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Comprehensive Compensation®

November 18, 2010

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

Re: File No. S7-31-10

Dear Ms. Murphy,

Pearl Meyer & Partners (PM&P) is pleased to submit comments to the Securities and Exchange Commission on its proposed guidance to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act) provision for shareholder advisory votes on executive compensation (Say on Pay), frequency of the vote (Say on Frequency), and golden parachute payments (Say on Golden Parachutes).

By way of background, Pearl Meyer & Partners is one of the nation's leading independent compensation consulting firms, serving Board Compensation Committees as advisors and assisting companies in the creation and implementation of innovative, performance-oriented compensation programs to attract, retain, motivate and appropriately reward executives, employees and Corporate Directors. We help Boards and Committees establish and maintain sound governance practices, particularly in regard to decision-making around executive and director pay programs. Since its founding in 1989, PM&P's compensation professionals have advised hundreds of organizations in virtually every industry, ranging from Fortune 500 companies to smaller private firms and not-for-profit organizations.

In general, PM&P supports the Commission's proposed guidance. However, we believe certain areas require further clarification and input. Our responses to certain of the Commission's numbered Request for Comment in the proposal are set forth as follows.

1. Should we include more specific requirements regarding the manner in which issuers should present the shareholder vote on executive compensation? For example, should we designate the specific language to be used and/or require issuers to frame the shareholder vote to approve executive compensation in the form of a resolution? If so, what specific language or form of resolution should be used?

We believe the proposed guidance offers companies sufficient structure for implementing their Say on Pay resolutions. There is ample precedent available from companies that have already voluntarily adopted Say on Pay, as well as the language offered by the Commission for Troubled Asset Relief Program (TARP) recipients. It is clear from the Act's mandate that shareholders would be required, at a minimum, to approve named executive compensation as disclosed in the CD&A, supplemental tables and accompanying narratives. If companies would like to offer additional items for vote, they should have the flexibility to do so.

Nonetheless, we understand that certain companies would prefer having a better understanding of whether they are compliant with the new requirement. As such, it may be helpful for the Commission to provide some "safe harbor" language to reassure companies that they have asked the right question(s). The language offered with respect to TARP advisory votes would likely suffice.

7. Should the requirement to discuss the issuer's consideration of the results of the shareholder vote be included in Item 402(b)(1) as a mandatory principles-based topic, as proposed, or should it be included in Item 402(b)(2) as a non-exclusive example of information that should be addressed, depending upon materiality under the individual facts and circumstances? In this regard, commentators should explain the reasons why they recommend either approach.

We believe this disclosure should be included in Item 402(b)(2) as a non-exclusive example of information that could be addressed *only* if it is material to a decision, rather than as mandatory item. The Act is clear that the vote is advisory in nature. Companies that receive majority approval – which was the case for almost all companies with Say on Pay on their ballots in 2010 – will likely perceive that their shareholders support the executive compensation program. It will therefore be difficult, if not awkward, to describe how they took the vote into account. This type of disclosure would merely lengthen an already voluminous CD&A, without much substance. Conversely, companies that do not receive majority support will not necessarily understand why this was the case by the time compensation decisions for the following year must be made. While they may deem the vote outcome to be material to their decision-making process, they will not have the time to implement change – again, rendering the disclosure awkward and not substantive.

A more appropriate approach would be to include the disclosure requirement in the non-exclusive list of examples that could be addressed if material, which would also reinforce the advisory nature of the vote. Companies would retain the

flexibility to remain silent if the information as to how or whether it considered the voting results is not material to decisions made.

8. Should the proposed requirement for CD&A discussion of the issuer's consideration of previous shareholder advisory votes be revised to relate only to consideration of the most recent shareholder advisory votes?

If material, this requirement should not be limited to consideration of only the most recent shareholder advisory vote. Following the principles-based spirit of the CD&A, we believe disclosure should be required with respect to *any* shareholder advisory vote outcome that has a material impact on the company's decision making in the current year. Compensation decisions and program design modifications can be a lengthy and time-intensive exercise, given that important changes take time. Therefore, any Say on Pay vote results – regardless of the year to which they relate - that have an impact on the current year's compensation decisions should be discussed pursuant to Item 402(b)(2) if material.

21. Should the proposed note to Rule 14a-8(i)(10) be available if the issuer has materially changed its compensation program in the time period since the most recent say-on-pay vote required by Section 14A(a)(1) and Rule 14a-21(a) or the most recent frequency vote required by Section 14A(a)(2) and Rule 14a-21(b)?

The proposed rules allow companies to exclude shareholder proposals with respect to Say on Pay or Say on Frequency if their Say on Frequency policy is consistent with the plurality of votes cast. We do not believe that this practical exemption should be compromised if there is a change to compensation programs, even if "material" (a term difficult to define and explain). Once a company acts in accordance with the plurality preference regarding Say on Frequency, there is no reason to require companies to offer a Say on Pay vote due to changes in plan design or program. The shareholders – who are well aware that compensation programs are not static – will have already expressed their views as to the appropriate frequency of the vote.

