Council of Institutional Investors
The Voice of Corporate Governance

Via Email

November 12, 2010

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-31-10—Shareholder Approval of Executive Compensation and Golden Parachute Compensation (Proposal)[1]

Dear Ms. Murphy:

I am writing on behalf of the Council of Institutional Investors (Council), a nonprofit association of public, union and corporate pension funds with combined assets that exceed three trillion dollars. Member funds are major shareowners with a duty to protect the retirement assets of millions of American workers.[2]

The Council appreciates the opportunity to provide its views on the above referenced Proposal implementing the provisions of Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act) relating to shareholder approval of executive compensation and "golden parachute" compensation arrangements.[3] As you are probably aware, during the development of the Act the Council actively advocated for several key corporate governance improvements to be included in the Act.[4]

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[1] Shareholder Approval of Executive Compensation and Golden Parachute Compensation, Securities Act Release No. 9,153, Exchange Act Release No. 63,124, 75 Fed. Reg. 66,590 (proposed Oct. 28, 2010) (to be codified at 17 C.F.R. pts. 229, 240, & 249), *available at* http://www.sec.gov/rules/proposed/2010/33-9153fr.pdf.
[2] For more information about the Council of Institutional Investors (Council) and its members, please visit the Council's website at http://www.cii.org/about.
[3] 75 Fed. Reg. at 66,590.
[4] *E.g.,* Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors et. al. to The Honorable Nancy Pelosi, Speaker of the House 2 (Dec. 2, 2008), http://www.cii.org/UserFiles/file/resource%20center/correspondence/2008/CII%20Corporate%20Governance%20Reform%20Advocacy%20Letter.pdf (Letter signed by more than forty Council members describing eight areas of "governance improvements that the Council believes would have the greatest impact, and, therefore, should be contained in any financial markets regulatory reform . . .").

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As explained by our Executive Director in testimony before the United States (U.S.) Senate:

> The Council believes that a number of key corporate governance reforms are essential to providing meaningful investor oversight of management and boards and restoring investor confidence in our markets. Such measures would address many of the problems that led to the current crisis, and more importantly, empower shareowners to anticipate and address unforeseen future risks. These measures, rather than facilitating investors seeking short-term gains, are consistent with enhancing long-term value.[5]

The key corporate governance improvements the Council advocated during the development of the Act included language, generally consistent with Section 951, providing for advisory shareowner votes on the compensation of senior executives and limitations on severance payments to executives.[6] More specifically, our support for a legislative provision providing for an advisory vote on compensation, or so-called "say on pay," was based on our belief that:

> [A]n annual, advisory shareowner vote on executive compensation would efficiently and effectively provide boards with useful information about whether investors view the company's compensation practices to be in shareowners' best interests. Nonbinding shareowner votes on pay would serve as a direct referendum on the decisions of the compensation committee and would offer a more targeted way to signal shareowner discontent than withholding votes from committee members. They might also induce compensation committees to be more careful about doling out rich rewards, to avoid the embarrassment of shareowner rejection at the ballot box. In addition, compensation committees looking to actively rein in executive compensation could use the results of advisory shareowner votes to stand up to excessively demanding officers or compensation consultants.[7]

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[5] *Protecting Shareholders and Enhancing Public Confidence by Improving Corporate Governance*: *Hearing Before the Subcomm. on Securities, Insurance, and Investment of the Comm. on Banking, Housing, and Urban Affairs*, 111th Cong. 5 (full text July 29, 2009) (testimony of Ann Yerger, Executive Director, Council of Institutional Investors), http://www.cii.org/UserFiles/file/testimony/07-29-09%20Ann%20Testimony%20FINAL%20(with%20all%20attachments).pdf.

[6] Letter from Jeff Mahoney at 2.

[7] Testimony of Ann Yerger at 12.

