UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Douglas J. McCarron
General President

Via Email

November 18, 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

Dear Ms. Murphy:

On behalf of the United Brotherhood of Carpenters ("UBC") and its pension funds, I am writing to comment on the Commission's proposal implementing the provisions of Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). The UBC appreciates this opportunity to comment on the Commission's proposed rulemaking as corporate executive compensation policies and practices are critically important determinants of long-term corporate performance and the health of our members' retirement funds.

The UBC pension funds have been active investors for nearly three decades advocating for governance and compensation practices and principles designed to promote long-term corporate performance. In the area of executive compensation, we have engaged hundreds of companies addressing both specific compensation issues, such as option-expensing, performance-vested long-term compensation, and "golden parachutes," as well as the broad composition of executive compensation plans through our "CommonSense," "Pay-for-Superior Performance," and current "Core Principles and Practices" analysis of executive compensation plans. These efforts, and those of other advocates, have been effective mechanisms for engaging companies in meaningful dialogue and producing constructive compensation reforms.[1]

[1] See "The Impact of Shareholder Activism on Financial Reporting and Compensation: The Case of Employee Stock Options Expensing," Fabrizio Ferri and Tatiana Sandino, THE ACCOUNTING REVIEW, Vol. 84, No.2, pp. 433-466 (2009). "Shareholder Activism and CEO Pay," Yonca Ertimur, Fabrizio Ferri, and Volkan Muslu, electronic copy available at http://ssrn.com/abstract=1443455.

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Our pay activism experience informs our position on the issues of the shareholder approval of executive compensation and the shareholder approval of the frequency of shareholder votes on executive compensation. We are concerned that there may be unintended consequences associated with the well-intentioned say-on-pay reform that may work to impede meaningful executive pay reform. Annual say-on-pay voting obligations may lead to simplistic pay plan analysis, check-list vote guidelines, a misdirection of investor advocacy resources, and superficial compensation dialogue. The result may be the ratification of the status quo, a result that would disserve the interests of investors and the corporations.

We comment on a few aspects of the proposed rulemaking that we believe are fundamentally important to determining whether the pay approval vote is an aid or a hindrance in the effort to reform executive compensation. As relates to the Proposed Rule 14a-21(a), we believe that the Commission should not include more specific requirements than those proposed regarding the manner in which the issuers should present the shareholder vote. The Rule should simply specify that an issuer must provide a separate shareholder advisory vote to approve named executive officer, as such compensation is described in Item 402 of Regulation S-K, including the Compensation Discussion and Analysis ("CD&A"), the compensation tables and other narrative compensation disclosures. While we believe issuers should be provided latitude in crafting the language for the vote, the issuers should be required to frame the shareholder vote to approve executive compensation in the form of a resolution. The language of Section 14A(a)(1) of Dodd-Frank clearly states that a proxy, consent or authorization ... shall include "a separate resolution subject to shareholder vote to approve the compensation..." The management proposals offered by voluntary adopters of say-on-pay votes and TARP participant companies provide helpful guidance on the specific language of such resolutions.

As to the issue of the scope of the new issuer obligation to include a say-on-pay resolution, we strongly believe that the obligation should be limited by exempting smaller reporting companies. A key goal of the executive compensation provisions of Dodd-Frank was to empower shareholders to have a more direct and effective role in improving executive compensation practices at specific companies and in the market generally. An executive compensation plan is all-too-often a complex mix of pay practices, requiring careful and thorough analysis to determine plan strengths and shortcomings. In order to allow shareholders acting as fiduciaries to properly undertake their new voting responsibilities the scope of the pay vote obligation should be limited to a universe of large cap companies. Such a limitation would allow shareholders to focus limited research and voting resources on those companies whose pay practices directly influence market practices.

We would suggest elimination of the proposed amendment to Item 402(b) to require issuers to address in their CD&A whether and, if so, how their compensation policies and decisions have taken into account the results of shareholder advisory votes. As noted in the proposed rulemaking, such disclosure in not mandated by Dodd-Frank, and we do not believe that it would provide useful information to shareholders. Interpreting the meaning of a FOR or AGAINST vote on a multi-faceted executive compensation plan will be difficult for compensation committee members and executives, and while issuers may be prompted to revise plans based on their pay votes, the proposed disclosure should not be mandated. An issuer that chooses to describe how a pay vote has impacted compensation policies and decisions should feel free to provide this narrative without compulsion.

