Date: September 14, 2009

To: Chairman Schapiro
Commissioners Aguilar, Casey, Paredes and Walter
Staff

From: Integrated Governance Solutions, LLC (IGS)

Subject: Comments Regarding Proposed Rules in Release Nos. 33-9052; 34-60280; IC-28817; File No. S7-13-09

Introduction

IGS is submitting comments regarding three portions of the proposed rules:

A. Enhanced Compensation Disclosure
   1. Compensation Discussion and Analysis Disclosure

B. Enhanced Director and Nominee Disclosure

C. New Disclosure about Company Leadership Structure and the Board's Role in the Risk Management Process

Generally, IGS strongly supports the disclosure approach of the proposed rules; however, the "devil is always in the details," meaning the added value resides in the substance or content of the disclosure. IGS recommends that the proposed rules be enhanced to require each registrant to adopt the key principles recommended by IGS below and then disclose its compliance with each key principle.

1. Accountability: the board of directors of each registrant must possess risk expertise.
2. Independence: the chair of the board of directors of each registrant must be independent.
3. Integrity: each registrant must have a risk monitor reporting to its board of directors.
4. Transparency: each registrant must publicly disclose its governance and risk management structures and practices.

Appendix A contains some background information regarding IGS and supporting authorities for IGS' recommendations and comments.

Detailed Comments Regarding Proposed Rules

A. Enhanced Compensation Disclosure

1. Compensation Discussion and Analysis (CD&A) Disclosure

While IGS does not directly practice in the executive compensation space, it strongly believes that a direct connection exists among compensation, results and risk. Another colloquial expression to describe this connection is, "you get what you pay for." The crisis the markets experienced resulted from the adoption of short-term incentives and the pursuit of short-term value at the expense of long-term value creation. To compound the problem, the relationship between the reward and the consequence is asymmetric; to the extreme of another colloquial expression, "heads I win, tails I still win." An appropriate portion of an executive's compensation should be aligned with long-term value creation and adverse consequences should attach to the performance results, as well as rewards.

IGS believes that expanding the scope of the CD&A to require disclosure concerning a company's overall compensation program as it relates to risk management and or risk-taking incentives will provide meaningful disclosures to investors. Such requirement should not be limited to certain industries, because those industries will be penalized by talent flight and potentially exacerbate risk in the unregulated industries. Additionally, adopting rules which apply to all industries promotes a level playing field for all competitors. The examples listed in the proposed rules regarding situations where compensation policies may induce risk taking behavior, and therefore, potentially have a material impact on the company are appropriate issues for companies to consider discussing and analyzing. The list of examples of the types of issues that would be appropriate for a company to discuss and analyze is appropriate and the CD&A should include discussion of each item. If a company determines that disclosure under the proposed amendments is not required, it should be required to affirmatively state in its CD&A that it has determined that the risks arising from its broader compensation policies are not reasonably expected to have a material effect on the company. Disclosure should be required regarding whether a member of the compensation committee has expertise in compensation matters and whether the committee has the resources to hire its own independent legal counsel.

B. Enhanced Director and Nominee Disclosure

Corporate governance practices have not maintained pace with business models that have rapidly and dramatically changed over the past 20 years. Consequently, the bench strength of many boards is very shallow in certain disciplines, most notably, risk expertise. It's one thing to claim a skill. It's quite another to possess a demonstrated competency or expertise. This topic is a cornerstone of IGS' quartet of corporate governance key principles that will help companies achieve next generation governance - *accountability*. IGS believes that the proposed amendments provide investors with important information regarding directors and nominees for director, particularly with regard to risk expertise; however, IGS recommends strengthening the requirement for the presence of risk expertise on the board to support the execution of its duties.

IGS Corporate Governance Key Principle #1
Risk Expertise on Board of Directors - Accountability.

IGS Recommendation:

> Each registrant shall establish specialized risk management and risk oversight competencies (comprised entirely of independent voting directors, supplemented by periodic use of advisory expert resources applicable to the registrant's industry and situation) on its board of directors, which shall assist the board of directors in adequately executing its responsibility for the oversight and evaluation of the risk management policies and practices of the registrant.

