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The Conference Board Task Force on Executive Compensation

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About The Conference Board Task Force on Executive Compensation

The Conference Board convened the Task Force on Executive Compensation in March 2009 to address the loss of public trust in the processes for oversight of executive compensation. The Task Force is co-chaired by Raj L. Gupta, former Chairman and Chief Executive Officer of Rohm and Haas, and Robert E. Denham, partner in the law firm of Munger, Tolles & Olson LLP and former Chairman and Chief Executive Officer of Salomon Inc. Bill Ide, Chairman of the Advisory Board of The Conference Board Governance Center, former General Counsel of Monsanto Company and President of the American Bar Association, is serving as Director of the Task Force. Barbara Blackford of Superior Essex Inc. served as reporter for the task force. This report reflects the view of the members of the Task Force on Executive Compensation, and does not represent the views of the companies or organizations with which they are affiliated. Although sponsored and supported by The Conference Board, the task force enjoyed absolute independence and autonomy in its findings and recommendations.

Task Force Members

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About the Technical Advisory Group

The Conference Board Governance Center convened a Technical Advisory Group to the Task Force on Executive Compensation in order to provide information, advice, and expertise to the Task force in completing its work. The Advisory Group is comprised of experienced and seasoned professionals with expertise across a wide range of fields related to the task force's executive compensation focus. Members include representatives of corporations and investors and, legal, governance, and compensation experts. The Advisory Group was chaired by Barbara Blackford, EVP, General Counsel and Secretary at Superior Essex Inc. The Report of the Task Force on Executive Compensation is the view of the task force, and does not represent the individual views of the members of the Advisory Group or the companies or organizations with which they are affiliated. In particular, a member of the Advisory Group has issued a dissenting opinion with respect to the task force's report with respect to the requirements with respect to the disclosure of fees of compensation consultants, which is contained in Appendix G.

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The Conference Board Task Force on Executive Compensation

contents

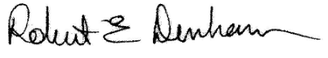
Foreword

The current economic crisis, precipitated by the meltdown in the financial services industry, has led to a loss of public trust in corporations and other institutions. Executive compensation has become a flashpoint for this frustration and anger. One of the missions of The Conference Board and its Governance Center is to convene independent thought leaders to participate in a substantive dialogue on the most pressing governance matters. As part of this mission, the Governance Center established the Task Force on Executive Compensation to provide an independent review of the issues related to executive compensation. In addressing these issues, the task force and its advisory group brought together directors, shareholders, experts in compensation, governance and law, and members of academia.

The task force's report and recommendations, which follows, sets forth Guiding Principles, which it believes, if appropriately implemented, can restore credibility with shareholders and other stakeholders and trust in executive compensation pay processes and oversight. These Guiding Principles call for assuring the link between pay and performance, adopting best practices, eliminating controversial practices and assuring transparency and an appropriate dialogue between boards and shareholders regarding executive compensation. The report provides guidance to boards, compensation committees and management in implementing these Guiding Principles, and its appendixes contain additional information on executive pay practices and standards.

The report is designed to be a useful handbook for directors in executing their oversight duties with regard to executive compensation and will be made available to directors, shareholders and others with an interest in governance of public companies.

This report was made possible through the dedicated effort of the members of the task force and its advisory group as well as the staff of The Conference Board. As co-chairs, we extend our thanks to each and every member and our special thanks to advisory group chair, Barbara Blackford.



Executive Summary

Long before the current financial crisis, executive compensation was generating debate and controversy, with many in the investment community and the general public viewing executive pay as too generous, insufficiently related to performance, and too often rewarding short-sighted behavior.

The economic crisis evidenced by the meltdown in the financial services industry and unprecedented government intervention in that industry, coupled with well-publicized payments to executives as their companies' stock prices plunged and unemployment rose, has only intensified public anger over executive compensation. This anger relates not only to the overall increase in executive pay over the past decade, but also to severance and other arrangements where payouts appear to be unrelated to performance. This anger has not been ameliorated by the decline in overall chief executive officer compensation levels in 2008.[1]

In retrospect, executive compensation governance and disclosure reforms implemented earlier in the decade may have changed "too little, too late" and the current public demand for change has effectively eliminated the option for executive pay practices to gradually evolve, as boards explore and test alternatives over time. Regardless of whether the recent executive pay issues are concentrated in the financial services industry, the task force believes that public corporations and directors are at a crossroads with respect to executive compensation. In order to restore trust in the ability of boards of directors to oversee executive compensation, immediate and credible action must be taken. All boards should examine their executive pay practices and take action to ensure that there are strong links between performance and compensation, that the company employs best practices and avoids controversial practices described in this report absent significant justification, that there is transparency with respect to executive compensation decision making processes, and that board and shareholder dialogue is available to resolve executive compensation issues.

The task force recognizes that a "rules-based" approach cannot provide the essential flexibility required to accommodate the disparate industries, strategies, business models, and stages of development represented in the more than 12,000 U.S. public companies. Given the differences among companies and even within the same company as its situation and strategy change over time, each company must have the flexibility to set (and change) its business strategy and then design unique executive compensation programs that promote and reward achievement of the objectives for the operative strategy. Moreover, rules cannot substitute for the good judgment required to make sound pay decisions.

The task force believes that executive compensation executed correctly, in furtherance of a company's business strategy and shareholder value and consistent with the company's values, is essential to the economic health of America's business sector. It has provided guiding principles for setting executive compensation, which, if appropriately implemented, are designed to restore credibility with shareholders and other stakeholders. The following summarizes these principles:

1 See Appendix F for information related to CEO pay.

1. Compensation programs should be designed to drive a company's business strategy and objectives and create shareholder value, consistent with an acceptable risk profile and through legal and ethical means. To that end, a significant portion of pay should be incentive compensation, with payouts demonstrably tied to performance and paid only when performance can be reasonably assessed.

Companies should examine and adopt a compensation system that best incents achievement of the objectives of their business strategies, and use performance metrics that best measure performance against the desired objectives¸ taking into account the potential risks associated with various metrics. Just as the business strategies of most companies will and should be focused on building long-term shareholder value, incentive compensation should also be designed to reward long-term value creation. Incentive compensation should not encourage excessive or inappropriate risk taking, nor discourage an appropriate level of risk taking that the board determines is necessary to accomplish the company's strategy.

Compensation committees should consider whether performance measures adequately capture the risks assumed in generating and measuring profits during the performance period. Incentive compensation should be paid only when performance can be reasonably measured.

A significant portion of incentive compensation should be designed to encourage the longer-term success of the company. Stock ownership and stock-holding programs that require executives to have a meaningful position in the company's stock aid in aligning the interests of the executives with that of shareholders and can encourage executives to focus on the longer term. Payouts for achieving shorter-term goals should support the company's strategy for building long-term shareholder value.

Performance targets should be realistic, neither too easy nor too difficult, and should provide the executive with a meaningful opportunity to earn incentive compensation in return for delivering performance. While these principles seem simple, it is challenging to set targets in a rapidly changing business environment where subsequent events can quickly render a target "easy" or make it unattainable. In determining payouts, compensation committees should consider the extent to which performance has been significantly influenced by external circumstances, in addition to the specific efforts and skills of executives.

2. Total compensation should be attractive to executives, affordable for the company, proportional to the executive's contribution, and fair to shareholders and employees, while providing payouts that are clearly aligned with actual performance.

Fundamentally, boards of directors and their compensation committees are responsible for determining the right level of pay for executives based on the performance of the company and individual executives.

Poorly executed benchmarking, particularly when combined with widespread targeting of above median pay levels, is widely believed to have contributed to the upward spiral in executive pay. Benchmarking data are only one source of information about the appropriate level of compensation and not the primary driver of the right level of compensation. The proper use of benchmarking requires care in selection of the peer group and appropriate targets in comparison to peers. Benchmarking should take into account performance differences among the company and its peers. It is axiomatic that no more than 25 percent of peer companies can perform at or above the 75th percentile. Companies should target above median pay only when there is appropriate justification, such as large differences in scale or unusual recruiting and retention challenges.

3. Companies should avoid controversial pay practices, unless specific justification is present.

Certain pay practices have come under heightened scrutiny for providing payouts to executives without regard to performance or inappropriately differentiating between executives and other managers. These "controversial" pay practices can raise special risks for companies, shareholders, and the system of overall executive compensation because they are unrelated to successful performance and can undermine employee morale, raise "red flags" for investors, and erode credibility and trust of key constituencies such as employees, shareholders, and the public. As a result, these pay practices should be avoided except in limited circumstances where the board or compensation committee determines that special justification exists. Such practices include:

- Multi-year employment agreements providing for generous severance payments
- Overly generous golden parachute payments or benefits
- Gross-ups for tax consequences of parachute payments or perquisites
- Golden coffins
- Perquisites or executive benefits that are not generally available to other managers
- Stock option repricings or restructurings that are not value neutral, nor approved by shareholders

If used, the rationale for these practices should be clearly and plainly disclosed to shareholders.

Since different companies face different situations regarding executive recruitment and retention, and the issues faced by the same company may change from time to time, boards and compensation committees should be able to exercise discretion to adopt one or more of these practices, but when they do so, they should clearly articulate the justification for their action. "Everyone else does it" or "it is market practice" is not sufficient. On the other hand, there are situations where sufficient justification exists. For example, a company undergoing a period of challenge, such as a liquidity crisis, may require special CEO expertise not available internally. In order to attract an appropriate candidate from outside the company, the company may need to provide the new CEO the assurance of an employment agreement granting severance protection to ameliorate the risks of leaving a stable position elsewhere for a company with greater challenges. Further, it may be necessary to provide special benefits to bridge foregone compensation or benefits.

