September 8, 2009

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

RE: Comments on SEC Proposed Rule Regarding Shareholder Approval of Executive Compensation of TARP Recipients
(Release No. 34-60218; File No. S7-12-09)

Dear Ms. Murphy:

The Center On Executive Compensation is pleased to submit comments to the Securities and Exchange Commission ("Commission") on its proposed rules on Shareholder Approval of Executive Compensation of TARP Recipients.[1] The Center recognizes the unique circumstances surrounding the financial services bailout that caused Congress to mandate an annual nonbinding vote on pay at companies that receive TARP assistance. Overall, we agree with the flexible approach to disclosure of say on pay votes the Commission has adopted in the proposed release. However, the Center opposes the application of a say on pay requirement for all public companies because effective methods of communication already exist for shareholders to engage with boards and mandated say on pay could have the effect of diluting the authority of the Board of Directors to determine executive compensation, to the detriment of all shareholders.

The Center On Executive Compensation is a research and advocacy organization that seeks to provide a principles-based approach to executive compensation policy from the perspective of the senior human resource officers of leading companies. The Center is a division of HR Policy Association and currently has over 60 subscribing companies representing a broad cross-section of industries. The senior human resource officers play a unique role in supporting the compensation committee chair. For this reason, we believe our Subscribers' views can be particularly helpful in understanding the important role that carefully constructed executive compensation packages play in ensuring a strong link between pay and performance and how a mandated vote on pay would weaken this link and negatively impact board-shareholder engagement.

I. Executive Summary

Clear and transparent disclosure coupled with board-shareholder engagement should be the goal when striving to strengthen shareholders communications on pay. The Center On Executive Compensation supports the ability of shareholders to engage with boards and to have a "say on pay" through the many effective methods that are currently available to shareholders, rather than through an ill-defined vote. In addition to the shareholder resolution process, which has proven

[1] U.S. Securities and Exchange Commission, Shareholder Approval of Executive Compensation of TARP Recipients, Release No. 34-60218, 74 Fed. Reg. 32474 (July 8, 2009).

to be an effective means of negotiation and dialogue on issues of concern between shareholders and companies, new methods of engagement have emerged in the past two years and are quickly becoming a best practice among leading U.S. companies. The Center strongly opposes a mandated annual vote on executive compensation for each publicly traded company, regardless of the company's pay practices for the following reasons:

- **Majority of Shareholders Do Not Support Say on Pay**. Shareholders, when given an opportunity to support say on pay, have not decisively endorsed it. Resolutions seeking annual say on pay resolutions have failed to garner majority support among shareholders, despite a distressed economic environment and populist anger over the perceived role that incentive compensation played in the financial services bailout. This lack of support is reflected in voting patterns during the 2009 proxy season, which reveal that less than one-third of say on pay shareholder resolutions have received majority support.[2] Further, an academic study commissioned by the Center shows that 50 percent of the largest institutional investors do not support say on pay, while only 25 percent affirmatively support it.[3]

- **Mandated Say On Pay Is Unnecessary**. Say on pay is unnecessary in light of considerable governance and compensation changes that have fostered a greater link between pay and performance in recent years and have engendered increased dialogue between shareholders and boards. This link has been driven by independent and more diligent compensation committees, clearer and more complete disclosure and greater engagement with shareholders. A mandated annual vote on pay would do little to foster real dialogue between companies and shareholders, and may actually reverse positive trends in engagement currently underway.

- **Say on Pay Would Undermine the Authority of the Board**. Say on pay would undermine the authority of the Board of Directors under the U.S. system of corporate governance. The Board has a fiduciary duty to represent the interest of all shareholders in managing the company and setting appropriate executive compensation packages. Setting executive compensation involves linking executive incentives to the company's business strategy, which in many cases includes the use of confidential information that is only available to the Board. Say on pay would dilute the Board's role, and give undue weight to shareholders' views in the executive compensation process even though they do not have the necessary proprietary information that is only available to the Board.

- **Say On Pay Would Weaken The Link Between Pay and Performance**. Establishing appropriate and competitive compensation packages that align executive pay incentives with the company's strategy helps ensure that pay is closely linked with performance and is designed to increase long-term shareholder value. Even though nonbinding, the existence of a shareholder vote is likely to cause Boards to change pay arrangements to conform to shareholder expectations, even if the change is not in the long-term interests

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[2] RiskMetrics data as of August 28, 2009.

