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<u>Via e-mail to: rule-comments@sec.gov</u>

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
Attn: Ms. Elizabeth M. Murphy, Secretary

Re: File No. S7-31-10
Release Nos. 33-9153; 34-63124
Shareholder Approval of Executive Compensation and Golden Parachute Compensation

Ladies and Gentlemen:

This letter is submitted on behalf of the Committee on Federal Regulation of Securities (the "***Committee***" or "***we***") of the Section of Business Law (the "***Section***") of the American Bar Association (the "***ABA***"), in response to the request for comments by the U.S. Securities and Exchange Commission (the "***Commission***") in the proposing release referenced above (the "***Proposing Release***"). In the Proposing Release, the Commission has proposed rules for implementing the shareholder approval of executive compensation and golden parachute compensation provisions of new § 14A of the Securities Exchange Act of 1934 (the "***Exchange Act***").

The comments expressed in this letter (this "***Comment Lette***r") represent the views of the Committee only and have not been approved by the ABA's House of Delegates or Board of Governors and therefore do not represent the official position of the ABA. In addition, this Comment Letter does not represent the official position of the Section.

I. Overview

We are pleased to have the opportunity to comment on the proposals set forth in the Proposing Release. We appreciate the challenge the Commission Staff has in drafting these and other proposed rules under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "***Dodd-Frank Act***") in a very compressed time frame. In the Proposing Release, the Commission provides important guidance about the interpretation and implementation of § 14A.

Many of our comments below reflect our view that the Commission should adopt a principles-based approach to these disclosure rules and avoid requirements that are likely to lead to boilerplate disclosure. We believe this purpose can best be accomplished by integrating the disclosure requirements mandated by the Dodd-Frank Act with the Commission's existing rules (and modify the existing rules to the extent appropriate) rather than adopting entirely new and supplemental disclosure requirements. We believe this approach would be most helpful to shareholders as they assess an issuer's executive compensation in light of the advisory votes on executive compensation mandated by the Dodd-Frank Act.

We have generally addressed our comments below in the order of the topics presented in the discussion of the proposed amendments in the Proposing Release. Unless otherwise indicated, all section and rule references herein are to the Exchange Act and the rules thereunder, and all Item references are to Regulation S-K.

II. Shareholder Approval of Executive Compensation and Shareholder Approval of the Frequency of Shareholder Votes on Executive Compensation

A. Phrasing for Advisory Vote Proposals

We support the Commission's approach in proposed new Rules 14a-21(a) and 14a-21(b) of not requiring issuers to use any specific language or form of proposal to be voted on by shareholders for the advisory vote on executive compensation (the "***say-on-pay***" vote) or the advisory vote on the frequency of an issuer's say-on-pay vote (the "***frequency***" vote), other than reflecting the statutory requirement that the vote must be to approve the compensation of executives as disclosed pursuant to Item 402. This approach is similar to the approach the Commission took in connection with the shareholder vote on executive compensation for TARP participates mandated under the Emergency Economic Stabilization Act of 2008 ("***EESA***").

Different issuers have their own styles of presenting proposals and many do not present proposals in the form of a resolution.[1] The statute itself is sufficiently specific in designating the scope of the proposal by requiring that shareholders vote to approve the compensation of the issuer's named executive officers, as such compensation is disclosed in Item 402 of Regulation S-K. Item 402 encompasses the Compensation Discussion and Analysis ("***CD&A***"), the compensation tables and other required narrative disclosures. Although issuers may vary the precise language used for this approval, the experience of the TARP participants demonstrates that they are unlikely to vary in any significant way.

[1] In this regard, the Commission should confirm in its adopting release or instructions to Item 24 that an issuer is not required to phrase the proposal as a "Resolved" statement, as we believe that a multiple choice frequency vote is not easily presented using "Resolved" language.

B. Additional Disclosure for Advisory Vote Proposals

Proposed Item 24 of Schedule 14A would require issuers to "briefly explain the general effect of this vote, such as whether the vote is non-binding." Because the statute is clear that the required vote is non-binding, we are concerned that the use of the word "whether" creates an unnecessary ambiguity. Instead, we suggest that Item 24 provide for issuers to "state that the vote on each proposal is non-binding." We also believe that the proposed requirement that an issuer describe the "general effect" of the vote is ambiguous and the phrase "such as" suggests the Commission contemplates disclosures other than that the vote is non-binding. In our view, the Commission should either discuss what additional types of disclosures would be required in this context, or delete the reference to "general effect."

C. Shares Entitled to Vote on Advisory Resolutions

Because the obligation to hold the advisory say-on-pay and frequency votes will apply to issuers with different capital and voting structures, in our view the Commission should clarify the interaction of this federally created voting right with state law created voting rights applicable to different classes of securities. We believe it would be appropriate for the Commission to confirm that § 14A does not expand voting rights to securities that under state law do not have general voting rights. This would clarify, for example, that preferred stock is not entitled to vote on § 14A resolutions if under state law and an issuer's charter, and contractual voting rights provisions (if any), the preferred stock would be entitled to vote only on matters affecting the rights of that series of preferred stock and on the election of a limited number of directors when dividends are in arrears.[2] If however the Commission determines that § 14A is intended to create voting rights, we suggest that it would be appropriate to provide that only classes of securities that would be entitled to vote on an executive compensation plan proposed by the issuer and submitted for a shareholder vote under Item 10 of Schedule 14A should be entitled to vote on a say-on-pay or frequency proposal.

D. Clarifying Changes to Rule 14a-21

We suggest that some minor drafting changes be made to the proposed text of Rule 14a-21 to better conform the text of the rule to applicable concepts discussed in the Proposing Release and to address some potential ambiguities and avoid unexpected consequences. Using proposed Rule 14a-21(a) as an example, we suggest that the following changes be made:

> If a solicitation is made by a registrant and the solicitation relates to an annual or other meeting of shareholders **at which directors**

[2] Under paragraph 313(C) of the New York Stock Exchange listed company rules, listed preferred stock is entitled to elect a minimum of two directors upon default of the equivalent of six quarterly dividends.

> **will be elected and** for which the rules of the Commission require executive compensation disclosure pursuant to Item 402 of Regulation S-K (§229.402 of this chapter), the registrant shall, for the first annual or other **such** meeting of shareholders on or after January 21, 2011 and **thereafter no later than the annual meeting held in the third calendar year after the most immediately preceding vote under this subsection**, include a separate resolution subject to shareholder advisory vote to approve the compensation of its named executive officers, as disclosed pursuant to Item 402 of Regulation S-K.