Current U.S. law requires a "financial expert" for all public boards/audit committees. By analogy, it would be appropriate to require the board of each public company to include a member with expertise in risk management.

Disclosure of such information no more frequently than annually should be sufficient, and every three years is acceptable. Also, IGS strongly supports the required disclosure of whether the board (or a committee) periodically conducts a substantive evaluation of the performance of the board as a whole, the committees of the board and/or each individual director.

C. New Disclosure about Company Leadership Structure and the Board's Role in the Risk Management Process

Again, while the proposed disclosure requirement will be helpful, IGS believes more should be required of public companies in this regard. This topic is the second cornerstone of IGS' quartet of corporate governance key principles that will help companies achieve next generation governance - *independence*. IGS believes that the proposed amendments will provide investors with important information regarding the company's leadership structure; however, IGS recommends requiring each public company to have an independent chair of its board of

directors. In particular, IGS believes that the combined roles of board chair and CEO in one person presents an inherent, serious conflict of interest and severely compromises board independence and the healthy checks and balances that should exist in a company.

IGS Corporate Governance Key Principle # 2
Independent Board Chair - Independence.

IGS Recommendation:

> The chair of each registrant's board of directors must be an independent member of its board of directors who has not previously served as an executive officer of the registrant and who, during the preceding 5 years, has not been:
>
> A. employed by the registrant in an executive capacity;
> B. an employee, director or owner greater than 20 percent of the beneficial shares of a firm that is a paid adviser or consultant to the registrant;
> C. employed by a significant customer or supplier of the registrant;
> D. a party to a personal services contract with the registrant, as well as with the registrant's chair, chief executive officer, or other senior executive officer;
> E. an employee, officer or director of a foundation, university or other non-profit organization that receives the greater of $100,000 or 1 percent of total annual donations from the registrant;
> F. a relative of an executive of the registrant;
> G. part of an interlocking directorate in which the registrant's chief executive officer or another executive serves on the board of another company employing that director; and
> H. engaged in any other relationship with the registrant or senior executives that the Securities Exchange Commission determines would not render that director an independent director.

A concept that is not addressed in the proposed rules and has received very little attention in the popular and professional trade press represents the third cornerstone of IGS' quartet of corporate governance key principles that will help companies achieve next generation governance - *integrity*. A robust monitoring system within a company that reports directly to its board of directors supports a healthy system of checks and balances by providing the board with an integrated view of material risk to the company, empowering the board to fulfill its fiduciary duties. Since the emergence of the current economic crisis, directors have been quoted in the media to the effect that they were not aware of the risks assumed by the companies that contributed to the crisis. Monitoring systems in those companies either did not exist or were compromised to preclude the boards from fulfilling their fiduciary duties. Consequently, the proposed rules should require each public company to implement a monitoring officer as described below.

IGS Corporate Governance Key Principle # 3
Monitoring Officer - Integrity.

IGS Recommendation:

> The board of directors of each registrant shall designate a qualified employee of the registrant (other than the chief executive officer, president, chief operating officer, chief financial officer, treasurer, controller, secretary or general counsel) who shall:
>
> A. be responsible for the establishment and performance of the registrant's system that objectively monitors and communicates findings regarding key aspects of the

registrant's business, including, but not limited to, ethics, risk, compliance and social responsibility,

B. serve as an officer (e.g., a chief monitoring, chief risk or functionally equivalent position) of the registrant,

C. report directly and solely to the registrant's chairman of the board or appropriate committee of the board; and

D. not directly or indirectly perform or be responsible for the performance of any activities of the registrant which interfere or conflict with such employee's foregoing duty to monitor and communicate findings regarding the key aspects of the registrant's business in an objective and non-filtered manner to all appropriate parties.

