

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

18 November 2010

Dear Ms Murphy:

**Re: File Number S7-31-10 (SHAREHOLDER APPROVAL OF EXECUTIVE  
COMPENSATION AND GOLDEN PARACHUTE COMPENSATION)**

We are writing in response to the request for comment from the SEC on its Release No. 34-63124, File Number S7-31-10, regarding the reforms currently under consideration relating to shareholder approval of executive compensation and “golden parachute” compensation arrangements as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

By way of background, Hermes Fund Managers Limited is owned by the British Telecom Pension Scheme, the UK's largest. Hermes manages the portfolios of over 200 other clients including many major pension schemes. Hermes Equity Ownership Services (EOS) also advises non-investment clients on governance and corporate engagement matters in respect of about US\$65 billion of equities. As part of our Equity Ownership Service, we also respond to consultations on behalf of many clients from around the world, all of them long-term owners of companies who therefore are keen to ensure that regulation works effectively in the interests of long-term investment and prosperity. These clients include Ireland's National Pensions Reserve Fund, Australia's VicSuper, Lothian Pension Fund, Pensioenfonds PNO Media amongst others. Only those clients which have expressly given their support to this response are listed here.

Hermes EOS welcomes the Securities and Exchange Commission's initiatives to require issuers to provide enhanced transparency on compensation practices through mechanisms such as the advisory vote. We feel that the implementation of a framework which clearly outlines how, and how often such information is presented to shareholders should be applied to all companies regardless of size, although a sensibly scaled-down version would be sufficient for smaller companies. Allowing shareholders to vote annually on executive compensation is a practice which we have endorsed and continue to recognize its benefits in markets such as the UK, Australia, South Africa, and the Netherlands, some of which have had such rules in place for a number of years, with positive effects for the clarity of pay disclosure and the dialogue on compensation issues between companies and their shareholders.

**Commentary on the Release**

*(For ease of reference we have adopted the numbering system used in the Release.)*



## **Section II**

### **II.A. Shareholder approval of executive compensation**

Based on our extensive experience of engaging with companies on compensation issues, we firmly believe that the content of related disclosures should aim to provide adequate qualitative and quantitative information to demonstrate how compensation structures seek to align the interests of executives and shareholders. We have identified below the key elements of quality compensation disclosure which offer an opportunity to create investor confidence on executive alignment and so a basis for dialogue. These elements, when presented as part of an issuer's overall remuneration disclosures, provide sufficient information to make a more informed assessment of a company's pay practices:

- A summary of the compensation committee's overall approach and aims;
- The various types of awards that may be granted under the plan (base salaries, bonuses, equity compensation plans, etc.);
- The number of each type of award to be granted under the plan;
- For award "units" that are comprised of various awards, the composition of the units;
- The performance metrics attached to each different type of award;
- Hurdle rates for performance metrics (threshold, target and maximum);
- Individuals responsible for determining grant dates and the criteria on which they base their decisions;
- Comparison of the company's various elements of compensation against its relevant peers;
- The results of the previous two advisory votes on compensation (if available); and
- Accompanying discussion on the feedback from the Board as well as any actions taken as a result of previous advisory votes

While this list is not exhaustive it demonstrates the type of enhancements investors would find beneficial in allowing for the more fulsome assessment of corporate pay practices.

### **II.B. Shareholder approval of the frequency of shareholder votes on executive compensation**

We believe that companies that consult shareholders on remuneration practices on a regular basis are better positioned to respond to continuously changing market conditions, helping to ensure that appropriate incentive schemes are in place to retain talent while keeping better in tune with the potential concerns of shareholders. It is equally important that responsible long-term shareholders have the opportunity regularly to assess the extent to which directors' interests align with their own. We therefore encourage the implementation of an annual advisory vote to facilitate regular dialogue between shareholders and issuers. Where companies choose to opt out of annual votes, investors may register their concerns about pay by voting against compensation committee members. We imagine that boards might prefer to avoid this situation.

### **II.D. Disclosure of golden parachute arrangements and shareholder approval of golden parachute arrangements**

HEOS believes that the disclosures outlined in item 402(t) should relate to actual transactions and their unique contexts. In this way, investors will be able accurately to gauge the effect of a proposed transaction on executive compensation and better assess the alignment of interests between executives and shareholders. We do not feel it is necessary to require such disclosure in all proxy statements, or all proxy statements which contain an advisory vote on executive compensation, as this may have the effect of diminishing the value of such disclosures to those scrutinizing the proxy. However, we do believe that annual proxy statements should contain sufficient disclosure to enable investors to determine the effect of a potential transaction on executive compensation.

We believe it would be prudent for the SEC to limit disclosures of golden parachute compensation to the named executives at each issuer who would be involved in a potential transaction. We also believe that requiring each issuer to include a general discussion of golden parachutes for a broader group of individuals is not necessary, as information regarding the effects of a potential transaction on compensation more broadly will already be covered under current disclosure requirements. The value of the new disclosures will rest in their enabling investors to conduct enhanced analysis of the effects of a transaction on executive compensation and the ongoing alignment of executives with shareholders interests. Requiring disclosure of the golden parachutes for executives whose compensation arrangements are not otherwise disclosed will be of limited value.

Regarding the proposed tabular disclosure, we believe it would be beneficial to distinguish between single- and double-trigger elements of compensation. It is also important that the tabular disclosure include the value of any compensation impacted by the proposed transaction, such as accelerated vesting of equity awards, special payments or any other payment that would not otherwise have been made. The proposed tabular disclosure should clearly segregate compensation relative to the proposed transaction from any compensation that has already been earned by the executive whether or not a transaction takes place.

Concerning employment agreements between named executives of the target issuer and the acquiring issuer we consider that these ought to be excluded from the tabular disclosure, but should be disclosed separately as such agreements may affect the quantum of a golden parachute paid to an executive. It is crucial that tabular disclosures and the accompanying narrative do not reach a level of complexity that hinders an understanding of the drivers of potential compensation and the impact of a given transaction. We agree that footnotes are sufficient to distinguish between multiple forms of compensation when they appear in a single column.

If golden parachute arrangements have been significantly modified subsequent to being subject to an annual shareholder vote, we believe it is appropriate to require a further vote on the golden parachute as a whole, as the addition of an agreement or changes to an existing agreement have the potential to affect the perception of the alignment of interests and alter the balance of the golden parachute in its entirety. We believe it is important for the SEC to permit exemptions in such cases where alterations are deemed necessary by the issuer but do not materially affect parachute payments.

As ever, we thank the SEC for the opportunity to comment on the proposed amendments. Please do not hesitate to contact us should you have further questions. We would be delighted to discuss these issues with you further.

Respectfully yours,



Darren T. Brady



James Davidson



Manuel Isaza