive officers themselves.

Commission Request for Comment:

Based on the language in Section 10C(b)(2), which distinguishes between the adviser and the person that employs the adviser, a personal or business relationship between the person employing the adviser and a member of the compensation committee would not be covered by the proposed rule (which, like Section 10C(b)(2)(D), only refers to relationships between the adviser and the compensation committee). Should the required list of factors also include a business or personal relationship between the person employing the compensation adviser and a member of the compensation committee? Along those lines, should it also cover a business or personal relationship between the person employing the adviser and an executive officer of the issuer?

Our Comment:

If a consulting firm (as distinguished from individual partners or employees) has separate business or personal relationships with members of the compensation committee, the chance that those could affect the independent judgment of the adviser would seem to be roughly as significant as the business or personal relationships of the individual partners or employees. We doubt that in many cases these relationships are significant enough to impair independence, however. If the consulting firm has such a relationship with an executive officer (rather than a compensation committee member), there likely would be a greater potential for impairment of independent judgment.

For example, say that a director and compensation committee member of company A is also a director and compensation committee member of company B. Consulting firm X is the compensation consultant to the Company B compensation committee. On its face, there is no reason to suspect that the consulting firm or individuals employed by it would not give fully independent advice to the company A compensation committee as well as the company B compensation committee. Of course, it would be prudent for the company A compensation

committee to consider if anything about the relationships might lead to a different conclusion, but it is almost certain that the company A compensation committee would ask the director who also serves company B whether the consulting firm gives good service and independent advice.

Change the facts: The CEO of company A serves on the compensation committee of company B. The company A compensation committee is considering hiring the consulting firm (but not the same individual consultant) as serves the company B compensation committee. Obviously, there is at least the conceivable chance that the consulting firm might favor the interests of the company A CEO in advising the company A compensation committee out of concern for the firm's continued retention by the company B compensation committee on which that CEO sits.

Commission Request for Comment:

> *Should we provide materiality, numerical or other thresholds that would apply to whether or when the independence factors must be considered by a compensation committee? If so, what should they be? For example, should we require consideration of stock ownership only if the amount of stock owned constitutes a significant portion of an adviser's net worth, such as 10%?*

Our Comment:

Our view that stock ownership is not at all relevant to an evaluation of advisers' independence is stated above. Under proposed Rule 10C-1(b)(4), compensation committees will be forced to ask potential advisory firms to provide information about stock ownership of partners and employees. The firms will have to gather stock ownership information from partners and employees, and pass it on to the compensation committee. The effort and expense of this will be burdensome, and yet the information it produces will be of trivial value to the assessment of advisers' independence. Conversely, employees will be asked by their firms to divest themselves of stock any time a consulting firm is being reviewed by a compensation committee. In the interests of reducing unnecessary regulatory burdens, the Commission should set a high threshold, requiring disclosure only if an individual is a beneficial owner of in excess of 5% of an outstanding class of the issuer's equity securities. In this way, the evaluation process could rely on the disclosure requirements under Section 13(d) and 13(g) of the Exchange Act without requiring a separate effort by the company or consulting firms to gather stock ownership information, and requests that employees divest themselves of stock will be avoided. The 5% threshold is satisfactory because one cannot articulate a reason that an adviser owning less than that amount would not be independent in advising a compensation committee.

Commission Request for Comment:

> *Would law firms be affected by the requirement to consider independence factors in a way that would be materially different than how compensation consultants would be affected?*

Our Comment:

Law firms may be precluded from revealing information in order to preserve attorney-client and other applicable privileges. Other compensation advisers have duties to preserve confidentiality that may be almost as far-reaching as the duties of lawyers, although the potential

sanctions such as disbarment or other penalties will not be an equal threat to non-lawyers. Rule 10C-1(b)(4) should not require disclosures from advisers to compensation committees that violate privileges or confidentiality obligations. The potential exists for well-qualified lawyers and advisers to decline potential engagements because they are precluded from disclosing information within the scope of the factors.

Commission Request for Comment:

> *We interpret "any stock of the issuer owned by the compensation consultant, independent legal counsel or other adviser" in proposed Rule 10C-1(b)(4)(v) to include shares owned by the individuals providing services to the compensation committee and their immediate family members. We do not believe this factor is intended to extend to the person that employs the adviser since Section 10C(b) is specific when factors extend to the employer and that language is not included for stock ownership. Is this an appropriate interpretation of this factor? If not, why and how should this phrase be interpreted? Should it also cover the person that employs the adviser?*

Our Comment:

No. Stock ownership by individual advisers is irrelevant and should not have been included in the list of factors to begin with. The Commission is directed by Section 10C(b) to add other items to the list of factors if they affect independence. No amount of stock ownership by a compensation committee member or an individual adviser or a consulting or other advisory firm by itself would lead to a decision that would not put the interests of the company first. So, why expand an irrelevant factor to cover anyone else such as family members?

Commission Request for Comment:

> *Would the proposed requirements have any unintended effects on the compensation committee or its process to select a compensation adviser? If so, please explain.*

Our Comment:

Yes. The Commission has provided no guidance on the relevance of the listed factors. The natural result of this will be that committees will assume that any information relating to a factor disclosed by a prospective adviser is adverse. For example, an individual who owns stock in the company will be viewed as less independent, when in fact the only effect of such ownership would be to tend to cause the adviser's advice to be more protective of shareholders and more independent. As discussed above, the Commission should make it clear that the list of factors is not "comprehensive," but is in fact grossly over-inclusive, so that compensation committees will be aware that some information elicited under the factors may represent a conceivable threat to independence but that other such information will not.

Commission Request for Comment:

> *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?

Our Comment:

The process and governance disclosure requirements already in place have resulted in bloated disclosure that is of limited usefulness to stockholders. This, in large part, is because the Commission has used disclosure requirements to try, indirectly, to promote better governance practices. Here, Congress is directly mandating governance practices, so increased disclosure is not needed to achieve the same end. We would suggest that existing disclosure requirements not be embellished but, instead, if the Commission staff has concerns that the substantive requirements of Section 10C(b) and Rule 10C-1(b)(4) are not being met, that it ask for supplemental information in the review process (similar to its current practice regarding the compensation committee assessment of whether the compensation program engenders excessive risk).

Respectfully submitted,

STEVEN HALL & PARTNERS

/s/ Steven .C. Root

Steven C. Root
Managing Director