4. Compensation committees have a critical role in restoring trust in the executive compensation setting process and should demonstrate credible oversight of executive compensation. To effectively fulfill this role, compensation committees should be independent, experienced, and knowledgeable about the company's business.

To build and sustain the investor and public trust necessary for a free market system for executive compensation in public companies, board compensation committees, as fiduciaries for the company and its shareholders, should demonstrate credible oversight of executive compensation. To effectively fulfill this role, compensation committees should be independent, experienced, and knowledgeable about the company's business and compensation programs. Compensation committees should also have access to, and control the engagement of key advisors, who should be independent of management.

5. Compensation programs should be transparent, understandable, and effectively communicated to shareholders. When questions arise, boards and shareholders should have meaningful dialogue about executive compensation.

The board, the compensation committee, and management should ensure that the company's executive compensation programs, as well as the rationale behind executive compensation decisions, are transparent and easily understood by investors.. Overly complex and esoteric arrangements can be difficult to understand, analyze, measure, and explain to shareholders. Companies should improve the engagement and dialogue with shareholders with respect to executive compensation. One approach for accomplishing this goal is better use of the executive compensation disclosures (through Compensation Discussion and Analysis— the CD&A) as a communications vehicle with shareholders rather than simply a compliance document. With federally mandated advisory votes on executive pay increasingly likely, both shareholders and corporations have responsibilities to assure that an advisory vote on executive pay is effectively implemented and facilitates dialogue between shareholders and boards regarding executive compensation. An advisory vote on executive pay is not itself a "dialogue"—but a tool to encourage a dialogue between shareholders and directors when dialogue is needed. Because of the unique drivers of each company's business strategy and executive compensation needs, shareholders also have a responsibility to avoid a "check the box" approach to advisory votes on executive compensation and critically examine recommendations of proxy advisory firms that adopt such an approach. Background information on the executive compensation setting process is included in Appendix A.

Guiding Principles

Principle One–Paying for the right things and paying for performance

Compensation programs should be designed to drive a company's business strategy and objectives and create shareholder value, consistent with an acceptable risk profile and through legal and ethical means. To that end, a significant portion of pay should be incentive compensation, with payouts demonstrably tied to performance and paid only when performance can be reasonably assessed.

Principle Two–The "right" total compensation

Total compensation should be attractive to executives, affordable for the company, proportional to the executive's contribution, and fair to shareholders and employees, while providing payouts clearly aligned with actual performance.

Principle Three–Avoid controversial pay practices

Companies should avoid controversial pay practices, unless specific justification is present.

Principle Four–Credible board oversight of executive compensation

Compensation committees should demonstrate credible oversight of executive compensation. To effectively fulfill this role, compensation committees should be independent, experienced, and knowledgeable about the company's business.

Principle Five–Transparent communications and increased dialogue with shareholders

Compensation should be transparent, understandable, and effectively communicated to shareholders. When questions arise, boards and shareholders should have meaningful dialogue about executive compensation.

Implementing the Guiding Principles

Principle One–Paying for the right things and paying for performance

Compensation programs should be designed to drive a company's business strategy and objectives and create shareholder value, consistent with an acceptable risk profile and through legal and ethical means. To that end, a significant portion of pay should be incentive compensation, with payouts demonstrably tied to performance and paid only when performance can be reasonably assessed.

Link to Company Strategy Is Critical

There are a number of factors involved in motivating executives to contribute extraordinary efforts in support of the company's business strategy. Among those factors are the culture and values of the organization, the scope of the individual's roles and responsibilities with associated opportunities for professional challenge and growth, and of course, compensation programs. While clearly not the only factor, there is no question that compensation programs can contribute to—or undermine—the culture and success of a company by directly influencing executive priorities and actions. Consequently, it is critical that executive compensation programs link pay directly to results that help achieve the company's business strategy, are consistent with the company's values, and reflective of a risk profile that is appropriate in light of the company's strategy and systemic considerations. Further, payouts should require that results are accomplished through legal and ethical means.

Competitive markets reward companies that, over meaningful time periods, efficiently fulfill market needs and employ business models that respond rapidly to changing market conditions. To succeed in a competitive global economy, individual companies should be able to tailor compensation programs to address the success drivers for their business, its unique business strategy, and its status within the evolution of that strategy. Companies should also be able to adjust the elements of their compensation programs from time to time as market needs and other conditions change.

For these reasons, a "one size fits all" or "rules-based" approach to executive compensation is not workable. Compensation programs should be sufficiently flexible to accommodate the disparate industries, strategies, business models, and stages of development represented in the more than 12,000 U.S. public companies. To illustrate, each of the companies profiled below would likely require fundamentally different organizations, skills and performance objectives to achieve their short- and long-term business objectives:

- An early-stage technology company with low current earnings and an unproven business model; but with potentially high future earnings and an investor base assuming a high risk-reward trade-off.
- A large-cap company in a stable or declining industry with a dividend-oriented investor base seeking to deploy its assets to more profitable business lines.
- A large-cap company with expectations for strong and sustained growth and cash flow, but requiring significant investments in its current and contiguous markets over long time horizons.

Given the differences among companies and within the same company as its situation, objectives, and underlying strategy change over time, each company should have the flexibility to set (and change) its business strategy and then design unique executive compensation programs that promote and reward achievement of the priorities for the operative strategy.

Perhaps the most costly mistake a company can make is to establish an executive compensation program that motivates executives to achieve short- or intermediate-term objectives that are misaligned with the longer-term strategy or encourages excessive risk taking. Such a result can be far more costly to the company and its shareholders than providing excess rewards for achieving the right business objectives within appropriate risk tolerances.

Mix of Compensation

Compensation committees are responsible for setting the right mix of pay elements and ensuring that a significant portion of an executive's overall compensation is demonstrably linked, in design and actual payout, to performance against goals and objectives that are aligned with the company's business strategies.

The right pay mix promotes the appropriate balance of a company's short- and long-term objectives, based on the company's business strategy. Pay mix should take into account the level of leverage and risk appropriate to the company's long-term business strategy and objectives. Too much focus on the short term in the wrong business model can lead to reward for current performance, but fail to promote the company's business strategy over the long term.

In determining the appropriate mix of compensation and benefits, compensation committees should consider the importance of teamwork in a business enterprise and the ways in which compensation can help strengthen teamwork and increase loyalty to the enterprise. Elements of compensation that are "at risk" based on performance should, in fact, be subject to risk, and as such, compensation committees should avoid subsequently reducing or eliminating that risk. Further, the portion of total compensation at risk which is based on performance should increase with an executive's role and responsibilities.

Finally, compensation committees should consider seeking simplicity in design of executive compensation programs. Simple programs can be more effective because they are more easily understood by executives and shareholders and are easier to measure. Further, simple compensation programs can mitigate the risk of unintended consequences, such as compensation "windfalls" or deficits that result from factors outside of management's control or influence.

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2 "Out with the Old: Creating a Sustainable and Effective Approach to Rewarding Executives, FTSE 100– Review of the Year 2008," PricewaterhouseCoopers LLP (December 2008). According to this study by PricewaterhouseCoopers of FTSE 100 executive compensation trends, approximately 70 percent of the FTSE 100 companies use deferred bonus plans in which a portion of the annual incentive earned is placed in a deferred bonus account and used to purchase shares of company stock. Depending on performance during the deferral period (3–5 years), stock equal to a multiple of the amount deferred may be granted to executives at the end of the performance period.

3 Section 304 of the Sarbanes-Oxley Act of 2002 ("SOX") provides that public company CEOs and CFOs are required to disgorge certain bonuses, incentive-based compensation, equity-based compensation, and profits realized from the sale of company stock in the event that the company has to restate its financial statements due to material noncompliance of the company, as a result of misconduct, with any financial reporting requirement under the securities laws. However, federal courts have held that Section 304 does not create a private cause of action; consequently, it is the SEC, not the company or its shareholders, which brings an action under Section 304. *See In re Digimarc Corporation Derivative Litigation*, 2008 WL 5171347 (9th Cir. 2008) (finding no Congressional intent to create a private right of action under Section 304 of SOX).

Pay for Performance

The following are key elements of pay for performance programs:

The "right" performance metrics Metrics intended as a yardstick for assessing company and executive performance. Such metrics represent an appropriate mix of financial (e.g., return on assets, cash efficiency, total shareholder return, earnings per share, capital allocation, etc.), non-financial (e.g., safety, compliance, quality, etc.), and individual metrics. The right performance metrics help drive achievement of a company's business strategy over both the short and the long term. Committees should not adopt metrics simply because they are common metrics or used by peers. Instead, committees should examine and select the metrics that are most closely tied to sustainable performance for their company. Committees should be aware of the potential advantages, disadvantages, and risks associated with various metrics and take these factors into account when selecting metrics and choosing the design of compensation programs. Performance metrics should take into account an executive's responsibility for and/or ability to affect the achievement of the metric—for example, business unit executives may have a relatively higher percentage of incentive compensation based on business unit results. Background information regarding performance metrics is included in Appendix D.

