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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

February 20, 2009

The Honorable Mary Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Ms. Schapiro:

On February 17, 2009, the President signed into law the American Recovery and Reinvestment Act of 2009, which contains executive compensation provisions in Title VII that I authored. I write to share my views on the intent and application of the provisions on "Shareholder Approval of Executive Compensation" and the "Certification of Compliance" on which the Commission has substantial duties, and to ask that the Commission staff provide guidance to public companies for complying with this new legislative requirement as soon as practicable.

The law's subsection captioned "Annual Shareholder Approval of Executive Compensation" requires that "TARP recipients during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding shall permit a separate [nonbinding] shareholder vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission." This provision of the law became effective on February 17, 2009. It is my view that this provision would not apply to preliminary (and the related definitive proxy even if filed after February 17) or definitive proxy statements filed with the Securities and Exchange Commission on or before February 17, 2009, but would apply to proxies filed after.

The law is intended to require a yearly vote by shareholders. That vote can be held either at the annual meeting of shareholders at which directors are elected or at a special or other meeting which is held in lieu of the annual meeting.

I point out that nothing in subsection 111(e)(1) changes the substantive executive compensation disclosure requirements under Commission rules. Finally, although the Commission will determine whether it will need to amend its rules to address the provisions of the Act, any such determination does not affect the effective date of this provision.

Title VII also requires the CEO and CFO of each TARP recipient to provide a written certification of compliance with the requirements of the new Section 111 of the Emergency Economic Stabilization Act. As this certification requirement relates to compliance with executive compensation and corporate governance standards that have yet to be established by the Secretary of the Treasury, it is my view that this requirement is not yet effective and therefore CEOs and CFOs will not be required to certify as to their company's compliance with such standards until they have been established.

Firms that are now subject to complying with the new law would benefit from prompt and clear guidance from the Commission staff on how to comply with its requirements. I hope that you will provide such guidance as soon as possible. I look forward to working with you on this and other matters so that we may oversee a smooth transition to the new corporate governance policies implemented by the Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Dodd", written in a cursive style.

CHRISTOPHER J. DODD