ClearBridge Compensation Group

November 15, 2010

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

Re: **Comments on Pay Versus Performance Disclosure under Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act**

Dear Ms. Murphy:

This letter is submitted on behalf of ClearBridge Compensation Group, LLC ("ClearBridge") in response to the Securities and Exchange Commission's (SEC's) invitation for preliminary comments on the executive compensation provisions contained in Subtitle E of Title IX of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the "Dodd-Frank Act").

ClearBridge Compensation Group, LLC is an independent executive compensation consulting firm founded in 2009. We provide advice to boards of directors and senior management on the design of effective executive compensation programs with a focus on shareholder alignment, linkage with business strategy, and adherence to strong governance standards. Our senior consultants have extensive experience and expertise in executive compensation program design for publicly-traded companies spanning across industries. Our aim is to establish transparent connections between management and shareholders and understandable links between performance and compensation.

I. Overview

This letter provides our comments and recommendations for your consideration in rule-making for Section 953(a) of the Dodd-Frank Act: "Executive Compensation Disclosure – Disclosure of Pay Versus Performance."

Section 953(a) generally requires the SEC to adopt rules requiring issuers to disclose in their proxy statements the relationship between executive compensation actually paid and the issuer's financial performance, taking into account any change in the value of shares of stock and dividends of the issuer and any distributions.

While this enhanced disclosure may help inform shareholders when assessing an issuer's executive compensation program, we believe the provision, as currently written, is vague with respect to its intent and application. In this letter, we identify several open issues and provide our specific recommendations. Although the open issues we have identified do not represent an inclusive list of all potential issues that may arise, we believe these are key issues that require clarification before the new disclosure requirement goes into effect.

II. Open Issues and Recommendations

A. Uniformity of Disclosure

Issue: Section 953(a) is unclear as to whether the intent is to provide uniform disclosure of pay versus performance relationships across issuers, or if issuers will be given the latitude to provide such disclosure based on the issuer's specific set of facts and circumstances.

Recommendation: We suggest the SEC take a principles-based approach when adopting rules for this new disclosure requirement. We recognize there are merits to having a uniform standard for all issuers, such as allowing information to be more easily used on a comparative basis. However, we believe that issuers should also have the flexibility to disclose their pay versus performance relationships as it relates to their unique business strategies, pay philosophies, and program designs.

B. Covered Executives

Issue: Section 953(a) requires issuers to disclose "the relationship between executive compensation actually paid and the financial performance of the issuer…" but "executive" is undefined.

Recommendation: We suggest that "executive" be interpreted to mean the proxy-named executive officers, consistent with current executive compensation disclosure rules (e.g., CD&A).

C. Time Period

Issue: Section 953(a) does not specify over what time period the pay versus performance relationship should be compared.

Recommendation: In order for the pay versus performance analysis to be meaningful, the time period over which pay is evaluated and the time period over which performance is evaluated should be the same. Salary and annual incentive plans cover compensation earned over a one-year period, while long-term incentives generally have a mid- to long-term focus (e.g., 3 or more years). We therefore recommend that the relationship between pay and performance be measured over both a one-year and a three-year period to account for the different time periods typical of executive compensation program design.

D. Pay Versus Performance Assessment

Issue: Section 953(a) requires that issuers disclose "information that shows the relationship between compensation actually paid and the financial performance of the issuer…" It is unclear how that relationship should be assessed.

Recommendation: With respect to how an issuer should assess its pay versus performance relationship, we recommend the SEC take a principles-based approach. There are a number of alternatives for assessing pay versus performance relationships; therefore, issuers should be permitted to determine their desired approach based on their unique set of circumstances, and provide clear and concise rationale for the approach they have chosen.