The "right" performance targets The targets (e.g., minimum, target, maximum) against which performance will be measured. Targets should be realistic—neither too easy nor too difficult—and should provide the executive with a meaningful opportunity to earn incentive compensation in return for delivering performance. While these principles seem simple, it is challenging to set targets in a rapidly changing business environment, where subsequent events can quickly render a target "easy" or unattainable. In setting these targets, a compensation committee should consider appropriate information regarding the company's industry, its growth rates, historical targets and actual performance relative to those targets, investor expectations, and key competitors and their performance levels in order to establish whether these targets are realistic and reflect the appropriate "stretch." External expectations regarding the company, such as analyst reports and models and expectations built into the current stock price can also be useful sources for assessing appropriate targets for incentive compensation.

The "right" performance period The period over which performance is measured. A significant portion of incentive compensation should be designed to encourage the longer-term success of the company. The performance periods should be based on the company's business objectives over the short- and long-term and the time horizon of risks. Shorter-term goals and payouts should support the company's strategy for building long-term shareholder value.

The "right" performance standard The appropriate standard for measuring performance. Choosing the right standard and deciding whether performance should be measured on an absolute basis or against a relative standard, such as an index, or specific set of peers (e.g., total shareholder return on an absolute basis or compared to peers), depends on a variety of factors. Committees should also consider whether an appropriate frame of reference exists for a relative measure. Relative performance measurements can be complicated by a variety of factors, such as whether the company has a well-defined set of peers and the company's current financial situation relative to those peers, but if done properly and under the appropriate circumstances, can have the advantage of compensating executives for their accomplishments instead of general industry trends.

The appropriate curve The appropriate relationship between payouts at threshold, target, and maximum performance. Compensation committees should, for example, consider whether performance that is halfway between threshold and target merits half the payout. Some situations merit a relatively flat curve and others may warrant a "hockey stick" curve. The choice of the "right" curve depends on corporate strategy, the level of difficulty for an executive to produce improved results, and the company's risk profile. Compensation committees should consider the appropriate balance between upside and downside risk. In considering steeper curves, compensation committees should be cognizant of the greater potential for small changes to produce unanticipated increases in payouts or modest shortfalls than can eliminate the payout entirely, either of which can provide an incentive for "gaming," improper conduct, or excessive risk taking.

Consideration of risk in performance measures Compensation committees should consider whether performance measures adequately capture the risks assumed in generating and measuring profits during the performance period. If appropriate, incentive plans may incorporate some form of bonus banking, deferred bonuses, longer-term performance periods, or other tools to more closely align payouts with such risks and better assure measurement of true performance.[2] In addition, for long-term incentives, vesting and holding periods are additional tools to align payouts with the time horizon of risks associated with generating the measured return. In appropriate circumstances, all or a portion of a bonus payout can be held back in a bonus account and paid out in the future, dependent on future performance or events.

Clawback policies to address certain inappropriate payouts Companies should adopt clawback policies allowing them to recoup compensation from executives under certain circumstances, such as later discovered misconduct or a subsequent restatement of financial statements.[3] The policy should be fully disclosed and:

- Apply to executive officers.
- Provide, at a minimum, for recoupment of incentive compensation, if the board finds that misconduct on the part of an executive contributed to excessive or unearned payouts of incentive compensation.
- State the actions to be taken to recoup incentive compensation or waive such recoupment.

Appendix E provides additional information regarding clawback policies.

Role of skill versus luck Compensation committees should consider the extent to which performance has been significantly influenced by external circumstances, rather than by the efforts and skills of executives. Committees should consider whether greater discretion in measuring performance or in adjusting payouts is desirable to adequately differentiate between these two sources of performance. For example, committees may reserve the right to exercise negative discretion in order to reduce payments for anomalous results.

Alignment of executive interests with shareholders–executive stock ownership requirements; stock holding requirements Stock ownership and stock holding programs are designed to require executives to attain a meaningful position in the company's stock and therefore to align the interests of the executives with those of shareholders and encourage executives to focus on the longer term. Companies should:

- Adopt meaningful stock ownership and stock holding requirements for senior executives that require executives to accumulate substantial equity over their careers with the company.
- Disclose the policies and the rationale for the required ownership and holding levels, compliance by senior executives with the policy, and any changes to the policies.

More information regarding these policies is included in Appendix E.

[4] Appendix C contains more information regarding the key elements of total compensation.

Principle Two–The "right" total compensation

Total compensation should be attractive to executives, affordable for the company, proportional to the executive's contribution, and fair to shareholders and employees, while providing payouts clearly aligned with actual performance.[4]

Fundamentally, compensation committees should determine the right level of pay for executives based on the performance of the company and individual executives.

Virtually every U.S. company's proxy statement states that its compensation philosophy is designed to attract, retain, and motivate the key executives required to achieve its corporate objectives. While perhaps universally true, such a philosophy does not excuse high payouts for failed or weak performance. Nor does it justify compensation programs that detract from achieving the company's objectives or undermine the confidence of investors, employees, and the public in the company and its board of directors.

How much is too much? While inherently subjective and variable, compensation committees should not pay executives more than is affordable to the company, proportional to the executive's contribution, justified by company performance, and fair to shareholders and employees. In making this determination, there is no algorithm, multiple, cap, or formula that can calculate the right amount without unduly limiting the flexibility needed to compete in a global economy.

Affordability

While affordability is subjective, compensation committees can review a variety of data to test the affordability of the company's executive compensation programs.

- Compensation committees may examine the percentage of a company's earnings, incremental earnings, or other metrics paid to executives in the form of total compensation. If this information is available for peer companies, committees may also compare the company to its peers. In reviewing this analysis, committees should ask themselves whether this percentage is sustainable and fair, given the company's strategy, performance, and other relevant considerations.
- Compared to a company's peers and peer executives, the compensation committee can examine whether company executives have higher pay based on the size, complexity, and performance of the company and the tenure, experience, and qualifications of executives.
- Committees may review sensitivity analyses of all potential payouts under incentive plans over time to examine whether payouts at all levels will be aligned with and proportionate to results. Committees should also consider how the company will finance the payouts without hampering growth or undermining needed liquidity.

Affordability should also be considered in other aspects of executive compensation design. For example, performance ranges for incentive compensation should be sufficiently wide to protect against windfalls attributable to modest overachievement and unintended compensation deficits for near misses, but not so wide that they dilute the impact of performance variation on the change in payouts. In addressing these issues, compensation committees should have a clear understanding of the degree of difficulty associated with the achievement of performance objectives, as well as the variability in the underlying metrics from year to year.

Benchmarking

Benchmarking is the process of comparing the company's executive pay to that of the company's peers. When properly employed, benchmarking provides an important source of data for determining the "market" for compensation of similarly situated executives.

Poorly executed benchmarking, particularly when combined with widespread targeting of above-median pay levels, is widely believed to have contributed to the "spiraling upward" of CEO pay.

The following practices can mitigate the potential negative consequences of benchmarking.

- **The right peer group** Pay critics have historically been concerned that companies "cherry-pick" their peer groups, inflating the market benchmarks against which compensation is compared. Compensation committees should ensure that their processes for selecting peer companies are robust and well designed and that the peer group is credible to both internal and external audiences. In selecting companies to include in the peer group, a committee should identify the company's competitors—including competitors for business and products, labor, and investor capital. The company's view should be reviewed in light of what external audiences, such as shareholders and analysts, consider to be the peers or competitors of the company. Compensation committees should develop robust criteria for screening these potential peers, including size in terms of revenue, assets, employees, and market capitalization. Other screening criteria can include financial metrics and such qualitative measures as growth phase/maturity, nature and degree of regulation, breadth of geographic footprint, capital intensity, etc. Compensation committees should also consider the number of companies in the peer group—a small peer group may produce less reliable comparator information because outliers will tend to have a disproportionate impact on summary statistics.
- **Targeting the right level of pay in comparison to peers** It is axiomatic that no more than 25 percent of peer companies can perform at or above the 75th percentile. Companies should target above-median pay only with appropriate justification, such as large differences in scale or unusual recruiting or retention challenges. Of course, incentive plan design will commonly provide for above-median payouts for exceeding plan performance objectives, and companies that are market leaders may expect such performance and target compensation above the market median. If a company provides target levels of pay at or above a particular percentile and does not perform at that percentile of peer companies on a sustained basis, the company should redesign its compensation strategy to align it with the organization's performance.

- **Benchmark compensation practice** Appropriate benchmarking should examine the compensation designs of peer companies, including the mix of fixed versus variable compensation and the extent to which realized compensation is sensitive to changes in operating results and shareholder value.
- **Compare performance of peers** Benchmarking should take into account performance differences among the company and its peers, such as the efficiency with which capital is employed. Compensation committees should evaluate historical peer performance levels to assist in identifying and measuring higher (and lower) levels of performance.
- **Exercise of judgment** Benchmarking data is only one source of information about the appropriate level of compensation and should not be the primary driver of the right level of compensation. Benchmarking data should be viewed within the overall context of the business and compensation strategy and in conjunction with other data and measures. Compensation committees should apply common sense and judgment when using comparative data. They should also recognize that in all comparative data there is a range of practice, and that appropriate positioning for individual executives within the range should reflect a variety of factors. These factors include the company's compensation philosophy, the executive's performance, the importance of the position relative to other executives (which may include differences in the scale of enterprise), and the skill set and experience of the executive relative to other peer executives.
- **Compare pay to compensation philosophy** Boards and compensation committees should articulate the company's compensation philosophy, explaining how the company's compensation policy reflects and carries out the company's business strategy and objectives. Compensation should be reviewed for consistency with this philosophy.

Principle Three–Avoid controversial pay practices

Companies should avoid controversial pay practices, unless specific justification is present.