The first change marked above is intended to clarify that the votes are not required at a special meeting called to act on a compensation plan and at which directors are not being elected. The text of the Proposing Release (including notes 16 and 59) indicates that the votes are only intended to be required at special meetings in connection with the election of directors. However, the proposed text of the new rule itself currently refers more broadly to special meetings for which Commission rules require executive compensation disclosure. Pursuant to Item 10 of Regulation 14A, this includes special meetings called solely to act on compensation plans. The change we are proposing is consistent with the approach taken in Rule 14a-20.

The second change marked above clarifies the reference to "other meetings" and is consistent with the discussion in the Proposing Release (see, e.g., the text in the sentence containing note 36).

The third change marked above is intended to eliminate a timing issue that could arise for issuers that change the date of their annual meetings over time. Specifically, proposed Rule 14a-21(a) says that a vote is required "for the first annual or other meeting of shareholders on or after January 21, 2011 and not less frequently than once every 3 years <u>thereafter</u>." This language could be read as tying the three-year deadline to the precise date of the prior meeting, which could prove to be problematic for issuers that over time change the date of their annual meetings by even a short period of time. For example, if an issuer's 2011 annual meeting is held on April 4, 2011, its 2012 annual meeting is held on April 9, 2012, its 2013 annual meeting is held on April 15, 2013 and its 2014 annual meeting is held on April 21, 2014, the issuer would be required to hold its second say-on-pay vote at the 2013 meeting (rather than at the 2014 annual meeting). The current language could also prove problematic for issuers where the prior vote is at a special meeting. We believe it would be more appropriate to require the deadline for subsequent votes to be tied to a date that is no later than the annual meeting held during the year that is the third **calendar** year after the prior vote.

In each case, appropriate corresponding changes should be made to the other subsections of Rule 14a-21.

E. CD&A Disclosure of Consideration of Say-on-Pay Vote

We agree that it will often be the case that Item 402(b) will require an issuer to address how it has considered the results of prior say-on-pay votes with respect to its executive compensation program. However, we believe that such disclosure should be included as a nonexclusive example of material information that an issuer may have to address in its CD&A under Item 402(b)(2) rather than a mandatory item that must be described under Item 402(b)(1). Based on the experience of numerous say-on-pay proposals to date, we expect that the vast majority of issuers will receive overwhelming support for their say-on-pay proposals. Requiring disclosure about how the board of directors of an issuer considered a 95+% vote in favor of its executive compensation would likely lead to boilerplate disclosure.[3] If that vote was a material consideration in whether an issuer decides to maintain or change its executive compensation, that impact would be picked up by our proposal.

If the Commission determines to require mandatory disclosure under Item 402(b)(1), the CD&A should only be required to address the most recent say-on-pay vote, with discussion of any prior say-on-pay votes being at the issuer's discretion.

F. Voting Standard for Determining Substantial Implementation Under Rule 14a-8(i)(10)

In the Proposing Release, the Commission has proposed amending Rule 14a-8(i)(10) to permit the exclusion of a shareholder proposal that would provide a say-on-pay vote or seeks future say-on-pay votes or that relates to the frequency of say-on-pay votes, provided the issuer has adopted a policy on the frequency of say-on-pay votes that is consistent with the plurality of votes cast in the most recent vote in accordance with Rule 14a-21(b).

We believe that it is appropriate to address the implications of a frequency vote on shareholder proposals relating to say-on-pay votes and frequency votes.[4] As provided for under § 14A(c)(4), this would allow shareholders to continue to submit shareholder proposals related to

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[3] If the objective of the proposal is to confirm whether or not compensation committees have reviewed and considered the most recent say-on-pay voting results, that is more appropriately addressed by requiring such disclosure in the Compensation Committee Report required under Item 407(e)(4) and providing that the CD&A address consideration of say-on-pay votes only when the vote was a material factor or consideration affecting compensation.

[4] We agree as well with the position reflected in note 65 of the Proposing Release that the Commission should not adopt a standard for determining whether a particular voting frequency should be considered to have been adopted or approved by shareholders. We believe that such a standard is not appropriate for non-binding advisory votes. Accordingly, the Commission should amend Item 21 of Schedule 14A to exclude non-binding advisory votes under § 14A.

elements of executive compensation or executive compensation practices.[5] However, unlike the normal binomial ("yes/no/abstain") voting situation, in cases where there are three voting choices as with the frequency vote, the choice that receives a plurality vote may not necessarily represent the choice of a majority of the voting shareholders. For example, assume a situation where 40% of the shares voted for having the say-on-pay vote every year, 30% voted for every two years, and 30% voted for every three years. Although the plurality vote was for annual votes, the voting makes clear that 60% of the shares voted to have the vote held less frequently than annually. In these circumstances, a decision to hold the vote every two years should also be deemed to have substantially implemented the shareholder vote.

We recommend that the Commission permit the exclusion of a Rule 14a-8 frequency proposal when (1) the issuer adopts a policy to use the interval that received a plurality of the votes or any more frequent interval or (2) if the votes in favor of a frequency of every two years and every three years in the aggregate exceed the votes in favor of an annual frequency, the issuer adopts a policy of holding say-on-pay votes every two years.[6]

G. Amendments to Form 10-K and Form 10-Q Regarding Decision on Frequency Vote

In connection with its implementation of § 14A(a)(2), the Commission has proposed amending Item 9B of Form 10-K and adding a new Item 5(c) of Form 10-Q that would require issuers to disclose, in the periodic report filed after the period during which the shareholder advisory vote on frequency occurs its decision on how frequently it will conduct shareholder advisory votes on say-on-pay in light of the results of the shareholder vote on frequency.

1. Adequacy of the proposed time period between the frequency vote and the required disclosure of a responsive frequency choice.

We agree that timely disclosure of any decision the board of directors makes on the frequency of a say-on-pay vote would be useful to investors. The results of the non-binding frequency vote will already have been disclosed on Form 8-K. Learning of the board's decision will allow shareholders to consider whether to propose a shareholder proposal regarding frequency at the next annual meeting. However, we believe that the timing of the proposed Form

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[5] Because shareholders can continue to submit proposals addressing specific elements of executive compensation or particular executive compensation practices, the Commission's proposed amendment to Rule 14a-8(i)(10) should be available if the issuer has materially changed its compensation program in the time since its most recent say-on-pay or frequency vote.

