915 East High Street
Charlottesville, VA
22902-4868 USA

+1 (434) 951 5499 tel
+1 (434) 951 5262 fax
info@cfainstitute.org
www.cfainstitute.org

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

22 July 2016

Re: Incentive-based Compensation Arrangements (File No. S7-07-16)

CFA Institute[1] appreciates the opportunity to respond to the rule proposed by the U.S. Securities and Exchange Commission ("SEC" or the "Commission"), *Incentive-based Compensation Arrangements* (the "Proposal"). CFA Institute represents the views of investment professionals before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the efficiency, integrity and accountability of global financial markets.

The Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corp.; Federal Housing Finance Agency; National Credit Union Administration; and the SEC (collectively, the "Agencies") seek comments on a Proposal to revise the original rule published April 14, 2011. The Proposal would implement section 956 ("Section 956") of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"). Section 956 requires the Agencies to prohibit incentive-based compensation, or any feature of such arrangements, that the Agencies determine encourages inappropriate risks by a covered financial institution: (1) by providing an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or (2) that could lead to material financial loss to the covered financial institution. Under the Act, a covered financial institution also must disclose to its appropriate Federal regulator the structure of its incentive-based compensation arrangements sufficient to determine whether the structure provides excessive compensation, fees, or benefits or could lead to material financial loss to the institution. The Dodd-Frank Act does not require a covered financial institution to report the actual compensation of particular individuals.

[1] CFA Institute is a global, not-for-profit professional association of more than 131,000 investment analysts, advisers, portfolio managers, and other investment professionals in 147 countries, of whom nearly 123,700 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 144 member societies in 69 countries and territories

CFA Institute believes that investors are well served when they know about the methods and rationale for executive and director compensation. Compensation for senior company executives should be explicitly linked to financial and operating performance. We believe that creating a link between executive compensation and fundamental performance best aligns executive and shareowner interests.

Summary

The Agencies state that poorly designed incentive-based compensation practices in the financial industry were one of many factors contributing to the financial crisis that began in 2007. Some compensation arrangements rewarded employees – including nonexecutive personnel like traders with large position limits, underwriters, and loan officers – for increasing an institution's revenue or short-term profit without sufficient recognition of the risks the employees' activities posed to the institutions, and therefore potentially to the broader financial system. Of particular note were incentive-based compensation arrangements for employees in positions that could expose their institutions to substantial risk and that failed to align the employees' interests with those of the institution.

The Agencies are re-proposing a rule, rather than proposing guidelines, to establish general requirements applicable to the incentive-based compensation arrangements of all covered institutions. Like the 2011 proposal, this Proposal would prohibit incentive-based compensation arrangements at covered institutions that could encourage inappropriate risks by providing excessive compensation or that could lead to material financial losses.

The Proposal would apply to any covered institution with average total consolidated assets greater than or equal to $1 billion that offers incentive-based compensation to covered persons.

The proposed rule distinguishes covered institutions by asset size, applying less prescriptive incentive-based compensation program requirements to the smallest covered institutions within the statutory scope and progressively more rigorous requirements to the larger covered institutions. Although the 2011 proposal contained specific requirements for covered financial institutions with at least $50 billion in total consolidated assets, the Proposal creates an additional category of institutions with at least $250 billion in average total consolidated assets.

The larger institutions are subject to the most rigorous requirements under the Proposal. The Proposal distinguishes covered institutions by asset size, applying less prescriptive incentive-based compensation program requirements to the smallest covered institutions within the statutory scope and progressively more rigorous requirements to the larger covered institutions. Although the 2011 Proposed Rule contained specific requirements for covered financial institutions with at least $50 billion in total consolidated assets, the Proposal creates an additional category of institutions with at least $250 billion in average total consolidated assets. These larger institutions are subject to the most rigorous requirements under the Proposal.

The Proposal identifies three categories of covered institutions based on average total consolidated assets:

- Level 1 (greater than or equal to $250 billion);
- Level 2 (greater than or equal to $50 billion and less than $250 billion); and
- Level 3 (greater than or equal to $1 billion and less than $50 billion).

It specifically provides that an incentive-based compensation arrangement would not be considered to appropriately balance risk and reward unless it:

- Includes financial and non-financial measures of performance;
- Is designed to allow non-financial measures of performance to override financial measures of performance, when appropriate; and
- Is subject to adjustment to reflect actual losses, inappropriate risks taken, compliance deficiencies, or other measures or aspects of financial and non-financial performance.

Boards of directors at each covered institution (or a committee thereof) would be required to:

- Conduct oversight of the covered institution's incentive-based compensation program;
- Approve incentive-based compensation arrangements for senior executive officers, including amounts of awards and, at the time of vesting, payouts under such arrangements; and
- Approve material exceptions or adjustments to incentive-based compensation policies or arrangements for senior executive officers.

II. SECTION-BY-SECTION DESCRIPTION OF THE PROPOSAL

CFA Institute reproduces notes from the draft rule itself and question posed by the Agencies *in italics*, followed by our response to each question.