Generally consistent with the Council's views, the U.S. Department of the Treasury (Treasury),[8] the Investors Working Group (IWG),[9] and many other parties[10] supported the inclusion of a say on pay provision in the Act. For example, in its July 2009 report entitled "Financial Regulatory Reform: A New Foundation," the Treasury concluded:

> Public companies should be required to implement "say on pay" rules, which require shareholder votes on executive compensation packages. While such votes are nonbinding, they provide a strong message to management and boards and serve to support a culture of performance, transparency, and accountability in executive compensation. Shareholders are often concerned about large corporate bonus plans in situations in which they, as the company's owners, have experienced losses. Currently, these decisions are often not directly reviewed by shareholders – leaving shareholders with limited rights to voice their concerns about compensation through an advisory vote.
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> To facilitate greater communication between shareholders and management over executive compensation, public companies should include on their proxies a nonbinding shareholder vote on executive compensation. Legislation that would authorize SEC "say on pay" rules for all public companies could help restore investor trust by promoting increased shareholder participation and increasing accountability of board members and corporate management. It would provide shareholders of all public U.S. companies with the same rights that are accorded to shareholders in many other countries.[11]

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[8] Department of the Treasury, Financial Regulatory Reform: A New Foundation 73 (July 16, 2009), http://www.financialstability.gov/docs/regs/FinalReport_web.pdf.

[9] Investors' Working Group, U.S. Financial Regulatory Reform: The Investors' Perspective 23 (July 2009), http://www.cii.org/UserFiles/file/resource%20center/investment%20issues/Investors'%20Working%20Group%20Report%20(July%202009).pdf (Recommending that "[c]ompanies should give shareowners an annual advisory vote on executive compensation"). Of note, the Council board of directors and membership reviewed and subsequently voted to endorse the recommendations of the Investors' Working Group (IWG). For more information about the IWG, see the Council's website at http://www.cii.org/iwgInfo.

[10] *See, e.g.,* Comm. on Banking, Housing, and Urban Affairs, Rep. to Accompany S. 3217, at 109 (Mar. 22, 2010), http://banking.senate.gov/public/_files/RAFSAPostedCommitteeReport.pdf (Stating that other supporters of the "say on pay" legislative provision includes AFSCME and the Consumer Federation of America).

[11] Department of the Treasury at 73.

As indicated in the Treasury's report, shareowners in Australia, France, Germany, India, Italy, Poland, Switzerland, Taiwan, and the United Kingdom ("UK") already have some form of shareowner vote on executive compensation.[12] Moreover, extensive research on the UK's adoption of say on pay has found that the advisory shareowner votes "improved the link between executive pay and corporate performance . . . [and] led firms (both before and after relatively negative shareholder votes) to adopt better pay practices . . . ."[13]

Similarly, in its July 2009 report entitled "U.S. Financial Regulatory Reform: The Investors' Perspective," the IWG offered the following recommendation:

> **Companies should give shareowners an annual advisory vote on executive compensation.** Nonbinding shareowner votes on pay would make board compensation committees more careful about doling out rich rewards to underperforming CEOs, and thus would avoid the embarrassment of shareowner rejection at the ballot box. So-called "say on pay" votes would open up dialogue between boards and shareowners about pay concerns.[14]

The Council's support of Section 951 of the Act and our specific views on issues raised by the Proposal (see Attachment to this letter) are derived from our membership-approved policies.[15] Those policies most relevant to issues raised by the Proposal include the following:

> **5.2 Advisory Shareowner Votes on Executive Pay**: All companies should provide annually for advisory shareowner votes on the compensation of senior executives.
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> . . . .

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[12] CFA Institute Centre for Financial Market Integrity, Shareowner Rights across the Markets: A Manual for Investors (2009), http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2009.n2.1.

[13] *Protecting Shareholders and Enhancing Public Confidence by Improving Corporate Governance: Hearing Before the Subcomm. on Securities, Insurance, and Investment of the Comm. on Banking, Housing, and Urban Affairs*, 111th Cong. 5 (July 29, 2009) (testimony of John C. Coates IV, John F. Cogan, Jr., Professor of Law and Economics, Harvard Law School), http://banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=5bf3cb78-734e-42e7-9f3a-423498f459fc.