The last cornerstone of IGS' quartet of corporate governance key principles that will help companies achieve next generation governance is *transparency*. This concept represents the heart of these proposed rules. IGS supports requiring the disclosure of the specific duties performed by the board's chair or independent lead director but the added value will be realized from the disclosure of the rationale for and operation of a company's governance and risk management structures and practices that are responsive to key stakeholders as well as shareowners and employees. Proxy advisor firms provide analyses to their clients based primarily on publicly available information. Lacking quality information regarding an registrant's rationale for and operation of its governance and risk management structures and practices handicaps the accurate analysis by an investor of the registrant's exposure to material risk and the registrant's internal capability to identify and manage its risk effectively.

IGS Corporate Governance Key Principle # 4
Public Disclosure of Governance and Risk Management Structures and Practices - Transparency.

IGS Recommendation:

> Each registrant must disclose in appropriate public filings, detailed information that explains the rationale for and the operation of its governance and risk management structures and practices, responsive to the governance and risk management needs of the registrant and expectations of its key stakeholders.

Appendix A

Background regarding IGS

Based on 25 years in the corporate governance space, including experience as a governance executive with a Fortune 25 company, the founder of IGS established it with a vision to transform and revolutionize how present and future organizations are governed, boldly setting a new standard for trusted governance. Its mission is to help create, restore, and maintain organizational and public trust through innovative and integrated governance solutions. It devoted the past year and a half to the development of next generation governance solutions for board oversight, business monitoring, and risk management. You may read more about IGS by visiting www.integratedgovernance.com. IGS believes strongly that it offers an important part of the answer our country is seeking. There are many others who appear to concur with IGS' approach.

IGs has reviewed its solutions with the following stakeholders, who have all been very interested and intrigued with how they can help the country in moving toward next generation governance and restoring trust in the market:

- Over 200 board members and senior executives
- The Council of Institutional Investors
- Proxy advisor firms
- The Corporate Executive Board (a major best practices and benchmarking organization)
- U.S. House Financial Services Committee members and staff (Democrat and Republican)
- A member of the Congressional Oversight Panel (COP)
- An SEC commissioner
- A representative from the FDIC
- SIGTARP senior leadership team
- Major academic institutions – nationally recognized business and law schools
- Other key stakeholders, including the AICPA, IMA, CFA, FEI, ECOA

Supporting Authorities - Excerpts

A. Enhanced Compensation Disclosure

1. Compensation Discussion and Analysis (CD&A) Disclosure

The Aspen Principles - Long-Term Value Creation: Guiding Principles for Corporations and Investors
The Aspen Institute - Business &Society Program, June 2007

1. Define metrics of long-term value creation
2. Focus corporate investor communication around long-term metrics
3. Align company and investor compensation policies with long-term metrics

Policy Briefing No. 5, Pay, Risk and Stewardship
Private Sector Architecture for Future Capital Markets, June 2009
The Millstein Center for Corporate Governance and Performance, Yale University School of Management

Recommendation b.2:
The goal of executive pay should be to compensate and incentivize executives for their contribution to long-term value creation. The existing focus on short-term stock price movement as the relevant metric for compensation decisions is misplaced.

Recommendation b.4:
Boards should approach pay decisions as an element of risk to the organization. The structure of certain compensation packages may induce executives to reach performance targets through inefficient, artificial or even illegal means, at a huge risk to the organization's long-term interest.

Financial Stability Forum Principles for Sound Compensation Practices 2 April 2009

4. Compensation must be adjusted for all types of risk.

5. Compensation outcomes must be symmetric with risk outcomes.

6. Compensation payout schedules must be sensitive to the time horizon of risks.

7. The mix of cash, equity and other forms of compensation must be consistent with risk alignment.

8. Supervisory review of compensation practices must be rigorous and sustained, and deficiencies must be addressed promptly with supervisory action. Compensation practices should be included in risk assessment of firms.

9. Firms must disclose clear, comprehensive and timely information about their compensation practices to facilitate constructive engagement by all stakeholders.

A review of corporate governance in UK banks and other financial industry entities 16 July 2009

Recommendation 28
The remit of the remuneration committee should be extended where necessary to cover all aspects of remuneration policy on a firm-wide basis with particular emphasis on the risk dimension.

