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November 18, 2010

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

Re: File No. S7-31-10; Release Nos. 33-9153; 34-63124
Shareholder Approval of Executive Compensation and Golden Parachute Compensation

Dear Ms. Murphy:

This letter is submitted on behalf of Business Roundtable, an association of chief executive officers of leading corporations with a combined workforce of more than 12 million employees in the United States and nearly $6 trillion in annual revenues. We are submitting this letter in response to the October 18, 2010 request for public comments by the Securities and Exchange Commission (SEC or Commission) on its rule proposals on shareholder approval of executive compensation and golden parachute compensation (Proposed Rules) issued pursuant to Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and set forth in the Commission's proposing release (Proposing Release).[1]

Shareholder Approval of Executive Compensation: Proposed Rule 14a-21(a)

In accordance with new Section 14A(a)(1) of the Securities Exchange Act of 1934 (Exchange Act), which was added by Section 951 of the Dodd-Frank Act, proposed Rule 14a-21(a) would require companies to hold, at least once every three years, a shareholder advisory vote to approve the compensation of their named executive officers.[2] The Proposed Rules would not prescribe the specific language or form of shareholder resolution to be used in connection with the say-on-pay vote.[3] We agree with the Commission's determination not to "include more specific requirements regarding the manner in which issuers should present the shareholder vote on executive

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1 Shareholder Approval of Executive Compensation and Golden Parachute Compensation, SEC Release No. 33-9153, 34-63124, 75 Fed. Reg. 66,590 (October 18, 2010).

2 Proposed Exchange Act Rule 14a-21(a).

3 *See* 75 Fed. Reg. at 66,592.

compensation."[4] Providing companies with flexibility as to how they present the say-on-pay vote will permit companies to tailor the presentation of the say-on-pay vote to their individual circumstances. In this regard, we agree with the Commission's same determinations as to the say-on-frequency and say-on-parachutes votes.[5]

We also agree with the Commission's decision not to specify a standard for determining which shares are entitled to vote in the say-on-pay, say-on-frequency and say-on-parachutes votes.[6] We believe that, similar to the Commission's rules implementing the say-on-pay vote requirement for participants in the Troubled Asset Relief Program under the Emergency Economic Stabilization Act of 2008,[7] the final rules should not address which shares are entitled to vote. This is a corporate law matter that traditionally has been reserved to state law, and, as such, the final rules should remain silent on this issue.

CD&A Disclosure: Proposed Amendment to Item 402(b) of Regulation S-K

The Proposed Rules would amend Item 402(b) (1) of Regulation S-K to require companies to disclose in the Compensation Discussion and Analysis (CD&A) section of the proxy statement whether and if so, how the registrant has considered the results of previous shareholder advisory votes on executive compensation … and, if so, how that consideration has affected the registrant's executive compensation decisions and policies."[8] As discussed below, the Proposed Rules are overly broad and would result in disclosures that do not provide meaningful information to investors. In this regard, we believe that the proposed disclosure should be required only if material to an understanding of the company's compensation policies and decisions regarding the named executive officers. Accordingly, the disclosure requirement should be included in Item 402(b) (2) as a potential topic that could be discussed, depending on materiality, rather than included in Item 402(b)(1) as a mandatory topic to be discussed in all cases.

Whether or not prior say-on-pay votes are material to an understanding of executive compensation, decisions and policies will vary from company to company and year by year. For example, a company that received at least 95% approval on its say-on-pay vote each year for the previous three years may not have made any changes to its compensation program as a result of the votes. In this case, disclosure in the CD&A that no changes were made would not provide meaningful information to investors. Item 402(b)(2) already recognizes that some topics are not material for every company every year and leaves it to each company to make the determination as to whether the information is necessary based on its facts and circumstances.

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4 75 Fed. Reg. at 66,592-93.

5 *See* 75 Fed. Reg. at 66,594, 66,603.

6 *See* 75 Fed. Reg. at 66,593, 66,594, 66,604.

7 *See* Exchange Act Rule 14a-20.