[6] Even if the issuer does not adopt the recommendations of the prior frequency vote (by whatever standards the Commission adopts), an issuer should nonetheless still be permitted to rely on Rule 14a-8(i)(10) to exclude a shareholder frequency proposal from each proxy statement in which the issuer is proposing its own frequency proposal pursuant to Rule 14a-21(b).

10-Q or Form 10-K disclosure may not be reasonable in view of the timing of many issuers' board meetings. For example, a calendar year issuer that held a shareholder meeting at which a frequency vote was proposed on, say, March 30, would be obligated to hold a board meeting to determine the frequency prior to the filing deadline for its Form 10-Q for that quarterly period, which might be May 10. This timing may not be consistent with the issuer's normal board meeting schedule. More importantly, even if the results of the frequency vote are discussed at the first meeting following the shareholder meeting, the board may determine at that meeting that they would benefit by reaching out to shareholders to understand the import of the vote and confer with advisers on the best course of action. We also believe that the timing of the proposed Form 10-Q or Form 10-K is not necessary to provide shareholders adequate time to formulate their response to the board's decision. In light of these considerations, we believe the Commission should adopt an alternative approach for reporting this information as further discussed below.

2. Require reporting of the frequency decision on any Form 10-Q or Form 8-K filed not later than a specified number of days before the last day for shareholders to submit proposals to the issuer under Rule 14a-8.

We believe that the best timing approach would be to require any frequency policy to be reported on any Form 10-Q or Form 8-K after the frequency vote was held, but in no event later than 30 days (or some appropriate period of time) before the last day for shareholders to submit proposals to the issuer under Rule 14a-8 for the issuer's next annual meeting. This approach would optimize the opportunity for issuers to make a well-considered choice, without prejudicing the opportunity of shareholders to take issue with the issuer's frequency decision if it is inconsistent with the most recent frequency vote. The 30-day period would give shareholders adequate time to submit a contrary proposal, and the requirement for issuers to report in advance of the proposal deadline would reduce the likelihood that shareholders would submit proposals unnecessarily. Given the nature of the subject matter for this requirement, we believe that the Form 8-K requirement should be entitled to the safe-harbor provisions applicable to specified items of Form 8-K, such as Item 5.02(e). If this approach is followed, the Commission may want to amend Form 8-K to create a new item number to enable shareholders to easily identify which filing contains this information.[7]

[7] Alternatively, because a board may change a company's frequency policy from time to time, companies should be permitted to disclose their policy on their websites instead of in a periodic or Form 8-K filing, if the company discloses in its proxy statement or other filing that the company's frequency policy is or will be posted on its website. This approach is comparable to the way that amendments to or waivers under company codes of conduct are permitted to be disclosed.

3. As an alternative, require reporting of the frequency decision not later than the periodic filing for the period following the period in which the vote is held.

Although less flexible than the approach described in subsection 2 above, another approach that would in our view, be more responsive to the timing of board meetings than the Commission's proposal, would be to require any frequency policy to be disclosed in the periodic filing for the quarterly period (or annual in the case of the fourth quarter) following the period in which the vote is held.

Applying this approach to the example provided in subsection 1 above, if the issuer's vote occurred on March 30, 2011, the issuer would not be required to announce its frequency determination until the due date for its second quarter Form 10-Q (August 9, 2011), which would provide the board with more time to consider and make its frequency choice. In our view, this approach would still provide adequate time in advance of the shareholder proposal deadline to permit shareholders to submit proposals for inclusion in the following year's proxy statement.

H. Preliminary Proxy Statements

We strongly support the Commission's proposal to amend Rule 14a-6(a) to expand the list of items that do not trigger the requirement to file a preliminary proxy statement to include both the say-on-pay and frequency proposals required by Rule 14a-21.

In addition, we urge the Commission to expand the list to include any other votes on executive compensation. We believe that issuers may increasingly decide to submit advisory proposals on various executive compensation matters to shareholders as a way to enable the issuer to obtain more specific feedback from shareholders regarding particular types of compensation, specific awards or agreements, or designated compensation programs. Because votes to approve or ratify compensation plans or amendments to such plans, say-on-pay and frequency votes, and votes on shareholder proposals relating to executive compensation would all not trigger a preliminary proxy filing, it does not appear appropriate to subject a narrow class of executive compensation proposals to a preliminary proxy filing.

III. Disclosure of Golden Parachute Arrangements and Shareholder Approval of Golden Parachute Arrangements

A. Golden Parachute Disclosure Required Only in the Context of an Extraordinary Transaction

We believe that Item 402(t) disclosure should be required only in connection with an extraordinary transaction, as proposed. Because, as the Proposing Release acknowledges, proposed Item 402(t) requires information not currently required to be disclosed by Item 402(j) in annual meeting proxy statements, we believe that it is appropriate to require that information to be compiled only when there is an actual extraordinary transaction. Of course, issuers may voluntarily provide Item 402(t) disclosure with their other executive compensation disclosures in annual meeting proxy statements for other reasons, including to avail themselves of the exception from a merger proxy separate shareholder vote under § 14A(b)(2) and proposed Rule 14a–21(c). After the Commission Staff and issuers have had time to gain experience with Item 402(t) disclosure, the Commission Staff may then wish to review its Item 402(j) disclosure requirements to see whether harmonization might be appropriate.

B. Named Executive Officers Covered by the Golden Parachute Disclosure

We believe that Item 402(t) disclosure should be provided for all of the issuer's named executive officers, as that term is currently defined under Item 402(a)(3), rather than excluding disclosure for named executive officers who were no longer serving as executive officers at the time of the transaction giving rise to the disclosure (the "Former Executive Officers").[8] Issuers and their shareholders have become comfortable with this definition of the term over the past four years, and have come to understand exactly which employees are covered from year to year by that term for proxy statement purposes. In addition, many issuers routinely use the term "named executive officers" to refer to the individuals named in the Summary Compensation Table, and then use that term uniformly throughout both the CD&A and the other compensation tables and narratives. It could be confusing for both issuers and shareholders if only a subset of the named executive officers are covered by just the Item 402(t) disclosure, and could force issuers to use different and confusing terminology to describe just the named executive officers who are covered by the Item 402(t) disclosure in just that section of the proxy statement. It would be far simpler and easier for issuers and shareholders to understand if disclosure were required for all named executive officers in the Item 402(t) disclosure.

