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VIA E-MAIL (*rule-comments@sec.gov*)

September 14, 2015

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **Proposed Rule on Listing Standards for Recovery of Erroneously Awarded Compensation (File Number S7-12-15)**

Dear Mr. Fields:

On July 1, 2015, the Securities and Exchange Commission (the "Commission") proposed rules (the "Proposed Rules") mandating the recovery of incentive-based compensation of executive officers in cases of material non-compliance with accounting reporting requirements, as required by Section 10D of the Securities Exchange Act of 1934, as added by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). We appreciate the opportunity to offer our comments and hope that the Commission finds our observations and recommendations useful in developing the final rules.

We have the following concerns with the Proposed Rules:

- The Proposed Rules provide very limited discretion for a listed issuer's compensation committee or board of directors in determining whether to pursue some or all of a potential clawback recovery and the manner of such recovery. Further, the Proposed Rules impose draconian (potential delisting) consequences for not complying. Such lack of discretion strips the committee and board of directors of any judgment whatsoever as to what may be in the best interests of the issuer and its shareholders and does not take into account the many nuances of financial statement restatements.

- The Proposed Rules incentivize behaviors that are not aligned with the best interests of issuers and their shareholders, including encouraging issuers to (a) modify their compensation programs to move away from incentive-based compensation based on metrics subject to the clawback rules and (b) designate fewer individuals, particularly those who do not have a role in preparing financial statements, as "executive officers" as defined under the Proposed Rules.

- The Proposed Rules will serve as an impediment for issuers in recruiting executive talent.

Below is a more detailed discussion of the above concerns.

1. **The Proposed Rules provide limited discretion, restricting the compensation committee and board of directors from acting in the best interests of the issuer and its shareholders.**

The Proposed Rules provide limited discretion for a listed issuer's compensation committee or board of directors to determine not to pursue a clawback and imposes harsh (potential delisting) consequences for not complying. The Proposed Rules interpret the Dodd-Frank Act's clawback mandate to require an issuer to recover previously awarded compensation in compliance with the issuer's recovery policy except to the extent that pursuit of recovery would be impracticable because it would impose undue costs on the issuer or its shareholders or would violate home country law. Under the Proposed Rules, the compensation committee and/or board of directors may consider only the following criteria in its determination of whether the discussed exceptions are applicable: (a) whether the direct costs of enforcing recovery (namely, direct legal costs and financial expenditures) would exceed the recoverable amounts and (b) whether recovery would violate home country law for foreign private issuers. Before concluding that the direct costs of enforcing recovery would exceed the recoverable amounts, the issuer must first make a good faith attempt to recover the compensation and can only use, for purposes of making the comparison between costs and benefits, the direct costs incurred by having a third party involved in recovering the compensation. The justification for not recovering the excess compensation must be disclosed in the issuer's proxy statement and submitted to the exchange. We believe that given the narrow scope of this exception it will be used only in limited situations.

A listed issuer's board of directors and its committees are ultimately responsible for its management. The lack of discretion on the part of the compensation committee and the board of directors in connection with pursuing clawbacks provided in the Proposed Rules disregards the knowledge of the committee and board of directors as to what may be in the best interests of the issuer and its shareholders. It also relegates them to performing little more than the ministerial functions of calculating direct costs and determining whether the anticipated recovery is greater or less than those costs. An alternative approach is to make the rules less prescriptive with a focus on disclosing any discretion exercised by the compensation committee or board of directors in making clawback-related decisions. Allowing additional discretion by the compensation committee and the board of directors in the areas highlighted below and requiring disclosure of the factors considered in exercising any such discretion (i.e., in newly proposed Item 402(w) of Regulation S-K) could relieve many of the concerns addressed in this letter and that have been expressed by other commentators. Investors, based on a review of this disclosure, can then decide whether the compensation committee or board of directors exercised its discretion appropriately under the circumstances and act on that determination when casting their votes on director nominees and compensation-related matters at shareholder meetings.

