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Via E-Mail: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

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

Dear Ms. Murphy and Commissioners:

**Re: File Number S7-12-09; Shareholder Approval of Executive Compensation of TARP Recipients**

The California Public Employees' Retirement System (CalPERS) welcomes the opportunity to provide comments to the Securities and Exchange Commission (Commission) on proposed amendments to the federal proxy to specify and clarify the requirement of shareowner approval of executive compensation of Troubled Asset Relief Program (TARP) recipients in the context of federal proxy rules.

CalPERS is the largest state public pension system in the United States with approximately \$190 billion under management. CalPERS provides retirement benefits to over 1.5 million public workers, retirees, and their families and beneficiaries. Acting as fiduciaries to the members of the system, the CalPERS Board of Administration and its staff invest the pension funds of its members over the long term throughout the global capital markets. CalPERS, which holds equity shares in more than 7,000 publicly-traded companies, views advisory votes on executive compensation as an issue of vital importance to all investors and thanks the Commission for the opportunity to provide public comment.

CalPERS supports the Commission's efforts in clarifying proxy rules around the new advisory vote on executive compensation requirement under the Emergency Economic Stabilization (EESA) Act of 2008. These new amendments to the federal proxy rules will provide companies the necessary guidelines in which to present their shareowner advisory vote on executive compensation.

Clarifying the expectation of this advisory vote for companies will be the first step in allowing investors to make informed voting decisions. Additionally, **CalPERS believes that the SEC should extend the application of the advisory vote on executive compensation beyond TARP recipients to all publicly-traded companies.**

CalPERS is pleased to provide comment to the Commission on the proposed amendments to the proxy rules under the Securities and Exchange Act of 1934 to set forth certain requirements for U.S. registrants subject to Section 111(e) of the EESA of 2008. Specifically we offer the following comments on the proposed new Rule 14a-20 under the Exchange Act, Section 111 (e) (1) of the EESA which will require TARP recipients to provide a separate shareowner vote in its proxy solicited for an annual meeting of security holders for which proxies will be solicited for the election of directors.

### **Effective Mechanism – Promotes Dialog**

CalPERS believes shareowners should have an effective mechanism by which to periodically promote substantive dialogue, encourage independent thinking by the board, and stimulate healthy debate for the purpose of holding management accountable for performance through executive compensation programs. CalPERS fully supports that companies submit executive compensation policies to shareowners for non-binding approval on an annual basis to approve the compensation of executives.

Many companies have already initiated an advisory vote on executive pay on their own accord or have had shareowners file proposals on their behalf. According to RiskMetrics Group, during 2008 there were seventy-two shareowner proposals requesting an advisory vote on executive compensation, a 57% increase from shareowner proposals filed on the same issue in 2007. Also in 2008, there were six management proposals on the same issue, a 5% increase from the prior year. These proposals have served as one of few mechanisms in which investors have the ability to have a dialogue about executive compensation with the Board.

### **Well-designed and Properly-Aligned Performance-Based Compensation**

Executive compensation has always been an important topic to CalPERS, one which we have carefully monitored in our portfolio companies. The importance of executive compensation is highlighted with the quote from Timothy F. Geithner, Treasury Secretary on Wednesday, June 8, 2009, “The financial crisis had many significant causes, but executive compensation practices were a contributing factor. Incentives for short-term gains overwhelmed the checks and balances meant to mitigate against the risk of excess leverage.” Time and time again, CalPERS has observed companies with extraordinary compensation packages (including high levels of base salary, non-executive compensation, perks, and severance packages) while exhibiting poor market performance. To this end, CalPERS has long been an advocate for executive compensation programs that are transparent and that align pay-for-performance.

CalPERS, as outlined in its Global Principles of Accountable Corporate Governance, believes well-designed compensation programs should be adequately disclosed and

align management with the long-term economic interests of shareowners. The executive compensation provisions of the EESA defines specific compensation practices that may need further clarification to better align compensation with the economic interest of shareowners. We recommend the following:

Pay for Performance: Compensation of the executive oversight group should be driven predominantly by performance. The compensation committee should establish performance measures for executive compensation that are agreed to ahead of time and publicly disclosed. Performance measures applicable to all performance based awards (including annual and long-term incentive compensation) should reward superior performance — based predominantly on total stock return measures and key operational measures — at minimum reasonable cost and should reflect downside risk.

Compensation Committees: Compensation committees should review senior executive pay plans for unnecessary and excessive risk and provide annual descriptions and certifications regarding their evaluations and conclusions of risk assessment. The compensation committee should provide full disclosure of the performance goals used to determine annual and long-term incentive compensation. Also, the compensation committee should disclose annually to their shareowners how the executive compensation packages they have approved; align with its overall principles which contribute to long-term sustainable value. This type of disclosure will allow shareowners the necessary information to evaluate whether the compensation programs encourage excessive risk-taking. It is also the responsibility of the compensation committee to ensure that executive compensation programs are effective, reasonable and rational with respect to critical factors such as company performance, industry considerations and compensation paid to other employees inside the company.

External compensation consultants: To reduce potential conflicts of interest in the pay-setting process, the annual assessment of the compensation committee's advisers' independence should be disclosed, along with a description of the nature and dollar amounts of services that the company's management commissioned from the advisers and their firms.