In many, if not most, cases involving a Former Executive Officer there would likely be no compensation actually disclosed in the table, as that person would not have received any compensation that is "based on or otherwise relate[d] to" the transaction. However, requiring disclosure of any compensation paid to them would prevent issuers from structuring arrangements designed to circumvent the disclosure requirements.

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[8] As noted in our comment letter that preceded issuance of the Proposing Release, the disclosure obligation should apply to a company's named executive officers as determined in the same manner as under Instruction 4 to Item 5.02(e) of Form 8-K; that is, the determination of named executive officers should be based on the most recently filed disclosure under Item 402(c).

C. Presentation and Content for the Golden Parachute Table

1. Flexibility for Presenting the Golden Parachute Information

We believe that Item 402(t)(2) should provide greater flexibility to issuers in fashioning a Golden Parachute Compensation Table while still satisfying the "clear and simple form" criterion mandated by the Dodd-Frank Act. For example, many issuers already use tables in merger proxy statements and annual meeting proxy statements for change-of-control and termination-compensation disclosures. We believe that it is appropriate to continue to allow issuers to format this information in a clear, simple and understandable manner, in a tabular format, that is appropriate for the specific arrangements and circumstances, while still capturing the elements identified in columns (b) through (h) of the proposed table. To illustrate, set forth below is but one alternative presentation of the table, which we believe also is in a "clear and simple form."

	"Single Trigger"	"Double Trigger"	
Name	**Change of Control**	**Termination Other Than for Cause Following Change of Control**	**Resignation for Good Reason Following Change of Control**
PEO			
Cash	$ ______		
Equity	______	$ ______	$ ______
Pension/NQDC	______	______	______
Perquisites/Benefits	______	______	______
Tax Reimbursements	______	______	______
Other	______	______	______
Total	$ ______	______	______
PFO			
[__________]	$ ______	$ ______	$ ______
A			
[__________]	$ ______	$ ______	$ ______
B			
[__________]	$ ______	$ ______	$ ______
C			
[__________]	$ ______	$ ______	$ ______

We believe that additional columns for the table have the potential for making the table unnecessarily complex. However, issuers should be permitted more flexibility in constructing the table while still including all of the elements of compensation prescribed in proposed columns (b) through (h). Issuers should also have the ability to add additional columns (and rows) so long as the presentation continues to be "clear and simple" and not misleading.

2. Compensation to Be Included in the Table

We believe that the proposed tabular disclosure captures "any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to" the transaction. However, the table should not include any amounts with respect to a cash-out of vested stock options or restricted stock based on the price being paid to shareholders generally in the transaction. Such cash-outs typically provide a convenience for employees by avoiding the need to borrow funds in order to exercise their options and participate in the transaction. We do not believe that this should be viewed as "compensation … that is based on or otherwise relates to" the transaction. Accordingly, we recommend additional clarification in the Instructions to Item 402(t)(2) to such effect.

We support the proposed approach of tabular disclosure under Item 402(t)(2) including only the compensation a named executive officer of a target company would receive pursuant to arrangements with the target company and the acquiring company. We further believe the adopting release should expressly permit providing the 402(t) information in two separate tables—one for amounts payable by the target company and the other for amounts payable by the acquiring company. The target company could then provide an appropriate introduction to each table, identifying the amounts covered by that table and specifying that no vote is required for amounts that would be paid by the acquiring company (unless as specified in the adopting release the acquiring company is soliciting proxies to approve the transaction).

In the case of an equity award, the equity award should be valued in the same way as it is valued under the rules set forth in Instructions to Item 402(c)(2)(v) and (vi). If, pursuant to an arrangement or agreement that the named executive officer of a target company enters into with an acquiring company, such named executive officer would be entitled to a payment without any vesting terms upon the closing of such transaction (such as a sign-on bonus or a stock grant), then a separate table would be warranted. Text accompanying such separate tabular disclosure should inform shareholders of the target company that the advisory vote on golden parachute arrangements would not apply to such compensation.

By contrast, if the compensation payable by an acquiring company to the named executive officer of the target company (such as salary or incentive compensation, whether cash-based or equity-based) is contingent on future service or performance with or by the acquiring company, additional disclosure regarding such payments should be in narrative format only and not included in the separate tabular disclosure.

We believe that the material terms of any employment agreement with an acquiring company should be disclosed in narrative format, consistent with current proxy rules. Moreover, the disclosure should be limited to amounts that are known at the time of the proxy solicitation, such as base salary, bonus targets, term of employment, numerical amount of equity awards and similar terms, as well as the terms of any future severance or change-of-control arrangements. The narrative should also discuss the factors set forth in the text and accompanying footnote 109 of the Proposing Release that are attributable to a description in the required narrative of material factors for golden parachute arrangements of the target company. Consistent with proposed rules under Item 402(t), we do not believe that it would be appropriate to require quantification of any values that cannot be known at the time of proxy solicitation, and should not require any assumptions or speculation to be made by the target company in connection with the narrative disclosure relating to employment agreements with an acquiring company. Further, if the named executive officers of an acquiring company were entitled to receive compensatory benefits as a result of a transaction, such disclosure should be made to the shareholders of the acquiring company in both narrative and tabular format only when the acquiring company is soliciting approval of the transaction.

3. No Disclosure Necessary for Previously Vested Equity, Pension Benefits and Nonqualified Deferred Compensation

We believe that disclosure of previously vested equity, pension benefits and nonqualified deferred compensation should not be required in the tabular disclosure. These amounts reflect previously earned multi-year compensation unrelated to the transaction and requiring their disclosure could be confusing since it would overstate the amount of compensation payable as a result of the transaction. However, issuers should be permitted the flexibility to disclose this information if they so choose, including by adding rows or columns to the table, as some issuers may believe that so called “walk-away” amounts are also of importance to their shareholders.

4. Identification of Single-Trigger and Double-Trigger Arrangements

Issuers should be given greater flexibility in tailoring the table to the particular circumstances of the transaction and forms of compensation. While we believe footnote disclosure of single- versus double-trigger amounts is sufficient, there could be circumstances where an issuer may believe that the addition of columns (or rows) or other means would be more useful. Issuers should be permitted to make these adjustments to the table.

