CENTER FOR CAPITAL MARKETS COMPETITIVENESS
OF THE
UNITED STATES CHAMBER OF COMMERCE

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November 18, 2010

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

Re: **Shareholder Approval of Executive Compensation and Golden Parachute Compensation**
Release Nos. 33-9153; 34-63124
File No. S7-31-10
RIN 3235-AK68

Dear Ms. Murphy:

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses and organization of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. To achieve this objective, it is an important priority of the CCMC to advance an effective and transparent corporate governance structure. The CCMC welcomes this opportunity to comment on the Shareholder Approval of Executive Compensation and Golden Parachute Compensation ("proposed rules") proposed by the U.S. Securities and Exchange Commission ("SEC").

The CCMC has consistently advocated that non-binding advisory votes on executive compensation ("Say on Pay") rules should be crafted to provide companies with the flexibility needed to create an appropriate structure for such a vote and its frequency. CCMC has also advocated that in crafting rules, flexibility should be built in to take into account the burden of these rules amongst all issuers and consider exemptions for companies based upon size. Our concerns are centered upon the following issues:

- Disclosure and decisions concerning say on pay and frequency votes;
- Proxy advisory firm recommendations;
- 14 a-8 shareholder proposals;
- Inadequate cost benefit analysis;
- Need to address exemptive authority; and
- Broker Vote.

A detailed discussion of our concerns is listed below..

Background

Section 951 of the Dodd-Frank Consumer Protection and Wall Street Reform Act ("Dodd-Frank Act") requires companies to hold Say on Pay votes, every one, two, or three years. Once every six years, shareholders can determine the frequency of those Say on Pay votes. Section 951 of the Dodd-Frank Act also provides for advisory non-binding votes on golden parachute compensation as part of a merger or acquisition. The CCMC's comments will be limited to the Say on Pay votes.

On February 6, 2009, the Chamber sent a letter to Treasury Secretary Timothy Geithner with important principles on executive compensation and Say on Pay.

1. Principles for Effective Corporate Governance, Investor Responsibility, and Executive Compensation

- Corporate governance policies must promote long-term shareholder value and profitability but should not constrain reasonable risk-taking and innovation.
- Long-term strategic planning should be the foundation of managerial decision-making.

- Corporate executives' compensation should be premised on a balance of individual accomplishment, corporate performance, adherence to risk

- management, and compliance with laws and regulations, with a focus on shareholder value.

- Management needs to be robust and transparent in communicating with shareholders.

2. Say on Pay

The Chamber believes that a strong dialogue between directors and shareholders is an important dynamic in the management of a company. However, the elements of that dialogue must be relevant in order to be worthwhile. While Say on Pay can be a part of that dialogue, the Chamber remains concerned that a one-size-fits-all approach will not provide for adequate feedback or input. Notably, with the average length of a compensation package being three years, the Chamber believed that an annual advisory vote may not be the preferable option for shareholders or directors. Accordingly, the Chamber developed the following Say on Pay principles to allow a system to be created to meet the circumstances of a company. Accordingly, in our view Say on Pay should be:

- **Advisory** – Say on Pay resolutions should be advisory and non-binding to ensure boards understand shareholder opinions while preserving their decision-making authority.
- **Periodic** – Say on Pay resolutions should be periodic to minimize the cost, burden, and distraction associated with annual shareholder votes. If shareholders approve a company's executive compensation, the programs should not have to be put to another vote for three years. If a program is not approved, a vote should be required in the next year.
- **Opt Out**- Shareholders should be able to approve an opt out of say on pay. For example, if two thirds of shareholders approve an opt out of Say on Pay, no vote would be required for 5 years.

While section 951 of the Dodd-Frank Act did not adopt the Say on Pay principles, it did represent a modified version, closer to the Chamber principles, by allowing for a frequency of votes longer than one year, as well as a grant of power for the SEC to exempt issuers or class of issuers.

Discussion of Concerns Regarding the Proposed Rules

Frequency and Say on Pay Proposals

We support the proposed rules insofar as they permit shareholders collectively to choose how often they wish to vote on Say on Pay proposals. Consistent with the proposed rules, a company's board of directors should be permitted to recommend an approach, and provide its rationale, subject to shareholder approval. For example, many companies craft their compensation packages around 3-year performance cycles, so that shareholders may conclude that a triennial vote may be the most sensible and effective.

However, the CCMC believes that the SEC should not amend Forms 10-K and 10-Q, as proposed, to require that companies disclose their decisions on the frequency of future Say on Pay proposals in their Forms 10-Q for the quarter in which the annual meeting takes place (or in the Form 10-K if the annual meeting takes place in the fourth quarter). In the past, the SEC has consistently required disclosure when it was available and has not attempted through its rules to impact the substance and/or timing of a board's deliberations. Indeed, we do not believe that investors "need" the information on the board's response on the proposed timing. Investors should not need to know the board's response until the next year's annual meeting. We believe that the disclosure, if required, should be due no later than the quarterly or annual report immediately preceding the filing of the next year's proxy statement.