[3] Kevin F. Hallock, "Executive Compensation from the Perspective of the Largest Institutional Investors," September 10, 2008, at 3, last viewed at http://www.execcomp.org/research/Institutional%20Irvestor%20Report%20070908%20Final.pdf.

of the company or shareholders. This result would significantly weaken the pay for performance link companies strive to achieve in their compensation programs.

- **<u>Say on Pay in the United Kingdom Has Not Resulted in a Decrease in Pay</u>**. Proponents of mandated say on pay in the U.S. point to the experience in the United Kingdom (UK), which has had a mandated annual vote since 2002.[4] Yet, according to academic research, pay in the UK has actually continued to increase, not decrease as many U.S. proponents claim it will. In fact, the Wall Street Journal recently reported that the pay packages of the UK's 100 top company CEOs rose seven percent in 2008, a year in which the U.K. stock market lost almost a third of its value.[5]
- **<u>Mandated Say on Pay Would Further Empower Proxy Advisory Services</u>**. A mandated annual vote on pay would enhance the clout of the proxy advisory services, which conduct research and often vote the proxies on the shareholders' behalf. Many institutional investors will not take the time to evaluate the executive compensation policies of the publicly held companies in their portfolios; instead, they will defer to the proxy advisory services' recommendations. Even though advocates say the purpose of the vote is to increase the company's dialogue with shareholders, in reality it will increase the dialogue between the company and the proxy services whose views may or may not be aligned with the views of the company's shareholders.

The Center believes that the best way for the SEC to provide investors with a true "say on pay" is to encourage clear and transparent disclosure and to foster the constructive board/shareholder engagement that has emerged over the last few years and that is quickly becoming a best practice among the largest companies.

II. Application of a Mandated Vote to TARP Companies Is an Extraordinary Situation

The decision by Congress to mandate an annual shareholder vote for TARP companies is an extraordinary circumstance that should not be extended to all public companies. As the Center has consistently stated, where considerable government financial assistance is provided to companies or an industry, the government has the right to impose requirements and restrictions on that assistance. In this case, one of those requirements is a mandated vote on pay, in light of the $200 billion in assistance provided to institutions under the program and the exceptional losses suffered by shareholders. Although the Center does not believe that a shareholder vote is necessary or effective, even for TARP companies, the government clearly has the right to impose such conditions in exchange for the funds provided.

The Center supports the Commission's flexible approach to disclosure in the proxy regarding the nonbinding nature of the vote and the reason management is providing the vote. This approach is consistent with the current rationale of disclosures in the CD&A.

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[4] Jeffrey Gordon, "Say on Pay: Cautionary Notes on the UK Experience and the Case for Shareholder Opt-In," January 8, 2009, at 1, Columbia Law and Economics Working paper No. 336, ECGI-Law Working Paper No. 117/2009, available at SSRN http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1262867 [hereinafter "Cautionary Notes on the UK Experience"].
[5] Mark Cobley, "FTSE Bosses Fair Better Than Holders, Staff" *Wall Street Journal*, June 5, 2009, at 1 .

The Center believes that there is no governance, economic or policy rationale for extending a mandated vote beyond situations where exceptional assistance is provided. As articulated further below, the Center also believes that the negative effects on shareholder engagement, the governance system, and pay practices far outweigh any surface benefits from such a vote.

III. Majority Shareholder Support for Say on Pay Is Lacking

Contrary to arguments by shareholder vote proponents, the 2009 proxy season data and other academic research shows that there is not overwhelming shareholder support for say on pay. As of August 28, 2009, out of 70 votes on shareholder proposals seeking an annual nonbinding vote on pay, only 22, or less than a third, have received majority support.[6] Further, despite a deep economic recession, the meltdown in the financial services industry and financial markets, and populist anger over the perceived role that incentive compensation played in the meltdown, average support for say on pay in 2009 is only 46.3 percent, up from 42.6 percent in 2008.[7] The lack of widespread majority support demonstrates that shareholders are not clamoring to have a mandated vote on pay for all companies.

Academic research shows one reason that majority support is not more widespread: at least 50 percent of the largest institutional investors do not support say on pay. A 2008 study conducted by Professor Kevin F. Hallock of Cornell University, which involved one-on-one interviews with 20 of the top 25 institutional investors, found that 50 percent of large institutional investors opposed say on pay,[8] while only 25 percent affirmatively supported it. According to one investor quoted in the study, "It is not clear A, what we are voting on and B, what others are voting on. We can have a much more individual and nuanced discussion [with the Board]."[9] Another indicated:

> We view it as the prerogative of the board to consider all factors that go into the amount and composition of pay. We view the board as our proxies. Beyond that I think there is a danger in a democratic vote. On the surface it may look like lower pay is better but maybe not in the longer run.[10]

These findings reinforce why there was a lack of majority support for say on pay resolutions during the 2009 proxy season.