8 Proposed Item 402(b) (1) (vii) of Regulation S-K.

The Proposed Rules also would require a company to provide this disclosure with respect to all prior say-on-pay votes conducted by the company, regardless of materiality, although the Proposing Release requests comment as to whether only the most recent vote should be covered. In most cases only the most recent say-on-pay vote will be material. As the previous say-on-pay votes become older the compensation practices in effect at the time of the vote will undoubtedly have changed, and, in any case, the Proposed Rules would result in repetitive disclosure as each subsequent CD&A would include the same information that was included in prior CD&As.[9] Moreover, requiring all companies to provide this disclosure every year could result in generic, boiler-plate disclosure, especially at companies that consistently receive significant support for their say-on-pay votes. This would exacerbate concerns that have been raised about the readability and length of proxy statements.[10] We believe that the final rules should address these concerns by requiring disclosure about the results of previous say-on-pay votes only if the information is material in a particular year. This would further the SEC's stated purpose of the CD&A: "to provide to investors material information that is necessary to an understanding of the registrant's compensation policies and decisions regarding the named executive officers."[11]

Shareholder Proposals: Proposed Amendment to Rule 14a-8

Rule 14a-8(i) (10) permits companies to exclude from their proxy materials a shareholder proposal if the proposal has been "substantially implemented."[12] The Proposed Rules would add a note to Rule 14a-8(i)(10) to provide that a shareholder proposal that seeks a say-on-pay vote or that relates to the frequency of say-on-pay votes may be excluded if a company "has adopted a policy on the frequency of say-on-pay votes that is consistent with the plurality of votes cast in the most recent" shareholder advisory vote on the frequency of say-on-pay votes required by Rule 14a-21(b).[13] We support this exclusion as it will eliminate redundancy and reduce administrative burdens and costs but believe that there are some ambiguities that should be addressed in the final rules. In addition, we believe that there are ways to further reduce unnecessary costs on companies and the SEC alike.

First, the final rules should clarify that companies are permitted to exclude shareholder proposals based on the most recent say-on-frequency vote, whether conducted at least once every six years as required by proposed Rule 14a-21(b) or voluntarily conducted on a more frequent basis.

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9 We note that in other contexts the SEC has sought to avoid repetitious disclosures. *See, e.g.*, Instruction to Part II of Form 10-Q (permitting omission of information that "has been previously reported").

10 *See* SEC Chairman Mary L. Schapiro, Statement at Open Meeting for the Proposed Rules on Proxy Disclosure and Solicitation Enhancements (July 1, 2009), *available at* http://sec.gov/news/speech/2009/spch070109mls.htm.

11 Instruction 1 to Item 402(b) of Regulation S-K.

12 Exchange Act Rule 14a-8(i) (10).

13 Proposed Note to Exchange Act Rule 14a-8(i) (10).

Second, the final rules should clarify that companies are permitted to exclude shareholder proposals that seek a shareholder advisory vote on an aspect of executive compensation, such as severance benefits or perquisites.

Finally, companies should not be required to file no action requests with the SEC staff in order to be able to exclude say-on-pay proposals as substantially implemented under Rule 14a-8(i) (10). Under current rules, a company seeking to exclude a shareholder proposal is required to file a statement of its reasons why it believes it may exclude a shareholder proposal.[14] Pursuant to the proposed note to Rule 14a-8(i)(10), any no action request would contain only a brief statement of the results of the company's most recent say-on-frequency vote and the company's policy regarding the frequency of say-on-pay votes. No purpose would be served, and unnecessary costs and administrative burdens would be incurred by the Commission and companies, if companies are required to submit a no action request in such circumstances.

Disclosure of Determinations: Proposed Amendments to Forms 10-Q and 10-K

The Proposed Rules would require companies to disclose in their quarterly report on Form 10-Q covering the period during which a say-on-frequency vote occurs (or in their annual report on Form 10-K if the vote occurs during the fourth quarter) their decision regarding how frequently they will conduct a say-on-pay vote.[15] We believe that such disclosure is unnecessary and inappropriate. Since the say-on-frequency vote is non-binding, as emphasized in the Proposing Release,[16] companies should have discretion, as they do with respect to other precatory shareholder proposals, to decide whether, and if so, how and when to disclose what action they might take in response to the voting results. In this regard, we note that this disclosure is neither contemplated nor required by Section 951 of the Dodd-Frank Act. Moreover, as we discuss above, there is a very real danger of disclosure overload.