5. Assumptions for the Golden Parachute Table

We agree that the closing price per share as of the latest practicable date would be appropriate for calculating the dollar amounts that are based on the issuer’s stock price if a single standard is mandated by the final rules. We note that for those transactions in which the issuer’s shareholders receive a fixed value for their shares (whether payable in cash or stock or a combination of both), issuers typically use such fixed value to provide disclosure in response to Item 5 of Rule 14a-101 rather than the closing price as of a recent date. We further note that in those transactions in which the value is fixed, using the closing price per share as of the latest practicable date is likely to understate the amounts ultimately payable pursuant to any golden parachute arrangements because of the discount at which the issuer’s stock will typically trade prior to the completion of the transaction. However, we believe that at the point in time when documents containing the Item 402(t) disclosure are finalized, the amount of the discount will generally not be significant. Moreover, the proposed standard has the advantage of providing a consistent and uniform methodology for all transactions, regardless of whether the value of the consideration to be received in the transaction is fixed or fluctuates.

6. Narrative Disclosure Requirements

The proposed narrative disclosure will result in an adequate description because the proposal not only calls broadly for a description of all material factors, but also lists three specific topics that are likely to be of particular interest to investors. The listed factors appear to be appropriate in this context, and no additional disclosures appear to be necessary to accomplish the desired objective.

We believe that a description of the basis for selecting each form of payment is more appropriate for inclusion in the CD&A in the year the arrangement is implemented. Requiring such disclosure at the time of a transaction, which may occur long after the arrangements were originally implemented, is likely to result in boilerplate disclosure that will add little to the numerical and narrative information already required by the proposal.

7. Named Executive Officers of an Acquiring Company

We believe that there is some confusion in the statute and in the proposed rules about which named executive officers should be covered by the disclosure. Section 14A(b)(1) places the disclosure obligation on the "person making the solicitation" for the approval of an "acquisition, merger, consolidation, or proposed sale of other disposition of all or substantially all the assets of an issuer . . . ." The disclosure is of any agreements or understandings that the soliciting person has with any named executive officers "of such issuer" – that is, the issuer that is being acquired, merged, consolidated or whose assets are being sold. Because in the normal course the target company is soliciting its shareholders, the disclosure would be of agreements or understanding that it had with its named executive officers. The confusion arises because of a parenthetical after "named executive officer of such issuer" that states "or of the acquiring issuer, if such issuer is not the acquiring issuer . . . ."

Read literally, a target company making a solicitation of its shareholders in a cash merger would have to disclose any agreements or understandings that it (i.e., the person making the solicitation) had with any named executive officers of the acquiring company about compensation to be paid as a result of the merger. There are unlikely to be any. However, read equally literally, the language of the statute does not pick up any disclosure about agreements or understandings that the acquiring company has with the named executive officers of the target company because the only agreements or understandings required to be disclosed are with "such person" – which is the person making the solicitation, in this case the target. We do not believe that can be what Congress intended. We believe that this is a case of a misplaced – and somewhat miscast – parenthetical. We believe that Congress meant to require the disclosure of any agreements or understandings that "such person **<u>(or the acquiring issuer, if such person is not the acquiring issuer)</u>** has with any named executive officers of such issuer . . . ."

We believe that the only disclosure required should relate to named executive officers of a person making a solicitation for an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all its assets. We believe that the disclosure should include any agreements or understanding with an acquiring company that are based on or otherwise relate to the acquisition.[9] Finally, we believe that a solicitation by an acquiring company asking its shareholders to increase its authorized shares to facilitate a merger or to obtain approval of the

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[9] We recognize that it may at times be difficult to identify the "acquiring company" in situations involving, for example, a merger of equals or a reverse acquisition with a public shell company.

issuance of shares in a merger for purposes of meeting listing requirements of a securities exchange should not be considered a solicitation to approve an acquisition within the meaning of Section 14A(b)(1).

D. Applicability of Golden Parachute Disclosures Outside of Proxy Statements

We generally support extending the Item 402(t) disclosure requirements to transactions not specifically referenced in the Dodd-Frank Act. However, we believe, for the reasons discussed below, that the burden of compliance with these requirements is most appropriately placed on the party in the best position to provide the necessary disclosure. Accordingly, we recommend that the Item 402(t) disclosure not be required of bidders in third-party tender offers at least insofar as it relates to arrangements between the target company and its executive officers.

In order to provide the disclosure required by Item 402(t), the bidder in a third-party tender offer must identify the executive officers of the target company as to whom the disclosures must be made. Depending on whether the target company has filed its annual proxy statement for that calendar year, the bidder may not be able to determine the identities of the executive officers whose golden parachute payments must be quantified.

Next, the bidder must identify the particular plans and agreements that may provide for payments to executive officers in connection with the proposed transaction. While these documents are likely to have already been filed by the target company with the Commission and therefore be publicly available, the bidder cannot know if these documents have been further amended or supplemented by additional arrangements. While the target company may have filed a Form 8-K to disclose any material amendments or supplemental arrangements that it has subsequently entered into with its executive officers, the actual documentation for these arrangements may not have been filed with the Form 8-K. Moreover, amendments to the previously disclosed arrangements may have been made that the target company deemed not sufficiently material to trigger an obligation to file a Form 8-K pursuant to Item 5.02(e). Such amendments, although not material, may nonetheless affect the calculations required by Item 402(t).

Even if complete copies of all relevant agreements and plans, as amended to date, were available to the bidder, it would likely still lack the information needed to calculate the amounts that executive officers would be entitled to be paid pursuant to those arrangements as a result of the proposed transaction. For example, an executive officer may be entitled to receive an amount calculated with reference to his current salary and/or target bonus for the current calendar year. For many issuers, this information is not disclosed until the issuer files its proxy statement for the following year. Finally, the relevant documentation may contain ambiguities that make it difficult for the bidder to calculate the amounts payable to executive officers with any degree of certainty.

Although the Proposing Release recognizes that a bidder may not have access to the information needed to prepare the disclosure required by Item 402(t), we believe that the standard proposed to address this issue—that the bidder provides the disclosure only to the extent known after making reasonable inquiry—will prove to be unworkable.

A bidder is likely to possess some information about the existence and scope of the target company's golden parachute arrangements based solely on its review of the target company's filings with the Commission. However, for the reasons detailed above, it is unlikely to have all the information necessary to provide the Item 402(t) disclosure with the mathematical precision required of that item.