Certain pay practices have come under heightened scrutiny for providing payouts to executives without regard to performance or inappropriately differentiating between executives and other managers. These pay practices, which we refer to as "controversial pay practices," can raise special risks for companies, shareholders, and the system of overall executive compensation because they may undermine employee morale, raise "red flags" for investors, erode the company's credibility, and weaken the trust of key constituencies—employees, shareholders, and the public. As a result, these pay practices should be avoided, except in limited circumstances where special justification exists. If used, the rationale for these practices should be clearly and plainly disclosed to shareholders.

The determination of whether special justification is present should be within the discretion of the board and its compensation committee. For example, a company undergoing a period of challenge, such as a liquidity crisis, may require special CEO expertise that is not available internally. In order to attract an appropriate candidate from outside the company, the company may need to provide the new CEO with an assurance of employment agreement that grants severance protection to ameliorate the risks of leaving a stable position elsewhere for a company with greater challenges. Further, it may be necessary to provide special benefits to bridge forgone compensation or benefits. When senior executives can be promoted from within the company, there is often less need to engage in these controversial practices, which can distort a company's overall compensation structure. A strong program of management development and succession planning helps a company maintain the desired structure of its compensation program, in addition to the other benefits it provides. Compensation committees should take care when negotiating with outside candidates to avoid or mitigate these potential negative effects on a company's compensation structure.

Since companies face many different situations and even the same company can face different issues at various stages, these criticized practices will sometimes be justified, but the prevalence of these practices today indicates that special justification is not the standard that is being applied when deciding whether such an arrangement is appropriate. "Everyone else does it" or "It is market practice" are not sufficient justifications for these practices.

[5] According to RiskMetrics, between 2003 to 2008, 22 of 43 shareholder resolutions that require companies to submit "excessive" severance agreements (i.e., the executive will receive more than three times, in some cases twice, the executive's usual salary and bonus) to a shareholder vote were approved, and shareholder proposals to eliminate or restrict severance agreements also received strong support, with 15 of 25 such shareholder proposals being approved between 2005 and 2008. Kosmas Papadopoulos, "Gilding Golden Parachutes: The Impact of Excise Tax on Gross-Ups," RiskMetrics Group, November 2008.

Controversial Pay Practices

- **Severance agreements** Generous severance provisions in employment agreements are a key contributor to concerns about executive compensation, and such provisions have led to increased shareholder action to limit the utilization of these agreements.[5] If companies feel compelled to implement an employment agreement, the severance arrangements should be designed to ameliorate the effects of a failed relationship and not unjustly enrich the executive. Severance formulas should be reasonable and serve the purpose of bridging the period during which the executive is unemployed. Special severance arrangements beyond those provided to other managers should only be for a limited period of time (e.g., new executive hired pursuant to a contract guaranteeing enhanced severance for a three-year period), should have a specified termination date, and should not include an automatic renewal feature.

- **Excessive golden parachutes** Golden parachutes are employment arrangements that typically provide severance if an executive is terminated by the company without cause or resigns for "good reason" following a change of control. Such protections can ensure that management pursues corporate transactions that are in the best interests of the company and its shareholders and remains focused on the business during a period of inherent uncertainty. While change in control protections can be in the company's best interests, severance formulas should be reasonable and provide enhanced severance protection only for a limited period of time following the change in control. In addition, absent special justification, change of control benefits, including enhanced vesting of equity or other incentive awards, should be subject to a "double trigger," meaning that the benefit is not provided unless both a change of control has occurred and the executive's employment is terminated by the company without cause or by the executive with good reason.

- **Gross-ups** A gross-up is an agreement whereby the company compensates an executive for personal income and/or excise taxes owed. Two common gross-ups are for taxes related to perquisites, such as personal use of company aircraft, and for excise taxes on so-called "golden parachute" payments. Due to the "tax on tax" effect, it is estimated that a full excise tax gross-up costs companies between $2.50 and $3 for every $1 of grossed up parachute payments.[6] Gross-ups should not be provided absent a finding of special justification, unless the gross-up is provided to a broader group of employees, as is frequently the case for moving expenses. More information related to gross-up payments is included in Appendix E.

- **SERPs (in excess of restoration designs)** A supplemental executive retirement plan ("SERP") is a type of nonqualified plan that generally provides incremental retirement benefits to certain highly compensated employees of the company that are in addition to the benefits provided to other employees. Absent special justification, SERPs that provide any of the following should be avoided:

  –retirement payments except those providing equivalent benefits relative to executive income beyond the limitation provided for qualified plans (i.e., defined benefit or defined contribution restoration plans);

  –additional credit for years of service that credits the executive with more than the number of years actually worked;

  –eligibility to receive the benefits at an earlier retirement age than other managers or at a comparable age but on an enhanced basis;

  –inclusion of equity awards or other forms of compensation in the determination of the amount of post-retirement benefits that are excluded from the calculation of benefits for other employees; and

  –lump sum payouts calculated at artificially low discount rates that enhance the value of the benefit relative to that provided to other employees.

[6] Papadopoulos, "Gilding Golden Parachutes."

- **"Golden coffins"** These are benefits paid out upon the death of an executive that are far in excess of the life insurance or other death benefits typically provided to employees, and, absent special justification, they should be avoided.
- **Perquisites** Absent special justification, executives, not companies, should be responsible for paying personal expenses, particularly those that average employees routinely shoulder, such as personal travel, financial planning, and club memberships. Absent special justification, perquisites should not be provided to retired executives. More information related to perquisites is included in Appendix E.
- **Above-market returns for deferred compensation** Many companies find it mutually advantageous to allow executives to defer the right to receive payment of compensation, and, as a result, defer taxation of such compensation to a later date. Such programs can benefit the company by effectively allowing the company the right to use the compensation until paid out to the executive. The amount of compensation deferred often bears a predetermined interest rate or a rate of return based on an internal or external index, such as a company stock fund or a selection of mutual funds. However, some programs provide executives above-market returns on deferred compensation. Compensation committees should avoid such enhanced features for executives absent special justification.
- **Option repricings or exchanges** Repricing, or the resetting of the exercise price of a stock option or stock appreciation right, poses the risk that shareholders and the public will perceive that executives have little downside from equity awards or are being rewarded for failed performance. Companies should not undertake stock option repricings or exchanges absent shareholder approval. Repricings should generally be value neutral, returning an equal or lesser value to employees who surrender underwater options for new equity or cash.

Principle Four–Credible board oversight of executive compensation

Compensation committees should demonstrate credible oversight of executive compensation. To effectively fulfill this role, compensation committees should be independent, experienced, and knowledgeable about the company's business.

To sustain the investor and public trust necessary for a free market system for executive compensation in public companies, board compensation committees, as fiduciaries for their company and its shareholders, should demonstrate credible oversight of executive compensation. While the ultimate responsibility for executive compensation lies with the board as a whole, compensation committees have a special responsibility to oversee and monitor executive compensation on behalf of the board.[7]

- **Think and act like an owner** Compensation committees should think like owners and ask themselves whether compensation elements would be designed or paid out as contemplated if negotiated on an arm's-length basis by an owner of the entire company. This requires compensation committees to analyze the costs and benefits of compensation programs. Furthermore, directors are likely to do a better job of thinking like owners if they are, in fact, shareowners and hold meaningful equity in the company.
- **Compensation committee independence** Credible oversight requires that compensation decisions be made by directors with the independence to make tough decisions. In determining independence, boards should ensure not only that compensation committee members meet all required legal and regulatory independence standards, but also consider whether any other financial or personal relationships with management, the company, or any other entities would impair the actual or perceived independence of compensation committee members.
- **Necessary experience** Compensation committee members should have a mix of experience to fulfill their duties. All members need an understanding of the company's business, including:
  - –the company's business strategy;
  - –the markets in which the company operates;
  - –the competitive landscape;
  - –the key drivers of short- and long-term performance;
  - –the company risk profile; and
  - –the company's financial history, current conditions, and projections.

  Compensation committee members should develop an understanding of compensation design elements and the influence each element might have on executive priorities and behavior. They should also be able to identify relevant metrics for the company and evaluate performance against those metrics. Compensation committee members are not expected to be experts in all of the legal, tax, accounting, and administrative considerations that affect executive compensation program design, but should have the acumen to know when to seek advice and be able to understand the information required for making compensation decisions.

7 For more information regarding resources and information compensation committees should consider, see Appendix B.

Compensation committee members should dedicate the necessary time to stay current with developments regarding the company and its business, as well as the roles and responsibilities of compensation committees and changing standards for oversight of executive compensation. Companies should provide the resources necessary to ensure their compensation committee members stay current about these matters. This can be done either internally, through committee consultants and advisors, or through third-party education programs. Board planning and strategy meetings are important sources of information regarding company strategy and can also be used to communicate with management and the board regarding executive compensation programs.

- **Necessary resources to make informed compensation decisions**[7] In order to fulfill their responsibilities, compensation committee members should have direct and unrestricted access to the resources needed for decision making.

Access to all relevant information

Compensation committee members should have access to all information relevant to the design and oversight of the company's executive compensation programs.

Access to management

The compensation committee should have direct and unrestricted access to members of management who possess relevant information related to the company, as well as the ability to ask questions and seek further information if the committee determines it is appropriate. In order to evaluate the congruence of compensation programs with business strategy and appropriate risk parameters, the compensation committee needs to maintain a strong dialogue with the CEO and senior management. Additionally, companies typically assign one or more members of management as primary liaisons with the committee, making these individuals responsible for providing information necessary to or requested by the compensation committee. The necessary resources for this information generally include human resources, legal, finance, accounting, and investor relations. These liaisons should understand their responsibilities to the compensation committee and serve the committee without self-interest or undue influence from other members of the management team, including the CEO.