The statutory requirement that all companies participating in the TARP program hold a shareholder vote this proxy season provided shareholders with the opportunity to voice their opposition to the compensation programs at the financial services companies that many believe were responsible for the economic crisis. Recently released data, however, revealed that shareholders approved executive pay packages at every public company that received funds under TARP.[11] This outcome reinforces the argument that a mandated vote on pay would have

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[6] RiskMetrics data as of August 28, 2009.
[7] *Id.*
[8] Hallock Report, *supra* note 3, at 3.
[9] *Id.* at 18.
[10] *Id.* at 18.
[11] Cari Tuna, "Investors Say 'Yes' on Pay at TARP Firms" *Wall Street Journal*, September 2, 2009, at 1 .

limited, if any, value, and is consistent with evidence that shareholders rely on boards to establish executive compensation.

Individual shareholders typically do not embrace say on pay for many reasons. A recent academic paper by Professor Stephen M. Bainbridge of the UCLA School of Law, concludes, "Most shareholders recognize that they are better off pursuing a policy of rational apathy rather than an activist agenda. They know that directors have better information and better incentives than do the shareholders."[12] This makes sense when considered in light of the length of most proxy statement compensation disclosures, which for large companies run 30 to 50 pages in length. Most individual shareholders will not invest the time necessary to develop a reasoned understanding of pay that enables them to cast a knowledgeable vote. The lack of majority support for say on pay shareholder resolutions affirms these tendencies.

IV. Mandated Say on Pay Is Unnecessary in Light of Greater Engagement

Say on pay is unnecessary in light of increased board-shareholder engagement that has occurred in recent years. Due in large part to the greater information disclosed in the proxy statement since 2006 under the SEC's revised disclosure rules, shareholders have much more executive pay information available than they did just a few years ago. These disclosures provide shareholders with a much better understanding of the rationale for a company's compensation programs and how compensation fits with overall business strategy. Although the clarity of disclosure has steadily improved since 2006, questions continue to arise as shareholders seek to understand the complexities of executive compensation programs. Companies, in turn, have responded by fostering opportunities for informed dialogue with shareholders on these issues.

Shareholders already offer companies feedback on executive compensation issues in a number of meaningful ways. Existing methods that have been successfully used over the years include sending letters to the corporate secretary or investor relations executive or raising questions at the annual meeting. In addition, shareholders have increasingly employed the shareholder resolution process as a way to engage management. The flexibility inherent in the shareholder proposal approach allows for negotiation and creative solutions, as evidenced by the withdrawal of approximately 22% of all resolutions filed in 2009 due to successful board/shareholder negotiations.[13] Companies take these submissions very seriously and typically discuss proposals with the proponents at length before including them in proxy statements.

Leading companies are also reaching out to shareholders in new and innovative ways in an effort to gather input and answer questions about compensation programs. Companies are increasingly adopting proactive methods for engaging their shareholders on executive pay issues, such as hosting individual/group meetings with the largest investors, conducting surveys targeted on company specific executive compensation issues, or providing a designated email address or website portal for questions related to compensation. Others are simply engaging more

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[12] Stephen M. Bainbridge, "Remarks on Say on Pay: An Unjustified Incursion On Director Authority," March 4, 2008, *UCLA School of Law, Law-Econ Research Paper No. 08-06*, at 10.
[13] RiskMetrics data as of August 28, 2009.

frequently and in greater depth with shareholders through the existing means that have long been available.

These existing and alternative methods create the opportunity for ongoing and constructive dialogue that would not occur with a simple up and down vote. Unlike a shareholder vote, which is a referendum on executive pay generally, these approaches allow shareholders to have a say on pay by targeting the specific aspects of compensation that cause them concern.

V. Say on Pay Would Undermine the Authority of the Board

A fundamental tenet of the U.S. system of corporate governance is that boards of directors are responsible for managing companies on behalf of all shareholders by setting the company's strategy and addressing the many complex aspects of running a large enterprise. A key element of this "board-centric" approach is the review and approval of executive compensation packages that are closely linked to the business plan and the underlying strategic direction of the company. Just as with business strategy, the board goes through a rigorous process, considering many factors in setting appropriate pay packages. In turn, shareholders are responsible for electing directors, and approving certain programs or transactions that affect them directly. Shareholders have the power to hold directors accountable for their decisions by voting out those that underperform. Recent data indicates that 66 percent of S&P 500 companies have adopted some form of majority voting for directors,[14] which gives shareholders the power to more easily remove directors.