[14] Investors' Working Group at 23.

[15] Council of Institutional Investors, Corporate Governance Policies §§ 5.12; 5.13 (updated Sept. 29, 2010), Govhttp://www.cii.org/UserFiles/file/CII%20Corp%20Gov%20Policies%20Full%20and%20Current%2009-29-10%20FINAL.pdf.

5.13 Employment Contracts, Severance and Change-of-control Payments: Various arrangements may be negotiated to outline terms and conditions for employment and to provide special payments following certain events, such as a termination of employment with/without cause and/or a change in control. The Council believes that these arrangements should be used on a limited basis.

5.13a Employment Contracts: Companies should only provide employment contracts to executives in limited circumstances, such as to provide modest, short-term employment security to a newly hired or recently promoted executive. Such contracts should have a specified termination date (not to exceed three years); contracts should not be "rolling" on an open-ended basis.

5.13b Severance Payments: Executives should not be entitled to severance payments in the event of termination for poor performance, resignation under pressure or failure to renew an employment contract. Company payments awarded upon death or disability should be limited to compensation already earned or vested.

5.13c Change-in-control Payments: Any provisions providing for compensation following a change-in-control event should be "double-triggered." That is, such provisions should stipulate that compensation is payable only: (1) after a control change actually takes place and (2) if a covered executive's job is terminated because of the control change.

5.13d Transparency: The compensation committee should fully and clearly describe the terms and conditions of employment contracts and any other agreements/arrangements covering the executive oversight group and reasons why the compensation committee believes the agreements are in the best interests of shareowners.

5.13e Timely Disclosure: New executive employment contracts or amendments to existing contracts should be immediately disclosed in 8-K filings and promptly disclosed in subsequent 10-Qs.

> **5.13f Shareowner Ratification**: Shareowners should ratify all employment contracts, side letters or other agreements providing for severance, change-in-control or other special payments to executives exceeding 2.99 times average annual salary plus annual bonus for the previous three years.[16]

We appreciate the opportunity to comment on the Proposal. If you have any questions or need any additional information, please feel free to contact me at 202.261.7081 or jeff@cii.org.

Sincerely,

Jeff Mahoney
General Counsel

Attachment

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[16] *Id.*

Attachment

Council of Institutional Investors (Council)
Responses to Securities and Exchange Commission (Commission)
Proposed Rule
Shareholder Approval of Executive Compensation and Golden Parachute Compensation[1]
November 12, 2010

(2) Would it be appropriate to exempt smaller reporting companies from the shareholder vote to approve executive compensation? Please explain the reasons why an exemption would, or would not, be appropriate. Would the proposed amendments be disproportionately burdensome for smaller reporting entities?[2]

All reporting companies, whatever their size, should be required to adopt the proposed amendments.[3] On this point, Council membership approved policies[4] are consistent with the views of the United States Department of the Treasury ("Treasury").[5]

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[1] Shareholder Approval of Executive Compensation and Golden Parachute Compensation, Securities Act Release No. 9,153, Exchange Act Release No. 63,124, 75 Fed. Reg. 66,590 (proposed Oct. 28, 2010) (to be codified at 17 C.F.R. pts. 229, 240, & 249), *available at* http://www.sec.gov/rules/proposed/2010/33-9153fr.pdf.

[2] *Id.* at 66,593.

[3] Council of Institutional Investors, Corporate Governance Policies § 5.2 (updated Sept. 29, 2010), http://www.cii.org/UserFiles/file/CII%20Corp%20Gov%20Policies%20Full%20and%20Current%2009-29-10%20FINAL.pdf ("**Advisory Shareowner Votes on Executive Pay:** All companies should provide annually for advisory shareowner votes on the compensation of senior executives"); *cf.*, e.g., Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to The Honorable John F. Kerry, Committee on Small Business and Enterpreneurship, United States Senate 1 (Apr. 18, 2007), http://www.cii.org/UserFiles/file/resource%20center/correspondence/2007/418JohnKerryLetter.pdf (Opposing an exemption for many public companies from the internal control requirements of the Sarbanes-Oxley Act of 2002 noting that "the Council believes any company tapping the public markets to raise capital, regardless of size, should have the appropriate internal controls").