23. Would the proposed Form 10-Q or Form 10-K disclosure notify shareholders on a timely basis of the issuer's determination regarding the frequency of the say-on-pay vote? Should this disclosure instead be included in the Form 8-K reporting the voting results otherwise required to be filed within four business days after the end of the shareholder meeting, or in a separate Form 8-K required to be filed within four business days of when an issuer determines how frequently it will conduct shareholder votes on executive compensation in light of the results of the shareholder vote on frequency?

We strongly oppose any requirement that a company disclose its decision regarding Say on Frequency in the same Form 8-K that reports shareholder voting results. Four days is not nearly enough time for a company to consider

shareholder Say on Frequency voting outcomes and then make its own decision as to which Say on Frequency will be adopted by the company.

24. Would the amendments to Form 10-Q and 10-K, as proposed, allow an issuer sufficient time to analyze the results of the shareholder votes on the frequency of shareholder votes on executive compensation and reach a conclusion on how it should respond? Should the issuer's plans with respect to the frequency of such shareholder votes instead by required to be disclosed no later than in the Form 10-Q of Form 10-K for the next full time period ended subsequent to the vote (for example, if the vote occurs in the second quarter of the issuer's fiscal year, the disclosure would be required not later than in the Form 10-Q for the third quarter?

Similar to our response above, we do not believe that companies should be required to make a decision and report its Say on Frequency policy in the immediate Form 10-Q or 10-K. Depending on the timing of the meeting, the proposed rules will not afford ample opportunity to consider the plurality vote. For example, if the Say on Frequency vote occurs towards the end of a quarter, reporting of the company's decision with respect to the same in the 10-Q after the annual meeting leaves very little time for the company to discuss the plurality implications. Logistically, decisions of that scope will require at least one committee meeting and/or Board meeting to approve the decision. Moreover, Committee meetings immediately following an annual meeting generally focus on issues unrelated to items such as Say on Frequency. Based on these practical implications, we would suggest that companies not be required to report their Say on Frequency policy any earlier than the Form 10-Q (or 10-K) for the next <u>two</u> full time periods ended subsequent to the vote.

26. Should we amend Rule 14a-6(a) under the Exchange Act as proposed so that issuers are not required to file a preliminary proxy statement as a consequence of providing a separate shareholder vote on executive compensation in accordance with Rule 14a-21(a)? If not, please explain why not.

We agree that companies should not be required to file a preliminary proxy statement with respect to Say on Pay, Say on Frequency or Say on Golden Parachutes. The nature of the voting process and the topics are fairly straightforward, and the requirement to file a preliminary statement would place undue and unnecessary burdens on companies.

32. Should Item 402(t) disclosure be required only in the context of an extraordinary transaction, as proposed? Should we extend the Item 402(t) disclosure requirement to annual meeting proxy statements generally, or in annual meeting proxy statements in which the shareholder advisory vote required by Section 14A(a)(1) is solicited? Would this disclosure be useful in annual meeting proxy statements in the absence of an actual transaction, or are the existing compensation disclosure requirements applicable to annual meeting proxy statements sufficient? Should we amend Item 402(j) to cover

the matters required by Section 14A(b)(1) that are not otherwise required by that Item, rather than adopt proposed Item 402(t)?

We strongly recommend that Item 402(t) disclosure be limited to extraordinary transactions. Burdening the annual CD&A with yet another lengthy requirement will detract from the annual information provided and is clearly duplicative in many respects to Item 402(j) disclosure. The benefits of such disclosure are far outweighed by the costs and administrative efforts to incorporate this reporting annually.

Moreover, while the Commission did not specifically request a comment to this effect, we are of the view that the goals of transparency and consistency will be undermined by the proposed 402(t) disclosure when compared to the currently existing Item 402(j) disclosure. At a minimum, the standards for similar elements should at least be identical (i.e., exceptions for *de minimus* perquisites, inclusion of costs related to benefits generally applicable). Subtle nuances in calculating the same benefits will cause immense confusion if investors compare Item 402(j) and Item 402(t) disclosure, even though the numerical differences will likely be insignificant. While it would be difficult to amend Item 402(j) at this point, we believe the final Item 402(t) rules should be consistent on some level with the 402(j) disclosures.

35. Should we also require tabular disclosure of previously vested equity and pension benefits and require the total amount to include those amounts? For example, should the value of vested pension and nonqualified deferred compensation be presented so that shareholders may easily compare that value to the value of any enhancements attributable to the change-in-control transaction? Similarly, should the value of previously vested restricted stock and the in-the-money value of previously vested options be presented so that shareholders can compare these amounts to the value of awards for which vesting would be accelerated? Would inclusion of these amounts in the total overstate the amount of compensation payable as a result of the transaction?