Recommendation 33
Deferral of incentive payments should provide the primary risk adjustment mechanism to align rewards with sustainable performance for executive board members and executives whose remuneration exceeds the median for executive board members. Incentives should be balanced so that at least one-half of variable remuneration offered in respect of a financial year is in the form of a long-term incentive scheme with vesting subject to a performance condition with half of the award vesting after not less than three years and of the remainder after five years. Short-term bonus awards should be paid over a three year period with not more than one-third in the first year. Clawback should be used as the means to reclaim amounts in limited circumstances of misstatement and misconduct.

Recommendation 35
The remuneration committee should seek advice from the board risk committee on an arm's-length basis on specific risk adjustments to be applied to performance objectives set in the context of incentive packages; in the event of any difference of view, appropriate risk adjustments should be decided by the chairman and non-executive directors on the board.

Recommendation 37
The remuneration committee report should state whether any executive board member or senior executive has the right or opportunity to receive enhanced pension benefits beyond those already disclosed and whether the committee has exercised its discretion during the year to enhance pension benefits either generally or for any member of this group.

19.2 Remuneration Code: General requirement

Remuneration policies must be consistent with effective risk management

19.2.1 R A *firm* must establish, implement and maintain *remuneration policies*, procedures and practices that are consistent with and promote effective risk management.

19.2.2 G (1) If a *firm's remuneration policy* is not aligned with effective risk management it is likely that *employees* will have incentives to act in ways that might undermine effective risk management.

(2) The aim of the *Remuneration Code* is to ensure that *firms* have risk-focused *remuneration policies*, which are consistent with and promote effective risk management and do not expose them to excessive risk.

(5) The principles in the *Remuneration Code* will be used by the *FSA* to assess the quality of a *firm's remuneration policies* and whether they encourage excessive risk-taking by a *firm's employees*.

(6) The *FSA* may also ask *remuneration committees* to provide the *FSA* with evidence of how well the *firm's remuneration policies* meet the *Remuneration Code's* principles, together with plans for improvement where there is a shortfall. The *FSA* will also expect relevant *firms* to use the principles in assessing their exposure to risks arising from their *remuneration policies* as part of the *internal capital adequacy assessment process* (*ICAAP*).

19.3 Remuneration Code: Remuneration principles

19.3.2 G (1) *Remuneration* is usually the largest cost incurred by *firms* after funding costs. The risks arising from the way *employees* are recruited and managed, including the risks posed by *remuneration policies*, constitute some of the most important risks faced by *firms*. *Remuneration committees* should pay specific attention to these risks.

(3) *Remuneration committees* should have a majority of *non-executive directors*, one or more of whom should have practical skills and experience of risk management, for example through being a member of a *firm's* risk committee or audit committee. *Remuneration committees* should receive regular reports directly from the *firm's* risk management function on the implications of the *remuneration policy* for risk and risk management.

(4) The *FSA* may ask a *remuneration committee* to prepare a statement on the *firm's remuneration policy*, including the implications of the policy for the *firm*. The *FSA* will expect the statement to include an assessment of the impact of the *firm's* policies on its risk profile and *employee* behaviour.

(5) It is good practice for a *firm's governing body* or the *remuneration committee* to issue a separate public document to inform its shareholders and other stakeholders about its *remuneration policy* and its implications for the *firm's* risk profile and for *employee* behaviour.

19.3.4 G (2) It is good practice for a *remuneration committee* to ask the risk management function to validate and assess risk adjustment data, and to attend a meeting of the *remuneration committee* for this purpose.

Remuneration Principle 5: Long-term performance measurement

19.3.9 E (1) Where the performance-related component of an *employee's remuneration* is a significant part of his total *remuneration*, the assessment process should be designed to ensure assessment is based on longer-term performance.

19.3.10 G (2) Performance assessment on a moving average of results can be a good way of meeting Remuneration Principle 5. However, other techniques such as good quality risk adjustment and deferment of a sufficiently large proportion of *remuneration* may also be useful.

19.3.11 E (2) Non-financial performance metrics should include adherence to effective risk management and compliance with the *regulatory system* and with relevant overseas regulatory requirements.