Below are some possible approaches an issuer may follow when assessing its pay versus performance relationship:

- *Internal year-over-year assessment:* Assess the change in actual compensation paid vs. the change in performance
- *Internal assessment of actual outcomes vs. targets:* Assess actual compensation paid vs. target compensation compared to actual performance vs. target performance
- *Relative pay and relative performance assessment:* Actual compensation paid vs. the external market compared to actual performance vs. the external market

We note that each of these alternative approaches are imperfect and may not fully provide the context for an issuer's actual pay versus performance relationship. For example, assessing an issuer's relative pay versus performance relationship in a meaningful way presents several challenges, particularly with respect to the availability of timely pay data for the external market (e.g., an industry peer group) for the year analyzed. If an issuer's fiscal year ends on December 31, and the fiscal year for each of the industry peer companies also ends on December 31, relevant pay data for the fiscal year for peer companies may not become publicly available within a practicable timeframe for an issuer to incorporate the information into its proxy statement for that year.

E. Actual Financial Performance

Issue: Section 953(a) does not give guidance as to what "financial performance" should be considered, apart from "taking into account any change in the value of shares of stock and dividends of the issuer and any distributions."

Recommendation: We agree that issuers should compare pay versus performance as measured by changes in stock price. More specifically, we recommend issuers be required to use total shareholder return ("TSR")[1] over one- and three-year periods.

We recognize that stock price may not always fully reflect an issuer's operating performance. Therefore, issuers may wish to supplement required disclosure with additional information pertaining to other relevant operating measures, as appropriate (e.g., measures used by the issuer when determining incentive compensation payouts and/or tied to the issuer's business strategy). However, we do not recommend that the SEC require this level of disclosure, given that the relevance of financial measures is often issuer-specific.

F. Actual Compensation Paid

Issue: Section 953(a) does not define "compensation actually paid."

[1] Total shareholder return represents the change in stock price plus reinvested dividends.

Recommendation: When evaluating the pay versus performance relationship for a one-year period, we recommend that compensation actually paid include salary, annual incentives earned for the most recently completed fiscal year (including amounts deferred but not yet paid), and any non-performance based bonuses paid for that year.

Defining pay over a three-year period is more complex than over a one-year period, given that long-term incentive practices vary significantly based on each issuer's specific business objectives, pay philosophy and program design. We recognize there are merits to using long-term incentive values as disclosed in the Summary Compensation Table ("SCT") of the proxy statement (e.g., using consistent approaches among issuers and easier for the shareholder to follow). However, we believe that the SCT disclosure has limitations as well. For example:

- Equity compensation (e.g., stock options and stock-based awards) disclosed in the SCT is based on the fair value of the award as of the date of grant, and the valuation of these awards is generally driven by financial accounting rules. Equity compensation disclosed does not reflect *actual* amounts earned based on an issuer's *actual* financial and/or stock performance.

- While *actual* long-term performance cash plan payouts are included in the non-equity incentive compensation column of the SCT, *actual* long-term performance share/unit plan payouts are not. Instead, long-term performance share/unit plans are included in the equity compensation columns, based on the grant date fair value of the award, which in many cases may represent the award value for *target* performance, not *actual* performance.

Therefore, we recommend that issuers determine compensation actually paid over a three-year period using "realizable" pay. Realizable pay would include the following:

- The sum of annual cash compensation (defined the same as annual cash compensation for one-year pay versus performance relationship) earned in each of the last three years;

- In-the-money value[2] of stock options granted in the last three-year period, based on the most recent fiscal year-end stock price;

- Current value of restricted stock/restricted stock units granted in the last three-year period, based on the most recent fiscal year-end stock price; and

- Actual payouts earned for long-term performance plans with performance periods ending in the most recently completed fiscal year.

[2] In-the-money value of a stock option represents the difference between the option exercise price and the current stock price multiplied by the number of option shares granted.

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III. Conclusion

We appreciate the opportunity to provide our comments on the pay versus performance disclosure provision of the Dodd-Frank Act. If you have any questions about our comments, please do not hesitate to contact us.

Sincerely,

Russell Miller
Founder and Managing Director

Yonat Assayag
Partner