May 2, 2006

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

Re: Release No. 34-53598; File No. SR-NASD-2005-080

Dear Ms. Morris:

Houlihan Lokey Howard & Zukin Capital, Inc. ("Houlihan Lokey") is pleased to have this opportunity to respond to Section IV, Solicitation of Comments, in the above-captioned release (the "Release") by the Securities and Exchange Commission (the "Commission"), regarding the NASD's proposed rule 2290, as amended (the "Proposed Rule"). Our response to the Release reflects our firm's thirty years' experience in providing fairness opinions to Boards of Directors, Special Committees of independent directors, and other fiduciaries.

Comment Requests

Among other things, the Release requests comment on the following issues:

1. The Proposed Rule does not require member firms to quantify in the fairness opinion the amount of compensation received that is contingent upon the successful completion of the transaction or to be received as a result of any material relationship between the member firm and any party to the transaction. Accordingly, the Commission has requested comment regarding whether the disclosure that would be required by the Proposed Rule 2290(a)(1), (2), and (3) should be quantified.
2. Whether it would be more informative to investors for firms to specifically state that a conflict may exist and describe the impact of such a conflict rather than to merely state that compensation is contingent.
3. Whether member firms should be required to describe what type of verification they undertook with respect to information supplied by the company requesting a fairness opinion that formed a substantial basis for the opinion, and whether members should be required to obtain independent verification of such information.
4. Whether member firms should disclose the procedures utilized by the member firm in the fairness opinion or elsewhere.

Disclosure Regarding Quantification of Fees

We strongly support a revision to the Proposed Rule that would require disclosure of the specific nature of the overall compensation arrangement between the fairness opinion provider and the company which is the subject of the opinion, and, particularly, the amount of the fee earned for rendering the fairness opinion relative to the aggregate amount of fees to be earned by such member firm upon the successful completion of the transaction. We believe that such a requirement would be far more informative to investors than either a statement that a conflict may exist and a description of the impact of such a conflict or a mere statement that compensation to be earned by the fairness opinion provider is contingent.

In most circumstances, the vast preponderance of an investment bank's fee for a particular transaction is payable only if the transaction is consummated, and the receipt of a fairness opinion is generally a precondition to such consummation. Therefore, in those situations, there can be an inherent tension between the investment bank's ability to render an unbiased fairness opinion and its economic incentive to ensure the consummation of the transaction, which is the subject of the opinion. Investment banks often attempt to mitigate the appearance of a conflict by providing for a separate opinion fee. However, this fee is generally a small fraction of the overall payment to the investment bank due upon consummation of the transaction. Moreover, such an "opinion fee" is customarily credited against the aggregate "success fee," which, if the transaction were consummated, would not result in any incremental compensation for the delivery of the fairness opinion. As a result, such an arrangement would not significantly mitigate the tension discussed above. Accordingly, we believe that the Proposed Rule should be revised to require the quantification of the disclosures required by Proposed Rule 2290(a)(1), (2) and (3), and in a manner that would specify the aggregate compensation received by the member firm from the client and, more particularly, the amount of the fee earned by the member firm for rendering the fairness opinion vis-à-vis the aggregate amount of fees to be earned by such member firm in connection with the transaction. Disclosure of the size and proportion of the various fees potentially payable to a fairness opinion provider will allow parties to whom the fairness opinion is issued to (i) understand the magnitude of the difference between the fees that the provider will receive for opining as to the fairness of the consideration to be paid or received in a transaction and the fees that the provider will receive for other services in connection with the consummation of the transaction, (ii) determine whether that relationship of the size of those fees provides an incentive for the provider to positively opine, and (iii) assess the independence of the opinion provider and the weight that should be accorded the opinion in their consideration of the transaction.

