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Former Public Company Issuer
For a Smaller Reporting Company

November 22, 2021

U.S. Securities and Exchange Commission
Office of the Secretary
Vanessa Countryman, Secretary
100 F Street, NE
Washington, DC 20549
rule-comments@sec.gov.

Re: File No. S7-12-15, Listing Standards for Recovery of Erroneously Awarded Compensation

Dear Secretary Countryman:

This is in response to the Commissions' reopening of the comment period for File No. S7-12-15, proposed Listing Standards for Recovery of Erroneously Awarded Compensation. I am commenting as an issuer, with over 40 years' experience in Corporate finance, accounting, internal audit, compliance, and court-ordered remediation at large publicly traded commercial and federal government contracting companies. During 2003 and 2005 I worked on the WorldCom/MCI court-ordered remediation and financial restatements, and developed procedures for review of Government contracts. From 1985 through 1993 I worked at GE Aerospace Group on remediation of serious compliance failures under U.S. Government Contracts, and developing best practices going forward. From 1994 through 1996 I worked at Motorola, achieving Defense Contract Audit Agency's reliance on Motorola's internal audit of final cost certifications.

My comment letter is largely based on my most recent employment experience from June 2011 through March 2017. My career ended after six-years tenure at a closely-held microcap smaller reporting company where I held financial planning, government compliance and public reporting responsibilities. The company's revenue was, and still is, nearly 100% generated from contracts with the U.S. federal government. They are therefore subject to the Federal Acquisition Regulations and well as Exchange law and other regulations. I was terminated after internally reporting my concerns of serious internal control failure; misleading or omitted disclosures; earnings manipulation; fraudulent accounting and reporting; and allocations, cost shifting, and labor charging

issues on U.S. government contracts. I elevated my concerns internally under the SOX-mandated Company Code of Ethics for the CEO, CFO, (and Controller). This included the Chairman of the Board who was also the audit committee financial expert, and the Corporate Secretary who is an outside attorney. I have been in the SEC Whistleblower program since April 2017. Further whistleblower information can be found in my comment letters to the SEC dated Sep. 17, 2018 and Aug. 29, 2019 re. SEC File No. S7-16-18, Amendments to the Commission's Whistleblower Program Rules, see https://www.sec.gov/comments/s7-16-18/s71618.htm. Several of my comments were included in the SEC final rule.

To show a Rough Order of Magnitude (ROM), below is a summary table for my estimate of unearned cash incentive compensation for certain Company executives for a single year. My estimate of $639 thousand results from my allegations of intentional fraud. Detailed analysis has been provided to the SEC Office of the Whistleblower. Stock option grants are not reflected in this table, nor is other compensation that I have called into question in filings with the SEC Office of the Whistleblower. I have asserted that the accounting and disclosure fraud has continued for several years.

Executive Incentive Compensation Summary (In dollars)

	Base Salary	Incentive Comp Paid	Morrell Calc IC Paid %	Exec Max Award % (a)	Morrell calc IC earned	Morrell calc. overpmt of Incentive Comp
Exec 1	425,000	385,110	90.61%	100%	63,240	321,870
Exec 2	318,750	158,853	49.84%	50%	23,715	135,138
Exec 3	232,940	103,724	44.53%	50%	19,905	83,819
Exec 4	152,981	98,911	64.66%	50%	711	98,200
Total Incentive Comp.		746,598			107,571	**639,027**

(a) Maximum award % derived from Board MRC Committee minutes

The Company has consistently denied any fraud or material misstatements, so no voluntary restatements have been made. Because potential clawbacks are large, I believe only a federal court order will trigger the Company to make financial restatements.

My estimate of $639 thousand compensation subject to clawback **refutes the following statement** made by the U.S. Chamber of Commerce, Center for Capital Markets Competitiveness, in their Comment Letter September 14, 2015. https://www.sec.gov/comments/s7-12-15/s71215-29.pdf :

> ***"And there is no benefit to a company's shareholders in expending huge sums of corporate funds to recover what will often be nominal or immaterial amounts."*** (I disagree)

Consequently, my experience as a whistleblower illustrates the need for strong individual accountability and broad inclusion in the clawback rules.

Clawback Rules Must Be Broad

Clawback rules must be broad enough, and enforcement strong enough, to deter and address the most egregious offenders. The need for strong enforcement is critical, especially when dealing with misconduct undertaken with the inclusion and consent of company officers, directors, public auditors and outside legal counsel. Compliance is a choice. Compliance is easy, established, and cost effective. Thus, honest material accounting misstatements should be rare.

Conversely, I assert from my experience that accounting fraud and management self-dealings are difficult, complex, expensive, require collusion, and are unlawful. Fraud eats away at existing capital and impairs a company's ability to raise new capital. This is due, in part, to fines, penalties, restatements, investor lawsuits, legal and consulting fees, erroneously awarded incentive comp and equity grants, and loss of reputation.

