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September 10, 2015

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Subject: File Number S7-12-15

Dear Secretary Fields:

Compensation Advisory Partners LLC ("CAP") appreciates the opportunity to comment on proposed rules for clawbacks. As a leading executive compensation consulting firm, we support sound corporate governance.

The proposed rules would add Section 10D to the Securities Exchange Act of 1934. This would require companies to adopt and comply with written polices for recovering excess incentive-based compensation applicable to executive officers and to disclose these policies. Clawback would be triggered when companies are required to restate financial statements because of material non-compliance with financial reporting requirements, recovering amounts over and above what would have been paid based on the restated numbers for the three prior years.

In our view, the proposed rules are overly complex and will impose a compliance burden. The rules are also crafted to have broad application, with little or no Board discretion available. We also note that the proposed rules differ significantly from the existing clawback policy under Section 304 of the Sarbanes-Oxley Act of 2002 ("SOX").

We support disclosure of a company's clawback policy, the aggregate amount subject to clawback, and the aggregate amount actually recovered. However, the proposed rules greatly expand disclosure requirements, adding complexity and compliance challenges.

Our recommendations are intended to simplify the rules. We also seek to narrow the scope of the proposed clawback rules and create more overlap with existing policy under SOX. We recognize that legislation that amends Dodd-Frank may be required to achieve some of these goals.

Narrow the Scope of Proposed Clawback Rules

1) We support adoption of a more minimalist policy along the lines of SOX that focuses recovery on the CEO and CFO, the two positions who certify the accuracy and completeness of financial statements. These executives set the tone for the organization overall and are directly involved with financial statements. Other executives – working at the business unit level or in staff functions like Legal or Human Resources – have much less impact on financial statements.

2) Under SOX, compensation is subject to recovery when an accounting restatement resulting from misconduct occurs. We support using misconduct as a trigger for recovery over the "no-fault" approach – where any restatement resulting from an error triggers recovery – in the proposed rules.

3) We support Board discretion in determining if a clawback should take place. As proposed, companies would be required to recover compensation except when recovery would be impracticable because it would impose undue costs on the company or would violate home country law. Under the proposed rules, Boards would be required to undertake an extensive process to justify and document their decisions. This is unnecessary in our view. Disclosure by the Board of its decision and rationale should be sufficient.

4) We prefer the SOX approach of providing for recovery of bonus, incentives and equity awarded for a 12 month period prior to a restatement resulting from misconduct. This approach is relatively simple and straight forward. In contrast, the proposed rules require complex calculations to determine the amount of excess compensation subject to recovery. The proposed rules require boards to calculate the extent to which restatement of GAAP financials affect non-GAAP performance metrics for three years. Boards will also be required to estimate of the impact of a restatement on stock price and total shareholder return for three years. This will be extremely difficult to put into practice and will force Boards to hire outside experts to perform the calculations. We predict that this will benefit professional service firms willing to perform the analyses, but will return little value to shareholders.

5) We do not support naming individual executive officers in the disclosure, beyond those that currently appear in proxy statements. This could affect an individual's reputation and is particularly inappropriate when the proposed rule is expressly defined as a "no-fault" approach.

Prepare for Unintended Consequences

We predict that the proposed rules will have unintended consequences that run counter to shareholder interests.

1) The proposed rules will discourage companies from using performance-based compensation. Simply put, performance-based compensation will be subject to clawback and time-vested awards will not be subject to clawback. This will create a bias against performance-based compensation.

2) The proposed rules will narrow the circumstances under which companies apply clawback policies. To date, many companies have adopted broad clawback policies of their own volition. For example, many companies reserve the right to recover

compensation in any instance of fraud or misconduct, even if an accounting restatement is not triggered, typically at the discretion of the Board. At other companies, clawback applies when an executive violates an employment covenant, such as a non-compete. We believe that a narrow regulatory construct, combined with Board discretion, will encourage companies and their Boards to develop tailored policies that address their particular concerns. When the regulatory framework is overly broad and dictates the steps that a Board must take in a prescriptive manner, as with the proposed rules, many Boards will accept the rules as the default position. As a result, policies that go further will likely be scaled back.

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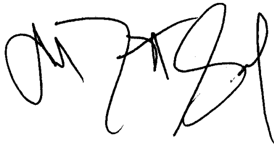
We hope these comments are helpful. If you have any questions, please call me at [redacted] [redacted] or Matt at [redacted].

Sincerely,



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