If the Commission nevertheless determines to require this disclosure, the Proposed Rules do not provide sufficient time for the company to analyze the voting results and decide how it will respond. The determination requires careful consideration of multiple factors involving executive compensation and corporate governance, affects the agenda for future annual shareholders meetings, impacts investor relations, and requires the involvement of a company's board of directors. As a logistical matter, it is likely that a company would not be able to reach a thoughtful conclusion on the Commission's proposed timetable for a variety of reasons. In any case other than one in which there is an overwhelming investor preference for one of the three frequencies, companies likely would want to discuss the outcome of the vote with their significant investors, which takes time and may be difficult to arrange during proxy season. In addition, a company's board of directors and its relevant committee may not have the opportunity to meet after the annual shareholders meeting until its next regularly-scheduled board meeting, which may not occur until the quarter following the quarter during

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14 Exchange Act Rule 14a-8(j).

15 *See* Proposed Part II, Item 5(c) of Form 10-Q; Proposed Part II, Item 9B (a) of Form 10-K.

16 *See* 75 Fed. Reg. at 66,591.

which the vote was held. In this regard, the proposed timing of the disclosure requirements would have a disproportionate impact on companies that hold their annual meeting towards the end of the quarter. There also is no need to accelerate the timing of the disclosure unnecessarily because the determination of the frequency of holding a say-on-pay vote would not be effective until, at the earliest, the following year's annual meeting.

Finally, the Commission should consider, if it determines to require this disclosure, permitting companies to disclose their policy on the frequency of holding say-on-pay votes on their websites. In this regard, the Commission already permits companies to disclose other corporate governance policies on their websites[17] and make their committee charters available to investors through their websites.[18] In addition, the New York Stock Exchange requires companies to use their websites to disclose their corporate governance guidelines.[19]

Preliminary Proxy Statements: Proposed Amendments to Rule 14a-6

The Proposed Rules would amend Rule 14a-6 to provide that holding a say-on-frequency vote "as *required*" under Section 14A(a)(2) of the Exchange Act and proposed Rule 14a-21(b) would not trigger an obligation to file a preliminary proxy statement.[20] We support this amendment, but believe some clarification is appropriate. In this regard, a preliminary proxy statement should not be required if a company voluntarily determines to hold a say-on-frequency vote more frequently than once every six years as required by the rules. Accordingly, the final rules should clarify that any say-on-frequency vote, whether or not required by Section 14A (a) (2) or proposed Rule 14a-21(b), would not trigger an obligation to file a preliminary proxy statement. This would be consistent with the Commission's goal, as stated in the Proposing Release, of avoiding "unnecessary administrative burdens and preparation and processing costs associated with the filing and processing of proxy material that would unlikely be selected for review in preliminary form."[21]

Golden Parachutes

Proposed Item 402(t) of Regulation S-K

Existing Item 402(j) of Regulation S-K requires disclosure in annual meeting proxy statements of potential severance compensation and golden parachute compensation.[22] The Commission now is proposing new Item 402(t) of Regulation S-K, which would require additional disclosure in merger proxy statements of golden parachute compensation in connection with mergers and

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17 *See, e.g.*, Instruction to Item 407(b)(2) of Regulation S-K (policy on board member attendance at annual shareholders meetings); Instruction 1 to Item 407(f) of Regulation S-K (policy on shareholder communications with the board of directors).

18 *See* Instruction 2 to Item 407 of Regulation S-K.

19 *See* New York Stock Exchange Listed Company Manual § 303A.09.

20 Proposed Exchange Act Rule 14a-6(a) (8) (emphasis added).

21 75 Fed. Reg. at 66,597, n.72.

