



2101 L Street NW
Suite 400
Washington, DC 20037
202-828-7100
Fax 202-293-1219
www.aiadc.org

September 14, 2015

U.S. Securities and Exchange Commission
Attn: Brent J. Fields, Secretary
100 F Street NE
Washington, DC 20549-1090
Via E-mail: rule-comments@sec.gov

Re: File Number S7-12-15, Proposed Rule: Listing Standards for Recovery of Erroneously Awarded Compensation

The American Insurance Association (AIA) offers the following comments in response to the above-referenced proposed rule ("Proposed Rule"), which implements Section 10D of the Securities Exchange Act of 1934. Section 10D, which was added by Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"), requires the Securities and Exchange Commission ("SEC") to adopt rules to direct national exchanges and national exchange associations to prohibit the listing of any security of an issuer that does not disclose the issuer's policy on incentive-based compensation and recovery of incentive-based compensation that is received in excess of what would have been received under an accounting restatement.

AIA represents approximately 325 major U.S. insurance companies that provide all lines of property-casualty insurance to consumers and businesses across the United States and around the world. AIA members write more than \$127 billion annually in U.S. property-casualty premiums and approximately \$225 billion annually in worldwide property-casualty premiums. AIA is submitting this comment letter because of important public policy considerations raised by incentive compensation recovery plans, commonly referred to as "claw-back" plans. Specifically, AIA's submission focuses on insurability issues of unearned incentive compensation that is required to be returned to the issuer.

Summary

As set forth in more detail below, AIA agrees with the SEC's public policy position prohibiting issuers from using issuer assets to reimburse executives, whether through insurance or other direct or indirect means, for clawed-back amounts. AIA respectfully submits that position should be expressly and fully reflected in the rule language itself.

Issuer Purchase of, or Reimbursement of, Premiums for Insurance for Clawed-back Compensation

Compensation paid based on erroneously stated earnings is not compensation to which the executive is entitled. Therefore, the recoupment of such compensation constitutes a return of unearned amounts, rather than a loss – much like the return of lost or stolen property to its rightful owner. With or without a culpability requirement, the important principle underlying a claw-back policy can be simply stated: those executives who receive “compensation” calculated on incorrect financial information are in possession of unearned benefits and, therefore, should be required to return those benefits. To reinforce this principle, because those benefits were received in error and not earned by the executive, the amounts neither vest in the executive nor trigger any authority to indemnify that individual with company assets.

The SEC recognizes the importance of this concept in its extensive discussion in the preamble to the Proposed Rule. The preamble both emphasizes that corporate indemnification or company-purchased insurance for clawed-back compensation amounts would undermine the behavioral incentives created by the prospect of a claw-back and underscores the SEC’s finding that use of corporate assets for indemnification of, or premiums for insurance for, clawed back compensation in such situations is an inappropriate cost for shareholders to bear. We agree with this statement as a matter of sound public policy. However, AIA respectfully submits that the strong principles expressed by the SEC in the preamble should be carried forward into the Proposed Rule language itself. The current language of the Proposed Rule focuses solely on an indemnification prohibition:

(v) The issuer is prohibited from indemnifying any executive officer or former executive officer against the loss of erroneously awarded compensation.¹

Prohibiting indemnification alone may not prevent a company from using its assets to purchase or reimburse for insurance covering the returned, erroneously awarded amounts. Thus, AIA recommends that the language in § 240.10D–1 (b)(1)(v) should be expanded to make clear that the issuer is specifically prohibited from: (1) indemnifying the executive for erroneously awarded compensation; (2) purchasing insurance intended to cover those amounts; and (3) reimbursing the executive for his or her own purchase of such insurance.

Claw-Back Insurance Purchased by the Executive

The Proposed Rule indicates that a market may develop for executives to buy their own insurance in order to hedge the risk that results from a compensation recovery policy. We read this language in the Proposed Rule as not prohibiting executive officers from buying their own insurance. Executives of issuers should be able to manage their individual financial affairs –


¹ SEC Proposed Rule, 80 Fed. Reg. at 41.192.

including purchasing appropriate insurance – much in the same way that high-level government employees, school teachers, and police officers can purchase their own insurance for situations where they are neither subject to immunity or otherwise protected from liability by the government.

* * *

We appreciate this opportunity to comment on the Proposed Rule. We respectfully recommend that the SEC carry forward the strong public policy principles regarding corporate indemnification or company-purchased insurance for clawed-back compensation amounts outlined in the preamble into the final language of the rule itself. Please do not hesitate to call on us with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Zielesienski', with a long horizontal line extending to the right.

J. Stephen (“Stef”) Zielesienski
Senior Vice President & General Counsel

Cc: Leigh Ann Pusey