In asserting the need for broad rules, I disagree with statements made by the U.S. Chamber of Commerce, Center for Capital Markets Competitiveness, in their Comment Letter September 14, 2015, https://www.sec.gov/comments/s7-12-15/s71215-29.pdf, as follows:

> *"Although the CCMC is sensitive to the concern that a few bad actors may seek to evade the proposed mandate of Rule 10D-1, we do not believe it is good policy to draft stock exchange listing standards with the lowest common denominator in mind."* --- **I disagree**. Bad actors are the problem and need to be broadly covered by the clawback rules.
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> "*The SEC should provide the public with an economic analysis if the rule will promote capital formation and competition by creating conditions that will lead to an increase in the number of U.S. public companies*." --- **I disagree**. There is no need for this task to be tossed over to the SEC. Compliance is easy, cost effective, the rules are established and clear. Fraud is difficult, complex, costly, and reduces existing and new capital formation. Fraud hinders economic growth. If company leaders want to reduce risk and liability, they should transact in accordance with the law --- not lobby for weaker regulation.

In a similar vein, if lobbyists deem regulations such as the False Claims Act unfair, then they and their clients should cease and desist bidding and working on U.S. government contracts. Leave the market to competitor companies who are willing and able to comply with the Federal Acquisition Regulations, Exchange law, earn a fair and honest profit, and save taxpayers money.

Types of compensation subject to clawback:

Types of compensation subject to clawback should include incentive compensation, stock options, stock grants, reimbursed personal legal expenses, and other compensation unfairly paid due to lack of effective internal controls. Incentive-based compensation that is awarded, earned, or vested based on nonfinancial measures should also be subject to recovery under the clawback rule. Any equity vesting criteria should be included in the clawback rule. Vesting criteria for equity awards are assigned by choice, and thus subject to selection to avoid liability under clawback rules. Also, the Commission should prohibit the indemnification and insurability of any clawed-back incentive-based compensation.

Regarding clawbacks for directors and executives reported on annual SEC Form DEF 14A ANNUAL PROXY STATEMENT, I recommend the following categories be included under the clawback rules.

Non-Executive Director Compensation

Stock Awards, Option Awards, Non-Equity Incentive Plan Compensation, Change in Pension Value, All Other Compensation,

Executive Compensation Table

Bonus, Stock Awards, Stock Option Awards, Non-Equity Incentive Plan Compensation, All Other Compensation,

I recommend that stock awards be recovered or cancelled whichever case is applicable. Vesting criteria should not be a factor as it can be manipulated.

I recommend that stock option grants be recovered if exercised and cancelled if not yet exercised or vested. Vesting criteria should not be a factor as it can be manipulated.

I agree with statements expressed by the Financial Services Roundtable Comment Letter dated September 14, 2015 https://www.sec.gov/comments/s7-12-15/s71215-40.pdf, from pages 4 and 5 as follows (headings only, full text is found in the letter):

"IV. As a matter of public policy, the Commission should prohibit the indemnification and insurability of any clawed-back incentive-based compensation."

"a. The company's recovery of erroneously paid incentive-based compensation is not a "loss" to the executive, but a return of the company's property."

"b. The final rule also should prohibit the use of company assets to purchase insurance to reimburse executives for amounts subject to the clawback rule."

I disagree with statements expressed by the National Association of Corporate Directors (NACD) Comment Letter dated October 2, 2015 https://www.sec.gov/comments/s7-12-15/s71215-66.pdf, as follows:

"Finally, it might be a good idea for companies to explore the legalities of non-forfeitable entitlement as a shield against overreach. If companies can prove that their executives had such an entitlement, this might prevent them from clawing back the pay. The burden should be on companies to write good compensation agreements." --- **I disagree**. This defeats the purpose of regulation to protect investors. Compensation is earned under fair rules of trade, Exchange law, and other regulations. There should be no "entitlements" written into compensation agreements, but if there are they should be null and void in recovery of executive compensation due to material misstatements.

"In addition, the rule could have an inflationary effect on the market for public company executive officers if they receive higher pay packages just to cover the risk of future loss." --- **I disagree**. This is a bogus excuse that appears to have no purpose other than to shield executives from accountability and the consequences of acting contrary to Exchange law and other federal regulations. Compliance is easy, the rules are established and clear.

Restatements and Materiality

U.S. Generally Accepted Accounting Principles (GAAP) should be the guiding standard for restatements and materiality in the clawback rule. Materiality should be consistent with U.S. GAAP, and specifically refer to SEC Staff Accounting Bulletin: No. 99 – Materiality,17 CFR Part 211, [Release No. SAB 99], August 12, 1999,"SUMMARY: This staff accounting bulletin expresses the views of the staff that exclusive reliance on certain quantitative benchmarks to assess materiality in preparing financial statements

and performing audits of those financial statements is inappropriate; misstatements are not immaterial simply because they fall beneath a numerical threshold."

