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August 5, 2009

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

Re: File No. S7-12-09

Ladies and Gentlemen:

This letter is in response to the request of the Securities and Exchange Commission (the "Commission") for comments on the proposal (the "Proposal") to adopt rules relating to shareholder approval of executive compensation of participants in the Department of the Treasury's ("Treasury") Troubled Asset Relief Program ("TARP") as set forth in Release No. 34-60218 (the "Release"). The views expressed herein are solely those of the undersigned and are not necessarily those of Kutak Rock LLP.

## General Observations

I support the Commission in its effort to provide clarification with respect to the proxy rules under the Securities Exchange Act of 1934, as amended (the "1934 Act") for those registrants also subject to Section 111(e) of the Emergency Economic Stabilization Act of 2008 ("EESA"). I believe, however, that the proposed rules are broader than those contained in EESA and that the Proposal should be further refined to conform to EESA.

## Proposed Rule 14a-20

The reference in the first sentence of proposed Rule 14a-20 under the 1934 Act to "during the period in which any obligation arising from financial assistance" should be defined by reference to Section 111(a)(5) of EESA. In particular, Section 111(a)(5) defines the "period" to "not include any period during which the Federal Government only holds warrants to purchase common stock of the TARP recipient."<sup>1</sup> The reference now to "any obligation" could be read to include obligations under warrants held by the Federal Government, and proposed Rule 14a-20

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<sup>1</sup> In addition, the definition of "TARP Period" in § 30.1Q-1 (31 CFR 30 Part 30) excludes the period where only warrants to purchase common stock of the TARP recipient are held by Treasury.

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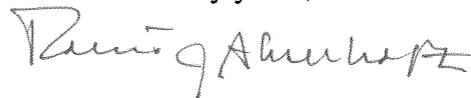
should not, at this time, include a “say on pay” obligation where none now exists under EESA.<sup>2</sup> The shareholder approval requirement in EESA, thus, does not exist subsequent to the TARP preferred stock being redeemed by the TARP recipient where the related warrants remain outstanding.

In addition, consideration should also be given to making reference in proposed Rule 14a-20 to Section 111(e)(2) of EESA to make it clear that the reference to “vote to approve the compensation of executives” refers only to the nonbinding vote requirement of Section 111(e)(2). While the Release makes this clear, proposed Rule 14a-20 does not.

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I would be glad to discuss any of these suggestions with any member of the staff.

Sincerely yours,



Robert J. Ahrenholz

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<sup>2</sup> Obviously, if the Commission were to expand the “say on pay” concept to other registrants as proposed by current legislation and the proxy disclosure proposals in Release Nos. 33-9052 and 34-60280, we would expect that Rule 14a-20 would be revised accordingly or another comparable rule would be adopted.