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

*RE: File No. DF Title IX - Executive
Compensation - Title IX Provisions of the
Dodd-Frank Wall Street Reform and
Consumer Protection Act*

Dear Ms. Murphy:

Protective Life Corporation (“Protective” or “the Company”) is pleased to submit these comments to the Securities and Exchange Commission (“the SEC” or “the Commission”) regarding the executive compensation and corporate governance provisions in Title IX, Subtitle E of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”).

The executive compensation and corporate governance provisions of the Act are, in many cases, both very broad and very vague. Furthermore, it is frequently difficult to reconcile typical compensation practices with the statutory language. The Company encourages the Commission to carefully review and consider the wide variety of short-term bonus and long-term equity-based incentive compensation programs and to issue regulations and other guidance that implement the core concepts behind the Act’s provisions while minimizing the risk of inadvertently subjecting companies, their shareholders, and their officers and employees to consequences that were, in all likelihood, not contemplated by the Act.

The Company’s specific comments on these issues follow.

I. Shareholder Vote on Executive Compensation Disclosures

Section 951(a) of the Act added new Section 14A to the Securities Exchange Act of 1934 (the “Exchange Act”). Section 14A requires corporate issuers to hold nonbinding shareholder votes on executive compensation not less frequently than once every three years, and requires a separate nonbinding shareholder vote to determine the frequency of these “say on pay” votes. In summary, Protective recommends that:

- The Commission's regulations should clarify the legal effect of both shareholder votes required by Section 14A(a).
- Issuers should have flexibility in presenting the text of the say on pay resolution, as long as the statutory requirements are met.
- Shareholder resolutions seeking a different frequency of say on pay votes should be prohibited.
- Companies should not be required to file preliminary proxy statements merely because they have a say on pay resolution on the ballot.
- The Commission should ensure that proxy advisory firms employ sound methodologies that result in accurate and unconflicted recommendations to institutional investors.

A. Clarification of the Legal Effect of Shareholder Votes. The Company believes that the regulations implementing the say on pay and frequency votes should distinguish between the statutory language that describes the votes (set forth in Section 14A(a)) and their actual legal impact (as set forth in the Section 14A(c)). New Section 14A(a)(1) of the Exchange Act states that the say on pay resolution is "to *approve* the compensation of executives"; however, Section 14A(c) makes it clear that the vote is nonbinding and that shareholders are not actually "approving" executive compensation (but are instead providing their views on the issuer's executive compensation program). Similarly, Section 14A(a)(2) states that the proxy shall include a "separate resolution subject to shareholder vote to *determine*" how frequently the say on pay votes will take place; however, Section 14A(c) again makes it clear that this vote is nonbinding and that the ultimate decision rests with the issuer. These points should be made clear in the implementing release.

B. Give Companies Flexibility in Structuring Say on Pay Resolutions. Protective believes that the SEC should provide companies with flexibility in presenting the nonbinding resolution on pay, so long as the statutory requirements are met. The Company recommends that the SEC follow an approach similar to the approach it adopted for TARP companies, which allowed companies considerable flexibility to discuss why shareholders should approve a say on pay resolution.

C. Shareholder Resolutions Seeking Alternative Voting Frequencies Should be Prohibited. The Company believes that new Section 14A should be read to preempt shareholder proposals seeking more or less frequent say on pay votes than the issuer has implemented. The statute has established a system for obtaining shareholder input on the frequency of this vote, and specifies that shareholders be given the opportunity to vote on this matter. Protective believes that the combination of a mandated vote on pay and the mandated shareholder vote on the

frequency of the vote fully occupies the space on this issue, and that subsequent shareholder resolutions on this matter should not be permitted.