§ ___.1 Authority, Scope and Initial Applicability.

The Agencies recognize that most incentive-based compensation plans are implemented at the beginning of the fiscal or calendar year. Depending on the date of publication of a final rule, the proposed compliance date would provide at least 18 months, and in most cases more than two years, for covered institutions to develop and approve new incentive-based compensation plans and 18 months for covered institutions to develop and implement the supporting policies, *procedures, risk management framework, and governance that would be required under the Proposal.*

1.1. The Agencies invite comment on whether this timing would be sufficient to allow covered institutions to implement any changes necessary for compliance with the proposed rule, particularly the development and implementation of policies and procedures. Is the length of time too long or too short and why? What specific changes would be required to bring existing policies and procedures into compliance with the rule? What constraints exist on the ability of covered institutions to meet the proposed deadline?

We believe that 18 months is an adequate amount of time for covered institutions to develop and implement the supporting policies, procedures, risk management frameworks, and governance structures needed under the Proposal.

§ ___.2 Definitions.

The proposed rule defines "senior executive officer" as a covered person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions at a covered institution for any period of time in the relevant performance period: president, chief executive officer (CEO), executive chairman, chief operating officer, chief financial officer, chief investment officer, chief legal officer, chief lending officer, chief risk officer, chief compliance officer, chief audit executive, chief credit officer, chief accounting officer, or head of a major business line or control function.

2.15. The Agencies invite comment on whether the types of positions identified in the proposed definition of senior executive officer are appropriate, whether additional positions should be included, whether any positions should be removed, and why.

The types of positions identified in the proposed definition of senior executive officer are appropriate, and in keeping with current compensation reporting best practices – in fact exceeding the disclosure that is currently required in the executive compensation section of the current proxy of US issuers.

Significant risk-taker. The proposed rule's definition of "significant risk-taker" is intended to include individuals who are not senior executive officers but are in the position to put a Level 1 or Level 2 covered institution at risk of material financial loss so that the proposed rule's requirements and prohibitions on incentive-based compensation arrangements apply to such individuals. In order to ensure that incentive-based compensation arrangements for significant risk-takers appropriately balance risk and reward, most of the proposed rule's requirements for Level 1 and Level 2 covered institutions relating to senior executive officers would also apply to significant risk-takers to some degree.

The proposed definition of "significant risk-taker" incorporates two tests for determining whether a covered person is a significant risk-taker. A covered person would be a significant risk-taker if either test was met. The first test is based on the amounts of annual base salary and incentive-based compensation of a covered person relative to other covered persons working for the covered institution and its affiliate covered institutions (the "relative compensation test"). This test is intended to determine whether the individual is among the top 5 percent (for Level 1 covered institutions) or top 2 percent (for Level 2 covered institutions) of highest compensated covered persons in the entire consolidated organization, including affiliated covered institutions. The second test is based on whether the covered person has authority to commit or expose 0.5 percent or more of the capital of the covered institution or an affiliate that is itself a covered institution (the "exposure test").

2.18. For purposes of a designation under paragraph (2) of the definition of significant risk-taker, should the Agencies provide a specific standard for what would constitute "material financial loss" and/or "overall risk tolerance"? If so, how should these terms be defined and why?

We believe the definitions proposed for a "significant risk-taker" are an adequate starting point. However, we encourage the agencies to take into account all comments when forming a final definition of "significant risk-taker" as the concept is a relatively new one when it comes to compensation-related reporting in the United States. We also encourage the Agencies to be open to amending the definition based on feedback.

The significant risk-taker definition under either test would be applicable only to covered persons who received annual base salary and incentive-based compensation of which at least one-third is incentive-based compensation (one-third threshold), based on the covered person's annual base salary paid and incentive-based compensation awarded during the last calendar year that ended at least 180 days before the beginning of the performance period for which significant risk-takers are being identified.

2.19. The Agencies specifically invite comment on the one-third threshold in the proposed rule. Is one-third of the total of annual base salary and incentive-based compensation an appropriate threshold level of incentive-based compensation that would be sufficient to influence risk-taking behavior? Is using compensation from the last calendar year that ended at least 180 days before the beginning of the performance period for calculating the one-third threshold appropriate?

We believe the one-third threshold is a reasonable starting point for determining whether someone can be considered a significant risk-taker, although we feel a number of one-half may be a more reasonable starting point, particularly as it relates to persons in the securities sector.