Advisors

If it decides such access is helpful or required, the compensation committee should have direct and unrestricted access to external advisors who are independent of management. These advisors can provide independent advice regarding executive compensation design legal requirements, tax, and other regulatory requirements affecting the company's executive compensation programs. The committee should have the ability to directly engage its own advisors when it determines such engagement is appropriate.

Compensation consultants

If the compensation committee decides that engaging a compensation consultant is desirable, the compensation consultant should report directly to the committee. The compensation consultant should be independent of management and selected and engaged by the committee. The committee should review and approve all key terms of the engagement, including the scope of the engagement and the work to be undertaken. Compensation committees should annually review all fees paid to the consultant firm and its affiliates and review the consultant's independence.[8] As is the case for independent auditors, under appropriate circumstances, a compensation

[8] See Carolyn Kay Brancato and Alan A. Rudnick, *The Evolving Relationship Between Compensation Committees and Consultants*, The Conference Board, Research Report 1382, 2006.

consultant (or its affiliates) may undertake other work for the company, but the compensation committee (or designated members of the compensation committee) should pre-approve any such engagement. Such approval should include a review of the scope of the work to be undertaken and the fees involved. The compensation committee should monitor the engagement to ensure it does not adversely impact the consultant's independence. If additional work is undertaken, the company should disclose the amount of fees paid to the consultant both for executive compensation work for the committee and for other work done by the consulting firm and its affiliates.

Although the compensation committee is necessarily reliant on a variety of resources for information and advice, there is no substitute for the independent judgment and experience of the committee members. For example, while compensation consultants can provide insight and experience and make recommendations regarding the most appropriate performance metrics, the committee should ultimately decide the right performance targets to align with the company's business strategy.

- **Coordination with full board and other board committees** The compensation committee should ensure it has appropriate linkages with the full board and other board committees, such as taking advantage of the experience of the company's finance/audit committee with respect to key performance and risk metrics and concerns or limitations with respect to those metrics. This linkage may be most efficiently attained by inviting other independent board members to attend compensation committee meetings and, as appropriate, provide information and input. This linkage can also be supported by soliciting the views of other committees, such as the finance or audit committee, on specific issues. Furthermore, the compensation committee should maintain a dialogue with the full board in order to evaluate the congruence of compensation programs with business strategy and appropriate risk parameters and with goals for succession planning. Furthermore, the compensation committee should ensure that the full board of directors is sufficiently informed about the company's executive compensation programs to perform its oversight role with respect to executive compensation.
- **Independent director review of CEO compensation** Given the fundamental role of the board with respect to the chief executive officer and the significance of compensation decisions with respect to this key position, the independent members of the board of directors should review and ratify or approve the compensation program and payouts for the CEO recommended by the compensation committee. As a part of this process, boards of directors should be fully informed about the executive compensation programs and the rationale for the compensation committee's recommendations.
- **Review of other compensation programs** The compensation committee should be provided an overview of the company's overall employment philosophy and how it aligns with the company's business strategy and values as well as key elements of the company's overall compensation programs that are applicable to employees other than executive officers. The appropriate amount of board-level review and oversight of nonexecutive compensation will differ from company to company. For companies where compensation programs for nonexecutive officers may pose financial risk, a more detailed review of these compensation programs may be appropriate. Such a review may be conducted by the board committee responsible for risk management or another committee the board determines is appropriate within its governance structure. This board-level review of compensation programs does not change management's fundamental responsibility for developing and implementing compensation programs for employees other than executives whose compensation is subject to review of the compensation committee, but, under certain circumstances, active oversight may be appropriate.[9]

[9] Compensation committees should identify the officers and other employees of a company within the direct oversight of the compensation committee. At a minimum, this group should include the named executive officers and all direct reports of the chief executive officer and/or officers subject to Section 16 reporting under the Securities Exchange Act of 1934. Compensation committees should be fully informed regarding the compensation of executives whose compensation may require disclosure under the securities laws.

Principle Five–Transparent communications and increased dialogue with shareholders

Compensation should be transparent, understandable, and effectively communicated to shareholders. When questions arise, boards and shareholders should have meaningful dialogue about executive compensation.

The board, the compensation committee, and management should ensure that the company's executive compensation programs, as well as the rationale behind executive compensation decisions, are transparent and easily understood by investors. Overly complex and esoteric arrangements can be difficult to understand, analyze, measure, and explain to shareholders.

- **Improved disclosure** While increased disclosure regarding executive compensation has provided investors with valuable information, directors, investors, and advisors readily agree that the disclosures have become complicated compliance documents and the heart of the compensation program and its rationale is often lost for readers in a sea of detail.

  Boards and compensation committees should ensure that executive compensation disclosures include a clear, plain, and effective explanation of the company's executive compensation programs. Compensation disclosures should demonstrate that the committee understands the company's business and that the metrics of the compensation program are linked to specific measures of business performance, and should present the business goals and rationale for the performance metrics and actual payouts. With this information, shareholders are positioned to evaluate whether compensation is actually based on performance. A direct communication in "plain English" from the compensation committee is recommended, whether in a compensation committee report, executive summary, or the Compensation, Discussion and Analysis section of the annual proxy statement, as a vehicle to provide the compensation committee's perspective on executive compensation decisions.

- **Improved communications with shareholders** Appropriate members of the board and the compensation committee should work with the company to develop processes and procedures to learn about investor concerns regarding the company's executive compensation programs. A dialogue between shareholders and directors can:

  –Minimize the use of shareholder resolutions as means of communications.

  –Enhance board authority and credibility.

  –Increase board awareness of shareholder long-term interests.

  –Garner goodwill and trust of shareholders.[10]

[10] Stephen Davis and Stephen Alogna, "Talking Governance: Board-Shareowner Communications on Executive Compensation," Millstein Center for Corporate Governance and Performance, Yale School of Management (December 2008).

There are a wide variety of ways to structure these discussions—from open invitation meetings with any interested shareholder to meetings with only the largest shareholders. No single best practice has emerged and the best alternative will be situation dependent. While there are legal concerns regarding selective disclosure and other considerations, it should usually be possible to structure an effective dialogue while addressing these concerns. To ensure the effectiveness of this dialogue, it is important that the appropriate participants are enlisted, including shareholder representatives who understand the company and the shareholders' investment goals with respect to the company. Management participation normally facilitates communication about business strategy and its linkage to compensation, provides awareness of the linkage between the discussions and the company's existing public disclosures and any selective disclosure issues, and provides for follow-through with respect to issues that are raised.

- **Advisory vote on executive pay** Due to the requirements that became applicable to financial services companies receiving federal assistance in 2009, more than 400 companies will provide their shareholders with an advisory vote on executive pay, and an advisory vote may soon become mandatory for all U.S. public companies. An advisory vote on executive pay should be focused on increasing communication between shareholders and boards regarding executive compensation. An advisory vote on executive pay itself is not a "dialogue"—but a tool many believe has been effective at encouraging a dialogue between shareholders and directors since its adoption in the UK.

  If advisory votes on executive pay are to improve communication about pay between companies and shareholders, any requirements for such a vote should provide meaningful flexibility to companies to decide how to word the question or questions on which they are soliciting a vote. That way there can be experimentation about how best to use the advisory vote to improve communication, and best practices can emerge.

  An advisory vote on executive pay places additional demands on both companies and shareholders. To be most effective, shareholders should be willing to dedicate the resources required to examine executive compensation issues and directly communicate their questions and concerns about a company's compensation program to the company and the compensation committee. Companies should provide an avenue to communicate these questions and concerns, rather than leaving shareholders a negative vote as the sole alternative for communicating grave concerns. The credibility of advisory votes will be undermined if investors use a potential negative vote on executive compensation to provide leverage when negotiating with the company on other issues. Because of the unique drivers of each company's business strategy and executive compensation needs, shareholders also have a responsibility to avoid a "check the box" approach to advisory votes on executive compensation, and to critically examine recommendations of governance rating agencies that adopt such an approach.

Appendix A

Background on Roles and Responsibilities Affecting Executive Compensation Processes

The foundations set forth in U.S. corporate law are intended to promote commerce by allowing shareholders to pool their resources into a separate legal entity, and by providing shareholders with limited individual liability for the obligations of the corporations.[11] State law generally dictates the rules regulating the corporation's business affairs, as well as the relationships among the shareholders, directors, officers, and management. Under the laws of Delaware and most states, shareholders are provided with limited liability for the obligations of corporations while the business and affairs of the corporation are managed by or under the direction of the board of directors. Under state corporate law, directors are fiduciaries of the company and its shareholders. In turn, the board delegates the running of the day-to-day operations of the corporation to the officers. Shareholders are provided a vote on the most fundamental issues affecting the corporation–election of directors, amendment of the articles of incorporation, mergers, dissolution, and a sale of substantially all the assets of the company.

State corporate law, therefore, provides the framework for board oversight of management of corporations. Federal law and exchange listing requirements have provided an overlay of additional requirements with respect to the governance of public companies, such as requirements related to the independence of directors and board committees and shareholder votes on equity awards provided to management.