Allowing for annual shareholder resolutions that ask companies to change the frequency of the shareholder vote would be redundant and overly burdensome, given the cost of assessing the propriety of a resolution, engaging the proponent, fashioning a response, publishing the resolution in the proxy statement, soliciting proxies and tallying the vote. Moreover, it is possible that a company could receive two resolutions seeking alternative time frames in the same year (*e.g.*, a company that has chosen to hold a say on pay vote every two years could receive resolutions seeking say on pay votes every year or every three years).

The Company believes that this interpretation is consistent with the rule of construction in Section 14A(c)(4), which states that the shareholder vote “may not be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials *related to executive compensation*.” The Company believes that shareholder proposals seeking a more or less frequent vote on executive compensation are not “related to executive compensation” as contemplated by the statute, but are instead related to the frequency of shareholder input on this matter.

In addition, the SEC has long allowed exclusion of shareholder proposals that would conflict with a management proposal. This analysis recognizes that a company would not know how to respond if, for example, conflicting proposals each received a majority vote. Allowing shareholder proposals in this case would appear to create the potential for such conflicts.

D. Companies Should Not Be Required to File Preliminary Proxy Statements. The SEC should not require a company to file a preliminary proxy statement merely because it has a say on pay resolution. (This is consistent with the treatment of TARP companies.) A preliminary proxy filing requirement would shorten the amount of time that almost all companies would have to prepare their proxy materials. Moreover, as a practical matter, it would probably be difficult for the SEC staff to review more than a very small percentage of these preliminary proxy statements.

E. Say on Pay and the Influence of Proxy Advisory Firms. Protective’s experience, and that of many other large companies, demonstrates that proxy advisory firms have considerable influence over the proxy voting decisions of institutional investors. Despite the importance of proxy advisory firms to the proxy voting process, these firms are almost completely unregulated and are not required to use any specified methods to develop their recommendations, to ensure the accuracy of their evaluations or recommendations, or to disclose possible conflicts of interest. Furthermore, in Protective’s experience, proxy advisory firms tend to use a “one size fits all” approach to their analysis, instead of reviewing compensation programs on a company-specific basis. Protective urges the SEC to take action, through its review of the proxy voting process, to more closely oversee and regulate the proxy advisory

industry so that analyses are unbiased, reports are accurate, and votes are not improperly influenced.

II. Disclosure and Shareholder Vote on Certain Golden Parachute Payments

Section 951(b) of the Act requires a public company that enters into a merger, change in control, or similar transaction to provide additional disclosure “in a clear and simple form” of any agreements or understandings that the company has with the named executive officers of either company. It also requires a separate nonbinding shareholder vote on change in control arrangements, if the arrangements have not been previously included as part of a say on pay vote.

A. The New Disclosures Should Incorporate Approach From Existing Post-Termination Payment Disclosure. The Company believes that the SEC should address the additional disclosure requirement by simply incorporating the current disclosures for post-termination payments in Item 402(j) of Regulation S-K, which companies are currently required to include in their annual proxy statements. The current disclosures address the statutory requirements and provide for consistency in reporting annual compensation and compensation in the event of a merger or change in control.

B. Shareholder Vote Should Only Be Required If Structure of Payments Has Changed. The Company believes that the SEC should clarify that a separate shareholder vote is necessary only if the structure of the change in control arrangements has changed since the last periodic say on pay vote. There should not be a separate vote merely because the value of the change-in-control payments has changed due to stock price fluctuations, changes in bonus performance levels, or similar matters. Otherwise, the statute’s requirement that a separate vote be held only when there have been changes in the agreements or understandings related to the change in control arrangement would be meaningless.

III. No-Fault Clawback Policy

Section 954 of the Act added new Section 10D to the Exchange Act. Section 10D requires the SEC to promulgate rules directing the securities exchanges and securities associations to develop listing standards that require companies to adopt and disclose a “no-fault” clawback policy. Specifically, a company’s policy must provide that if there is:

“an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws, the issuer will recover from any current or former executive officer of the issuer who received incentive based compensation (including stock options awarded as compensation) during the 3-year period preceding the date on which the issuer is required to prepare an accounting restatement, based on the erroneous data, in excess of what would have been paid to the executive officer under the accounting restatement.”