Disclosure Regarding Existence and Impact of "Conflicts"

We believe that it would be more informative to investors for member firms to disclose to its clients factual statements regarding its material relationships with parties to the transaction (including compensation anticipated to be received in the transaction as described above) than to provide a subjective statement as to whether a conflict may exist and to speculate as to the impact of such a conflict. As we stated in our response to the NASD's initial request for comment prior to proposing Rule 2290 in its Notice to Members 04-83 (the "Notice"):

> "Given the multifarious and complex commercial relationships that can exist between an investment bank and its clients, and the subjectivity inherent in determining the presence of a "conflict of interest," we believe that any Rule should require disclosure to a company's Board of Directors of all "significant relationships," rather than "significant conflicts of interest" as suggested in the Notice. We strongly believe that the ultimate determination of whether a particular relationship constitutes a disabling conflict is rightfully a matter for the business judgment of a company's Board of Directors. The Rule should require member firms to provide, at the earliest possible point in time, the pertinent and objective information regarding all "significant relationships" to its client's Board of Directors, rather than permit the member to make the normative determination as to whether a "significant conflict of interest" exists.
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> Again, given the breadth of relationships that may exist between a member firm and the client of the member firm, we believe that the Rule should not attempt to exhaustively specify the range of significant relationships that might be appropriate for disclosure. Instead, the Rule should incorporate the same "materiality" standard that is the keystone of the disclosure system under both generally accepted accounting principles and the federal securities laws. Thus, the Rule could require disclosure to the member's client of all "material" relationships existing between the member and any party to the transaction (including its client). In this context, a relationship would be "material" if there were a substantial likelihood that a reasonable director would consider it important in deciding what weight to accord a fairness opinion rendered by a member firm."

Examples of "significant" or "material" relationships that might be relevant include:

- Any existing or mutually contemplated lending relationship between the member firm and one or more of the parties to the transaction, especially in the context of so-called "stapled financing," where the "sell-side" investment bank rendering a fairness opinion is providing financing to the acquiror;

- Direct or indirect investments by the investment bank in the debt or equity securities of one or more of the parties to the transaction;

- Derivative and structured finance arrangements with any party to the transaction;

- Recent past, current or mutually contemplated underwriting or other investment banking assignments between the member firm and one or more of the parties to the transaction; and

- A directorship with one or more of the parties to the transaction held by a member firm's employee.

Disclosure Relating to the Description of the Member Firm's Information Verification and the Requirement of Such Verification

We believe that member firms should not be required to (i) describe what type of verification they undertook with respect to information that was supplied by the company requesting a fairness opinion that formed a substantial basis for the opinion or (ii) obtain independent verification of that information. As is recognized in the case law cited by several of the commentators responding to the Notice, investment banks are generally not qualified to engage in verification of data; they lack both the resources and expertise to validate data provided to them by their clients and their client's accountants. Investment banks are not auditing specialists or forensic accountants. We concur with the observation of the Securities Industry Association in its comment letter responding to the Notice that "it is the responsibility of a company's management and Board of Directors to insure that the information provided to member firms as part of the fairness opinion process is accurate in all material respects." As a result, we believe that it is more appropriate for member firms to describe, rather than verify, the information (or types of information) requested, received and reviewed, which is consistent with the current practice of investment banks.

Disclosure Relating to Procedures Utilized

Pursuant to the Proposed Rule, member firms would be required to have procedures in place that are generally designed to ensure an appropriate internal review of each fairness opinion. In the ordinary course of its oversight responsibilities, the existence and appropriateness of such procedures will be subject to review by the NASD. Moreover, in the ordinary course of its review of proxy statements in connection with M&A transactions, the staff of the Commission regularly requires detailed disclosure of the various analyses performed by fairness opinion providers in connection with publicly disclosed fairness opinions. In light of these substantive safeguards, we believe that additional disclosure regarding internal procedures is unnecessary and would devolve into boilerplate language that would add little to the existing mix of information currently available to investors.

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We appreciate this opportunity to comment on the matters being considered by the Commission, and we would be happy to discuss any questions the Commission or its staff may have with respect to this letter. Questions may be directed to the undersigned at 310-788-5283 or mbowen@hlhz.com.

Very truly yours,

Marjorie L B

Marjorie Bowen
Managing Director
National Co-Director of Fairness Opinion Practice