I recommend that the SEC use the following text from page 8 of their proposed clawback rule:

> "In this regard, we note that Commission staff has provided guidance that an issuer's materiality evaluation of an identified unadjusted error should consider the effects of the identified unadjusted error on the applicable financial statements and related footnotes, and evaluate quantitative and qualitative factors.[7]"
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> [7] The staff has provided guidance to assist registrants in carrying out these evaluations. *See* Staff Accounting Bulletin No. 99, *Materiality* (Aug. 12, 1999) and Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements* (Sept. 13, 2006). The statements in the staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Additionally, I agree with comments submitted to the SEC on September 14, 2015 by Mary A. Francis, Corporate Secretary and Chief Governance Officer, Chevron Corporation https://www.sec.gov/comments/s7-12-15/s71215-45.pdf copied below:

> "The Proposed Rule defines "accounting restatement" as "the result of a process of revising previously issued financial statements to reflect the correction of one or more errors that are material to those financial statements." The proposed definition generally harmonizes with the relevant accounting literature and Commission staff guidance, which indicate that when an error is material the financial statements must be restated (sometimes informally called a "Big R" restatement). A "Big R" restatement requires an issuer to revise previously filed financial statements and refile financial statements via an amendment to Form 10-K or 10-Q, as applicable. In contrast, when an error is immaterial, the error can usually be corrected in a future Form 10-K or 10-Q (sometimes informally called a "Little R" restatement)
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> We believe that only so-called "Big R" restatements should trigger a clawback under the Proposed Rule. We agree that the definition of "accounting

restatement" should reference "errors that are material to [the] financial statements." However, since the Commission requires U.S. domestic companies to file financial statements in accordance with Generally Accepted Accounting Principles ("GAAP"), we also believe that the proposed definition of "accounting restatement" should be revised to reference GAAP and the relevant accounting literature. This would avoid any disconnect between the Proposed Rule and the accounting standards that govern the financial statements." *(Comments submitted by Mary A. Francis, Chevron Corporation, September 14, 2015.)*

Trigger date for three-year lookback period

I agree with the SEC's proposed rules that would establish the date on which an issuer is required to prepare an accounting restatement as the earlier of (a) the date the issuer's board of directors, a committee of the board of directors, or the officer or officers of the issuer authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the issuer's previously issued financial statements contain a material error, or (b) the date a court, regulator or other legally authorized body directs the issuer to restate its previously issued financial statements to correct a material error.

Under (a), I recommend leaving in the words "or reasonably should have concluded" because doing so focuses on individual accountability, or lack thereof. Also, the term is related to "reasonable belief"; a common standard used in legal and regulatory guidance.

Individuals Subject to Clawback Rules

I recommend a broad umbrella for individuals under clawback rules for material misstatements, especially when fraud is involved. Claw-back of ill-gotten gains should address the most egregious cases of fraud and management self-dealings. This should include public company executives and finance/accounting leadership, board members, controlling shareholder(s) public company auditors, and corporate secretaries/legal counsel who influence public reporting. For fraud allegations at my most recent employer, it would include all individuals who were aware of and/or contributed to accounting fraud, did nothing to stop it, and amassed significant, unearned financial rewards over a period of years.

This is the end of my comments for today, November 22, 2021.

I will send a second comment letter on or before Friday, November 26, 2021 that addresses specific experiences/examples at my most recent employer, a micro-cap

smaller reporting company that is primarily controlled by an activist investor. I have examples that will show the huge difference between “looks-good-on-paper” visions, values, policies and procedures compared to the career-limiting harsh reality of adhering to same.

I will comment on my assertions of particularly egregious conduct, using specific examples, regarding erroneously awarded compensation through management self-dealings that allowed fraudulent public reporting and disclosures to occur, unchallenged and unabated, under work funded nearly 100% through U.S. Government contracts.

Another topic for comment is my belief that the SEC should update the SOX rule to require outside legal counsel's "noisy withdrawal" as part of "up the ladder" reporting. I believe this requirement was removed from the SEC final rule under pressure from public company lobbyists. My experience will show, through specific examples, that this important gatekeeper failed to exercise duty of care and compliance with the rule. Moreover, I will show that members of the legal firm joined in the retaliation after I reported “up the ladder” under the Company Code of Ethics for CEO and CFO.

Additional topic headings with specific examples will include:

- Compliance is easy, cost effective, and the rules are established and clear.
- Accounting fraud and management self-dealings are difficult, complex, expensive, eat away at existing capital, and impair a company’s ability to raise new capital.
- Smaller reporting companies should be included in the clawback rules.
- There are many benefits from allocation of resources to production of high-quality financial reporting.
- XBRL Tagging, either detailed or block, is easy to achieve with electronic SEC reporting preparation and filing systems available to public companies both large and small.

I look forward to providing the Commission with a second comment letter on or before Friday, November 26, 2021.

Respectfully submitted,

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Smaller Reporting Company
Transmitted on November 22, 2021 via email to: rule-comments@sec.gov.