The mandate of new Section 10D raises a number of issues, including:

- the types of incentive-based compensation that are subject to recoupment; and
- the mechanics of determining the amount to be recouped, the means of recoupment, and the date the recoupment provision applies.

Protective believes that the Commission should consider the structure of issuer incentive plans as it prepares proposed regulations. This letter discusses the following common incentive arrangements:

(1) Formulaic annual incentive plans that pay bonuses or similar amounts based on the achievement of objective financial measures that are either (a) required to be reported under the securities laws (“reportable measures”), and/or (b) not required to be so reported (“non-reportable measures”). Reportable measures would include GAAP measures such as revenue, net income and earnings per share, as well as non-GAAP measures such as earnings before interest, taxes, depreciation and amortization and return on net assets. Non-reportable measures might include stock price, total shareholder return and operational performance measures specific to the business (such as market share and customer satisfaction).

(2) Formulaic annual incentive plans, in which a pool is funded based on the achievement of reportable and/or non-reportable measures, but the compensation committee has the discretion to determine the actual amount paid from the pool to each employee.

(3) Performance-based restricted stock and similar awards, in which the number of shares paid is based on the achievement of reportable and/or non-reportable measures over a period of several years after the date of grant.

(4) Stock options, stock appreciation rights (“SARs”), time-vested restricted stock and similar awards, in which the number of awards is based on reportable measures from previous periods (and not primarily compensation committee discretion), but the amount ultimately paid is not based on reportable measures.

(5) Stock options, SARs, time-vested restricted stock, and similar awards, in which neither the number of awards nor the amount ultimately paid are based on reportable measures.

A. Incentive-Based Compensation Subject to Clawback. Section 10D provides that issuers must have policies for recoupment of incentive compensation that is “based on financial information that is required to be reported under the securities laws.” Clearly, the Commission’s rules must differentiate between incentive compensation that is subject to the recoupment

requirement from compensation that is not. Referring to the compensation programs described above, Protective believes the recoupment provision should generally apply as follows:

- Compensation under formulaic annual incentive plans that pay bonuses based on the achievement of reportable measures should be subject to recoupment; bonuses that are based on the achievement of non-reportable measures should not be subject to recoupment.
- For “pool” plans, in which the achievement of reportable and/or non-reportable measures determines the amount of a bonus pool (but not the amount paid to each individual employee), the company’s compensation committee should have the discretion to decide how much to recoup from each individual, as long as the aggregate required recoupment is made.
- Performance-based restricted stock and similar awards in which the number of shares paid (as opposed to the number of shares initially awarded) is based on the achievement of reportable measures should be subject to recoupment.
- Income received from stock options, SARs, time-vested restricted stock and similar awards, in which the number of awards was based on reportable measures (and not primarily compensation committee discretion), should be subject to recoupment.
- Income received from stock options, SARs, time-vested restricted stock and similar awards, in which neither the number of awards nor the amount ultimately paid are based on reportable measures, should not be subject to recoupment.

In summary, Protective believes that Section 10D should treat incentive compensation that is awarded, earned or vested based on reportable measures as subject to recoupment. Conversely, compensation arrangements such as time vested stock options, SARs or restricted stock should not be subject to recoupment unless the grant of the awards was based on the reportable measures.

B. Amount, Means and Period of Recoupment. The Company believes that compensation committees should have discretion to decide not to recoup compensation from a particular individual if the amount to be recouped is *de minimus* or the committee reasonably determines in good faith that the costs of recoupment would exceed the amount recovered. Also, since the statute does not specify how compensation is to be recouped, the Commission’s rules should give compensation committees the discretion to recoup by any method that they reasonably deem to be appropriate, including cancellation of unvested equity or cash awards. (A committee’s policies and decisions on these matters would, of course, be disclosed in the proxy

statement.) This flexibility would mitigate some of the procedural complexities involved in recovering compensation (including the need for the company and the executive to file amended tax returns).