[4] Council of Institutional Investors § 5.2.

[5] Department of the Treasury, Financial Regulatory Reform: A New Foundation 73 (July 16, 2009), http://www.financialstability.gov/docs/regs/FinalReport_web.pdf.

In its report entitled, *Financial Regulatory Reform: A New Foundation*, the Treasury explained:

> Legislation that would authorize SEC "say on pay" rules for *all* public companies could help restore investor trust by promoting increased shareholder participation and increasing accountability of board members and corporate management. It would provide shareholders of *all* public U.S. companies with the same rights that are accorded to shareholders in many other countries.[6]

We, therefore, agree with the Commission's statement that the proposed amendments:

> [W]ould not only implement the requirements of Section 14A of the Exchange Act, but would also help ensure that shareholders receive disclosure regarding the required votes, the nature of an issuer's responsibilities to hold the votes under Section 14A, and the issuer's consideration of the results of the votes and the effect of such consideration on the issuer's compensation policies and decisions. The proposed amendments would also enhance the transparency of a company's compensation policies. As discussed in greater detail above, *we believe these benefits would be achieved without imposing any significant additional burdens on issuers*. As a result, the proposed amendments should improve the ability of investors to make informed voting and investment decisions, and, therefore lead to increased efficiency and competitiveness of the U.S. capital markets.[7]

We also note that the Commission took specific steps to limit any potential burdens that the proposed amendments might impose on smaller reporting companies by (1) providing that "the proposed amendments to CD&A would not apply to smaller reporting companies," (2) not expanding the "the existing scaled disclosure requirements under Item 402 of Regulation S-K," and (3) not establishing "additional different compliance requirements."[8]

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[6] *Id.* (emphasis added).
[7] 75 Fed. Reg. at 66,613 (emphasis added).
[8] *Id.* at 66,614.

(6) Should we amend Item 402(b) to require disclosure of the consideration of the results of the shareholder advisory vote on executive compensation in CD&A as proposed? If not, please explain why not.

(7) Should the requirement to discuss the issuer's consideration of the results of the shareholder vote be included in Item 402(b)(1) as a mandatory principles-based topic, as proposed, or should it be included in Item 402(b)(2) as a non-exclusive example of information that should be addressed, depending upon materiality under the individual facts and circumstances? In this regard, commentators should explain the reasons why they recommend either approach.

(8) Should the proposed requirement for CD&A discussion of the issuer's consideration of previous shareholder advisory votes be revised to relate only to consideration of the most recent shareholder advisory votes?[9]

Item 402(b) should be amended to require discussion of the issuer's consideration of the results of the shareowner advisory vote on executive compensation in CD&A as proposed. We believe that the disclosure should be mandatory and include consideration of the previous and at least the two most recent shareowner advisory votes.

We agree with the Commission that the proposed requirements "provide . . . information [that] would facilitate better investor understanding of issuers' compensation decisions."[10] Disclosure of the consideration of the most recent and at least the two previous shareowner advisory votes is valuable in that it provides companies and shareowners the opportunity to gauge the trend of support for pay decisions.

