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July 22, 2016

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In re: OCC Docket ID OCC-2011-0001, Incentive-Based Compensation Arrangements

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Board of Governors of the Federal Reserve System
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In re: Docket No. 1536 and RIN No. 7100 AE-50, Incentive-Based Compensation Arrangements

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Federal Deposit Insurance Corporation
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In re: RIN 3064-AD86, Incentive-Based Compensation Arrangements

Alfred M. Pollard
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In re: Comments/RIN 2590-AA42, Incentive-Based Compensation Arrangements

597-15
11/15

Gerard S. Poliquin
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National Credit Union Administration
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Alexandria, VA 22314-3428
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In re: AFSCME Comments on Notice of proposed rulemaking for Incentive-Based Compensation Arrangements

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street NE
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Email: rule-comments@sec.gov
In re: File Number S7-07-16, Incentive-Based Compensation Arrangements

Re: Incentive-based Compensation Arrangements

Dear Officers:

The American Federation of State, County and Municipal Employees ("AFSCME") is the largest union in the AFL-CIO representing 1.6 million state and local government, health care and child care workers. AFSCME members participate in over 150 public pension systems whose assets total over $1.7 trillion. AFSCME is pleased to comment on the proposed rule on "Incentive-Based Compensation Arrangements" (the "Proposed Rule") issued by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Securities and Exchange Commission and Federal Housing Finance Agency (collectively, the "Agencies").

We appreciate the opportunity to comment on the proposed rule regarding incentive compensation in the financial industry. The way in which financial institution employees were compensated contributed significantly to the 2008 financial crisis and resulting recession. In particular, financial firms' reliance on compensation plans that rewarded executives and traders lavishly for short-term performance, without regard to risks over the medium and long term, led those employees to take excessive risks. AFSCME previously submitted comments on the original proposed rule in 2011.[1] We continue to support the overall approach taken in the Proposed Rule, which provides for closer scrutiny of incentive compensation arrangements by regulators of financial institutions. We also believe the revised proposed rule is an improvement over the 2011 version. We are pleased the Proposed Rule now extends compensation deferral requirements beyond top executives to all employees who could put large financial firms at risk,

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[1] AFSCME Comment Letter (May 31, 2011), available at: https://www.sec.gov/comments/s7-12-11/s71211-633.pdf.

as well as the improved requirements for clawbacks. However, we do believe several aspects of the Proposed Rule should be strengthened for the Proposed Rule to meet its objective "in helping safeguard covered institutions against incentive-based compensation practices that threaten safety and soundness, are excessive, or could lead to material financial loss." These areas of concern are highlighted below.

Deferral period of bonuses could be lengthened

We recommend that deferral periods should be longer in order to have sufficient effect on incentives and risk-taking. The proposal requires a four-year deferral of 60 percent of bonus pay for the most senior executive officers at the largest banks, with lower levels of deferral for other significant risk-takers and senior executives at midsize banks. The proposal also allows pay to vest pro rata each year. As a result, after only a short period of time, executives will begin receiving a rolling majority of their deferred pay. For example, after three years, any senior executive officer would be receiving 85 percent of their pay. To restrain short-term, reckless behavior, we recommend longer deferral periods, ideally for a period longer than five years to cover the typical length of a credit cycle, with cliff vesting. We further recommend considering using UK rules as a model for a more rigorous system deferral, which require British banks to stretch out bonus payments over seven years for senior managers.

Clawbacks allow too much managerial discretion

We are pleased to see seven-year clawback provisions added to the Proposed Rule. Yet exercise of any clawback is left to management discretion. Specifically, "the proposed rule would not require that Level 1 or Level 2 covered institutions exercise the clawback provision, and the proposed rule does not prescribe the process that covered institutions should use to recover vested incentive-based compensation." We believe this a flawed policy that should be strengthened to require clawbacks through a bright-line set of standards. Otherwise the policy leaves too large a loophole for management to look the other way in cases of wrongdoing or financial restatements. Additionally, firms should be required to publicly disclose the individuals subject to the clawback and the amounts involved. Otherwise, shareholders and investors have no way to know what clawbacks have taken place, and non-disclosure may lessen any deterrent effect upon covered individuals.

Hedging of incentive compensation should be banned for individuals as well as the firm

We recommend that the rule extend its hedging prohibition to covered individuals. While the proposed rule intends to eliminate firm initiated hedging, a personal hedging transaction by covered persons would still be permitted (unless the institution prohibits such transactions from occurring). Any system of bonus deferral loses its effectiveness to reduce inappropriate risk-taking if employees are allowed to employ hedging. Hedging sharply limits the ability of incentive compensation to shape behavior. Because the current proposal fails to prohibit hedging of bonus pay by individual employees, only by covered institutions, it will not be effective at preventing compensation hedging. Allowing for any form of hedging subverts the measures prescribed in the Proposed Rule, which are intended to align compensation with risk.

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In closing, we appreciate the opportunity to share our views on this important rulemaking. If you have any questions, or need additional information, please do not hesitate to contact me at [redacted].

Sincerely,

John Kee

John Keenan
Corporate Governance Analyst, Capital Strategies