We believe that a compensation committee or board of directors should be allowed to consider the following in making its determination as to whether it is practicable to pursue some or all of the potential clawback recovery:

- A committee or board of directors should be allowed to consider costs of recovery beyond direct costs. A determination by the compensation committee or board of directors of what is in the best interests of the issuer and its shareholders may go beyond measurable direct costs and, depending on the circumstances, could include indirect costs such as commercial and reputational harm, recruitment concerns, opportunity costs and time of management and board members. The indirect costs associated with commercial and reputational harm and the time and effort of management are principal concerns to directors when considering whether an action is in the best interests of the issuer and its shareholders. Prohibiting directors from considering these costs diminishes the ability of directors to act in the best interests of the company and its shareholders.

- The compensation committee or board of directors should be allowed to consider whether a pre-existing legally binding contract (where such contract provides for incentive-based compensation but does not condition receipt of such compensation on clawback rights under the new clawback rules) should be the basis for an impracticability exception. Recipients of incentive-based compensation not already subject to clawback restrictions would likely be averse to amending an existing agreement to permit recovery of such compensation without any consideration for doing so. Alternatively, any such compensation arrangements could be grandfathered under the new clawback rules.

- An individual's incentive-based compensation is subject to recovery if the individual served as an executive officer of the issuer at any time during the three-year period subject to a clawback. In circumstances in which an individual serves as an executive officer for only a part of the applicable performance period, the compensation committee or board of directors should be allowed to consider whether it is appropriate to seek to recover only that portion of the incentive-based compensation attributable to the time during the performance period that such individual served in the capacity of an executive officer. For example, in the case of an individual who was not an executive officer at the time the compensation was granted to him or her, but who subsequently became an executive officer during the clawback period, we propose that it should be in the discretion of the compensation committee and the board of directors whether to seek to recover only that portion of the excess incentive-based compensation paid to such individual while he or she served in the capacity of executive officer.

In the Proposed Rules, the Commission states that issuers should be able to exercise discretion in how to accomplish recovery of clawback amounts, but only to the extent such discretion is exercised reasonably promptly and in a manner that effectuates the purpose of the statute—to prevent executive officers from retaining compensation that they received and to which they were not entitled under the listed issuer's results. The Commission further noted that undue delay would constitute non-compliance with an issuer's clawback policy and therefore subject the issuer to delisting. We believe that the clawback rules or related guidance should clarify that a compensation committee under certain circumstances can recover any excess compensation over time or from future pay. Examples of circumstances or factors that might call for such methods of recovery are: (a) if the compensation committee concludes that the accounting restatement was due to a good faith error rather than some form of misconduct,

(b) the executive officer had no role in preparing, or any oversight role in the preparation of, the financial statements that were later restated, or (c) if the individual served as an executive officer for only a part of the applicable performance period as discussed above.

2. **The Proposed Rules incentivize behaviors that are not aligned with the best interests of listed issuers and their shareholders, including using alternative performance measures that are not subject to the clawback rules or having fewer appointed executive officers.**

Alternative Performance Measures

The Proposed Rules create a disincentive for listed companies to use financial reporting measures in their performance-based metrics for compensation. This will cause companies to move away from offering incentive-based compensation that is likely to trigger clawback rules, potentially undermining many companies' present compensation goals of aligning the interests of officers with the interests of shareholders and incentivizing contribution to share value. Under the Proposed Rules, each issuer would be required to recover the excess amount of incentive-based compensation actually paid to current and former executive officers during the three-year period preceding the year in which the issuer is required to restate its financial statements. Issuers must recover the excess amount of incentive-based compensation, defined as any compensation, including cash and equity, that is granted, earned or vested based wholly or in part upon the attainment of any "financial reporting measure." Financial reporting measures include measures based on accounting principles used in preparing financial statements, any measures derived wholly or in part from such financial information, stock price and total shareholder return ("TSR"). Incentive-based compensation excludes certain types of compensation, including strategic measures (e.g., a merger or divestiture) and operational measures (e.g., completion of a project).

