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September 17, 2015

Transmitted via Email: rule-comments@sec.gov

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-12-15, Listing Standards for Recovery of Erroneously Awarded Compensation

Dear Mr. Fields:

The State Board of Administration (SBA) of Florida is pleased to provide comments on the **Proposed Rule for Listing Standards for Recovery of Erroneously Awarded Compensation**, developed in accordance with Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The SBA manages approximately \$172 billion in pension and non-pension assets on behalf of the Florida Retirement System (FRS), one of the largest public pension plans in the United States with 1.1 million beneficiaries and retirees. The SBA's governance philosophy encourages companies to adhere to responsible, transparent practices that correspond with increasing shareowner value and to appropriately consider the input of their shareowners.

As stated in the SBA's *Corporate Governance Guidelines and Proxy Voting Principles*, we emphasize that provisions for the recovery of erroneously awarded compensation (clawback provisions) are essential to performance-based compensation plans.¹ To align executive interests with the interests of shareowners, executives should be compensated for achieving performance benchmarks. Equally, an executive should not be rewarded if he or she does not achieve established performance goals. If restated financial statements reveal that the executive was falsely rewarded, then he or she should be forced to repay any unjust compensation received.

In response to select questions posed by the Securities and Exchange Commission in the proposed rule, we offer the following targeted comments:

Q1: Should the listing standards and other requirements of the proposed rule and rule amendments apply generally to all listed issuers, as proposed? If not, what types of issuers should be exempted, and why?

The listing standards should apply across all listed issuers as the burden to issuers is relatively innocuous, while exemptions for certain issuers would likely add uncertainty for investors. Emerging growth companies, smaller reporting companies, foreign private issuers, and controlled companies all participate in the process of

¹ SBA 2015 Corporate Governance Principles & Proxy Voting Guidelines (p. 68).

http://www.sbafla.com/fsb/Portals/Internet/CorpGov/ProxyVoting/2015_SBACorporateGovernancePrinciplesProxyVotingGuidelines.pdf

motivating executives through incentive-based compensation, and all should have consistent goals of providing such compensation when reasonably earned.

While smaller reporting companies and emerging growth companies may not be SBA portfolio holdings at inception, many will grow into such a role, ideally with strong governance practices intact. Considering the relatively low obligation of disclosure, it seems logical to require beneficial, transparent compensation practices of all companies considered in the proposed rule. Alternatively, an early stage exemption could allow for poor compensation disclosure and deficient clawback policies at early growth stages that would eventually need to be enhanced.²

Q12: For purposes of proposed Rule 10D-1, an accounting restatement would be defined as the result of the process of revising previously issued financial statements to correct errors that are material to those financial statements. Rather than including this definition in our proposed rule, should we refer to the definition of “restatement” in GAAP? If we do not refer to the definition in GAAP, is it appropriate to include in the proposed definition the phrase “errors that are material” or might it be confusing or redundant? Is our proposed approach the appropriate means to implement Section 10D, including its “material noncompliance” provision?

While use of the GAAP definition of “restatement” would provide consistency, there are concerns such a definition would create a relatively low bar for exclusions and actually lead to very few clawbacks.³ On August 4, 2015, Audit Analytics provided an update to its restatements report, showing the significant decline in Item 4.02 restatements. Over the last decade, such non-reliance statements have dropped from 67% of total restatements to only 24%.⁴ Of equal consequence to the future efficacy of compensation clawbacks, “revision restatements”, which do not change reliance on past financials, rose to 76% of all restatements reported in 2014, versus only 42% in 2007.⁵ Revisions on a going forward basis should also receive consideration under the proposed Rule 10D-1, if revised data reflect performance that would not have resulted in compensation payouts.

Including the phrase, “errors that are material” and including more specific examples of the most common type of errors, would allow for a more precise reporting of instances eligible for clawback. It is noted that the present Rulemaking does not “propose to describe any type or characteristic of an error that would be considered material for purposes of the listing standards required by proposed Rule 10D-1 because materiality is a determination that must be analyzed in the context of particular facts and circumstances.”⁶ However, the absence of examples of characteristic errors could lead to issuer development of clawback policies that are overly vague and nondescript.

Q14: Should any revision to previously issued financial statements that results in a reduction in incentive-based compensation received by an executive officer always trigger application of an issuer’s recovery policy under the proposed listing standards?

² The SBA suggested similar support for comprehensive disclosure in the SEC’s *Release No. 33-9723*, Proposed Rule re: Disclosure of Hedging by Employees, Officers and Directors. <http://www.sec.gov/comments/s7-01-15/s70115-17.pdf>

³ One example of such concerns is provided by Francine McKenna, “SEC’s clawback proposal leaves a big loophole,” MarketWatch, (July 2, 2015).

⁴ Audit Analytics, “Clawbacks after Financial Restatements,” August 4, 2015. <http://www.auditanalytics.com/blog/clawbacks-after-financial-restatements/>

⁵ Audit Analytics, “Latest Results Show Continuing Positive Restatement Trends,” April 27, 2015. <http://www.auditanalytics.com/blog/2014-financial-restatements-review/>

⁶ SEC *Release No. 33-9861*, Listing Standards for Recovery of Erroneously Awarded Compensation, p.26. Securities and Exchange Commission <http://www.sec.gov/rules/proposed/2015/33-9861.pdf>

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Any reduction in earned compensation based on performance and measurement shortfalls should result in application of the recovery process. Consistency is crucial in such instances. The uncertain links between performance, performance measurement, resulting compensation, and the potential variation in the definition of restatement (as noted in Question 12), create an extensive disconnect for investors. Once it is established that a reduction in incentive-based compensation has occurred, there should not be another variable added regarding the likelihood of the recovery process going forward.

We share the views expressed by the Council of Institutional Investors that the “establishment of a broad clawback arrangement is an essential element of a meaningful pay for performance philosophy. If executive officers are to be rewarded for “hitting their numbers”—and it turns out they failed to do so—the unearned compensation should generally be recovered notwithstanding the cause of the revision.”⁷

The SBA appreciates the opportunity to weigh in on these substantive issues. Thank you for your consideration, and if you have any questions, please feel free to contact me at [REDACTED], or at governance@sbafla.com.

Sincerely,



Michael P. McCauley
Senior Officer, Investment Programs and Governance

cc: SBA Corporate Governance & Proxy Voting Oversight Group

⁷ Council of Institutional Investors, August 27, 2015 Comments submitted in response to SEC *Release No. 33-9861*, Listing Standards for Recovery of Erroneously Awarded Compensation. <http://www.sec.gov/comments/s7-12-15/s71215-8.pdf>