Via Email

September 15, 2015
Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
Re: File Number S7-12-15

Dear Mr. Secretary:

Subject: Release No. 33-9861; 34-75342; IC-31702

We write in response to the SEC's recent release of new rules and regulations to add Section 10D to the Securities Exchange Act of 1934. This proposal places a new listing requirement to address recovery of erroneously awarded compensation. This implements a long-delayed provision of the 2010 Dodd-Frank the Wall Street Reform and Consumer Protection Act.

The underlying premise is broadly supported by shareholders. Its goal and intent is the recovery of compensation that was erroneously paid as a result of material noncompliance with accounting rules. In other words, as others have noted, this is compensation that the executive would not have received if the company's accounting had been performed properly.

As Program Manager of As You Sow's Power of the Proxy; Executive Compensation initiative, I am writing to provide our comments on the proposed rules to implement Section 954 of the Dodd-Frank Act relating to recovering erroneously awarded pay.

Founded in 1992, As You Sow promotes environmental and social corporate responsibility through shareholder advocacy, coalition building, and innovative legal strategies. Our efforts create large-scale systemic change by establishing sustainable and equitable corporate practices.

General comments:

Our greatest concern with the proposed rules as drafted is that erroneous compensation is unlikely to be recovered due to the broad discretion available to Boards in recovering funds. The disclosure of clawback policies and attempts to utilize them will be extremely useful to shareholders. Likewise, much may be accomplished simply in the existence of the rule if it inspires strict adherence to economic principles.

A number of specific questions from the rulemaking are cited below with our responses:

14. Should any revision to previously issued financial statements that results in a reduction in incentive-based compensation received by an executive officer always trigger application of an issuer's recovery policy under the proposed listing standards? Why or why not?

Yes, we believe that it should. The foundational understanding of pay for performance requires it. Dodd-Frank Section 954 fundamentally means that executives should be required to repay compensation that they did not actually earn

17. Is it appropriate to treat the earlier of the two proposed dates as ''the date on which an issuer is required to prepare an accounting restatement'' for purposes of triggering the Section 10D recovery obligation? If not, why not? Would using these dates provide sufficient certainty and transparency for issuers, investors and exchanges to determine when recovery would be triggered for purposes of compliance with the proposed listing standards? Are there additional triggers we should consider including?

The three-year look-back period begins when the board concludes, or a court or regulator determines, that a material error existed in prior financial statements. Given the glacial pace of such proceedings, it seems likely to us that a three year look-back period may not coincide with a significant portion of the compensation that should be recovered. Restatements may well have taken place a considerable time after the erroneous payments were made. If the start of the look-back period is maintained in the regulation, then we believe the look-back period should be extended to at least five years.

As others have pointed out, companies most likely to be involved in an accounting restatement may be inclined to stretch out the investigation and run down the clock.

23. *Is the proposed definition of "executive officer" too broad? Should we instead limit the recovery policy to "named executive officers," as defined in Items 402(a)(3) and 402(m)(2) of Regulation S-K or otherwise define a more narrow set of officers subject to recovery?*

From the perspective of shareholders, the widest possible application of the rule is ideal. The issue is not whether actions by the executive caused the restatement, but simply that if the compensation was not earned under performance requirements then they should need to return it. Objections to application of the rule to officers not directly involved in financial reporting error are misplaced.

Importantly, we believe one point of an expansive rule is to serve as a deterrent. We hope that it will not only deter actions that would trigger restatements, but the tendency to ignore such actions by officers who may be aware of, but not personally involved in them. If all executive officers are likely to be subject to the consequences of recovery for erroneously awarded compensation, they will be motivated to keep a keen eye out for malfeasance and errors.

51. Is the proposed issuer discretion not to pursue recovery of incentive-based compensation consistent with the purpose of Section 10D? Is the scope of this discretion appropriate? Why or why not?

This is the greatest concern we have with the rule as it now stands: we believe issuer discretion fundamentally undermines the intent and application of the rule. The legislative history for Section 954 makes clear that the provision was intended to require that all issuers establish a policy "so that executives **must** return monies that should belong to the shareholders." Had the intent of the law been to provide discretion, then the legislation would have used terms such as "may" or "might" with regard to the return of monies.

Additionally, we note that, in fact, many companies have already adopted some form of discretionary clawback policies, but these policies are very rarely utilized. We therefore believe that allowing discretion will undermine the purpose and goal of the rule and maintain the status quo of inaction except in the most egregious cases.

52. Should the standard for exercising discretion not to recover be limited to the extent to which that recovery is impracticable? Should direct costs of recovery be a basis for exercising discretion not to recover? If so, what specific costs of recovery should be considered? For example, should only direct expenditures to third-parties be considered, as proposed? Should we further define what constitutes "direct costs"? Should an issuer be permitted to consider indirect costs, such as opportunity costs or reputational costs? Should the issuer disclose the cost estimates in its Exchange Act annual reports? If the cost estimates are not disclosed in the issuer's annual reports, should those costs be independently verified?

As noted above, we do not agree with the proposal to limit recovery on this basis, and have specific concerns regarding the use of costs as any measurement for discretion. The proposition that companies should have discretion not to conduct recovery, if the amount to be recovered is less than the cost of recovering the funds, is extremely problematic. We believe that it would be invoked in far too many instances and, further, that the behavior incentivized -- inflating costs to avoid recovery - would be contradictory to shareholders' best interests.

If the rule moves forward with this large loophole in it, however, we advocate for a reliance only on direct costs rather than indirect costs, and for the fullest possible disclosure.

As You Sow appreciates the opportunity to submit our comments on the Proposed Rule, and thank you for taking these opinions into consideration. We hope that this rule and others will be implemented as quickly as possible.

Sincerely,

Rosanna Landis Weaver

As You Sow