Richard Thalheimer

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July 5, 2011

United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
Attn: Ms. Elizabeth M. Murphy, Secretary

File No. S7-13-11

Dear Ms. Murphy:

On March 30, 2011, the United States Securities and Exchange Commission (the "SEC") issued Proposed Rules under Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"). The SEC requested public comments on certain aspects of the Proposed Rules. As the founder and former Chief Executive Officer of The Sharper Image (which was once a publicly-traded corporation), I have avidly followed the debate surrounding Section 952 and would like to submit my comments on certain matters, as follows:

Definition of Legal Counsel "Engaged" by an Issuer's Compensation Committee

An interesting issue has arisen as to the determination of when legal counsel is "engaged" by an issuer's compensation committee for purposes of application of the independence requirements of Proposed Rule 10C-1(b)(4). Generally, this provision requires that certain independence factors must be taken into account and considered by an issuer's compensation committee before it can engage legal counsel.

A number of commentators[1] have suggested that only counsel "formally" engaged by the compensation committee should be subject to the independence standards. Thus, they argue, the receipt of formal or informal legal advice by the compensation committee from the issuer's in-house legal counsel or outside counsel selected by management should not be conditioned upon the committee's consideration of the applicable independence standards.

"Formal" as compared to "informal" engagement in this situation is a meaningless distinction. A compensation committee's receipt of advice by the issuer's in-house and/or outside counsel (who are hired by, and beholden to, the issuer's management team) is just the situation that so concerned Congress. Exempting in-house counsel and management-selected outside counsel from the independence requirements of Section 952 of Dodd-Frank would effectively render this provision of the statute completely hollow. In fact, under this interpretation, a compensation committee could engage non-independent attorneys *and*

[1] Primarily law firms that represent corporate management and a committee of the ABA. A tough SEC Rule would require compensation committees to consider whether these attorneys are independent. I believe that this is exactly what Congress intended all along.

consultants and yet not be subject to the applicable disclosure requirements so long at the engagements are "informal." This interpretation clearly does not represent Congress's intent. Accordingly, for purposes of Proposed Rule 10C-1(b)(4), any attorney or consultant giving advice or assistance to a compensation committee, whether formally or informally, should be deemed to have been "engaged" by the compensation committee.

It is important to note that, in reality, there is little burden imposed on corporations by applying Congress's standard to in-house and management law-firm counsel because all that is required is that the boards *consider* their independence. The boards can consider the situation and still opt to utilize in-house or management law-firm counsel, but they then should also consider whether the CEO's chosen firm would have a conflict of interest.

Disclosure of the Compensation Committees Process for Selecting Compensation Advisors (Including Compensation Consultants, Legal Counsel and other Advisors).

Section 10C(b) of the Exchange Act provides that compensation committees of listed issuers may select compensation consultants, legal counsel and other compensation advisors only after taking into account certain independence factors identified by the SEC. Proposed Rule 10C-1(b)(4) provides that certain stock exchanges must adopt listing standards requiring the listed issuers to consider such independence factors. On page 27 of the Release, the SEC has requested public comment as to whether the SEC should amend Regulation S-K "to require listed issuers to describe the compensation committee's process for selecting compensation advisors pursuant to the new listing standards." It further requests public comment as to whether "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[s] transparency to the compensation advisor selection process and provide[s] investors with information that may be useful to them as they consider the effectiveness of the selection process."

Clearly, disclosure along these lines is necessary and should be made mandatory. From the prosaic requirement that automobile owners must show proof of coverage under a liability insurance policy before they can complete the car registration process, to the more germane rule requiring listed issuers to disclose the opinions of their independent auditors in order to publicly establish that such audits actually took place, a common theme has evolved: In virtually all situations where a statute or regulation requires a person to engage in an action or activity, establishment of proof of the accomplishment of such action or activity is required. Accordingly, some mechanism must be established to assure the SEC and investors that the requirements of Section 10C(b) of the Exchange Act have been carried out.

Adequate disclosure would provide transparency to the selection process and would provide useful information to investors (which, in the grand scheme of things, is what Congress is encouraging under Dodd-Frank). A number of commentators have suggested that the SEC should not require this type of disclosure because (i) the disclosure rules are already too extensive or (ii) stockholders just won't care whether or not independent counsel is utilized.

These arguments do not hold water. First, the required disclosure need not be extensive or overly burdensome on the listed issuers. A paragraph generally describing how the listed issuers' compensation committees addressed the requirements of Section 10C(b) of the Exchange Act and whether or not they elected to utilize the services of independent compensation advisors (and why they did or did not make such an election) should be sufficient. Furthermore, this disclosure need not be made on an annual basis. In order to help reduce the cost of complying with this new requirement, once every "X" number of years (or more frequently in the event the compensation advisors' situations change or if the listed issuers engage one or more new compensation advisors) should suffice. The exact nature of the Final Rules is beyond the nature of this brief comment letter. I would be pleased to share my views with the SEC Staff if that would be helpful.

Second, it is simply not true that stockholders, as a group, don't care about the disclosure. In my experience it has repeatedly been made clear that in light of the significant publicity related to executive compensation issues very many stockholders do have a great interest in how compensation packages are developed. This is especially true of institutional investors who, with the assistance of organizations such as Institutional Shareholder Services and Glass, Lewis, actively oppose compensation practices they perceive to be excessive and, accordingly, demand more detailed information about the process by which these programs are developed and adopted.

As a former CEO of a publicly traded company, and as someone who counts among his acquaintances quite a number of other CEOs, I have had a front row seat to the ongoing saga of executive compensation controversies. Although the views I expressed in this letter may be seen as antithetical to the interests of corporate officers in general, I truly believe that the best way to curb excess compensation practices is to give as much information as possible to the investing public about the processes by which compensation packages are developed. Only by doing this can the public be assured that corporate boards of directors will truly look after the interests of stockholders they are obligated to serve.

Thank you for your time and consideration.

Sincerely yours,

Richard Thalheimer