The Company believes that the three-year recoupment period should begin on the date the company actually files an accounting restatement as described in Section 10D. This definition would create a verifiable date certain and avoid speculation over the date on which a company should have known that it was required to prepare a restatement.

The Company encourages the Commission to explicitly exclude restatements based on changes in generally accepted accounting principles from the types of restatements that trigger a recoupment. These restatements are not based on oversights or deliberate errors, and should not result in application of Section 10D's recoupment requirement

IV. Disclosure of Pay Versus Performance.

Section 953(a) of the Act added new Section 14(i) to the Exchange Act. Section 14(i) provides, among other things, that companies will be required to disclose "information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions."

Protective believes that this disclosure should reinforce the purpose of the compensation discussion and analysis -- that is, to "put into context the compensation disclosure provided elsewhere." Consistent with this view, the Company believes that compensation committees should have broad discretion in determining the best way to make this disclosure. Rather than focus on uniform "one size fits all" disclosure that is, for example, reliant solely on numerical measures (that may or may not apply to a particular company or its compensation arrangements), new Section 14(i) should allow compensation committees to explain these decisions in the context of their overall pay philosophies.

Protective notes that the determination of when compensation has been "actually paid" is often a point of debate among compensation committees, employees, shareholders and others, particularly as it relates to long-term stock based incentives. Furthermore, few compensation committees focus on only "compensation actually paid" (in the traditional sense of taxable compensation) when awarding long-term incentives. For example, when granting these incentives, compensation committees often consider the grant date fair value of the awards, the amount that the committee actually expects the employee to receive in the future with respect to the awards (which may vary significantly from the grant date fair value), the amount actually recognized upon the payout or vesting of previous awards, current levels of stock ownership, and/or the outstanding amount of unearned and unvested long-term incentives. (Most of these amounts are also disclosed to some extent in proxy statement compensation disclosures.)

Section 14(i) should be interpreted to give compensation committees broad discretion to refer to these considerations and each such disclosure (as appropriate) in order to fully describe the relationship between company performance and the committee's compensation decisions.

V. Pay Ratio Disclosure

The Company believes that for large employers (particularly those with international operations), compliance with the pay ratio disclosure requirement in Section 953(b) of the Act will be extremely difficult (if not impossible) and very expensive. Therefore, the Company encourages the SEC to interpret Section 953(b) in a way that fulfills the statutory mandate while making it practicable for companies to comply. Specific suggestions are set forth below.

A. Definition of "All Employees." The Company believes that the SEC should interpret Section 953(b) in a manner that takes into account the practical ability of companies to calculate the "median of annual total compensation" of all employees (other than the chief executive officer). Large companies will have to perform hundreds, if not thousands, of individual employee calculations in order to prepare this disclosure. Furthermore, including the compensation of temporary or part-time employees, non-U.S. employees (whose pay data may be on overseas computer systems, and who are likely to be paid in a currency other than U.S. dollars), and employees who did not work a full year would both increase the costs of compliance and result in misleading disclosures. Therefore, Protective recommends that only the compensation of full-time U.S. employees who were employed for the entire previous calendar year be included in the calculation.

B. Calculation of Annual Total Compensation; Determination of the "Median" Employee. Once a company has identified "all employees," it must determine which employee has the median "annual total compensation." Section 953(b) requires the company to calculate "annual total compensation" in the same manner as total compensation is determined under Item 402(c)(2)(x) of Regulation S-K as in effect immediately before enactment of the Act.

