CFA INSTITUTE

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18 May 2011

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

Re: File No. S7-13-11, Proposed Rule for Listing Standards for Compensation Committees

Dear Ms. Murphy:

CFA Institute[1] is pleased to comment on the *Proposed Rule for Listing Standards for Compensation Committees* issued by the Securities and Exchange Commission (the "SEC" or the "Commission"). CFA Institute represents the views of investment professionals before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the efficiency and integrity of global financial markets.

Executive Summary

CFA Institute supports the SEC's efforts to define listing standards for compensation committees for companies listed in the United States. We believe the Commission's efforts will help establish a compensation committee independence threshold that is in the best interest of shareowners. We also welcome the disclosures the Commission proposes regarding the relationship between a board and its compensation consultant. Such transparency can alert shareowners of potential conflicts of interest.

CFA Institute has written often on the subject of executive compensation and on the corporate governance of the compensation committee. Most recently, we created the *Compensation Discussion & Analysis Template* that sets out a new format to simplify the Compensation Discussion and Analysis (CD&A) disclosure process while covering all required SEC disclosures. The CD&A Template addresses some of the issues discussed in this proposed rule, and serves as a blueprint for CD&A disclosures that improve clarity and transparency to the benefit of both investors and issuers alike. Other CFA Institute commentary on executive compensation practice and committees include, *The Compensation of Senior Executives at Listed Companies: A Manual for Investors* (2008) and *The Corporate Governance of Listed Companies: A Manual for Investors, Second Edition (2009).*

[1] CFA Institute is a global, not-for-profit professional association of over 105,000 investment analysts, advisers, portfolio managers, and other investment professionals in 137 countries, of whom more than 93,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 135 member societies in 58 countries and territories.

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Comments on Specific Proposals

II. Discussion of Proposals

A. Proposed Listing Requirements

1. Applicability of Listing Requirements

CFA Institute does not believe that an exchange should be limited to only listing companies with dedicated compensation committees. Although the presence of a compensation committee has become a best practice and the norm among listed companies in the United States, some companies may combine the duties of a compensation committee with another committee. We do not believe the Commission needs to mandate the types of committees a board should oversee.

If a board does not have a dedicated compensation committee, this proposed rule should apply to any other committee that performs functions typically performed by a compensation committee. In the absence of any dedicated committee making the decisions typically undertaken by a compensation committee, the Commission should require that independent directors undertaking such responsibilities should be subject to the new rule requiring independence of the relevant committee and external compensation advisers, as set forth by the Commission.

2. Independence Requirement

CFA Institute agrees with the proposed rule, which would allow each exchange to establish its own independence criteria. Exchanges already have their own definitions of director independence which are understood by investors and issuers alike. The definitions of independence required by each exchange may differ slightly, but these definitions of independence are similar enough that we do not feel the need for the Commission to offer one overarching definition of “director independence” for all board members of listed companies in the United States. The definitions of director independence that comply with exchange listings are readily available on exchange and issuer websites as well as in many proxy materials.

We believe the factors required to determine independence by each exchange should also extend to a reasonable “look-back” period before the appointment of a director. The look-back periods that each of the exchanges currently uses to determine independence suffices. Exchanges should include any business or personal relationships that may compromise the independence of a compensation committee member in this look-back.

4. Compensation Adviser Independence Factors

Section 10C(b) of the Exchange Act provides that the compensation committee may select an adviser only after considering the factors identified by the Commission. Section 10C(b) specifies that the independence factors identified by the Commission must be competitively neutral and include, at minimum:

- *The provision of other services to the issuer by the person that employs the compensation consultant, legal counsel or other adviser;*

- *The amount of fees received from the issuer by the person that employs the compensation consultant, legal counsel or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel, or other adviser;*

- *The policies and procedures of the person that employs the compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest;*

- *Any business or personal relationship of the compensation consultant, legal counsel, or other adviser with a member of the compensation committee; and*

- *Any stock of the issuer owned by the compensation consultant, legal counsel or other adviser.*

The statute does not require a compensation adviser to be independent, however, only that the compensation committee considers these independence factors before selecting a compensation adviser.

CFA Institute encourages the Commission to consider requiring that such compensation advisers be independent of the company and management. In the absence of such a requirement, we would ask for enhanced disclosure including the disclosure of any personal or business relationships between a compensation adviser and a company or that company's management. A simple table—similar to the one already required in a company's proxy statement that discloses the fees paid to a company's auditor—detailing the amount paid to a compensation adviser for compensation related services and "other" services would be helpful.

As we have proposed in our new template, a company's CD&A—in its annual proxy—should include a statement addressing the independence of the compensation consultants from company management and a discussion of, or cross-reference to, the information concerning how consultants are compensated for this work and other work for the company unrelated to the specific executive compensation engagement.

We do not believe an issuer should be required to describe the compensation committee's process for selecting compensation advisers, as we believe such disclosures are unlikely to provide any additional useful information to shareowners.

Instead, if in the final rule an adviser is <u>required</u> to be independent of the company, that company should be required to disclose the basis for such independence. If no such independence requirement appears in the final rule, all relationships between an adviser and the company should be disclosed so that shareowners can make an informed decision regarding the level adviser independence.

Finally, we believe that a company should discuss the role of compensation consultants and management in the determination of compensation. The discussion should focus on how any advice from the compensation consultants is reflected in the compensation committee's decisions setting executive compensation.

Concluding Comments

CFA Institute is pleased to submit its views on the Commission's *Proposed Rule for Listing Standards for Compensation Committees.* If you or your staff have questions or seek clarification of our views, please feel free to contact either Kurt Schacht, CFA, at +1.212.756.7728 or kurt.schacht@cfainstitute.org, or Matthew Orsagh, CFA, CIPM at +1.212.756.7108 or matt.orsagh@cfainstitute.org.

Sincerely,

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