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April 17, 2015

BY ELECTRONIC MAIL

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. S7-01-15

Dear Mr. Fields:

This letter is submitted by Cleary Gottlieb Steen & Hamilton LLP in response to the request for comment by the U.S. Securities and Exchange Commission (the "Commission") in Release Nos. 33-9723; 34-74232 (the "Release") in which the Commission has proposed amendments to its rules to implement Section 955 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 955 requires that the Commission adopt a rule requiring annual meeting proxy statement disclosure of whether employees or members of the board of directors are permitted to engage in transactions that are designed to hedge or offset any decrease in the market value of equity securities granted to the employee or board member as compensation, or held directly or indirectly by the employee or board member.

We are pleased to have the opportunity to comment on the proposed rule included in the Release (the "Proposed Rule"). Our comments are limited to certain aspects of the Proposed Rule. Specifically, we ask the Commission to:

- clarify that transactions involving (i) an index that includes a broad range of equity securities, including issuer's equity securities, or (ii) financial instruments based on such an index, are outside the scope of the Proposed Rule; and
- limit the disclosure requirement to hedging policies of an issuer that cover its executive officers (but not other employees) and directors.

These changes to the Proposed Rule would reduce unnecessary costs and burdens on registrants and employees and promote disclosure that is meaningful to investors.

1. Exclude Transactions Involving Broad-based Indices Based on Section 16(c) Principles. Item 3 under Request For Comment in Part III.C of the Release asks whether the scope of transactions covered by proposed Item 407(i) should be clarified to exclude transactions involving broad-based indices. We believe that it should. Consideration of the policy underlying Section 955 clearly leads to the conclusion that Congress was concerned with transactions that mitigate a covered person's exposure to reductions in the value of ***the registrant's*** equity securities, as contrasted with transactions that primarily mitigate a covered person's exposure to reductions in the equity markets more generally. We do not believe that it serves the purpose of Section 955 for registrants to be required to disclose whether they restrict covered persons from transactions the value of which is based on changes in valuations in broad-based equity markets, as such information would not provide any benefit to investors.

We also agree with the Commission that since shareholders are likely to view a policy prohibiting hedging as shareholder friendly, the disclosure requirement may prompt registrants to adopt new hedging policies or revise existing ones. Companies are therefore likely to adopt policies that prohibit all hedging within the meaning of the Item 407(i), which will unnecessarily cover transactions involving broad-based indices if transactions involving broad-based indices are not clearly excluded from the scope of the rule. That result will lead to covered persons being effectively precluded from engaging in routine financial transactions that help them manage their exposure to volatility in the equity markets generally, although those transactions are demonstrably beneficial to the covered persons and the financial markets.

The Commission also asked whether a principle-based or numerical threshold approach should be used to define the scope of broad-based transactions that would not be considered hedging for purposes of the rule. We suggest the Commission use for these purposes the same approach utilized for purposes of Section 16 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the regulatory framework applicable thereto. Section 16(c) under the Exchange Act prohibits short-selling by corporate officers or directors ("insiders"). Rule 16c-4 under the Exchange Act permits insiders to engage in transactions that would otherwise be prohibited by Section 16(c) if the transactions constitute hedging transactions – i.e., if the transactions mitigate an insider's risk of loss from a decline in the value of securities, rather than permitting the insider to gain from such a decline. Accordingly, Rule 16c-4 effectively already defines "hedging" as a transaction that would be prohibited by Section 16(c) but for the fact that the insider owns the securities that underlie the transaction.[1] Accordingly, the Commission should expressly state that transactions involving indices containing a registrant's stock (and index-based financial products) that would not be prohibited by Section 16(c) (without regard for Rule 16c-4) for insiders of that registrant are not covered by Item 407(i).

2. Limit Item 407(i) to Hedging Policies Covering Executive Officers and Directors. Item 10 under Request For Comment in Part III.C of the Release asks whether the scope of Item 407(i) should extend to hedging policies applicable to all employees of a registrant, or should be more limited. We believe that the scope should be limited to executive officers (within the meaning of Rule 3b-7 under the Exchange Act) and directors, on the basis that information concerning registrant hedging policies for other employees will not generally be of interest to investors. We note that information concerning stock ownership by other employees is not generally required to be disclosed to investors, and that registrants rarely disclose information about rank-and-file employee stock ownership in Exchange Act filings. In the absence of such disclosure, or of any record of investor demand for such disclosure, it is not obvious why information about hedging policies applicable to such employees would be valuable to investors.

We note (as does the Release) that the report issued by the Senate Committee on Banking, Housing, and Urban Affairs stated that Section 955 was intended to "allow

[1] Rule 16c-4 is premised on the Commission's view that Section 16(c) prohibits insiders from acquiring "put equivalent positions," as defined in Rule 16a-1(h). Rule 16a-1(h), in turn, uses the term "derivative security" to define "put equivalent position." Rule 16a-1(c)(4) excludes from the term "derivative security" interests in broad-based indices.

shareholders to know if ***executives*** are allowed to purchase financial instruments to effectively avoid compensation restrictions that they hold stock long-term, so that they will receive their compensation even in the case that their firm does not perform" (emphasis added).[2] Therefore applying the disclosure requirement only to hedging policies covering executive officers and directors would be consistent with the legislative history of Section 955.

We note further that the Commission has undertaken a disclosure reform initiative with a goal to "explore methods for discouraging … the disclosure of immaterial information."[3] The inclusion of immaterial information about hedging policies covering employees who are not involved in key operating and strategic decisions will run counter to the Commission's initiative to streamline disclosure.

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We would be pleased to answer any questions you may have concerning our comments. Please do not hesitate to contact Arthur H. Kohn or Olga Sanders (212-225-2000) if you would like to discuss these matters further.

Very truly yours,

CLEARY GOTTLIEB STEEN & HAMILTON LLP

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[2] Report of the Senate Committee on Banking, Housing, and Urban Affairs, S. Rep. No. 111-176, at 136 (2010), available at: http://www.banking.senate.gov/public/_files/Comittee_Report_S_Rept_111_176.pdf
[3] SEC, Report on Review of Disclosure Requirements in Regulation S-K, at 99 (2013), available at: https://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf