TIAA CREF
FINANCIAL SERVICES FOR THE GREATER GOOD®

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

Re: Shareholder Approval of Executive Compensation and Golden Parachute Compensation, File No. S7-31-10

Dear Ms. Murphy:

I am writing on behalf of Teachers Insurance and Annuity Association of America ("TIAA") and College Retirement Equities Fund ("CREF") (collectively, "TIAA-CREF"). TIAA-CREF is a national financial services organization and the leading provider of retirement services in the academic, research, medical and cultural fields, with $434 billion in combined assets under management as of September 30, 2010. CREF, one of this country's largest institutional investors, holds shares in over 7,000 publicly traded companies. As fiduciaries charged with maximizing the collective value of over 3.7 million participants' retirement savings, we have been a leading advocate for more than 30 years on behalf of shareholder rights and good corporate governance.

As an investor, TIAA-CREF has been a proponent of a shareholder advisory vote on executive compensation ("Advisory Vote") for many years. Additionally, TIAA was one of the first U.S. companies to voluntarily provide our participants with such a vote in 2007 and have done so every year since. Thus, our perspective on the Shareholder Approval of Executive Compensation and Golden Parachute Compensation ("Proposed Rules")[1] is both as an investor who has directly engaged issuers to voluntarily adopt such a vote and as a company who has offered the vote to our participants multiple times.

Generally, we believe the Proposed Rules are consistent with the concept of the advisory vote we have espoused over the years. We have focused our comments on the following five points: (i) the purpose of an Advisory Vote and how it should be interpreted; (ii) the language of the Advisory Vote resolution; (iii) the disclosure of how the Advisory Vote affects compensation decisions; (iv) the implementation of the frequency vote; and (v) additional disclosure considerations.

[1] SEC Rel. Nos. 33-9153; 34-63124 (October 18, 2010).

I. Shareholder Approval of Executive Compensation

a. Purpose and Interpretation of an Advisory Vote

The Advisory Vote provides shareholders with an efficient tool to express their concerns about the compensation programs of issuers. When used responsibly, the Advisory Vote allows shareholders to send a clear message to issuers without resorting to the more drastic measure of voting against one or more directors. Thus, it is imperative that both issuers and shareholders are fully aware of the purpose and meaning of the vote. We believe issuers and shareholders should view the Advisory Vote as a referendum on whether or not the issuer has presented a convincing argument for its compensation program being linked to long-term performance and the achievement of specific business objectives structured to promote the creation of long-term sustainable shareholder value.

When casting Advisory Votes, shareholders should be mindful that the board and management are in the best position to determine compensation for their executives. The ideal role of shareholders is to provide a form of oversight on the policy behind and implementation of a well aligned compensation program, but not to set actual compensation. The board and management have access to consultants, advisers and internal information specific to their company (*e.g.,* performance evaluations, confidential details of strategic initiatives and competitive industry data) that may not be available to shareholders. Thus, without access to this information, we do not believe shareholders are well-positioned to cast Advisory Votes based solely on the numbers presented in the summary compensation table ("SCT"). However, we do believe that shareholders are appropriately positioned to pass judgment on whether or not the program is adequately performance-based, well aligned with long-term owners, and the disclosure accompanying the SCT, including the Compensation Discussion & Analysis ("CD&A"), is persuasive. Therefore we believe it is important that any resolution presented to shareholders focus on the quality and persuasiveness of the compensation disclosure.

b. Advisory Vote Language

The Commission is correct to leave the formulation of the specific Advisory Vote resolution language to each issuer, but within the context of a principles-based guideline. This provides issuers with the opportunity to present a proposal that is appropriately customized for, among other things, their specific circumstance. However, we are aware that giving this flexibility to issuers will put a larger burden on shareholders, who will need to first determine what they are being asked to vote on before evaluating the compensation program and deciding how to vote. Furthermore, the lack of standardization may make it difficult to analyze and compare the results of the votes across the market because the underlying resolutions may be significantly different. Despite these concerns, we believe the flexibility for issuers to adapt the vote to the evolution of corporate governance thinking and obtain feedback consequential to their specific compensation decisions is of paramount importance to the Advisory Vote remaining a useful and meaningful tool into the future. To achieve this goal, we believe the Commission should, at a minimum, provide issuers with a principles-based guide to crafting the resolution language.

We agree with the Commission's determination that "the shareholder vote must relate to all executive compensation disclosure set forth pursuant to Item 402 of Regulation S-K."[2] We also anticipate that shareholders may submit 14(a)-8 proposals asking the issuer to change the language for future votes if they do not find the current language acceptable. However, we believe that it may also be appropriate for the Commission to provide model language that would be consistent with the intention and scope of the Advisory Vote in addition to the principles-based guide suggested above. We have voted on several formulations of the advisory vote in recent years[3] and believe the following language appropriately instructs shareholders to submit a vote on the totality of the compensation program with a specific focus on the adequacy of the issuer's disclosure:

> Resolved, that the shareholders approve the overall executive compensation policies and procedures employed by the Company, as described in the Compensation Discussion and Analysis and the accompanying tabular disclosure of this proxy statement.[4]

c. Effect of the Advisory Vote

We strongly support the proposed amendment to Item 402(b), requiring issuers to specifically "address in the CD&A whether and, if so, how their compensation policies and decisions have taken into account the results of shareholder advisory votes on executive compensation."[5] Furthermore, we believe that, as proposed, this amendment should be made to Item 402(b)(1) so that it is a requirement and not merely a suggestion.[6] This disclosure will provide confirmation to shareholders that the board has reviewed the Advisory Vote and discussed it with management. It will also provide the issuer with an important opportunity to refute any shareholder concerns or inaccuracies in perception that may have resulted in a lower level of support than expected. This disclosure will ensure the Advisory Vote is not an afterthought and will encourage a healthy dialogue between shareholders and issuers on the topic of compensation on an annual basis.[7]

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[2] Proposed Rules, SEC Rel. No. 33-9153 (October 18, 2010) at 13.

[3] The following two examples exemplify the range of the language used by issuers who have voluntarily adopted an Advisory Vote, from including all aspects of the compensation disclosure to excluding the CD&A entirely.

> "Resolved, that the shareholders approve the compensation philosophy, policies and procedures described in the CD&A, and the compensation of the named executive officers as disclosed pursuant to the SEC's compensation disclosure rules, including the compensation tables."

> "Resolved, that the stockholders ratify the compensation of the Company's named executive officers set forth in the proxy statement's Summary Compensation Table (the "*SCT*") and the accompanying narrative disclosure of material factors provided to understand the SCT (but not the Compensation Discussion and Analysis)."

[4] This language reflects an adaptation of a resolved clause generally used in the market (*e.g.*, Aflac Inc., Marshall & Ilsley Corp. and H&R Block, Inc.) that we believe is most appropriate.

[5] Proposed Rules, *supra* n. 1, at 16.

[6] *See* Proposed Rules, *supra* n. 1, at 18.

[7] Notwithstanding the issuers choice concerning the frequency of the Advisory Vote, we believe including the proposed disclosure in Item 402(b)(1) will ensure the results of the most recent Advisory Vote(s) are considered annually.

II. Shareholder Approval of the Frequency of Shareholder Votes on Executive Compensation

a. Standard Language

The shareholder approval of the frequency of shareholder votes on executive compensation ("Frequency Vote") as proposed is not open to significant variation from issuer to issuer. It is therefore reasonable for the Commission to designate specific language and vote options for the Frequency Vote in order to ensure consistency. Furthermore, we believe that the "four vote choices (every 1, 2 or 3 years or abstain)" [8] provided in the Proposed Rules are clear. With designated language, shareholders will be able to efficiently evaluate the Frequency Votes and submit a vote that they believe is appropriate for the issuer's specific situation.

b. Amendments to Form 10-K and 10-Q

In response to the question of when issuers should be required to disclose their decision on the frequency of the Advisory Vote, the Commission must take care not to disenfranchise the board and management nor shareholders. Consideration should be given to both the board's need to thoughtfully consider the results of the vote and shareholders' need to engage with the issuer and/or file a 14(a)-8 proposal based on the decision made. Thus, the Commission should consider whether the first Form 10-K or Form 10-Q respects both of these concerns. Requiring disclosure of the issuer's decision a reasonable number of days before the deadline for filing 14(a)-8 proposals published in the previous years Schedule 14A may strike a more appropriate balance.

III. Additional Disclosure Considerations

We are concerned that Proposed Rules may result in shareholders being reliant on a third party to track the frequency of the Advisory Vote and when the next vote will occur for the many issuers in which they invest. This is because it appears the Proposed Rules do note require annual disclosure of this information. Therefore, in the interest of transparency and efficiency, we suggest that Schedule 14A should be amended to also include a requirement to disclose the frequency of the Advisory Vote and the year of the next Advisory Vote in the issuer's proxy statement.

If you would like to discuss any of the issues raised in our letter, please do not hesitate to contact me at 212.916.4344, or my colleague, Stephen L. Brown at 212.916.6930.

Sincerely,

Jonathan Feigelson

Cc: Hon. Mary L. Schapiro, Chairman
Hon. Louis A. Aguilar, Commissioner

[8] Proposed Rules, *supra* n. 1, at 22.

Hon. Kathleen Casey, Commissioner
Hon. Tory A. Paredes, Commissioner
Hon. Elisse Walter, Commissioner
Meredith B. Cross, Director, Division of Corporation Finance
David M. Becker, General Counsel and Senior Policy Advisor, Office of the General Counsel
Meredith B. Cross, Director, Division of Corporation Finance
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