If it is unable to acquire the additional information from the target company, the bidder would be faced with the choice of making no disclosure at all, or making incomplete, and quite possibly misleading, disclosure concerning the target company's arrangements. Either course of action risks violating the applicable disclosure rules. Even if the target company furnishes some information in response to the bidder's inquiry, the bidder cannot be sure it has obtained all the information needed to accurately present the golden parachute arrangements in compliance with Item 402(t).

In sum, in light of the complexities of these arrangements and the mathematical precision with which they must be presented, a bidder would be understandably reluctant to include any information concerning the target company's golden parachute arrangements in response to Item 402(t), unless it was furnished that information, by the target company, in precisely the format required by Item 402(t)—a tabular presentation of all amounts payable to the target company's named executive officers together with explanatory footnotes and accompanying narrative disclosure.

Even if furnished with this information in the required format by the target company, a bidder would have legitimate concerns regarding its potential liability for including within the documents that it files with the Commission information that it is otherwise unable to verify.

E. The Effect of Prior Approval of Golden Parachute Arrangements

We agree with the general approach taken in the Proposing Release requiring the merger proxy shareholder advisory vote only for changes in golden parachute agreements. Subjecting arrangements that were previously subjected to an annual say-on-pay vote to another vote in the merger context would render the statutory provision for advance approval essentially meaningless. As long as full disclosure of the total set of arrangements is provided, a vote on the changes only should be entirely sufficient, unless the issuer elects to submit the entire set of arrangements to a fresh vote.

We recommend that only new golden parachute arrangements and any material revisions or modifications to previously disclosed arrangements that were subject to a prior say-on-pay advisory vote should be subsequently disclosed pursuant to Item 402(t) and subjected to a golden parachute advisory vote. We agree that any new or material revisions to or amendments of golden parachute arrangements, as referenced in this Comment Letter should be included in both tables (and accompanying narratives) under Instruction 6 to Item 402(t)(2). We believe that when golden parachute arrangements have been appropriately disclosed pursuant to Item 402(t) in a prior say-on-pay advisory vote, only amounts payable pursuant to new or materially amended golden parachute arrangements, exclusive of (1) any changes in amounts payable by virtue of any increase in stock price under golden parachute arrangements that have been previously disclosed under Item 402(t) in a prior say-on-pay advisory vote or (2) amounts attributable to salary increases, or bonus target increases as part of ongoing employment arrangements that are otherwise unrelated to golden parachute arrangements (other than as set forth in our discussion of tax gross-ups below), should be disclosed and subject to a new golden parachute vote. It should be noted that such increased amounts that may be permissively excluded from any additional golden parachute vote may be reflected in Interests of Management in the Transaction as required by Item 5 of Rule 14a-101.

New benefits would include a new equity award subject to the same pre-existing acceleration terms or a new bonus that would be paid upon the merger or acquisition transaction. However, it should not include a new equity award that, by its terms or the terms of any golden parachute arrangement, that has not been made in contemplation of the transaction and does not accelerate and/or is not otherwise amended upon the transaction. The final adopting release should make clear that the mere assumption or substitution of an award pursuant to the terms of such transaction does not constitute a new or materially amended award). We also believe that the full benefits of any golden parachute arrangement that benefits a named executive officer who was not included as part of the prior say-on-pay advisory vote should be included in a golden parachute advisory vote and disclosed in full under Item 402(t).

We agree with the conclusion set forth in footnote 129 of the Proposing Release that any IRC Section 280G tax gross-up that becomes payable as a result of new golden parachute arrangements and any material revisions or modifications to previously disclosed arrangements that were subject to a prior say-on-pay advisory vote should be included in the additional table and subject to an additional golden parachute advisory vote. We also believe that the adopting release and the instructions to Item 402(t) should make clear that any additional tax gross-up that results from (1) any changes in amounts payable by virtue of any increase in stock price under golden parachute arrangements that have been previously disclosed under Item 402(t) in a say-on-pay advisory vote or (2) amounts attributable to salary increases or bonus target increases, as part of ongoing employment arrangements that are otherwise unrelated to golden parachute arrangements, in either case that have an effect of materially increasing amounts payable under the golden parachute arrangements, should be included as part of the Item 402(t) disclosure and the advisory vote. While we believe that good arguments may be made that would make such latter disclosure and vote unnecessary, we believe it would be misleading to shareholders to not make such disclosure and would be confusing to them to make such disclosure but not subject such additional payments to a subsequent vote.

F. Other Disclosure Considerations

When an issuer voluntarily includes Item 402(t) disclosure in its annual meeting proxy statement to satisfy the exception from the § 14A(b)(2) shareholder vote, all Item 402(t) disclosure should be presented together with the issuer's other Item 402 disclosure so that it is easy to locate for any reader seeking to review all of the issuer's Item 402 disclosure. This approach gives each issuer flexibility to provide the Item 402(t) disclosure in a logical location based on its specific disclosure format, but proximate to the other information that will be subject to the say-on-pay vote.

Instruction 6 to Item 402(t) should then require issuers to provide disclosure that allows shareholders to differentiate clearly among (1) aggregate golden parachute compensation, (2) golden parachute arrangements that were previously subject to a say-on-pay vote (and thus not covered by the golden parachute vote), and (3) new or revised golden parachute arrangements that are subject to the golden parachute vote. Although we agree that Instruction 6 should mandate use of two separate Golden Parachute Compensation Tables as part of this disclosure, the location of these tables, as discussed below, will be crucial in terms of helping shareholders understand the golden parachute disclosure.

First, for consistency reasons, we agree that Instruction 6 should require issuers to include a Golden Parachute Compensation Table and narrative disclosure for its aggregate golden parachute compensation, much as the disclosure would have been presented in the issuer's prior annual meeting proxy statement, and this disclosure should be presented with the issuer's other Item 402 disclosure. Second, Instruction 6 should require issuers to include, specifically as part of the golden parachute vote proposal, a Golden Parachute Compensation Table and narrative disclosure that reflects only the new or revised golden parachute arrangements that are subject to the golden parachute vote. This will allow shareholders to clearly identify in a familiar format the new or revised golden parachute arrangements that are based on or otherwise relate to the corporate transaction and that are specifically subject to the golden parachute vote. Finally, Instruction 6 should require issuers to present in any clear and simple format of their choosing both quantitative and qualitative information explaining to shareholders the difference between the golden parachute arrangements subject to the golden parachute vote and the aggregate golden parachute compensation being provided in connection with the corporate transaction. This approach will allow issuers to provide tailored disclosure, in a clear and concise format of their choosing, so that shareholders have a complete picture of the issuer's golden parachute arrangements.