With regards to the issue of the frequency of shareholder votes on executive compensation, we urge the Commission to reconsider aspects of its proposed amendment to Section 14a-4. The proposed rulemaking states that Section 14A(a)(2) of Dodd-Frank "requires a shareholder advisory vote on whether say-on-pay votes will occur every 1,2 or 3 years." From this the Commission concludes that "shareholders must be given four choices: whether the shareholder vote on executive compensation will occur every 1, 2, or 3 years, or to abstain from voting on the matter." The Commission concludes that alternative formulations of the shareholder vote, such as an issuer's advocacy of a specific vote frequency cycle, are not allowed by Section 14A(a)(2). The Commission's interpretation of Section 14A(a)(2) as requiring a shareholder advisory vote with four vote options is misguided.

Section 14A(a)(2) holds that no less frequently then once every 6 years, an issuer shall include "a separate resolution" subject to a shareholder vote to determine whether votes on the resolutions required under Section 14A(a)(1) will occur every 1,2, or 3 years. Section 14A(a)(2) clearly states that there should be a separate "resolution" on the vote frequency issue. A vote opportunity in the form of a "resolution" envisions a vote that would allow shareholder to vote FOR or AGAINST or to ABSTAIN from a proposition relating to whether the pay vote will occur annually, biennially or triennially. The Commission's menu approach requiring that each frequency option (1,2 and 3 years) be presented in the resolution raises questions of compatibility with state law vote standards and traditional shareholder and management proposal practice under the Commission's rules. The Commission clearly recognizes that a four option vote does not lend itself to the majority vote standard (majority of votes cast or majority of votes present and eligible) established in issuer governance documents pursuant to state law for non-election issues. The Commission's later discussion of no-action letter request defenses indicates that the Commission believes that because the frequency vote is nonbinding that a plurality vote standard perspective can be used to evaluate and interpret the vote outcome.

We believe that a fair reading of Section 14A(a)(2) of Dodd-Frank should be that it requires a shareholder vote, at least once every six years, in the form of an advisory management resolution that allows shareholders to vote (FOR, AGAINST or ABSTAIN) on a management proposed annual, biennial, or triennial pay vote frequency. Management would be expected to advocate for a certain vote cycle and that proposition would either pass or fail based on a majority vote standard in place to determine the outcome. The management resolution would either pass or fail, and due to its advisory nature, management would have the latitude to determine exactly how the vote would influence their practice. It is important to note that even when a shareholder or management resolution is nonbinding, it is necessary to determine whether the measure receives majority support as defined by state law and passes or does not receive majority vote support and fails. In these instances of nonbinding resolutions, it is important that a clear vote outcome is obtained as it challenges issuers to interpret the vote and act.

Finally, we urge the Commission to forego its proposed amendment to Rule 14a-8 under the Exchange Act to add a note to Rule 14a-8(i)(10) that would clarify the status of shareholder proposals that seek a nonbinding vote on executive compensation or the frequency of a say-on-pay vote. Congress in Dodd-Frank has set out the parameters for say-on-pay votes: At least once every three years shareholders will be afforded the opportunity to vote on a management resolution approving or disapproving the executive compensation of named executive officers and at least once every six years, the vote frequency issue will be put to shareholders in the form of a nonbinding resolution. Issuers should be permitted to point to compliance with these legislated obligations to indicate that any shareholder proposal on these topics has already been substantially implemented. We note that shareholders still retain the right to submit shareholder proposals concerning single or multiple executive compensation issues in any year, even if a say-on-pay or frequency vote is before shareholders for consideration.

Again, we appreciate the opportunity to comment on the Commission's proposed say-on-pay rulemaking.

Sincerely,

Ed Durkin

Edward J. Durkin
Director, Corporate Affairs Department