We note that the proposed disclosures are generally consistent with the Council's membership approved policies.[11] Those policies provide for "full" disclosure of all "qualitative" measures used to determine executive compensation, including the weightings and rationale for each measure.[12]

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[9] *Id.* at 66,594.
[10] *Id.* at 66,593.
[11] Council of Institutional Investors § 5.5h (**Disclosure Practices:** "The compensation committee should commit to provide full descriptions of the qualitative and quantitative performance measures and benchmarks used to determine compensation, including the weightings and rationale for each measure").
[12] *Id.*

(11) Should a new issuer be permitted to disclose the frequency of its say-on-pay votes in the registration statement for its initial public offering and be exempted from conducting say-on-pay and frequency votes until the year disclosed? For example, if an issuer discloses in its initial public offering prospectus that it will conduct a say-on-pay vote every two years, should we exempt it from the requirements of Section 14A(a)(1) and 14A(a)(2) for its first annual meeting as a reporting company?[13]

A new issuer should not be exempt from conducting a say-on-pay and frequency vote at its first annual meeting as a reporting company. All public companies should, consistent with Council policies, provide annually for advisory shareowner votes on the compensation of executives.[14]

An annual vote permits shareowners to provide regular, timely feedback on the board's annual executive policy decisions. Moreover, as indicated, annual votes provide companies and their shareowners valuable information about the trend in support for pay decisions. Thus, in our view, the Commission should not provide issuers an exemption that allows a reporting company to avoid a say on pay vote for up to three years without first seeking the views and preferences of its shareowners.

(17) Is it necessary or appropriate to prescribe a standard, such as a plurality, as proposed, for resolving whether issuers have substantially implemented the shareholders' vote on the frequency of the vote on executive compensation for purposes of Rule 14a-8? Is a standard other than plurality appropriate? Should the standard vary if the company's capital structure includes multiple classes of voting stock (e.g., where classes elect different subsets of the board of directors)?

(18) Is the proposed amendment to Rule 14a-8(i)(10) appropriate? Should we, as proposed, allow the exclusion of shareholder proposals that propose say-on-pay votes with substantially the same scope as the votes required by Rule 14a-21(a)? If not, please explain why not.

(19) Should we, as proposed, permit the exclusion of shareholder proposals that seek to provide say-on-pay votes more or less regularly than the frequency endorsed by a plurality of votes cast in the most recent vote required under Rule 14a-21(b), as described above? Are there other circumstances under which shareholder proposals relating to the frequency of say-on-pay votes should be considered substantially implemented and subject to exclusion under Rule 14a-8(i)(10)?

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[13] 75 Fed. Reg. at 66,594.

[14] Council of Institutional Investors § 5.2.

(20) Should we amend Rule 14a-8(i)(10) to address other specific factual scenarios that are likely to occur as a result of the implementation of Section 951 and our related rules? Are there other specific facts and circumstances under which Rule 14a-8(i)(10) should permit or prohibit the exclusion of shareholder proposals that seek say-on-pay votes?

(21) Should the proposed note to Rule 14a-8(i)(10) be available if the issuer has materially changed its compensation program in the time period since the most recent say-on-pay vote required by Section 14A(a)(1) and Rule 14a-21(a) or the most recent frequency vote required by Section 14A(a)(2) and Rule 14a-21(b)?[15]

It is not necessary or appropriate for the Commission to permit the exclusion of shareowner proposals that seek to provide say-on-pay votes more frequent than that endorsed by the votes cast in the most recent vote. We note that, as proposed, a shareowner proposal to provide say-on-pay votes more frequently than once every three years would be excluded *even if the majority of shareowners supported a frequency vote of one or two years in the most recent vote*. Our view on this issue is consistent with Council policies that, as indicated, provide that all companies should provide annually for advisory votes.[16]

We, however, would not object if a shareowner proposal relating to the frequency of say-on-pay votes was deemed substantially implemented and subject to exclusion when the frequency adopted by the issuer was endorsed in the most recent vote by a majority of shareowners.[17] That proposed approach would be consistent with Council policies that indicate issuer boards should take actions recommended in shareowner proposals that receive a majority of votes cast.[18]

Our proposed approach would also be superior to the alternative posed by the Commission in Question (21)—whether there has been a material change in the issuer's compensation program. If that approach were adopted, we note that there could be disagreements between issuers and shareowners over what is "material," and the Commission staff would likely need to devote resources to refereeing no-action disputes on that point. Thus, we believe that the majority-prevails proposed approach we outlined in the preceding paragraph is superior both on policy grounds and as an administrative matter.