19.3.12 G (1) Poor performance in non-financial metrics such as poor risk management or other behaviours contrary to *firm* values can pose significant risks for a *firm* and should, as appropriate, override metrics of financial performance.

Remuneration Principle 7: Measurement of performance for long-term incentive plans

19.3.13 E (1) The measurement of performance for long-term incentive plans, including those based on the performance of *shares*, should take account of future risks.

B. Enhanced Director and Nominee Disclosure

Policy Briefing No. 4 Chairing the Board
The Case for Independent Leadership in Corporate North America, March 30, 2009
The Millstein Center for Corporate Governance and Performance, Yale University School of Management in support of The Chairmen's Forum

- The board's apparent failure to perform its risk management function is considered by many to be a key contributing factor to the current financial crisis.
- This crisis has exposed a board failure in fulfilling its duties and ensuring the existence of an adequate risk management system.

Financial Reform, A Framework for Financial Stability by The Group of 30
January 2009

Regulatory Standards for Governance and Risk Management
Recommendation 9:
Regulatory standards for governance and risk management should be raised, with particular emphasis on:
a. Strengthening boards of directors with greater engagement of independent members having financial industry and risk management expertise.

A review of corporate governance in UK banks and other financial industry entities 16 July 2009

Recommendation 13
The evaluation statement should include such meaningful, high-level information as the board considers necessary to assist shareholders understanding of the main features of the evaluation process. The board

should disclose that there is an ongoing process for identifying the skills and experience required to address and challenge adequately the key risks and decisions that confront the board, and for evaluating the contributions and commitment of individual directors. The statement should also provide an indication of the nature and extent of communication by the chairman with major shareholders.

Recommendation 23
The board of a bank or other financial institution should establish a board risk committee separately from the audit committee with responsibility for oversight and advice to the board on the current risk exposures of the entity and future risk strategy.

C. New Disclosure about Company Leadership Structure and the Board's Role in the Risk Management Process

Supporting Authorities Regarding Independent Chair

U.S. Financial Regulatory Reform: The Investors' Perspective
Report by the Investors' Working Group
An Independent Taskforce Sponsored by CFA & CII
July 2009

- Boards of directors should be encouraged to separate the role of chair and CEO or explain why they have adopted another method to assure independent leadership of the board.

Policy Briefing No. 4 Chairing the Board
The Case for Independent Leadership in Corporate North America, March 30, 2009
The Millstein Center for Corporate Governance and Performance, Yale University School of Management in support of The Chairmen's Forum

- The independent chair curbs conflicts of interest, promotes oversight of risk, manages the relationship between the board and CEO, serves as a conduit for regular communication with shareowners, and is a logical next step in the development of an independent board.

- 2008 NACD Public Company Governance Survey, 72.8% of directors serving on boards with an independent chair stated that companies greatly benefit from an independent chair.

- 95% of all FTSE (UK) 350 companies adhere to the principle that the roles should be separated, and 79% designate their chairmen as non-executive in their annual reports. All German and Dutch companies have separate chairs and CEOs, since these jurisdictions have two-tier boards which split the roles by definition. Most public firms in Australia, Belgium and Singapore also have separate CEO and board chairs, as do most listed companies in Brazil. All listed companies in South Africa split the roles, as required by the Johannesburg Stock Exchange.

- In governance as in government, splitting the roles is ideologically consistent with the view that a system of checks and balances is the best protection against unrestrained power.

- Moreover, there is no conclusive evidence (or, more accurately, virtually no evidence at all) that splitting roles destroys value.

- Avoiding the split to avoid the potential for animosities would be akin to encouraging absolutism because of branch conflicts generated by the separation of powers.

- In empowering the board, an independent chair can in fact help the board avoid executive compensation excesses and instances of "pay for failure."

- There has been a shift from an imperial CEO and mode of management which was constrained mainly by *external* forces such as regulation, competition and the market for corporate control, to one which relies also on protecting and enhancing shareholder value through mechanisms of checks-and-balances *within* the corporate structure.