It is difficult to overemphasize how burdensome this requirement could be for large employers. Calculating annual total compensation is much more complicated than simply adding up numbers that companies already have available. Most employers will have reasonable access to certain items of compensation (base pay, cash bonuses, and perhaps severance pay, perquisites, tax gross-ups, issuer contributions to defined contribution plans and the value of life insurance premiums paid). Other items of compensation—particularly pension plan payments—will often be on the systems of third party administrators. However, very few employers routinely determine certain items of compensation for individual "rank and file" employees, notably the values of stock and stock option awards and the aggregate change in the actuarial present value of defined benefit pension plan accruals. For most employers, determining these amounts will require, for the first time, calculations for all (or a large subset) of their employees. Since many large companies use outside accounting, actuarial, and compensation and pension

administration firms to perform these calculations, the costs of disclosure will increase accordingly.

Protective believes that when most employees and shareholders focus on the compensation of rank and file employees, they focus on base salary, overtime and cash bonuses. Most employers should be able to determine the “median” employee compensation on this basis with relatively little difficulty. Unfortunately, the other items of compensation noted above (severance pay, perquisites, tax gross-ups, the value of life insurance premiums paid, issuer contributions to defined contribution plans, pension plan payments, values of stock and stock option awards, and the aggregate change in the actuarial present value of defined benefit pension plan accruals) can vary widely from employee to employee, often with little or no correlation to an employee’s regular cash compensation. Therefore, if the “median employee” is to be determined by reference to annual total compensation, employers will be required to expend substantial amounts of time, effort and money to locate (and in many cases, determine for the first time) the necessary data and to determine annual total compensation for a large number of employees. Anyone who has done these calculations for only the five named executive officers at their company will certify that this will be an extraordinarily difficult task.

Protective suggests that the Commission adopt regulations that would permit companies to determine the “median” employee by reference to only base salary, overtime pay, and cash bonuses. (Item 402 of Regulation S-K should be amended to clearly refer to overtime pay for this purpose.) Once this individual has been identified, the company could perform the other calculations and collect the other information needed to determine that individual’s annual total compensation.

Protective also notes that for rank and file employees, the value of company-provided “welfare” benefits (primarily medical, dental, vision, life, disability, and accidental death and dismemberment insurance) can be a very significant part of the employee’s compensation. For purposes of the disclosure required by Section 953(b), the Company believes that it would be appropriate to consider, for both the CEO and the “median” employee, the value of these benefits. Such a presentation would provide a more complete picture of the compensation actually provided to both employees (particularly the median employee).

The following recommendations would probably require amendment of Section 953(b) (which Protective encourages the SEC to advocate):

- Section 953(b) currently requires annual total compensation to be determined as required by Item 402(c)(2)(x) of Regulation S-K *as in effect immediately before enactment of the Act*. If the SEC later determines that revision to Item 402 is appropriate, companies may have to calculate annual total compensation in two ways—as required under the revised regulations and as required by the regulations as in effect today. This would be an

unnecessary burden and expense to companies, and result in disclosures that would confuse shareholders and employees.

- The entire disclosure could be vastly simplified by referring only to the base salary, overtime pay and cash bonuses of the CEO and the median employee. Any shareholder who wished to refer to the CEO's total compensation as shown in the summary compensation table would be able to do so. Companies could also be given the alternative of disclosing all annual total compensation as defined in Item 402 (preferably with the addition of the value of company-provided welfare benefits, as discussed above).

C. The Pay Ratio Should Be Considered a Furnished (Not Filed) Number.

Protective believes that the median annual total compensation of all employees and the pay ratio disclosures should be deemed "furnished" rather than "filed." If these calculations are treated as filed, they will presumably be subject to the requirements for chief executive officer and chief financial officer certification under Section 302 of The Sarbanes-Oxley Act of 2002. Given the complexities noted above, it will be extremely difficult to conclusively demonstrate that the company appropriately calculated the median compensation number from among hundreds, thousands, or even tens of thousands of possible employees. Making these disclosures furnished rather than filed is a reasonable solution that also satisfies the policy objectives of the legislation.

Protective appreciates the opportunity to submit these comments. Please feel free to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Alfred F. Delchamps, III'. The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Alfred F. Delchamps, III