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[15] 75 Fed. Reg. 66,596.
[16] Council of Institutional Investors § 5.2.
[17] *Cf. id*. § 2.6a ("**Majority Shareowner Votes**: Boards should take actions recommended in shareowner proposals that receive a majority of votes cast for and against").
[18] *Id*. § 5.2.

(23) Would the proposed Form 10-Q or Form 10-K disclosure notify shareholders on a timely basis of the issuer's determination regarding the frequency of the say-on-pay vote? Should this disclosure instead be included in the Form 8-K reporting the voting results otherwise required to be filed within four business days after the end of the shareholder meeting, or in a separate Form 8-K required to be filed within four business days of when an issuer determines how frequently it will conduct shareholder votes on executive compensation in light of the results of the shareholder vote on frequency?[19]

Disclosure to notify shareowners of the issuer's determination regarding the frequency of the say-on-pay vote should be provided on a timely basis.[20] We agree with the Commission that the proposed Form 10-Q or Form 10-K disclosure would accomplish that objective.[21] The proposed disclosure strikes an appropriate balance between providing the issuer sufficient time after the vote to make a determination on frequency while at the same time providing a date certain deadline for when that determination must be made and disclosed to investors.

(36) In the table, will the proposed footnote identification of amounts of single-trigger and double-trigger compensation elements effectively highlight amounts payable on each basis? If not, should these elements be highlighted by disclosing them in separate columns, or by some other means? Is this information useful to investors?[22]

The proposed footnote identification of amounts of single-trigger and double-trigger compensation elements provides information useful to investors. As indicated by Council policies, information on the value of such elements can be important to investors, particularly as single-trigger awards may be granted even when there is no assurance that the transaction will be completed.[23]

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[19] 75 Fed. Reg. at 66,596.

[20] *Cf.* Council of Institutional Investors § 4.4 ("**Timely Disclosure of Voting Results**: A company should broadly and publicly disclose in a timely manner the final results of votes cast at annual and special meetings of shareowners. Whenever possible, preliminary results should be announced at the annual or special meeting of shareowners").

[21] *But see id.* § 5.13e ("**Timely Disclosure**: New executive employment contracts or amendments to existing contracts should be immediately disclosed in 8-K filings and promptly disclosed in subsequent 10-Qs").

[22] 75 Fed. Reg. at 66,601.

[23] Council of Institutional Investors § 5.13c ("**Change-in-control Payments**: Any provisions providing for compensation following a change-in-control event be "double-triggered." That is, such provisions should stipulate that compensation is payable only: (1) after a control change actually takes place and (2) if a covered executive's job is terminated because of the control change").

More broadly, consistent with Council policies,[24] we agree with the Commission that the proposed rules for golden parachute compensation:

> [W]ould provide more detailed and comprehensive information to shareholders to consider when making their voting and investment decisions.
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> . . . .
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> [It would also] benefit shareholders and other market participants by allowing them to timely and more accurately assess the transaction and evaluate with greater acuity the golden parachute compensation that named executive officers could expect to receive and the related potential interests such officers might have in pursuing and/or supporting a change in control transaction.[25]

(42) Are there other items of narrative disclosure that would be useful for investors? For example, should we require issuers to describe the basis for selecting each form of payment and to describe why it chose the various forms of compensation?[26]

An additional narrative disclosure that, consistent with Council policies, would be useful to investors would be a description of why the issuer believes that the golden parachute compensation is "in the best interests of shareowners."[27]

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[24] *Id.* § 5.13d ("**Transparency**: The compensation committee should fully and clearly describe the terms and conditions of employment contracts and any other agreements/arrangements covering the executive oversight group and reasons why the compensation committee believes the agreements are in the best interests of shareowners"); § 5.13f ("**Shareowner Ratification**: Shareowners should ratify all employment contracts, side letters or other agreements providing for severance, change-in-control or other special payments to executives exceeding 2.99 times average annual salary plus annual bonus for the previous three years").

