MINUTES OF THE SEPTEMBER 17, 2008, MEETING OF THE COMPENSATION AND HUMAN RESOURCES COMMITTEE

The Compensation and Human Resources Committee ("the Committee") of the Smithsonian Institution's Board of Regents met on September 17, 2008, in the Regents Room in the Smithsonian Castle. Committee Chair Patricia Q. Stonesifer and members John W. McCarter Jr. and Representative Xavier Becerra participated by teleconference. Ex officio member Roger W. Sant attended in person. Staff in attendance included Secretary G. Wayne Clough, Executive Assistant to the Secretary Patricia Bartlett, Chief of Staff to the Board of Regents John K. Lapiana, Director of the Office of Human Resources (OHR) James D. Douglas, Associate Director of OHR Greg Bettwy, Acting General Counsel Marsha S. Shaines, and Associate General Counsel Christine Nicholson. Consultant Carl Weinberg of PricewaterhouseCoopers (PwC) participated by telephone.

The meeting was called to order at 1:15 p.m.

Report of the Chair

Ms. Stonesifer welcomed the two new members of the Committee, Messrs. Becerra and McCarter.

Ms. Stonesifer provided the background for the agenda, which included the Institution's adoption of a unified compensation philosophy in 2007, improvements in the process for making compensation decisions, the decision to allow market-based performance incentives for the Chief Investment Officer, and the integration of Smithsonian Enterprises (SE) executive positions into the unified compensation system.

Ms. Stonesifer noted the hiring of three new executives: Executive Assistant to the Secretary Patricia Bartlett, Director of Business Development and Licensing for SE Carol LeBlanc, and Director of Retail Group for SE Peter Gibbons. She added that the Institution was in the process of recruiting directors for the Hirshhorn Museum and Sculpture Garden, the National Museum of African Art, and the Smithsonian Latino Center, as well as for the position of General Counsel.

Secretary Clough introduced Ms. Bartlett to the Committee, noting that she most recently served as Director of Federal Relations at the Georgia Institute of Technology. Her duties as Executive Assistant to the Secretary will include expanding stakeholder outreach.

Secretary Clough noted that compensation packages for the three recently filled executive positions were determined following the Institution's unified compensation philosophy. The compensation for the Executive Assistant position fell within the guidelines for a Federal-equivalent position, and the compensation levels for the other two positions were determined based on market studies.

Secretary Clough explained that he plans to reduce the number of Under Secretary positions from four to three. The duties of the position of Under Secretary for Art will be transferred to the position of Under Secretary for Art, History, and Culture. An internal search will be conducted for the latter position. Nationwide searches will be conducted for the positions of Under Secretary for Science and Under Secretary for Finance and Administration.

Secretary Clough reported that the national search for a President of SE was nearly completed and that he expected to make a decision by September 26, 2008. He added that the search committee headed by Acting Under Secretary Alison McNally had recommended three candidates for his consideration. The Secretary also reported that the search committee for the General Counsel, which is chaired by National Museum of Natural History Director Cristián Samper, would be hiring a search firm that week.

Mr. Becerra and Secretary Clough both emphasized the importance of obtaining a diverse pool of candidates for the Under Secretary positions, as well as for the next General Counsel. Secretary Clough reported that the search committees and search firms are aware of this mandate.

Approval of Minutes

The Committee approved the minutes of its last meeting, which was held on June 12, 2008.

New IRS Form 990 Presentation

Acting General Counsel Shaines then outlined changes to the IRS Form 990 that will affect the Institution's reporting beginning with fiscal year 2009 (the return for which will be due in 2010). She noted that Part VII and Schedule J will require reporting the compensation of a significantly greater number of employees, as well as demanding considerably more information about those employees' compensation and benefits.