IV. Transition Matters

A. IPO Companies

We believe that a newly public company should first be required to comply with the proposed say-on-pay and frequency votes in connection with its solicitation for an annual meeting (or other shareholder meeting at which directors are to be elected) after it has one complete annual reporting cycle behind it (i.e., not at or before its first annual meeting after going public). The Commission has adopted a similar transition period for compliance with the internal control over financial reporting requirements for newly public companies. (S*ee* Release 33-8760.)

Executive compensation disclosure for a newly public company generally includes a carryover of disclosure relating to compensation during the period prior to its public offering. In order for shareholders to be able to assess the executive compensation the company paid as a public company, shareholders will need to evaluate the disclosures the company makes for the fiscal year in which the initial public offering ("***IPO***") occurred. Also, in contemplation of the IPO or shortly after, companies generally implement a variety of corporate governance procedures, add directors and executive officers, and adopt executive compensation policies and programs.

We believe that requiring a say-on-pay vote or a frequency vote prior to a full year's reporting of post-IPO compensation would be premature. It would be based on compensation levels and programs that not only may no longer be in effect, but that in many if not most cases were designed and approved by the equity owners of the company prior to the IPO. We believe that such a vote is simply not necessary until the IPO company has fully established its compensation policies and programs as a public company.

B. Programming for the Frequency Vote

Section 14A(a)(2) requires a shareholder advisory vote on whether say-on-pay votes will occur every one, two or three years. To implement this provision, the Commission has proposed an amendment to Rule 14a-4 to require that issuers present four choices to their shareholders, to reflect the choice of one year, two years, three years or abstain.

As the Commission notes, the § 14A(a) requirements are effective whether or not the Commission takes action by adopting implementing rules. In recognition that some proxy service providers may not be able to reprogram their systems to support the proposed four-choice voting model, the Proposing Release provides that the Commission will not object if the form of proxy only provides three choices (one, two or three years), and that proxies are not voted on the frequency vote in the event the person solicited does not select a choice among one, two or three years. However, the Commission provides that this relief will be available only until the Commission takes final action to implement § 14A.

We recommend that the Commission extend the period in which this relief is available to cover all shareholder meetings held during the peak 2011 proxy season (i.e., all meetings held on or before June 30, 2011). We encourage the Commission to extend such relief immediately. The fact that the current relief ends on a date that is unknowable (i.e., the date the Commission adopts final rules) significantly undercuts the utility of the relief as companies, in planning for their annual meetings, currently need to assume that the relief will not be available.

Although we understand that certain of the larger proxy service providers, including Broadridge Financial Solutions, Inc., are (or expect to be) able to support the four-choice voting model proposed by the Commission as soon as it is first required (i.e., for meetings held on January 21, 2011), we are concerned that (1) the short time frame these providers are operating under in order to accommodate the four-choice model may not permit adequate opportunity for fully testing their solutions, thereby increasing the risk that unexpected problems will arise during the peak part of the 2011 proxy season and (2) other proxy service providers will not be able to timely address the technical and processing challenges created by the new four-choice voting model. Indeed, the fact that the larger providers are indicating that they will be ready increases our concern that other providers will feel significant additional pressure to conclude that they are ready to implement the four-choice model, even if they have not been able to complete the testing necessary to confirm whether they are in fact actually ready, thereby increasing the likelihood of actual errors during the 2011 proxy season. Moreover, issuers will have no basis on which to accurately assess whether the providers they work with are in fact ready, and will instead have to rely on self-interested assurances from these providers. While extending the relief throughout 2011 will not completely eliminate the competitive pressure providers will feel to match the four-choice model made available by the larger providers, we believe the permissibility of a three-choice model throughout 2011 would encourage all providers to provide more candid assessments of their readiness to issuers—and thereby help reduce the likelihood of major implementation problems during 2011.

For similar reasons to those discussed in the prior paragraph (i.e., the lack of adequate time for robust testing of solutions and the competitive pressure that may lead some providers to make an overly optimistic assessment of their readiness), we believe the Commission should consider whether it would be best to require all companies to use the three-choice model for the peak 2011 proxy season, as doing so would dramatically reduce the risk of implementation errors that further undermine investor confidence in the proxy voting system. Such a universal delay in implementation of the four-choice model would give all providers additional time to complete robust testing procedures and, as an added benefit, would commence implementation of the four-choice model during the latter half of 2011, when fewer meetings are held. The delay would permit implementation in a more manageable setting.

C. TARP Companies

We support the approach in the Proposing Release regarding shareholder votes on executive compensation for TARP companies. There is no apparent benefit to shareholders in requiring issuers with outstanding indebtedness under the TARP to include a non-binding advisory shareholder vote to approve executive compensation under new Rule 14a-21(a) or to vote on the frequency of the shareholder vote to approve executive compensation under new Rule 14a-21(b). The exemption for issuers with outstanding indebtedness under the TARP from the requirements of Rules 14a-21(a) and 14a-21(b) and § 14A(a)(2) until the first annual meeting of shareholders after the issuer has repaid all outstanding indebtedness under the TARP is an appropriate exercise of the Commission's discretion in balancing the burdens imposed on the issuer with potential benefits to shareholders.

To confirm the exemption noted above and to facilitate an issuer's transition from the TARP-specific reporting requirements, we recommend that the Commission amend Rule 14a-20 to reflect that the requirements of Rules 14a-21(a) and 14a-21(b) and § 14A(a)(2) shall not apply until the first annual meeting after the TARP obligation has been repaid provided the issuer complies with its requirements under Rule 14a-20, and that the frequency vote must be held at the first annual meeting once the TARP obligation has been repaid.

D. Other Transition Considerations

More generally, many issuers with annual meetings scheduled to occur on or shortly after January 21, 2011 already are working on their proxy statements and are in good faith relying on the Commission's proposals in preparing the form of their say-on-pay and frequency votes. While we understand and appreciate the Commission's efforts to timely adopt final rules under §§ 14A(a) and (b), we are concerned that some issuers may have substantially completed their proxy statements before the Commission adopts final rules. Therefore, it would be helpful if, as a transition matter, the Commission allows issuers to rely on the proposed rules for any proxies filed within some reasonable period of time, such as 30 days, after the final rules are published in the Federal Register.