We believe that rushing the disclosure could adversely impact the quality of the board's deliberations. As a practical matter, the proposed rules may require that, within a period of time as short as three or four weeks, management, the board and/or one or more board committees would have to:

- Review the voting results;

- Assess their significance, as well as the relevance of the results of the vote on the actual Say on Pay proposal;

- Discuss the available alternatives internally and, as appropriate, with external advisors;

- Potentially discuss with investors to understand the meaning of their vote;

- Reach a decision, and

- Meet to act on the decision.

In addition, time would be needed to draft the disclosure once the board and/or its committees reach their decisions and act on them. As an example, if a company has its annual meeting on June 25, the proposal would require that a final decision be made by the company and disclosed in the Form 10-Q that the company files no later than July 31, which is less than 4 weeks after the meeting.

The short time frame also seems to assume that the shareholders will express a clear preference on the frequency proposal, thereby giving the board a clear mandate as to the requested timing for future Say on Pay proposals. It is equally possible, however, that the frequency proposal will lead to inconclusive or mixed results, which may necessitate more extensive deliberations. Consider, for instance, a circumstance where one frequency receives 40 percent of the vote, and another 39.5 percent. If the board, in the exercise of its fiduciary best judgment, believes that the latter option may be better for the company, should it not spend time considering the best course of action?

Finally, the proposed requirement may conflict with the legislation upon which it is based. New Section 14A of the Securities Exchange Act states that the non-binding frequency proposal "may not be construed . . . as overruling a decision by such company or board of Directors" or "creat[ing] or imply[ing] fiduciary duties" of the company or board. This language does not support imposing a significant burden on the company or board – i.e., an obligation to make a decision within a specified (and perhaps, unduly short) period of time, and then to publicly disclose that decision

in the company's next quarterly or annual report filed with the SEC. In fact, we believe that the proposed disclosure obligation may well in some cases "imply fiduciary duties," contrary to Congress' clear intent.

The best approach is the one that companies currently follow with regard to all advisory shareholder votes – i.e., they use their discretion to decide the timing of, and disclosure method for, any company decisions made in response to a non-binding shareholder vote. It is our view that on frequency proposal votes, a company would typically disclose its response no later than in the following year's proxy statement.

Frequency Votes and Proxy Advisor Voting Recommendations

In connection with the SEC's proposals on the frequency vote, we also wish to alert the SEC to a voting policy that ISS has proposed to adopt for the 2010-2011 proxy season. If adopted, this voting policy will undermine the goals of Congress under Section 951 of the Dodd Frank Act and the goals of the SEC in implementing that legislation, because it would deprive investors of a meaningful choice on frequency. ISS proposes to recommend in favor of an annual management Say on Pay vote, without consideration of the circumstances of the individual company. Congress and the SEC clearly contemplate that investors be provided with an informed choice from among four options — 1, 2, 3 years, or abstain. As you are aware, this is an atypical ballot item insofar as it is more in the nature of a referendum than a traditional proxy advisory vote. A uniform recommendation would defeat those purposes. In adopting Section 951, Congress clearly determined that a "one-size-fits all" approach is not appropriate.

Given the significant impact of ISS' influence on voting results, together with the SEC's own stated support for policies supporting informed proxy voting, we believe that it would be inappropriate for ISS to develop a "one-size fits all" voting recommendation. Proxy advisors furthermore could have a direct economic interest in seeing frequent Say on Pay proposals insofar as it increases reliance on their services. ISS may decide not to adopt the policy as proposed, and we are unsure what plans other proxy advisors might have on this topic. However, regardless of how these matters develop, we recommend that the SEC review the practices of proxy advisors in connection with its pending concept release on proxy mechanics, and consider a rule under these proposals regulating the conduct of proxy advisors in developing

voting recommendations on Say on Pay proposals to ensure that they do not defeat the purposes of the new rules, and the clear intent of Congress.

Shareholder Proposals Under Rule 14a-8

The proposed rules would permit companies that adopt the voting frequency supported by the largest plurality of shareholders to exclude Say on Pay shareholder proposals that address the same subject-matter. In particular, the proposing release states that a company may in such circumstances exclude as "substantially implemented" a shareholder proposal "that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K . . . or that relates to the frequency of Say on Pay votes , . . ." We support this proposal as the voice of a plurality of shareholders, coupled with the considered judgment of the company's board of directors, provides solid governance around the frequency implemented by the company. Any other approach would defy the expressed wishes of the company's shareholders, and open the door to abuse of the proxy process, including inevitable waste of corporate resources in dealing with endless and unnecessary proposals on the same subject matter. As noted below, we believe that the SEC has significantly underestimated the costs and other burdens that the proposed rules will place on companies and shareholders, and any other approach would increase such burdens even further.