The recent American Bar Association Task Force report on Delineation of Governance Roles and Responsibilities[15] reinforces the traditional roles of boards and shareholders and corrects several misperceptions about the role of shareholders in our model of corporation governance. For example, proponents of say on pay often argue that notions of "shareholder democracy" reinforce the need for say on pay. Yet, the report cautions that the board of directors' authority as the governing body of the corporation is "neither delegated by, nor derived from shareholders."[16] Instead the Board is given that authority independently by state law. Thus, the directors do not "represent" shareholders, but rather "each director becomes a fiduciary to the corporation and must act in the best interests of the corporation and the entire body of shareholders . . . . Therefore analogies to democratic forms of government are imprecise."[17]

The ABA report also makes clear that shareholders have limited rights, but in return, have limited responsibilities, unlike proprietors of a business or partners in a partnership. By contrast, as fiduciaries, directors must uphold a duty of loyalty to the corporation and all shareholders, and thus "may not delegate to others those duties that are at the heart of the corporation."[18] These duties include selecting, compensating, evaluating and motivating the CEO and the senior

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[14] Claudia Allen, "Study on Majority Voting of Directors" November 12, 2007, at 1, *last viewed* http://www.ngelaw.com/news/pubs_detail.aspx?ID=777
[15] *Report of the Task Force of the ABA Section of Business Law Corporate Governance Committee on Delineation of Governance Roles and Responsibilities*, August 1, 2009, last referenced at http://www.abanet.org/buslaw/committees/CL260000pub/materials/20090801/delineation-final.pdf.
[16] *Id*. at 5.
[17] *Id*.
[18] *Id*. at 10.

management team. The report concludes by cautioning policymakers to carefully evaluate the consequences before changing the current balance of rights and responsibilities among boards and shareholders. The Center believes that say on pay would upset this balance because it effectively puts shareholders in the shoes of the board with respect to executive compensation decisions.

Although significantly improved disclosure has provided investors with a wealth of information about executive pay programs, shareholders are not privy to proprietary information that boards use to make decisions on pay, nor should they be. This information often must remain confidential to protect the company's competitive advantage in the marketplace. Yet giving shareholders a vote on pay presumes that they have the same information as the Board and that shareholders' judgments should prevail, even though the Board has a clearer view of the company's competitive position.

While perhaps attractive on the surface, a say on pay vote would implement a system of "management by shareholder referendum" that runs contrary to our current system of corporate governance, which clearly defines and separates the shareholder and director roles. Charles Elson, director of the Weinberg Center for Corporate Governance at the University of Delaware, highlighted the unintended consequences that a mandated vote would have on corporate governance, stating "Say on Pay has some harm to it because it dilutes the authority of the board. … [I]f you approve say on pay, why not approve shareholder votes on capital allocations or on strategic moves? Once you go down that road, shareholders end up voting on everything and nothing gets done."[19] Likewise, the Washington Post recently editorialized that say on pay would be "either empty or pernicious." Boards should be responsible for compensation decisions and held accountable through greater disclosure and ultimately by shareholders who determine whether to reelect them.

VI. Say on Pay Would Weaken the Pay for Performance Link

Providing a shareholder vote on pay would negatively impact the Board's ability to tie pay to performance. Hiring, incenting and retaining CEOs and other senior executives are key elements of the board's duty to set and oversee corporate strategy. Establishing appropriate and competitive compensation packages that align executive pay incentives with the company's strategy helps ensure that pay is closely linked with performance and is designed to increase long-term shareholder value.

Compensation that is aligned with performance by definition is specific to the company in question. Even though certain industries and types of companies may pay similarly, each has slightly different products and markets, as well as different strengths and weaknesses and different leadership. By tailoring short- and long-term incentives to business strategy, boards more directly align executives' interests with those of the company and its shareholders.

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[19] G. Jeffrey MacDonald, "Have Your Say on CEO Pay," The Christian Science Monitor, April 16, 2009, at 2, http://www.csmonitor.com/2009/0416/p13s02-wmgn.html.