Ms. Shaines said that the Smithsonian will have to report the compensation of current officers (defined as persons so-identified in the bylaws), key employees (non-officers whose W-2 compensation is at least $150,000 and who meet the "responsibility test" stated in the form's instructions), and the five highest compensated employees who are not officers or key employees. Also required will be compensation reports on former officers and key employees who held positions within the past five years and still receive compensation of at least $100,000 per year. With regard to these employees, the Smithsonian will have to report not only W-2 compensation but also "other compensation," which will include non-taxable benefits such as deferred compensation under flexible spending accounts, Smithsonian contributions to TIAA-CREF retirement accounts, and Smithsonian payments for health benefits. As a result, reported compensation under the new IRS Form 990 will be about 30% higher than that reported in the current IRS Form 990, which only considers W-2 compensation.

The Institution also will have to report any "lightning rod" benefits, such as first class travel, spousal travel, and housing allowances, and, if such benefits were paid, who received them, whether it was treated as taxable income, and whether there is a policy regarding such payments. Arrangements for incentive bonuses contingent on revenue or net earnings also will have to be reported. In addition, the process for determining the compensation of the Secretary will have to be described.

Ms. Shaines explained that the purpose of these and other changes to the Form 990 is to provide the IRS and the public a much more detailed picture of the compensation paid to executives of non-profit organizations. She reported that the Office of the Comptroller, OHR, and the Office of the General Counsel had already met to ensure that the Institution's financial systems will be ready to capture the required information.

Ms. Shaines said that she would provide a more complete briefing to the full Board of Regents at its September 22, 2008, meeting.

Incentives for Staff in the Office of Investments (OI)

The Committee then discussed Chief Investment Officer (CIO) Amy Chen's request to change the compensation approach for certain members of her investments staff. Following a similar recommendation made by Cambridge Associates to the Investments Committee, Ms. Chen asked that some of her staff be moved to a market-based pay banding system, as well as placed on an incentive program. It was noted that the proposal from the OI would be precedent-setting in that payments to non-executives would exceed Federal aggregate limits.

Secretary Clough recommended that the OI staff remain on the existing salary structure and that the CIO use existing tools for recruitment and retention. The Secretary also recommended that an incentive plan for investment staff be developed that permits payouts that may exceed Federal aggregate limits. This plan would be available only to those OI employees making investment decisions and not to those reporting on decisions or results or providing administrative support. Further, the Secretary recommended that this decision be limited to investments, as a specialized field of work that merits such treatment, and that it not be used as a precedent for other revenue-generating non-executive positions.

The Committee then reviewed summary information on potential performance-based compensation levels for the OI staff under discussion. The Committee requested clarification regarding (1) when retention bonuses would be used, (2) what would be appropriate benchmarks to determine such bonuses, and (3) which positions would be afforded performance-based incentives. Committee members expressed concern about the repeated use of a retention bonus, the unexplained differences between the compensation benchmarks for the Investment Officer (IS-15) provided by Cambridge Associates to the Investments Committee and those provided by PwC to the Compensation and Human Resources Committee, and the inclusion of the Investment Accountant position in the incentives plan.

2009 Compensation Process: Proposed Approach for Determining Comparables

Carl Weinberg next presented PwC's proposed plan for gathering and valuing competitive benchmarking data for about 100 Federal and market-based positions for the 2009 compensation process. The Committee questioned PwC's use of private universities as a comparable labor market and directed PwC to use only comparables from public universities of similar size and scope that possess major research facilities. The Committee also discouraged the use of for-profit labor markets as comparables for SE positions and noted the need to apply a not-for-profit differential to any for-profit market data used. PwC agreed to prepare a final plan taking into consideration the Committee's concerns and suggestions.

It was noted that the OHR will provide information to the Committee on an annual basis that is designed to determine whether changes in the Institution's compensation process have affected executive turnover.

2009 Compensation Process: Clarification of 2009 Decision-Making Levels

The Committee then considered the proposed recommendation regarding decision-making levels and concluded that clarification was necessary before it could reach a decision on the proposal. Mr. Bettwy agreed to provide that clarification.

The meeting adjourned at 2:30 p.m., after which the Committee went into Executive Session.