With respect to the generally understood concepts of corporate structure related to executive compensation:

- Management defines and articulates the company's short- and long-term business strategy and the company's standards of conduct, the resources, qualities, and organizational skills necessary to carry out the business strategy, and the risks *to*, as well as the risks inherent *in*, that strategy.
- The board of directors provides input into and ultimately approves the strategy and standards of conduct and oversees management's execution of the strategy.
- Once the corporate strategy has been approved by the board, management is responsible for communicating this strategy to company investors, employees, and other key constituencies.
- The board of directors reviews management's evaluation of the risks related to the company's business and strategy, oversees the installation and effectiveness of systems and controls implemented by management to manage these risks, and oversees compliance with the company's standards of conduct.
- Working with the board of directors, management, and committee advisors, the compensation committee crafts executive compensation programs that effectively and economically incent senior executives to achieve the company's strategy, thereby aligning executives' interests with those of the company and its shareholders. The company's executive compensation programs should be ratified or approved by the independent members of the board of directors, at least with respect to the CEO.
- The board of directors is responsible for holding the CEO and senior management accountable for the enterprise's success. This includes the fundamental responsibility of hiring and firing the CEO, evaluating the performance of the CEO, and remunerating the CEO and other senior executives. It also includes the responsibility for assuring appropriate succession planning is in place for the CEO and other key executives. Although hiring a candidate from outside the company is often appropriate, it has the potential to be more risky and more expensive than developing the required skills within an appropriately qualified internal candidate pool. Companies that are required to look externally must entice an external candidate to leave his or her existing position by offering higher compensation to replace forfeited bonuses, unvested equity awards, and lost retirement benefits.
- In executing the company's strategy and business plans, the chief executive officer, and senior management are responsible for developing employment and remuneration program(s) to attract, retain, and motivate a work force with the skills needed to support and achieve the business plans and strategy.

[11] Consequently, under the states' corporate laws, a corporation is treated as a separate legal entity with perpetual existence, which has the abilities to sue and be sued, to enter into contracts, and to own property.

Appendix B

Guide to Information and Analyses Useful for Design and Assessment of Compensation Programs

The following is a guide to the types of information compensation committee members may find relevant to ensure they have the knowledge required to properly design and monitor a company's executive compensation programs.

Background Information Regarding Company and Strategy

In order to design compensation programs that support the company's business strategy, compensation committees should have an overall understanding of the company, its business, strategy and performance, organizational structure, and executives. Such information may include:

- A review of the company's business strategy for competing in its markets and delivering shareholder value, the factors driving its growth, the major risks and vulnerabilities to which it is exposed, and the key milestones and outcomes of the corporate strategy.
- The key business measurement tools used by management in company and business unit or segment performance.
- Key competitors, their relative strengths and weaknesses, and performance against the company with respect to key metrics.
- Information regarding relevant buy-side and sell-side analyst reports and analysts' view of the company and its competitors.
- The company's key shareholders, their characteristics, concerns, and methods of engagement.
- The company's other key stakeholder groups and their characteristics, concerns, and methods of engagement.
- Timely and adequate reporting of performance against key business and compensation metrics.
- Annual operating and business plans.
- The company's organizational structure.
- Key executives, their roles, responsibilities, and backgrounds.
- Key information regarding existing compensation programs and plans in which executives participate.

Analyses to Understand Consequences and Potential Risk of Compensation Programs

Dilution Information Compensation committees should review information related to the dilutive effect of equity plans, including the annual percentage of outstanding shares being granted (the "run rate") and total equity awards outstanding and reserved for grant under company equity plans, as well as the views of various governance rating agencies and major shareholders regarding potential increases in equity grant authorizations.

Performance Information Compensation committees should receive timely reports, before the end of the performance period, regarding the company's performance against metrics for incentive plans, including currently anticipated payouts. Generally, such reports should occur at least annually, prior to making decisions regarding awards for the upcoming year. This information provides the compensation committee information about the status of incentive compensation programs and may reveal areas for improvement in design of compensation programs. For example, a trend may emerge in business conditions that provide unanticipated, nonperformance related improvements in the underlying metrics that need to be taken into account in the following year's award design.

Fiscal Impact of Compensation Programs to the Company and Shareholder If relevant and material, compensation committees should review information regarding the potential portion of earnings, incremental improvement in earnings, or other similar information (depending on the design of the company's incentive compensation plan) that would be paid out to executives at threshold, target, and maximum levels of performance under existing and potential incentive plans.

Tally Sheets Tally sheets have become a popular tool for compensation committees to use in evaluating the total costs of executive compensation. Tally sheets are designed to provide a summary of the dollar value of what an executive is receiving from the company, as well as the value the executive may receive under different scenarios, such as a change in control of the company, changes in stock price or upon meeting future performance targets under incentive plans (particularly payouts at maximum levels).

Key components of compensation that should be reviewed through tally sheets or other analyses include:

- The executive's total direct compensation (i.e., salary, bonus, and the value of long-term incentive compensation granted or exercised during the year).
- The potential value that the executive will receive under the company's short- and long-term incentive plans if the company achieves its minimum, target, and maximum payout targets.
- The annual cost of providing each retirement benefit, the total current value of the retirement benefit, and the projected total value of the benefit at retirement.
- The perquisites and benefits that the executive receives and the annual cost of such benefits.
- The executive's equity holdings [arising from company awards] (e.g., stock, options, restricted stock, performance shares, etc.) both vested and unvested, anticipated future equity grants, and an analysis of sensitivity to rises and falls in the company's stock price.
- What the executive will receive (e.g., salary, accelerated vesting of equity incentives, payments from insurance policies, continuing healthcare coverage, tax gross-ups and its value if there is any change in circumstances such as a recapitalization, change in control or if the executive's employment ceases under different scenarios (e.g., termination by the company with or without cause, resignation by the executive with or without good reason or due to death, disability, or retirement).
- A summary of outstanding deferred compensation or other related elements.

Because the tally sheet allows the compensation committee to see the value the executive will receive under these different circumstances, the committee can not only evaluate the reasonableness of the executive's overall compensation package but evaluate any risks that may be inherent in the company's executive compensation program.

Tax Impact If relevant and material, compensation committees should review information related to the company's tax cost of executive compensation payouts and of particular executive compensation program designs, as well as any unusual tax impact on executives.

Comparative Information Compensation committees should consider the comparability and consistency of various sources of data to avoid inadvertently drawing inappropriate conclusions due to significant differences in the underlying data.

Appendix C

Pay Mix and Elements

Key Elements

Executive compensation is generally composed of several different elements, which can generally be grouped into four categories:[12]

1. Base salary which provides executives with a basic level of liquidity and financial security;
2. Short-term incentives which reward executives for achieving the company's short-term goals and/or year-to-year attainment or improvements in the company's results;
3. Long-term incentives which reward executives for attaining strategic goals and provide executives with an opportunity to accumulate capital; and
4. Benefits and perquisites such as health care and retirement.

Recent Trends

According to a recent report from Hewitt Associates on executive compensation pay trends, the mix of 2000 and 2008 executive compensation for selected large industrial companies was: [13]

	2000	2008
Base salary	19%	21%
Bonus	12	16
Options	48	27
Performance-based plans	6	17
Restricted stock	5	11
Perquisites and benefits[14]	10	8

12 Yale D. Tauber, "A Perspective on Executive Compensation," *Executive and Director Compensation Reference Guide*, Independent Compensation Committee Advisers, LLC, http://www.independentcca.com

13 Hewitt Associates, "2008 Executive Compensation Pay Trends (2000-2008)," November 2008. Note: The percentages cited here are based on the target annual incentive compensation of the CEO, CFO, general counsel, lead human resources officer, controller, group head, and division head of large industrial companies included in the survey, which had average revenues of $12 billion and median revenues of $10 billion.

14 Benefits included 401(k) plans and broad-based health and welfare plans, executive vacation, supplemental executive retirement plan (SERP), executive life insurance, executive long-term disability plans, executive healthcare, and voluntary non-qualified deferred compensation. Perquisites included flexible perk allowances, first class air travel, personal use of company plane, company car, club memberships, financial/estate planning and tax preparation, and/or an annual physical.

Appendix D

Performance Metrics

Specific Financial Measures

- Shareholder return, earnings per share, and income or return ratios are the most common metrics for long-term incentives, while measures of income, profit, and earnings per share are the most commonly used metrics for short term incentives. In addition, approximately 60 percent of those companies with long-term incentive plans use one metric, and approximately 32 percent use two metrics, according to a study of *Fortune* magazine's top 300 publicly traded companies.[15] With respect to short-term incentive plans, approximately two-thirds of the companies use multiple performance measures, and 80 percent of the companies use three or fewer measures.
- Total shareholder return, or TSR, is used as a measure by many companies for long-term incentive plans. Total shareholder return is viewed by many shareholders as the measure that most closely ties executive incentives to those of shareholders, particularly if measured over long periods of time. Measuring TSR relative to a peer group of companies can safeguard against a "rising tide lifts all boats" effect (i.e., a general rise in the stock market and stock prices that benefits the company along with the market, rather than due to the focused efforts of management).
- Measuring TSR against a peer group makes the selection of an appropriate peer group critical. The lack of an appropriate peer group–e.g., because the company is in a niche market or has a combination of businesses that are relatively unique–may indicate that TSR should be combined with other measures in order to balance the risk that a general rise in the stock market will inappropriately benefit executives.