A mandated shareholder vote would undermine this approach. Even though it is non-binding, a majority shareholder vote against a compensation package would effectively force boards to respond by changing the executive compensation program. Seeking to ensure a positive vote, compensation committees may be more inclined to support a compensation package that would pass shareholder approval but that is not necessarily aligned with the company's strategy. This could result in compensation plans that are decoupled from performance, do not reflect the committee's judgment and ultimately undermine the board's authority for setting pay.

Even in the absence of a negative vote, a mandatory annual vote is likely to cause compensation committees to focus on ensuring that the company will receive a majority vote in favor of the annual pay resolution, and tailor their pay programs to achieve this goal. According to academic research, this trend of companies adopting a "cookie-cutter" approach has emerged in the UK.

> "Immediately upon adoption of the DRR [say on pay] regime, the ABI [Association of British Insurers] and the NAPF [National Association of Pension Funds] adopted "best practices" of compensation guidance. Because of the dominance of those two actors, whose institution investor members own nearly 30 percent of the shares of large UK public firms, the annual shareholder vote is often a test of "comply or explain," with those guidelines…the tendency for firms to "herd" in their compensation practices is very strong."[20]

The long-term interests of companies and shareholders are best served by compensation plans that are tailored to company specific strategies and rely on board judgment to ensure that there is clear alignment between pay and performance.

VII. Say on Pay Has Not Decreased Compensation in the UK

The experience in the United Kingdom (UK) has not conclusively shown that pay will decrease under a mandatory shareholder vote, despite policymakers' intent that say on pay decrease pay. According to academic research, CEO salaries and bonus payouts in the UK grew at double digit rates, with the value of long-term incentive plans growing at similar or in many cases higher rates than in the U.S., despite the adoption of say on pay in 2002.[21] In fact, the *Wall Street Journal* recently reported that the pay packages of the UK's 100 top company CEOs rose 7% in 2008 in a year when the UK stock market lost almost a third of its value.[22] CEO's of S&P 500 companies in the U.S., on the other hand, saw their compensation decline by 7.5% in 2008.[23]

In addition to the lack of evidence that a mandated shareholder vote has impacted the level of pay in the U.K., the structure of corporate governance is substantially different in the UK than in the U.S. There are no mandatory standards for independent directors for UK companies. In fact they have a much larger percentage of directors from company management, 38 percent,

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[20] *Cautionary Notes on the UK Experience*, *supra* note 4, at 17.
[21] *Id. at 15*
[22] Mark Cobley, "FTSE Bosses Fair Better Than Holders, Staff," *Wall Street Journal*, June 5, 200, at 1.
[23] Equilar, Report: 2009 CEO Pay Strategies for S+P 500 Companies, May 2009, at 5, *available at* http://insight.equilar.com/app/pub/newsletter/view/view.jsp

compared to less than 20 percent for large American firms.[24] Members of management who are company directors can participate on compensation committees in the UK,[25] but in the U.S., stock exchange rules prohibit management from participating on such committees. In the UK, court action against the board may be barred after a board decision is put to a shareholder vote. Also, legal action is much more constrained in the UK because the loser must pay the winner's litigation expenses. In the U.S., litigation is not foreclosed just because there is a shareholder vote on an issue, and in the U.S. the parties bear their own costs.

In addition, roughly 30 percent of the shares in UK corporations are held by just two large shareholders, the Association of British Insurers and the National Association of Pension Funds. If these two investors "approve" of the company's pay program, most other investors follow. There is no such concentration of share ownership in the U.S. Hence, it might be appropriate in the UK for corporations to meet with such large shareholders to develop consensus on executive pay. However, in the vast majority of cases it would be prohibitive to extend this system to the much larger number of shareholders in the U.S.[26]

Studies of the UK experience with a mandatory shareholder vote have indicated that it has increased communication between British companies and the two large shareholders.[27] Because the U.S. does not have a similar corporate governance system, this "success" does not really translate and more importantly, the mandated shareholder vote in the UK has not slowed the increase in executive pay, which is the implied objective for U.S. legislation.