We are concerned, however, that shareholder proponents may attempt to circumvent the SEC's proposed approach by making small adjustments to the scope of their compensation-related shareholder proposals. A shareholder, for instance, might submit a "Say on Pay" shareholder proposal that focuses on many, but not all of, the elements of the compensation disclosed pursuant to Item 402 of Regulation S-K. In such a case, the scope of the proposal would differ from management's Say on Pay proposal only in a technical sense. We believe that requiring companies to include such proposals in their proxy materials would represent a waste of company resources, and a waste the SEC's resources as it attempted to "draw lines" between excludable and non-excludable proposals based on what would amount to nuances in scope. We also believe that drowning investors in multiple Say on Pay proposals of varying scope would tend to confuse shareholders and work against the goal of

informed proxy voting. Accordingly, we propose that the SEC modify its proposed revisions to Rule 14a-8 to make clear that company may exclude any shareholder proposal on the same general subject-matter – regardless of technical differences in scope -- when the company has adopted the frequency supported by the greatest plurality.

Cost Benefit Analysis

We believe that the SEC has underestimated the costs and burdens involved in implementing the proposed rules and that a more complete analysis would support great use of its exemptive authority. In the release the SEC states:

> We anticipate that the proposed disclosure amendments would increase the burdens and costs for companies that would be subject to the proposed amendments....For purposes of the PRA, we estimate the annual incremental paperwork burden for all companies to prepare the
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> disclosure that would be required under our proposals to be approximately 25,192 hours of company personal time and a cost of approximately $8,141,200 for the services of outside professionals.

These costs in time and money are burdensome to companies and investors, particularly in the course of an economic downturn. However, the CCMC believes that the SEC has underestimated the costs and burdens involved because it has not taken into account additional categories of costs that would come into play, including:

- Costs associated with proxy advisory firms, given the requirement that thousands of public companies now routinely seek shareholder advisory votes on compensation, and the potential for companies to retain additional consulting services related to their compensation decisions and Say on Pay proposals;

- Additional costs associated with submitting no-action letter requests under Rule 14a-8, as shareholders attempt to submit Say on Pay shareholder

- proposals and/or frequency shareholder proposals in addition to the required management proposals on the same subject (unless the proposed rules are clarified to prevent this eventuality, as detailed above); and

- Likely increased demand for proxy solicitation services and other shareholder communications services, as thousands of public companies begin include routine management Say on Pay proposals in their proxy materials.

We believe that the SEC must determine the true nature of the costs and burdens of the proposed rules, to ensure that the rules have an appropriate impact, as well as providing a basis to take action to invoke the power to exempt.

Exemptive Authority

Section 951 (e) of the Dodd-Frank Act also provides the SEC with the power to exempt issuers or classes of issuers, taking into account, among other considerations, whether the requirements would disproportionately burden small issuers. As noted above, the CCMC believes that a more thorough cost benefit analysis is needed and that such an analysis would lead the SEC to conclude that a greater use of its exemptive authority is necessary and appropriate.

In the proposing release, the SEC has acknowledges that the proposed rules will be a burden upon companies. Therefore, the CCMC believes that the SEC should investigate the burdens upon companies of all sizes and exercise the power to exempt those companies upon whom the proposed rules would be most burdensome upon. It would appear that these provisions would be most burdensome upon small and mid-size issuers. These issuers are important job creators for the economy and unnecessary burdens can also be harmful to the investors of those issuers.

We propose that the SEC provide an exemption to issuers that fall below a $75 million threshold in market cap. Accordingly, we would request that the SEC study these burdens with an eye towards invoking exemptive authority as appropriate.

The Broker Vote

Section 957 of the Dodd-Frank Act also empowers national securities exchanges to change their rules to prohibit broker discretionary voting of uninstructed shares related to executive compensation. The CCMC is concerned that these rule changes will disenfranchise retail shareholders from participating in the Say on Pay process. Accordingly, the CCMC, as previously written to the SEC in 2009 and 2010, believes that systems allowing retail shareholders to participate in voting shares should be implemented.

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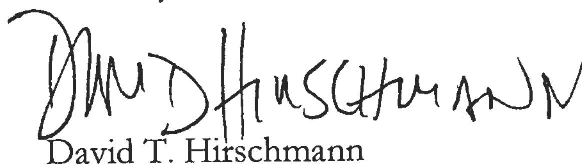
The CCMC believes that these concerns should be addressed in order to allow Say on Pay to be an effective part of the director-shareholder dialogue. In order for the system to work, flexibility must be built in to build appropriate systems to address the needs of companies and shareholders, identify and address the issues of excessive burdens, while empowering the system to work for all shareholders.

The CCMC stands by to assist the SEC to address these concerns.

Sincerely,



David T. Hirschmann

Cc: Chairman Mary L. Schapiro
Commissioner Luis A. Aguilar
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