V. Smaller Reporting Companies

A. General

Smaller reporting companies ("***SRCs***") have been struggling for years to keep up with the ever-increasing disclosure requirements and corporate governance rules. In recognition of the potential burdens that could be placed on smaller companies, § 14A(e) of the Dodd-Frank Act expressly provides the Commission with the authority to exempt an issuer or class of issuers from the say-on-pay, frequency and golden-parachute vote provisions contained in new §§ 14A(a) and 14A(b). We encourage the Commission to use the authority expressly granted to it by § 14A(e) and its broad authority set forth in § 36(a)(1) to exempt SRCs from most, if not all, of the say-on-pay provisions of the Dodd-Frank Act. We explain in more detail below our reasons for this position.

B. Say-on-Pay and Frequency Votes

1. Proposed exemption of SRCs from the say-on-pay and frequency votes.

We believe that SRCs should be provided a complete exemption from the requirements of §§ 14A(a) and 14A(b). We understand that the Commission expressed its belief in the Proposing Release that these new requirements would not be unduly burdensome on SRCs. However, we respectfully disagree with this conclusion.

In our experience, many smaller public companies are at or near the breaking point due to a combination of disclosure requirements, corporate governance rules and the economic downturn of the past two years. Forcing SRCs to add two additional action items to their proxy statements (albeit not necessarily every year) will increase their expenses in connection with the annual meeting of shareholders due to additional costs of preparation of the proxy statement and proxy card, printing of the proxy materials and mailing them to shareholders. While these additional expenses and the management time required to deal with the increased disclosures may not seem excessive for larger issuers, they represent significant additional burdens for SRCs.

As it is, many SRCs do not have sufficient bandwidth in terms of employees and time to address currently existing Commission disclosure requirements. And they often cannot afford to hire outside experts, such as compensation consultants and lawyers, to do it for them. These new vote requirements will exacerbate the problem.

Moreover, we believe that the genesis of shareholder concerns about runaway executive compensation is primarily the larger companies, which have more resources for executive compensation and are scrutinized by a lot more institutional investors than are SRCs. Generally speaking, most SRCs cannot afford to provide their executives with costly high-end pay packages. We do not think that SRCs are the type of companies that Congress had in its sights when enacting the Dodd-Frank Act say-on-pay provisions.

Finally, although the Proposing Release makes it clear that SRCs will not be required by the new rules to prepare a CD&A, it seems that SRCs may feel the need to do so in order to explain their compensation policies, processes and decisions so that shareholders can cast an informed say-on-pay vote. This would be extremely burdensome on SRCs. As the Commission Staff is well aware, drafting a good CD&A is very difficult and time-consuming.

2. Proposed modification and delayed implementation for SRCs.

If, notwithstanding the discussion above, the Commission does not feel that it is appropriate to provide a complete exemption for SRCs from the say-on-pay and -frequency votes, we suggest that the requirements be modified in order to provide at least some accommodation to SRCs.

Specifically, we recommend the following:

- Require SRCs to submit a say-on-pay vote to the shareholders every three years, with the first vote to be held in 2013; and

- Do not require a frequency vote.

The primary advantage of this recommendation is that, by eliminating the frequency vote and expressly permitting the say-on-pay vote to be done at three-year intervals, it should minimize the costs and burdens on SRCs, while still providing shareholders with input on the executive compensation paid by the SRC. It has the added advantage of giving SRCs two years to observe what other companies are doing and how they are responding to the disclosure requirements.

In addition, phasing SRCs into the new scheme on a delayed basis could help alleviate the time crunch that concerns many institutional investors and proxy advisory firms. Because the Dodd-Frank Act mandates that all companies that are not exempt from the say-on-pay rules must put both the say-on-pay vote and the frequency vote to the shareholders in 2011, it will be very difficult for investors who hold a large number of different companies' securities in their portfolios and for proxy advisory firms to review all the disclosures and make an informed decision on each issuer. Phasing in SRCs in 2013 would help alleviate the burden on such firms, which would in turn help avoid arbitrary decisions or recommendations and mistakes.

If the Commission chooses this alternative (or makes no accommodation at all for SRCs), we agree that the proposed instruction to Item 402 is useful in making it clear that SRCs do not have to provide a CD&A.

C. Golden Parachute Vote

We believe that SRCs should be exempt from the Dodd-Frank Act requirements for disclosure of golden parachute arrangements and shareholder approval of golden parachute arrangements. The disclosure that SRCs must currently provide with respect to post-termination compensation of executives is much less detailed than the disclosure required for larger companies. The additional disclosure that would be required by Item 402(t) includes a table and is much more extensive than the currently required large-company disclosure. In our experience, SRCs generally do not have extensive golden parachute arrangements for their executives.

Because of this, we do not believe that the minimal incremental investor protection gained by the new disclosure would be justified by the increased costs and burdens of producing such disclosure.

It is also possible that the extra money that an SRC will have to spend to prepare the Item 402(t) disclosure will end up decreasing the merger consideration. If this were the case, then providing the additional disclosure would actually hurt, not help, shareholders of the target company because it would decrease the merger consideration that they receive.

VI. Foreign Private Issuers

Because subsections (a) and (b) of new § 14A refer to shareholder meetings for which the proxy solicitation rules of the Commission require compensation disclosure, we are of the view that these subsections do not apply to foreign private issuers that are exempt from the Commission's proxy solicitation rules pursuant to Rule 3a12-3. Although the Commission does not explicitly so state, it does not appear that proposed Rules 14a-21(a) and 14a-21(b) are intended to apply to foreign private issuers. In order to avoid any unnecessary confusion regarding the scope of the proposed rules, we suggest that the Commission clearly state in its adopting release that Rules 14a-21(a) and 14a-21(b) do not apply to foreign private issuers.

The Commission is proposing an exception to the disclosure requirement under Item 1011(b) for both bidders and targets in third-party tender offers and filing persons in Rule 13e-3 going-private transactions where the target or subject company is a foreign private issuer. The Commission is also proposing an exception to the disclosure obligation under Item 402(t) with respect to agreements and understandings with senior management of foreign private issuers where the target or acquirer is a foreign private issuer. We concur with the Commission's view that such accommodations are appropriate in light of the Commission's long-standing accommodation to foreign private issuers regarding compensation disclosure.

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The Committee appreciates the opportunity to comment on the Proposing Release and respectfully requests that the Commission consider the recommendations set forth above. We are prepared to meet and discuss these matters with the Commission and the Staff and to respond to any questions.

Very truly yours,

/s/ Jeffrey W. Rubin
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