  Finally, how stock price is measured is important to effective functioning of TSR. Measuring the price on a single day can produce unintended consequences, because short-term or temporary events, including company announcements, can have an artificially pronounced effect on stock price at a single point in time.
- Earnings per share, or EPS, and income/profit measures are the most prevalent measures used in annual incentive plans and are the measures over which executives may perceive they have the most control.[14] These measures can easily be tied to affordability. Earnings per share is the single most followed performance metric by analysts. Earnings per share growth rate is also used in calculating the price earnings ratio, a very common measure of company performance. At the same time, EPS has frequently been cited as a factor in encouraging short-term management focus at the expense of longer-term success. Short-term cost cutting measures, such as reductions in research and development and layoffs, can improve EPS while jeopardizing long-term performance. Combining EPS with a measure based on revenue growth can offset these potential design risks. Care should be taken in the calculation of EPS, in terms of comparability with prior periods, special adjustments, and the effect of stock buyback programs.
- Certain measures, such as return on invested capital, return on assets, and return on equity, provide a measure of the efficient use of capital and are frequently referred to as measures of capital efficiency. The use of capital efficiency measures is nearly as prevalent as shareholder return in long-term incentive plans. Capital efficiency measures are also used in short-term incentive plans. Capital efficiency measures do not measure growth, and as a result, capital efficiency ratios are most prevalent in mature industries or with mature companies where growth has leveled off or is expected to do so soon. Excluding a capital efficiency measure can motivate top line growth without regard for the cost of capital to finance the growth. For example, by allowing their investment banking divisions to use capital from their consumer deposit base to invest in subprime securities at the parent company's cost of capital, certain diversified financial institutions facilitated top-line growth without regard for the true cost of capital (which should have reflected the riskiness of the assets acquired). For many companies, the cost of capital tends to be reasonably stable over time and, as such, it is possible to define return measure targets in a consistent manner for an extended period. Balancing a growth measure/standard with a return measure/standard can create a powerful incentive to generate profitable growth.

Nonfinancial Performance Metrics

More and more companies are expanding their use of non-financial, individual performance metrics in determining annual incentive payments.[17] Of the companies in the sample that use individual performance, more than half assign a separate weighting to this measure, ranging from 10 percent to 50 percent. Companies might consider funding these programs based on cash flow or earnings, with payout limited by individual performance. Some companies incorporate individual performance based on a multiplier approach, with individual performance multiplied against achievement of financial metrics (multipliers typically range from 0 percent to 150 percent). Another common multiplier is to allow individual performance to impact an award by stipulating that payout otherwise generated by a particular metric can be increased or decreased by a specific percentage based on the compensation committee's assessment of individual performance (e.g. payout based on return on investment can be increased or decreased by up to 20 percent based on individual performance with respect to specific goals or overall performance).

15 The study was conducted by James F. Reda & Associates of 2007 proxy disclosures on annual and long term incentive plans by *Fortune* Magazine's top 300 publicly traded companies. It found that 43 percent of companies with a long-term incentive plan used a relative metric for the plan. Of those companies, approximately 70 percent used a total shareholder return measure. *James F. Reda & Associates, LLC*, "Proxy Disclosure: Incentive Plan Performance Measures and Design Structure," http://www.jfreda.com

16 James F. Reda & Associates, LLC, "Proxy Disclosure: Incentive Plan Performance Measures and Design Structure."

17 James F. Reda & Associates, LLC, "Proxy Disclosure: Incentive Plan Performance Measures and Design Structure," http://www.jfreda.com

Appendix E

Background Regarding Certain Pay Practices

Clawback Policies

Clawback policies allow companies to recoup compensation from executives in the event of later-discovered misconduct or other events, such as a restatement of financial statements.[18]

The use of clawback policies by the largest 95 companies in the Fortune 100 has grown in recent years as follows:

Year	Percent of companies with clawback policies[19]
2006	17.6%
2007	42.1
2008 (through October 2008)	64.2

Generally, there are two types of clawback policies: those based on misconduct and those based on performance. There are many permutations of the provisions found in each type of policy, and in particular the level of discretion the board has to determine whether and to what degree incentive compensation should be subject to recoupment. Often such policies require a finding by the board that there has been misconduct on the part of the executive, and only those executives who were found to have engaged in misconduct are subject to the clawback.[20] Performance-based policies generally apply to any executives receiving incentive compensation based on incorrect financial statements, even if there is no misconduct.[21]

A 2008 study of the proxy statements of over 2,000 companies found that of those companies with clawback policies, 44 percent were based on misconduct, 39 percent were based on performance, and the remainder based on various other criteria, such as the violation of a non-compete agreement.[22]

18 Section 304 of the Sarbanes-Oxley Act of 2002 states that public company CEOs and CFOs are required to disgorge certain bonuses, incentive-based compensation, equity-based compensation, and profits realized from the sale of company stock in the event that the company has to restate its financial statements due to material non-compliance of the company, as a result of misconduct, with any financial reporting requirement under the securities laws. However, federal courts have held that Section 304 does not create a private cause of action; consequently, it is the SEC, not the company or its shareholders, that brings an action under Section 304.

19 Pauline Renaud, "Clawback Provisions in Executive Compensation Contracts," *Financier Worldwide*, January 2009, http://www.financierworldwide.com, with data from *Renaud,* "Clawback Policies on the Rise," www.equilar

20 For example, GE's proxy statement describes its misconduct-based policy as follows:
"If the Board determines that an executive officer has engaged in fraudulent or intentional misconduct, the Board may take a range of actions to remedy the misconduct, prevent its recurrence, and impose such discipline on the wrongdoers as would be appropriate. Discipline would vary depending on the facts and circumstances, and may include, without limit. . . if the misconduct resulted in a material inaccuracy in our financial statements or performance metrics, which affect the executive officer's compensation, seeking reimbursement of any portion of performance-based or incentive compensation paid or awarded to the executive that is greater than would have been paid or awarded if calculated based on the accurate financial statements or performance metrics."

21 Pfizer's proxy statement describes its performance-based clawback policy as follows:
"The Committee may, if permitted by law, make retroactive adjustments to any cash- or equity-based incentive compensation paid to Named Executive Officers and other executives where the payment was predicated upon the achievement of specified financial results that were the subject of a subsequent restatement. Where applicable, we will seek to recover any amount determined to have been inappropriately received by the individual executive officer. In addition, all of the equity incentive awards that we grant contain compensation recovery provisions."

22 *Cahill Gordon & Reindel, LLP*, "Corporate Governance Update: Corporate 'Clawback' Provisions and Executive Compensation," July 21, 2008, www.cahill.com; and Paul Hodgson, *Analyst Alert: Clawback Policies*, 2008 Proxy Season Foresights #11 (Portland, Maine, The Corporate Library, June 2008).

Executive Stock Ownership Requirements

According to a Frederic W. Cook & Co. report based on a review of the proxy statements of the largest 250 U.S. companies in the S&P 500, in 2008 86 percent of the companies reviewed had stock ownership guidelines that encouraged or required executives to own a particular amount of the company's stock, compared to 67 percent in 2005.[23] These traditional stock ownership requirements mandate that executives hold a fixed number of company shares or a number of shares that is typically based on a multiple of the executive's salary. The Frederic W. Cook & Co. report found that in 2008, 54 percent of the companies that had stock ownership guidelines used a multiple of salary, which ranged from two times salary to 25 times salary with 64 percent of the companies using five times salary as the guideline and 9 percent using a fixed share requirement.[24]

Hold Through Retirement Policies

Another form of required stock ownership which has gained attention in the last two years is a hold-through-retirement ("HTR") policy, which can take a number of forms.[25] The retention ratio is frequently applicable only to shares which remaining after payment of the exercise price and taxes owed. In some cases, companies only apply the retention ratio until the executive meets the traditional stock ownership requirements (i.e., percentage of salary or a fixed number of shares). Under the holding period approach, shares acquired from equity awards must be held for a specific period of time. According to the Frederic W. Cook & Co. report, the holding period and retention ratio approaches are used by 37 percent of the companies in the survey that had some form of required stock ownership. In addition to the retention ratio and holding period approaches, some companies also use long-term vesting as a means of implementing an HTR policy. Under the long-term vesting approach, a percentage of an equity award (generally restricted stock or a restricted stock unit) will not vest until the executive retires.

In the case of HTR policies, executives are also given an ever-growing incentive to focus on long-term stock price performance as the equity subject to the policy increases.[26] Some commentators have cautioned against HTR policies, arguing that instead of providing incentives for long-term performance, they may provide incentives for early retirement from the company.[27]

Gross-ups

A gross-up is an agreement whereby the company compensates an executive for personal income and/or excise taxes owed. Two common gross-ups are for taxes related to perquisites, such as personal use of company aircraft, and for excise taxes on so-called "golden parachute" payments. According to a recent study, approximately two-thirds of the companies in the S&P 500 provide their senior executives with excise tax gross-ups on parachute payments.[28] The report also noted that, due to the tax-on-tax effect, a full excise tax gross-up costs companies between $2.50 and $3 for every $1 of grossed up parachute payments.

23 Stephan Bosshard and Edward Graskamp, "The 2008 Top 250 Long-Term Incentive Grant Practices for Executives," *Frederic W. Cook & Co., Inc.*, October 2008.

24 According to RiskMetrics 2009 proxy voting guidelines, the CEO's stock ownership guideline should be at least ten times base salary, with the multiple decreasing for other executives. *RiskMetrics Group*, "2009 U.S. Proxy Voting Guidelines Summary," December 24, 2008.

25 Under RiskMetrics Group's 2009 Proxy Voting Guidelines, 50 percent of profit shares should be retained by the executive until retirement or for some period after retirement.