We strongly agree that vested amounts of any kind – whether equity, pension or nonqualified deferred compensation – should be excluded from the 402(t) disclosure. Amounts attributable to vested compensation do not reflect additional benefits being provided as a result of a transaction. Moreover, requiring these amounts would effectively undermine the goal of providing “clear and simple form” disclosure with respect to Say on Golden Parachutes by overstating amounts contingent on the transaction. Finally, the executives may be motivated to sell vested amounts in an effort to avoid such disclosure – contrary to the goal of promoting long-term ownership.

39. In proxy statements soliciting shareholder approval of a merger or similar transaction, we are proposing that the tabular quantification of dollar amounts based on issuer stock price be based on the closing price per share as of the latest practicable date. Is this measurement date appropriate?

Would a different measurement, such as the average closing price over the first five business days following the public announcement of the transaction, more accurately reflect the amounts payable to the named executive officers in connection with the transaction? If so, explain why.

If the transaction price is not known at the time of filing, we agree that amounts should be based on the closing price of the company's stock on the latest practical date (although we believe further guidance is needed to determine "latest practicable date"). However, if the transaction price is known or determinable at the time of filing, we would recommend the most accurate quantification of amounts reported in the table be based on the actual transaction price agreed to.

44. As proposed, issuers would not have to provide Item 402(t) information with respect to individuals who would have been among the most highly compensated executive officers but for the fact that they were not serving as an executive officer at the end of the last completed fiscal year. Should Item 402(t) information be required if such individuals remain employed by the issuer at the time of the proxy solicitation? If so, explain why. Also, as proposed, issuers would have to provide Item 402(t) information with respect to all individuals who served as the principal executive officer or principal financial officer of the issuer during the last completed fiscal year or who were among the issuer's other most highly compensated executive officers at the end of that year, even if such persons are no longer employed by the issuer at the time of the proxy solicitation. Would Item 402(t) disclosure with respect to such an individual serve a useful purpose or should we exclude former employees from the disclosure requirement?

We support exclusion of former employees from 402(t) disclosure requirements, regardless of whether they were the PEO, PFO, or among the highest paid executive officers during the year or as of the proxy solicitation. Requiring transaction-related disclosure of departed executives, who are likely to be receiving nothing as a result of the transaction, would serve little to no purpose.

49. Should we exempt certain changes to golden parachute arrangements that have been altered or amended subsequent to their being subject to the annual shareholder vote under Rule 14a-21(a)? For example, should we require a separate vote under Rule 14a-21(c) if the only change is the addition of a new named executive officer not included in the prior disclosure or a change in terms that would reduce the amounts payable? Should we provide an exemption for golden parachute arrangements previously subject to an annual shareholder vote if the only change is the subsequent grant, in the ordinary course, of additional awards under an employee benefit plan, such as stock options or restricted stock, that are subject to the same acceleration terms that applied to those already covered by the previous vote? For example, if subsequent to the previous vote, additional equity awards are granted in the ordinary course pursuant to a plan, such as an annual option grant, and those awards are subject to acceleration in the event of a change in control on the same terms as earlier

awards that were subject to the previous vote, should we exempt those subsequent awards? Should any other types of changes to golden parachute compensation arrangements be so exempted?

In our view, exemptions should be provided for the following items:

- Where there is a new NEO with substantially similar golden parachute arrangements: Reporting golden parachute payments for a single executive officer whose arrangement is similar to other executive officers is a distraction and likely to cause investor confusion. Moreover, most of this information is likely already disclosed in Item 402(j).

- Subsequent equity grants made in the normal course: Absent such an exemption, a routine option grant may be the sole item subject to a new advisory vote on golden parachute arrangements in a merger proxy. An advisory vote on a routine grant of options in connection with a merger proxy is unnecessary and will clearly cause investor confusion.

Absent these exemptions, it is almost certain that companies will need to conduct a separate advisory vote at the time of the merger, thereby eradicating any benefits provided by including the 402(t) disclosure during the annual meeting.

We also believe further clarification is needed to explain what types of revisions would trigger a subsequent separate vote. Specifically, footnote 129 of the proposed release states that if the only change to Item 402(t) disclosure is attributable to movements in the company's stock price, no new advisory vote is needed. If however, there is a change that would result in an IRC Section 280G tax gross-up becoming payable, a subsequent advisory vote is necessary. We believe clarification is needed to advise whether a subsequent vote would be needed where a Section 280G tax gross-up becomes payable solely because of a change in stock price, where it had not formerly been payable based upon the stock price at the time of the initial 402(t) disclosure in the annual proxy statement.

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We appreciate the opportunity to comment and share our views. Please note that PM&P is submitting this commentary on its own behalf, and not on behalf of any specific client. Please contact us at 212-407-9517 if you have any questions.

Sincerely,

Dave Swinford

David N. Swinford
President and CEO
Pearl Meyer & Partners
david.swinford@pearlmeyer.com