November 15, 2010

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

Re: ***Shareholder Approval of Executive Compensation and Golden Parachute Compensation (File No. S7-31-10)***

Dear Ms. Murphy:

The American Federation of State, County and Municipal Employees ("AFSCME"), is the largest union in the AFL-CIO representing 1.6 million state and local government, health care and child care workers. AFSCME members participate in over 150 public pension systems whose assets total over $1 trillion. In addition, the AFSCME Employees Pension Plan (the "Plan") is a long-term shareholder that manages $850 million in assets for its participants, who are staff members of AFSCME and its affiliates.

The Plan was the first investor to use the shareholder proposal process to push for a management-proposed shareholder advisory vote on senior executive compensation, or "say on pay," ("SOP") at U.S. companies. We strongly supported the inclusion of a provision requiring an advisory vote in the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). Accordingly, we have a keen interest in how that provision is implemented.

In general, we support the choices the Commission has made in the proposed rules contained in the proposing release (the "Proposing Release"), Shareholder Approval of Executive Compensation and Golden Parachute Compensation (the rules proposed in the Proposing Release are referred to as the "Proposed Rules"). We object, however, to the provision in the Proposed Rules that would allow exclusion on substantial implementation grounds of shareholder

proposals addressing the frequency of SOP votes. The substantial implementation exclusion should apply only when a company has taken the action requested in a shareholder proposal, and should not be expanded to apply whenever shareholders have previously been given an opportunity to provide input on a matter.

SOP Proposal--General

In the Proposed Rules, the Commission did not provide a template or standard language for the SOP proposal. We agree that such language is not necessary, and we believe that providing it could inhibit useful variation among companies. For example, some companies have chosen to subdivide their SOP proposals, to allow shareholders to vote more specifically on particular compensation elements. We expect that the Staff of the Division of Corporation Finance will monitor carefully the language used by companies in their SOP proposals to ensure that the scope of the SOP vote is described accurately.

The Proposed Rules would apply to smaller reporting companies, and we urge the Commission not to exempt such companies from the SOP vote requirement. Although absolute pay amounts may be lower at small companies, we are not aware of any evidence that problematic pay practices are less common at smaller companies. Indeed, smaller companies tend to lag behind larger ones in adopting corporate governance best practices. Because such companies are already making disclosure regarding executive compensation, the only incremental burden would be the addition of a management proposal in the proxy statement and on the proxy card.

Finally, as to the question of how to implement the SOP process for new issuers, we believe that any new issuer should simply be required to give its shareholders the opportunity to cast an initial SOP vote, as well as an initial vote on frequency, at the first annual general meeting held after the initial public offering.

Frequency Vote

Under the Proposed Rules, companies would be required to seek shareholder input on the frequency of the SOP vote no less often than once every six years. Companies would have to give shareholders the opportunity to vote on the proxy card for a frequency of every one, two or three years as well as the opportunity to abstain. We support this voting arrangement as giving shareholders a meaningful ability to indicate the most desirable frequency for the SOP vote. As with the SOP vote itself, we do not believe it is necessary for the Commission to provide standard language for the frequency vote.

The Proposed Rules would allow companies that abide by the results of the mandated non-binding frequency vote to exclude shareholder proposals urging a different frequency in reliance on Rule 14a-8(i)(10). That exclusion permits omission of shareholder proposals that have been "substantially implemented" by the company. We

oppose this provision of the Proposed Rules both because it is unwise as a matter of public policy and because it constitutes an inappropriate use of the substantial implementation exclusion. (We agree that shareholder proposals asking companies to implement an advisory vote, rather than requesting a different frequency, should be excludable on substantial implementation grounds.)

Significant changes can occur in a company's compensation practices during a six-year period, and such changes could affect shareholders' views regarding the desirable frequency of SOP votes. For example, at a company where compensation has not historically been problematic, holders of a plurality of shares might vote in favor of holding SOP votes every three years. The hiring of a new CEO from outside the company shortly after the frequency vote, however, might bring with it practices, such as guaranteed incentive compensation or relocation benefits, of which shareholders disapprove. Shareholders might reasonably conclude that, in the future, they would like to see annual SOP votes. Forcing them to wait four or five years for the next frequency vote is unnecessary when a non-binding shareholder proposal advocating annual SOP votes would allow shareholders to register their sentiment on this issue in a non-disruptive way.