22 Item 402(j) of Regulation S-K.

other similar significant corporate transactions.[23] We believe that, rather than adopt new Item 402(t), the Commission should consider possible amendments to Item 402(j) to address the new statutory requirements.[24] In this regard, the item could be amended to require companies to present golden parachute compensation in tabular form and provide an aggregate total of this compensation when this disclosure is being provided in a merger proxy statement or when the company is including this disclosure in a say-on-pay vote. Adding a new set of disclosure rules for golden parachute compensation would unnecessarily complicate the disclosure requirements and would not provide meaningful additional information to investors. If the Commission nevertheless determines to adopt Item 402(t), we believe that companies should have the option of including the Item 402(t) disclosure in their annual proxy statement in order to include this disclosure in the say-on-pay vote, as proposed.

Proposed Rule 14a-21(c)

Proposed Rule 14a-21(c) generally would require companies to provide a separate shareholder advisory vote on golden parachute compensation arrangements that are required to be disclosed in merger proxy statements under proposed Item 402(t), except for arrangements that previously were subject to a say-on-pay vote.[25] We believe that the final rules should clarify that a say-on-parachutes vote is not required for subsequent grants of additional awards made in the ordinary course and subject to the same acceleration terms as previous grants that were subject to a say-on-pay vote. Otherwise, the exception is meaningless as many companies have long-term incentive compensation programs pursuant to which they make annual grants of cash- and/or equity-based awards. Under the Proposed Rules, these companies almost always would be required to hold an additional say-on-parachutes vote. Moreover, investors would have known about and voted on the possibility of the company granting these awards because at the time of the previous say-on-pay vote the company would have been required to discuss its long-term incentive compensation program in the CD&A and executive compensation tables and narrative disclosure.[26]

Transition Issues

We applaud the Commission for providing helpful transition rules but suggest that they be broadened in certain respects for those companies conducting voluntary say-on-pay votes prior to January 21, 2011, the effective date. The Proposing Release states that the SEC "will not object if issuers do not file proxy material in preliminary form if the only matters that would require a filing in preliminary form are the say-on-pay vote and frequency of say-on-pay vote *required by* Section 14A(a)."[27] As Section 14A(a) only requires companies with annual meetings occurring on or after January 21, 2011 to hold a say-on-pay vote, companies that will be holding their annual meeting prior to January 21, 2011 and voluntarily holding a say-on-pay

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23 Proposed Item 402(t) of Regulation S-K.

24 *See* Exchange Act § 14A (b) (1).

25 Proposed Exchange Act Rule 14a-21(c).

26 *See* Items 402(b) (1) (iii) and (e) (1) (iii) of Regulation S-K.

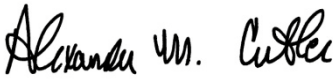
27 75 Fed. Reg. at 66,605 (emphasis added).

vote at that meeting may be required to file a preliminary proxy statement.[28] We believe that this would penalize companies that voluntarily adopted say-on-pay and make an arbitrary distinction between say-on-pay votes conducted voluntarily and those required by Dodd-Frank. Moreover, as the Proposing Release states, the Commission views say-on-pay votes as "similar to the other items specified in Rule 14a-6(a) that do not require a preliminary filing."[29]

Since it is unclear when the Commission will issue final rules, we urge the SEC staff to issue a Compliance and Disclosure Interpretation as soon as possible stating that it will not object if a company holding its annual meeting before January 21, 2011 does not file a preliminary proxy statement if the only item on the ballot that otherwise would trigger the filing of a preliminary proxy statement is a say-on-pay vote.

Thank you for considering our comments. Please do not hesitate to contact Larry Burton at Business Roundtable at (202) 872-1260 if we can provide you with any further information.

Sincerely,



Alexander M. Cutler
Chairman and Chief Executive Officer of Eaton Corporation
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Meredith Cross, Director, Division of Corporation Finance
Henry Hu, Director, Division of Risk, Strategy, and Financial Innovation

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28 *See* Exchange Act Rule 14a-6(a).

29 75 Fed. Reg. at 66,597.