VIII. Mandated Say on Pay Would Further Empower Proxy Advisory Services

The sheer volume of shareholder votes – one at each publicly held company annually – would put significantly more power in the hands of the proxy advisory services.[28] These businesses evaluate proxy proposals, issue recommendations, and even vote the proxies of institutional investors. The reality is that pay matters are complex, and most institutional investors do not have the resources to conduct a detailed analysis of thousands of company pay packages annually. As a result, the vote on pay movement will concentrate power and decision making in the hands of the proxy advisory services. Companies can be expected to conform their pay packages to the recommendations made by the services because, in many cases, the institutional investors will have neither the time nor the resources to conduct their own analysis, and will rely heavily or exclusively on the analyses provided by proxy advisory services. In other words, even though advocates say the purpose of the vote is to increase the company's

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[24] Spencer Stuart Board Index 2006; Spencer Stuart 2006 UK Board Index, http://content.spencerstuart.com/sswebsite/pdf/lib/SSBI-2006.pdf

[25] Financial Reporting Council, Combined Code on Corporate Governance, 2006 Edition, at Section 1, A.3, A.3.1, *last viewed at* http://www.frc.org.uk/documents/pagemanager/frc/Combined%20code%202006%20OCTOBER.pdf.

[26] Amy Knierem and Kelly Crean, Say on Pay Policies: A Global Comparison," Mercer Human Resource Consulting, May 2, 2007, at 9.

[27] Stephen M. Davis, "Does 'Say On Pay' Work? Lessons on Making CEO Compensation Accountable," at 10, *last viewed at* http://millstein.som.yale.edu/Davis_Say_on_Pay_Policy_Briefing.pdf.

[28] Stephen M. Davis, Testimony before the House Committee on Oversight and Government Reform, "Empowering Shareholders on Executive Compensation" and H.R. 1257, the 'Shareholder Vote on Executive Compensation Act,'" Mar. 8, 2007, at 6, *last viewed at* http://www.house.gov/apps/list/hearing/financialsvcs_dem/htdavis030807.pdf.

dialogue with shareholders, in reality it will increase the dialogue between the company and proxy services whose views may or may not be aligned with the views of the company's shareholders.

The UK experience illustrates this reality. As noted by one paper on the UK system funded by proponents of a mandated U.S. vote, "Funds have experienced mixed success in facing challenges posed by the introduction of advisory votes. Some funds responded by relying almost entirely on outsourced agents, the proxy advisory services, to conduct such analysis and consultation."[29] In addition, the report notes that the reliance on proxy advisory services has increased markedly and not to the benefit of shareholders, "Investment funds in Britain expect proxy service providers to vet remuneration plans with companies and to engage in dialogue with boards in search of improvements before plans are finalized. Other funds use service providers merely for guidance in voting. Either way, market concerns center on two questions: First, whether too many investors follow service provider voting advice automatically and, second, whether such providers apply a "one-size-fits-all" framework instead of evaluating compensation plans according to a company's specific circumstances."[30]

Further academic research supports this conclusion, "This narrow range, close to a "one size fits all," is highly likely because the burden of annual voting would lead investors, particularly institutional investors, to farm out evaluation of most pay plans to a handful of proxy advisory firms, who themselves will seek to economize on proxy review costs. Custom-tailored evaluation is costly; monitoring for adherence to "guidelines" or "best practices" is cheap."[31]

There is no doubt that mandated say on pay would provide a significant business opportunity to the proxy advisory services, as large investors unable to dedicate the resources to assessing and providing an informed vote on the compensation programs of thousands of companies, outsource this responsibility to the advisory services. It should be noted that RiskMetrics, the largest and most influential proxy advisor has an inherent conflict of interest in their business model by providing both consulting services to corporate issuers and voting recommendations to institutional investors. In addition the capacity constraints in RiskMetrics' business model have led to notable inaccuracies in its reporting and a simplistic approach to compensation analysis that provides substandard information to investors.

Taken to its logical conclusion, it is possible that the proxy advisory services would effectively control the vote over executive compensation plans.

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[29] *Id*. at 12.
[30] *Id*. at 13.
[31] *Cautionary Notes on the UK Experience, supra* note 4, at 2.

Conclusion

The Center opposes the application of mandated say on pay to all publically-traded companies for all of the reasons outlined above. However, we fully support the SEC's goals of providing investors with clear and transparent disclosure and encourage the Commission to recognize the significant increase in board/shareholder engagement that has taken place since the 2006 revised disclosure rules were instituted. The Center believes that the combination of increased engagement and transparent disclosure is the best way to ensure that shareholders have a true "say on pay."

Sincerely,

Timothy J. Bartl

Timothy J. Bartl
Senior Vice President and General Counsel

CC: Chairman Mary L. Schapiro
Commissioner Kathleen L. Casey
Commissioner Elisse B. Walter
Commissioner Luis A. Aguilar
Commissioner Troy A. Paredes