26 A Watson Wyatt study found that companies with high executive stock ownership requirements outperformed (as measured by total shareholder return, earnings per share growth, and return on equity) companies with low executive stock ownership requirements. *Watson Wyatt Worldwide*, "Corporate Governance in Crisis: Executive Pay/Stock Option Overhang 2003," October 2002.

27 Lucian Bebchuk and Jesse Fried, "Equity Compensation for Long-Term Results," *Wall Street Journal*, June 16, 2009.

28 Kosmas Papadopoulos, "Gilding Golden Parachutes: The Impact of Excise Tax Gross-ups," *RiskMetrics Group*, November 2008.

Perquisites[29]

Executive perquisites have been an area of shareholder interest and have been reduced or eliminated in response to the SEC disclosure rules that went into effect in the 2007 proxy season. The prevalence of perquisites, particularly the personal use of aircraft, enhanced healthcare benefits, and car allowance, plummeted between 2006 and 2007. There was a 7 percent rise in perquisites from 2007 to 2008; however, this is a reduction of 30 percent from 2006. The sharp reduction in 2007 shows that disclosure had an effect in focusing the compensation committee on this issue and causing actions to be taken to reduce or eliminate unnecessary perquisites.

Value of Perquisites[29]

Year	Value
2006	$243,121[30]
2007	$159,586[31]
2008	$170,501[32]

Prevalence of Perquisites

Perquisite	Percent of CEOs awarded in 2006[33]	Percent of CEOs awarded in 2007[34]
Personal use of corporate aircraft	67%	35%
Car allowance	51	41
Club dues	16	n/a[35]
Home/personal security	35	n/a
Tax planning	50	n/a
Enhanced healthcare benefits	23	7

In addition, 67 percent of CEOs were awarded supplemental executive retirement plans (SERPs) in 2006.

29 Values do not include pension contributions.

30 According to a study conducted by James F. Reda & Associates LLc, "2007 CEO Perquisites and Supplemental Retirement Benefits Study," www.jfreda.com

31 According to a study conducted by Associated Press. Vinnie Tong, "As Pay Falls, CEOs Get More Perks," May 1, 2009.

32 Tong, "As pay falls,"

33 According to a study conducted by James F. Reda & Associates based on CEOs in *Fortune* magazine's top 150 public companies: *James F. Reda & Associates, LLC*, "2007 CEO Perquisites and Supplemental Retirement Benefits Study," http://www.jfreda.com

34 Angela Andrews, Scott Linn, and Han Yi, "Corporate Governance and Executive Perquisites: Evidence from the New SEC Disclosure Rules," Social Science Research Network, March 2009. Data is based on 608 companies from the S&P 1500 that released their proxy statements between December 15, 2006 and June 30, 2007.

35 The study by Andrews, Linn, and Yi includes these perquisites in a broader category. For example, the category of club dues also includes payment for unused vacation, the home/personal security category includes reimbursement for education expenses and the tax planning category includes tax gross-ups. Prevalence for these broader categories of club dues, home/personal security, and tax planning are 27 percent, 33 percent, and 56 percent respectively.

Appendix F

2008 CEO Pay

There was a 6.8 percent drop in median CEO pay from 2007 to 2008 after taking into account the substantial reduction in annual bonus payments. [36]

CEO Pay[37]

Year	Total Compensation[38]
2001	$7,840,000
2002	$7,342,725
2003	$7,327,472
2004	$8,240,116
2005	$8,373,740
2006	$8,712,323
2007	$9,061,057
2008	$8,446,935

With respect to individual components of pay (salary, bonus, long term incentive [LTI]):

1. Salary increased by about 4.8 percent (average increase).[39]
2. Bonus decreased by about 11.7 percent.
3. LTI remained unchanged.[40]

The negative effect on CEO wealth is more pronounced when taking into account the stock holdings of CEOs. This effect is observed in two areas:

1. the actual LTI payouts (similar to short-term incentive payouts); and
2. the loss of value in stock options and other amounts held in stock or amounts related to the stock price.

Since 86 percent of larger companies have stock ownership guidelines, most senior executives have multiples of salary in stock or stock equivalents and have lost substantial amounts in the economic downturn. [41]

In addition, there has been an estimated 25 percent reduction in the LTI award value for 2009 grants.[42] However, though LTI appears to have decreased in 2009 while pay is down, over the long term, the value of stock may rise and increase the award value.

36 While median CEO pay fell 6.8 percent from 2007, the median declined only 2.7 percent at non-financial firms. Median pay at financial services firms declined 38.3 percent, with median annual bonuses of zero, according to a study by Equilar based on 208 companies of the S&P 500 index.

37 Equilar, "CEO Pay Falls 6.8% in First Drop Since 2002. Bonuses Cut by 20%: New Equilar Study Tracks S&P 500 CEP Pay Trends," www.equilar.com. To be included in data, the chief executive officer must have been in place for at least two years.

38 Total compensation is defined as the sum of base salary, cash bonus payouts, the grant date value of stock awards, the grant date value of option awards, and other compensation like benefits and perquisites. Bonuses include both discretionary and performance-based payouts. Stock and option awards include grants with both service-based and performance-based vesting requirements.

39 Average of the values found in a study by Equilar based on 208 of the S&P 500 index, which reported a salary increase of 5.7 percent and a bonus decrease of 12.3 percent, and The Wall Street Journal/Hay Group CEO Compensation Study based on companies that filed their proxies by March 2009 and had more than $5 billion in revenue, which reported a salary increase of 4.5 percent and a bonus decrease of 11 percent.

40 Based on The Wall Street Journal/Hay Group CEO Compensation Study: http://www.haygroup.com/ww/services

41 Stephan Bosshard and Edward Graskamp, "The 2008 Top 250 Long-Term Incentive Grant Practices for Executives," *Frederic W. Cook & Co., Inc.*, October 2008.

42 Hewitt Associates, "2009 Long-Term Incentive Design Practices and Award Sizes," March 2009, www.hewittassociates.com

Dissenting Opinion

From Roberta D. Fox, Hewitt Associates

Hewitt Associates respectfully dissents from the recommendations of the Task Force specifically relating to the disclosure of fees paid to a compensation consultant both for executive compensation work for the committee and for other work done by the consulting firm and its affiliates. Hewitt generally supports the SEC's ongoing intentions to improve clarity and transparency to investors, and we have been a frequent contributor to that regulatory dialogue. Disclosures should provide relevant proof that the committee has performed its due diligence and applied recommended standards for independence

We believe that proxy statements should continue to disclose the names of all third party advisors a compensation committee has retained related to executive compensation services. The disclosure should continue to include a summary of the committee's charge to each advisor, and affirm that the committee has reviewed the appropriate credentials, experience, resources, and independence of each retained advisor. In addition, the compensation committee should be required to disclose the governance policies it employs to determine whether the advice they receive is independent. Compensation committees must actively monitor and/or approve any additional engagements with a compensation consulting firm. As such, consulting firms should be required to provide the compensation committee with an annual summary of services provided and fees charged by the firm and its subsidiaries.

Providing detailed fee disclosures in the proxy (or other public filing) is not useful, because shareholders lack a context for evaluating the nature and necessity of separate purchase decisions made elsewhere in the company. We also believe that a fee disclosure requirement will have a chilling effect on the ability of multi-service firms to compete with boutiques for board compensation services, depriving boards of the opportunity to work with firms that may provide greater value and expanded resources. In addition, the requirement to disclose the fees for other services provided by the same firm may well cause further competitive harm.

A requirement to disclose all fees contributes to the perception that multi-service firms are conflicted and cannot provide independent advice to the compensation committee. Fee disclosure would force many companies to switch from a multi-service firm to a boutique in order to avoid the perception of a conflict of interest, when no actual conflict of interest exists. There is no credible evidence proving that using the same consulting firm to provide services to management and serve as the executive compensation consultant to the board's compensation committee has resulted in an actual conflict of interest or in higher compensation levels. The frequently cited study released last year by the Democratic majority of the House Committee on Oversight and Government Reform was flawed because it failed to control for economic drivers that affect pay levels, like company size. On the other hand, four academic studies conducted in the past 16 months have refuted the study and have each concluded that there is no compelling evidence of higher compensation or lower pay-for-performance correlations among clients of multi-service firms.[43]

The compensation committee is the only party that has all of the information in order to assess the independence of the compensation consultant. This includes fees charged for compensation committee and management consulting services, the governance policies and safeguards of the compensation consultant, the company's governance policies, and the committee's judgment of the independence of the advice and expertise they have received from the consultant. Fee disclosure will result in shareholders assessing the independence of the consultant based solely on the fees, which is overly simplistic and detrimental to multi-service firms and their clients.

43 Chris Armstrong, Christopher D. Ittmer, and David F. Larcher, "Economic Characteristics, Corporate Governance, and the Influence of Compensation Consultants on Executive Pay Levels," Rock Center for Corporate Performance Working Paper No. 15 (June 2008); Brian Cadman, Mary Ellen Carter, and Stephen Hillegeist, "The Role and Effect of Compensation Consultants on CEO Pay," (November 2007)); Brian Cadman, Mary Ellen Carter, and Stephen Hillegeist, "The Incentives of Compensation Consultants and CEO Pay," *Journal of Accounting and Economics* (forthcoming); Kevin J. Murphy and Tatiana Sandino, "Executive Pay and "Independent" Compensation Consultants," Marshall School of Business Working Paper No. FBE 10-09 (Apri, 2009).

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