Because the Proposed Rules define incentive-based compensation to encompass any compensation that is tied to a financial reporting measure, we believe many issuers will begin moving toward other types of performance measures that fall outside of the scope of the clawback rules, such as strategic measures, subjective measures or operational measures, instead of using the Commission-defined financial reporting measures. Shareholders, as evidenced by voting recommendations of proxy advisory firms such as Institutional Shareholders Services, have put a great deal of emphasis on financial reporting measures such as TSR in recent years. The Proposed Rules, by incentivizing companies to move away from these measures, undermine the goals of aligning the interests of officers with the interests of shareholders and incentivizing contribution to share value based on financial metrics.

In addition, the link between a financial statement error and the movement in stock price or TSR can be tenuous and difficult to ascertain. In the event that an issuer is required to recover the excess amount of compensation that was calculated based on stock price or TSR, estimating the alternative stock price and quantifying the impact of a financial restatement on stock price or TSR will be difficult, inherently imprecise and expensive. Although the Proposed Rules allow listed companies to use "reasonable estimates" in determining the effect of such an accounting restatement, the Commission acknowledges in the Proposed Rules that making such a determination may require complex analysis that involves significant technical expertise and specialized knowledge, resulting in extensive research and expense. The Commission acknowledged in the Proposed Rules that these expenses could be substantial and would require a significant number of hours of work by highly skilled experts. We believe that a significant amount of ambiguity remains in the Proposed Rules as to what forms of reasonable estimates will be deemed adequate without the engagement of valuation experts and other third party advisors. In practice, we believe that the risk of any such reasonable estimate being challenged by interested parties and the accompanying risk of litigation and shareholder lawsuits, particularly with respect to individuals who were executive officers at some point during the look-back period but are no longer holding such position, will ultimately lead most listed companies to the conclusion that engaging outside experts and incurring the related significant expenses will be required. This added expense and risk of shareholder litigation, coupled with the fact that any such analysis that identifies an alternative stock price or TSR will always be open to second guessing due to the many variables that impact any movement in share price over any measurable period of time, will lead many issuers to severely limit if not eliminate the use of stock price and TSR from their incentive-based compensation programs. This outcome is contrary to the goal of directly incentivizing contribution by executive officers to share value.

Reducing the Number of Executive Officers

The Proposed Rules may cause issuers to reconsider the duties of their executive officers in order to limit the number of officers subject to the rules. Under the Proposed Rules, each of the issuer's president, principal financial officer, principal accounting officer (or controller), any vice president in charge of a principal business unit, division or function and any other person (including executive officers of a parent or subsidiary of the issuer) who performs similar policy-making functions for the issuer would be individually subject to clawback exposure under the Proposed Rules. Because the Proposed Rules and clawback exposure applies to a broad range of officers, even those who have little or no responsibility for accounting and finance matters, one unintended consequence of the application of the Proposed Rules to such a broad group of individuals is that issuers may reconsider the duties of their executive officers in a way that limits the number of officers subject to the rules, to the extent possible. These types of decisions should be driven by best corporate governance practices rather than compensation matters.

3. The Proposed Rules will serve as an impediment for issuers in recruiting executive talent.

Because the Proposed Rules do not allow an issuer to indemnify an executive officer in connection with the clawback rules, the Proposed Rules may potentially inhibit an issuer's ability to hire a prospective executive officer given the individual's concern of being subject to a clawback even absent any misconduct or oversight role over the preparation of financial statements. A potential candidate for an executive officer position is likely to think more favorably of a comparable offer for employment at a competitor of the issuer that is not listed on a national securities exchange, given the possibility that he or she may be subject to a clawback while employed by the issuer, thereby hindering the issuer's ability to recruit top talent.

We sincerely appreciate your consideration of our comments. Please contact us if you have any questions regarding our comments.

Sincerely yours,

Ensco plc

J. Roderick Clark
Chair, Compensation Committee