- Nevertheless, the critical missing piece in this evolutionary path towards more independence, engagement and monitoring, especially in the United States, is the separation of the roles of chair and CEO. Notwithstanding the improvements, boards are still led by the one obvious conflicted person to monitor the CEO and senior management: the CEO. The overall consensus reached at the Center Forums for corporate board chairs in North America, is that without this critical step, the long development towards a monitoring board will remain flawed.

- If corporate directors choose to take a different course, either by combining the two posts or naming a non-independent chair, they should explain to their corporation's shareowners why doing so represents a superior approach to optimizing long-term shareowner value.

Richard Breeden (Chairman of Breeden Capital Management and former SEC chairman) testimony before the U.S. Senate Committee on Banking, Housing and Urban Affairs, March 26, 2009.

> Split the roles of Chairman of the Board and CEO in any company that receives federal taxpayer funds, or that operates under federal financial regulation. The traditional model of a Chairman and CEO combined in one individual weakens checks and balances and increases risks to shareholders compared with firms that separate those positions. Splitting these roles and requiring a prior shareholder vote to reintegrate them would reduce risks and improve investor protection.

THE COMBINED CODE (UK)
PRINCIPLES OF GOOD GOVERNANCE AND CODE OF BEST PRACTICE
Derived by the Committee on Corporate Governance from the Committee's Final Report and from the Cadbury and Greenbury Reports.

> Principle of Good Governance
> Section 1 A.2 There are two key tasks at the top of every public company - the running of the board and the executive responsibility for the running of the company's business. There should be a clear division of responsibilities at the head of the company which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision.
>
> Code of Best Practice
> Section 1 A.2.1 A decision to combine the posts of chairman and chief executive officer in one person should be publicly justified. Whether the posts are held by different people or by the same person, there should be a strong and independent non-executive element on the board, with a recognised senior member other than the chairman to whom concerns can be conveyed.

<u>Supporting Authorities regarding Risk Monitor</u>

Policy Briefing No. 5, Pay, Risk and Stewardship
Private Sector Architecture for Future Capital Markets, June 2009
The Millstein Center for Corporate Governance and Performance, Yale University School of Management

> Recommendation a.6:
> *Risk management units should have sufficient clout, independence and access to resources.* Risk officers should not report to business lines, given the potential for conflicts of interest. Direct reporting

obligations to the board independently of management are especially valuable in ensuring the clout and independence of the chief risk officer.

Financial Reform, A Framework for Financial Stability by the Group of 30, January 2009

Regulatory Standards for Governance and Risk Management
Recommendation 9:
Regulatory standards for governance and risk management should be raised, with particular emphasis on:

d. Ensuring the risk management and auditing functions are fully independent and adequately resourced areas of the firm.

Section 8B2.1(b)(2)(C) of the Federal Sentencing Guidelines, the U.S. Sentencing Commission

For an organization to have an effective compliance and ethics program, specific "individuals shall be given direct access to the governing authority or an appropriate subgroup of the governing authority".

A review of corporate governance in UK banks and other financial industry entities 16 July 2009

Recommendation 24
In support of board-level risk governance, a bank or other financial institution board should be served by a chief risk officer (CRO) who should participate in the risk management and oversight process at the highest level on an enterprise-wide basis and have a status of total independence from individual business units. Alongside an internal reporting line to the CEO or financial director, the CRO should report to the board risk committee, with direct access to the chairman of the committee in the event of need. The tenure and independence of the CRO should be underpinned by a provision that removal from office would require the prior agreement of the board. The remuneration of the CRO should be subject to approval by the chairman or chairman of the board remuneration committee.

Supporting Authorities Regarding Disclosure

A review of corporate governance in UK banks and other financial industry entities 16 July 2009

Recommendation 27
The board risk committee (or board) risk report should be included as a separate report within the annual report and accounts. The report should describe the strategy of the entity in a risk management context, including information on the key exposures inherent in the strategy and the associated risk tolerance of the entity and should provide at least high level information on the scope and outcome of the stress-testing programme. An indication should be given of the membership of the committee, of the frequency of its meetings, whether external advice was taken and, if so, its source.