

November 18, 2010

**By E-mail: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)**

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

Re: [Release Nos. 33-9153; 34-63124](#)  
[File Number S7-31-10](#)

Ladies and Gentlemen:

Vinson & Elkins LLP submits this letter in response to the request for comments made by the Securities and Exchange Commission (the “Commission”) in Release Nos. 33-9153 and 34-63124 (collectively, the “Release”). The Release proposes amendments to the Commission’s rules to implement the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to shareholder approval of executive compensation and “golden parachute” compensation arrangements. Specifically, we are addressing the text of proposed Rules 14a-21(a) and (b) and propose the addition of language from the parallel provision of Rule 14a-20.

We represent a number of publicly traded partnerships and controlled companies which do not hold annual or periodic meetings of their equityholders for the purpose of electing directors. These entities thus do not solicit proxies for the election of directors. They typically only solicit proxies for approval of extraordinary events, such as material amendments to organizational documents (partnership agreements, limited liability company agreements, charters or bylaws), mergers, recapitalizations and other similar events, and adoption of equity compensation plans. The only proxy statements for which information specified in Item 402 of Regulation S-K is required is when these entities solicit proxies for approval of equity compensation plans. Since these entities do have annual proxy statements for the election of directors, they are instead required to disclose Item 402 information in their annual reports on Form 10-K.

The Commission has previously adopted a Rule similar to Rules 14a-21(a) and (b) in Rule 14a-20, which applies to companies required to provide a separate shareholder vote on

executive compensation under the Troubled Assets Relief Program, or TARP.<sup>1</sup> In the Commission's adoption of Rule 14a-20 it stated that the "separate shareholder vote required by Section 111(e)(1) of the EESA will only be required on a proxy solicited for an annual (or special meeting in lieu of the annual) meeting of security holders for which proxies will be solicited for the election of directors."<sup>2</sup> Rule 14a-20 reads:

If a solicitation is made by a registrant that is a *TARP recipient*, as defined in section 111(a)(3) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(a)(3)), during the period in which any obligation arising from financial assistance provided under the *TARP*, as defined in section 3(8) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5202(8)), remains outstanding and the solicitation relates to an annual (or special meeting in lieu of the annual) meeting of security holders for which proxies will be solicited for the election of directors, as required pursuant to section 111(e)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(e)(1)), the registrant shall provide a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to Item 402 of Regulation S-K (§ 229.402 of this chapter), including the compensation discussion and analysis, the compensation tables, and any related material.<sup>3</sup>

Proposed Rules 14a-21(a) and (b) do not contain language similar to the underlined text. However, in footnote 16 of the Release the Commission stated they "continue to view this provision to require a separate shareholder vote on executive compensation only with respect to an annual meeting of shareholders for which proxies will be solicited for the election of directors, or a special meeting in lieu of such annual meeting. Similarly, proposed Rules 14a-21(a) and (b) are intended to result in issuers conducting the required advisory votes in connection with the election of directors, the proxy materials for which are required to include disclosure of executive compensation."<sup>4</sup> The Commission further stated in footnote 59 "[i]n our view, a separate shareholder vote on the frequency of shareholder votes on executive compensation is required only with respect to an annual meeting of shareholders for which proxies will be solicited for the election of directors or a special meeting of such annual meeting."<sup>5</sup>

<sup>1</sup> Release Nos. 33-9153; 34-63124 (October 18, 2010)

<sup>2</sup> Release No. 34-61335 (February 18, 2010)

<sup>3</sup> 75 FR 2789 (emphasis added)

<sup>4</sup> Release Nos. 33-9153; 34-63124 (October 18, 2010)

<sup>5</sup> Id.

We agree with the Commission's view, described in footnote 16 and 59 of the Release, that Rules 14a-21(a) and (b) should only apply with respect to an annual or special meeting of shareholders for which proxies will be solicited for the election of directors. To apply 14(a)-21(a) and (b) to entities that do not regularly solicit proxies for the election of directors would unduly burden these entities, and the application of the requirement in the Rules for periodic successive resolutions might be interpreted to require the entities to solicit proxies solely for advisory vote. In light of this view, we believe the wording in Rule 14a-20 underlined in the quote above should be included in Rules 14a-21(a) and (b).

#### **Rule 14a-21(a)**

We recommend that Rule 14a-21(a) be revised to read as follows (proposed added language is underlined):

If a solicitation is made by a registrant and the solicitation relates to an annual or other meeting of shareholders for which the rules of the Commission require executive compensation disclosure pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) and the solicitation relates to an annual (or special meeting in lieu of the annual) meeting of security holders for which proxies will be solicited for the election of directors, the registrant shall, for the first such annual or other meeting of shareholders on or after January 21, 2011 and not less frequently than once every 3 years thereafter, include a separate resolution subject to shareholder advisory vote to approve the compensation of its named executive officers, as disclosed pursuant to Item 402 of Regulation S-K.<sup>6</sup>

#### **Rule 14a-21(b)**

We recommend that Rule 14a-21(b) be revised to read as follows (proposed added language is underlined):

If a solicitation is made by a registrant and the solicitation relates to an annual or other meeting of shareholders for which the rules of the Commission require executive compensation disclosure pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) and the solicitation relates to an annual (or special meeting in lieu of

---

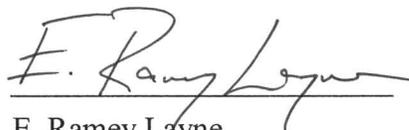
<sup>6</sup> Release Nos. 33-9153; 34-63124 (October 18, 2010) (emphasis added)

the annual) meeting of security holders for which proxies will be solicited for the election of directors, the registrant shall, for the first such annual or other meeting of shareholders on or after January 21, 2011 and not less frequently than once every 6 years thereafter, include a separate resolution subject to shareholder advisory vote as to whether the shareholder vote required by paragraph (a) of this section should occur every 1, 2 or 3 years. Registrants required to provide a separate vote pursuant to §240.14a-20 of this chapter shall include the separate resolution required by this section for the first annual or other meeting of shareholders after the registrant has repaid all obligations arising from financing assistance provided under the TARP, as defined in section 3(8) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5202(8)), and not less frequently than once every 6 years thereafter.<sup>7</sup>

### Conclusion

We believe the addition of the underlined wording to the text of Rules 14a-21(a) and (b) would conform the text of the Rules to the Commission's view of the proper application thereof, as expressed in footnotes 16 and 59, with which we agree. If you have any questions about this letter, please contact Ramey Layne at 212-237-0135.

Very truly yours,



E. Ramey Layne

---

<sup>7</sup> Release Nos. 33-9153; 34-63124 (October 18, 2010) (emphasis added)