Moreover, the Proposed Rules' reliance on the substantial implementation exclusion is at odds with the purpose of that exclusion. The Commission stated in a 1976 release that the exclusion "is designed to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management . . . . (Exchange Act Release No. 12,598 (1976)) In other words, it doesn't make sense to have shareholders vote on a proposal asking the company to do something it has already done.

A shareholder proposal urging a <u>different</u> SOP vote frequency by definition does not involve substantial implementation. If a company decided to hold SOP votes every year, and a shareholder submitted a proposal asking for annual votes, reliance on the substantial implementation exclusion would be appropriate. If however, a company decided to hold SOP votes every three years, and a shareholder submitted a proposal requesting annual votes, it defies logic to say that the proposal has been substantially implemented.

The idea behind the proposed preclusion of shareholder proposals on frequency seems to be that once shareholders have had an opportunity to weigh in on a question, they should be barred from again having input on it for some period of time. Analyzing this notion in the context of a different issue shows how inconsistent it is with the principle of shareholder voice embodied in Rule 14a-8.

Imagine a company where shareholders approve a charter amendment classifying the board. A year later, an unsolicited acquisition proposal is supported by holders of a majority of shares; the board, however, insists that remaining independent is the best course of action. A shareholder submits a non-binding proposal urging that the board be declassified. Under the reasoning advanced in the Proposing Release, this shareholder

proposal would be excludable on substantial implementation grounds because shareholders recently had the opportunity to vote on board classification. But, as with a shareholder proposal on SOP vote frequency, shareholders are asking for a different course of action, one that has not been implemented by the company.

In the Proposing Release, the Commission asks whether the substantial implementation exclusion should not apply to shareholder proposals on SOP or frequency if a company has materially changed its compensation program in the time period since the last SOP vote or frequency vote. In our view, defining materiality in this context would be very challenging, given the complexity of pay arrangements and the ability of companies to engineer compensation to avoid triggering vote requirements. Further, administration of any materiality standard would fall to the Staff of the Division of Corporation Finance during the months prior to proxy season when no-action determinations are sought, an already very busy time. Rather, giving the shareholders the right to suggest a different frequency vote in all instances[1] would give shareholders the flexibility to respond to any changes they deem material, while sparing SEC staff the additional burden of defining what constitutes "materially changed." For those reasons, we believe that the proposed note to Rule 14a-8(i)(10) should not be adopted in any form.

Advisory Vote on Golden Parachutes

We applaud the Commission for proposing new, more comprehensive disclosure requirements for golden parachutes subject to the shareholder advisory vote. In our view, the current proxy statement disclosure lacks uniformity, making it difficult for shareholders to compare arrangements at different companies. The more extensive tabular disclosure contained in the Proposed Rules is thus an important step in the right direction.

We urge the Commission to require such tabular disclosure not only in connection with the transaction-based shareholder advisory vote on golden parachutes, but also in the regular proxy statement executive compensation disclosure. Golden parachutes and other termination arrangements play a key part in many shareholders' evaluation of a company's overall compensation program and thus, by extension, shareholders' votes on SOP proposals and proposals to re-elect members of the board's compensation committee. We recognize that some companies may choose to include the tabular disclosure in their annual proxy statements in order to avoid a separate vote on golden parachutes in the event of a transaction; however, we believe that, given the value of the information, mandatory annual disclosure is preferable.

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[1] In the event that an issuer received more than one shareholder proposal requesting a different SOP frequency, we believe that exclusion as substantially duplicative pursuant to Rule 14a-8(i)(11) would be appropriate; in that way, an issuer would not have to parse potentially inconsistent results on multiple shareholder proposals.

We appreciate the opportunity to express our views on this matter.

Sincerely,

GERALD W. McENTEE
International President