[25] 75 Fed. Reg. at 66,611.

[26] *Id.* at 66,602.

[27] Council of Institutional Investors § 5.13d.

(48) If golden parachute arrangements have been modified or amended subsequent to being subject to the annual shareholder vote under Rule 14a–21(a), should we require the merger proxy separate shareholder vote to cover the entire set of golden parachute arrangements or should we, as proposed, require a separate vote only as to the changes to such arrangements? For example, if a new arrangement is added, would the Section 14A(b)(2) shareholder advisory vote be meaningful if shareholders do not have the opportunity to express their approval or disapproval of the full complement of compensation that would be payable?[28]

The Commission should require the merger proxy separate shareowner vote to cover the entire set of golden parachute arrangements. In order for the shareowner vote to be meaningful, we believe that, consistent with Council policies, shareowners should have the opportunity to express their approval or disapproval of the full complement of compensation that would be payable.[29]

(50) Where an issuer voluntarily includes Item 402(t) disclosure in an annual meeting proxy statement to satisfy the exception from the Section 14A(b)(2) shareholder vote, should all Item 402(t) disclosure be required to be presented in one section of the document, without cross references, to facilitate shareholder understanding? If not, why not? Does proposed Instruction 6 to Item 402(t)(2) assure certainty and predictability regarding the availability of this exception? If not, what additional instructions are needed?[30]

Shareowner understanding will be facilitated if all Item 402(t) disclosure is required to be presented in one section of the merger proxy statement. Consistent with Council policies, disclosure of all golden parachute arrangements, including both arrangements and amounts previously disclosed and voted on, is necessary and appropriate to provide investors with the full information needed to make an informed vote.[31]

(52) Should we fully, partially, or conditionally exempt smaller reporting companies or some other category of smaller companies from some or all of the requirements of Section 14A? Are the provisions of Section 14A unduly burdensome on small companies and if so, how are they unduly burdensome?

[28] 75 Fed. Reg. at 66,604.
[29] Council of Institutional Investors § 5.13d.
[30] 75 Fed. Reg. at 66,604.
[31] Council of Institutional Investors § 5.13d.

(53) Should we fully, partially, or conditionally exempt smaller reporting companies or some other category of smaller companies from any or all of our proposed rules? If so, which ones? Are any of our proposed rules unduly burdensome to smaller reporting companies and if so, how are they unduly burdensome?[32]

As indicated in response to Question (2), and consistent with Council policies, smaller reporting companies should generally not be exempt from the requirements of Section 14A or any of the proposed rules.[33]

On this issue we agree with the Commission that:

> [I]investors have the same interest in voting on the compensation of smaller reporting companies and in clear and simple disclosure of golden parachute compensation in connection with mergers and similar transactions as they have for other issuers.[34]

We note that the proposed rules contain a number of accommodations for smaller reporting companies that support the Commission's conclusion that the proposed rules would not "impose a significant additional cost or disproportionate burden upon smaller reporting companies."[35] Those accommodations include: (1) not altering "the existing scaled disclosures requirements set forth in Item 402 of Regulation S-K . . ., which recognize that the compensation arrangements of smaller reporting companies typically are less complex than those of other public companies;" (2) not altering the provision that "smaller reporting companies are not required to provide a CD&A;" and (3) not requiring smaller reporting companies to provide "quantification under Item 402(q) in annual meeting proxy statements . . . ."[36]

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[32] 75 Fed. Reg. at 66,605.
[33] *Cf.* Council of Institutional Investors § 1.3 ("**Disclosed Governance Policies** . . . : The Council believes every company should have written, disclosed governance procedures and policies . . .").
[34] 75 Fed. Reg. at 66,605.
[35] *Id.*
[36] *Id.*