Clawback Policy: Companies should recapture incentive payments that were made to executives on the basis of having met or exceeded performance targets during a period of fraudulent activity or a material negative restatement of financial results for which executives are found personally responsible.

Gross-ups: Senior executives should not receive gross-ups beyond those provided to all the company's employees.

Severance Payments: Executives should not be entitled to severance payments in the event of termination for poor performance, resignation under pressure, or failure to

renew an employment contract. Company payments awarded upon death or disability should be limited to compensation already earned or vested.

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

Deferred Compensation Plans: Investment alternatives offered under deferred compensation plans for executives should mirror those offered to employees in broad-based deferral plans. Above-market returns should not be applied to executive deferrals, and executives should not receive “sweeteners” for deferring cash payments into company stock.

### **Better Disclosure – Compensation Disclosure and Analysis (CD&A)**

Additionally, CalPERS supports full disclosure for companies that are providing for a separate shareowner vote on executive compensation under TARP restrictions. CalPERS feels that it is in the best interest of all investors that TARP-related disclosures are disclosed in the CD&A of a company, detailing how TARP will affect executive compensation packages. Furthermore, CalPERS advocates that all publicly-traded companies disclose the short-term and long-term risk decisions that executives made that year and how executive compensation packages align with those risk-taking decisions. Increased disclosure will allow investors to hold the Board to high accountability standards and require the Board to justify executive compensation package alignment with a pay-for-performance model.

We agree that improvement on disclosure should include:

- Focusing on how and why the analysis led to the levels of compensation
  1. Including discussions about how one element of the compensation package relates to other elements of the compensation package;
  2. Focusing on how and why the analysis led to the levels of compensation;
  3. Improving disclosure on metrics and targets of individual awards;
  4. Discussing change-in-control and termination agreements and explaining how and why the material terms were structured;
  5. Discussing how these potential payments on change control and severance agreements influenced other compensation decisions;
  6. Discussing equity awards and disclosing all assumptions in determining levels of pay;

7. Disclosing vesting dates, number of shares of stock, and equity incentive plan awards held by individuals at fiscal year-end.
- Improving Disclosures Related to Performance Targets - Define the Metrics of Long-Term Value Creation
    1. Disclose how performance targets and metrics are set and how these metrics create long-term value for shareowners;
    2. Include all specific corporate and individual performance targets and long-term metrics used to set compensation policies;
    3. Detail how performance levels are determined;
    4. Discuss why the compensation was paid when levels were or were not achieved;
    5. Disclose how pay-out is calculated when using a non-GAAP performance measure;
    6. Include the names and industries of peer companies used as benchmarks.

Proposed Rule 14a-20 will not modify the substantive executive compensation disclosure requirements that are set forth in Item 402 of Regulation S-K, which allows smaller reporting companies to provide scaled disclosure that does not include a compensation discussion and analysis. CalPERS does not agree with this scaled disclosure requirements as expressed in previous letters to the SEC on allowing scaled disclosures based on the size of a reporting company

### **Timely Results of Shareowner Votes and Preliminary Proxy**

Although proposed in a separate release by the Commission, CalPERS believes it is important to also state within this comment letter the importance of accelerating the filing schedule for reporting results of shareowner votes from Forms 10-Q and 10-K to Form 8-K which will require disclosure of voting results within four business days after the end of the meeting at which the vote was held. CalPERS believes that a timely release of voting results will increase and promote substantive dialogue between shareowners and company representatives.

In light of the early stage of the development of disclosures under these requirements and the special policy considerations relating to a shareowner vote for TARP recipients, CalPERS supports the Commission's belief that it is appropriate to provide the SEC staff the opportunity to comment on the disclosure before final proxy materials are filed with regards to a proxy statement that includes the vote on executive compensation required by Section 111(e) of EESA and proposed Rule 14a-20.

### **Equity Ownership and Holding**

CalPERS believes equity ownership guidelines and holding requirements should be an integral component of company's equity plan and overall compensation philosophy. The compensation committee should ensure executives own and hold a significant portion of their equity-based compensation for a period beyond their tenure and a meaningful portion of executive pay should be equity-based.

### **Overall**

Shareowner advisory vote on compensation requirements under TARP programs have brought a larger governance issue to much-needed attention for all publicly-traded companies. CalPERS thanks the Commission in its role in clarifying proxy rules, ensuring that all investors have all of the necessary information to make informed voting decisions.

CalPERS offers its strong support to the Commission in its decision making process and will provide any assistance that the Commission might require from investors. CalPERS supports the Commission expediting the proposed amendments to help implement and clarify requirements regarding a separate shareowner advisory vote to approve the compensation of executives as required of companies receiving financial assistance under the TARP. CalPERS also suggests the Commission move forward to **extend the application of the advisory vote on executive compensation to all publicly-traded companies**

Thank you for considering our comments. If you would like to discuss any of these points, please do not hesitate to contact me at (916) 795-4129.

Sincerely,



Mary Hartman Morris  
Investment Officer

cc: Joseph A. Dear, Chief Investment Officer - CalPERS  
Eric Baggesen, Senior Investment Officer - CalPERS  
Anne Simpson, Senior Portfolio Manager - CalPERS