2.23. With respect to the exposure test, the Agencies specifically invite comment on the proposed capital commitment levels. Is 0.5 percent of capital of a covered institution a reasonable proxy for material financial loss, or are there alternative levels or dollar thresholds that would better achieve the statutory objectives? If alternative methods would better achieve the statutory objectives, what are the advantages and disadvantages of those alternatives compared to the proposed level? For depository institution holding company organizations with multiple covered institutions, should the capital commitment level be consistent across all such institutions or should it vary depending on specified factors and why? For example, should the levels for covered institutions that are subsidiaries of a parent who is also a covered institution vary depending on: (1) the size of those subsidiaries relative to the parent; and/or (2) whether the entity would be subject to comparable restrictions if it were not affiliated with the parent? What are the advantages and disadvantages of any such variation, and what would be the appropriate levels? The Agencies recognize that certain covered institutions under the Board's, the OCC's, the FDIC's, and the SEC's proposed rules, such as Federal and state branches and agencies of foreign banks and investment advisers that are not also depository institution holding companies, banks, or broker-dealers or subsidiaries of those institutions, are not otherwise required to calculate common equity tier 1 capital or tentative net capital, as applicable. How should the capital commitment level be determined under the Board's, the OCC's, the FDIC's, and the SEC's proposed rules for those covered institutions? Is there a capital or other measure that the Agencies should consider for those covered institutions that would achieve similar objectives to common equity tier 1 capital or tentative net capital? If so, what are the advantages and disadvantages of such a capital or other measure?

We feel the 0.5 percent of capital threshold is a reasonable proxy for material financial loss. Taking the example of the financial crisis, had such a threshold been in place at the time, some of the compensation arrangements that eventually became problematic for financial institutions could have been brought to light much sooner – thereby alerting investors early on to some potentially risky compensation arrangements.

As an alternative to the relative compensation test, the Agencies also considered using a specific absolute compensation threshold, measured in dollars, to determine whether an individual is a significant risk-taker. Under this test, a covered person who receives annual base salary and incentive-based compensation in excess of a specific dollar threshold would be a significant risk-taker, regardless of how that covered person's annual base salary and incentive-based compensation compared to others in the consolidated organization (the "dollar threshold test"). A dollar threshold test would include adjustments such as for inflation. If the dollar threshold test replaced the relative compensation test, the definition of "significant risk-taker" would still include only covered persons who received annual base salary and incentive-based compensation of which at least one-third was incentive-based compensation, based on the covered 99 For purposes of the dollar threshold test, the measure of annual base salary and *incentive-based compensation would be calculated in the same way as the measure for the one-third threshold discussed above.*

2.30. Would a dollar threshold test, as described above, achieve the statutory objectives better than the relative compensation test? Why or why not? If using a dollar threshold test, and assuming a mechanism for inflation adjustment, would $1 million be the right threshold or should it be higher or lower? For example, would a threshold of $2 million dollars be more appropriate? Why or why not? How should the threshold be adjusted for inflation? Are there other adjustments that should be made to ensure the threshold remains appropriate? What are the advantages and disadvantages of a dollar threshold test compared to the proposed relative compensation test?

We do not believe a dollar threshold test is appropriate, as the test would apply to companies of many different sizes with many different compensation schemes. Compensation packages can be complicated and we feel that a dollar threshold may inadvertently be seen as over-simplifying executive compensation. For some of these companies $1 million in compensation would be a relatively small sum based on performance and for others it would be an enormous sum. A relative compensation test seems to be a more useful tool. Investors, especially institutional investors have grown quite sophisticated in understanding executive compensation packages, and we don't feel that they are especially burdened by a relative compensation test.

2.33. The Agencies invite comment on all aspects of the definition of "significant risk-taker." The Agencies specifically invite comment on whether the definition should rely solely on the relative compensation test, solely on the exposure test, or on both tests, as proposed. What are the advantages and disadvantages of each of these options?

We feel the definition of significant risk-taker that the Agencies have defined is a good first step. Currently, both the compensation test and the exposure test should be used in order to give investors more information. We encourage the Agencies to listen closely to the comments of both issuers and investors when deciding if such tests are adequate or if other tests are necessary.

2.35. How many covered persons would likely be identified as significant risk-takers under the proposed rule? How many covered persons would likely be identified under only the relative compensation test with the one-third threshold? How many covered persons would likely be identified under only the exposure test as measured on an annual basis with the one-third threshold? How many covered persons would be identified under only an exposure test formulated on a per transaction basis with the one-third threshold? How many covered persons would be identified under only the dollar threshold test, assuming the dollar threshold is $1 million, with the one third threshold? How many covered persons would be identified under each test individually without a one-third threshold?

Unfortunately, we do not have the answer to these questions. However, we do believe the answers are available and important to find in crafting a final rule. The Agencies want to make sure that the final rules will cover the number of people necessary for investors to adequately understand any material risks arising from compensation arrangements, while not covering so many individuals that investors find the information meaningless or difficult to sift through. We encourage the Agencies to work with investors and issuers to find the answer to this question, perhaps testing these thresholds against what was experienced in the financial crisis in order to better determine what thresholds are appropriate.

<u>Incentive-based compensation.</u> *The proposed rule defines "incentive-based compensation" as any variable compensation, fees, or benefits that serve as an incentive or reward for performance. The Agencies propose a broad definition to provide flexibility as forms of compensation evolve. Compensation earned under an incentive plan, annual bonuses, and discretionary awards are all examples of compensation that could be incentive-based compensation. The form of payment, whether cash, an equity-like instrument, or any other thing of value, would not affect whether compensation, fees, or benefits meet the definition of "incentive-based compensation."*

2.40. The Agencies invite comment on the proposed definition of incentive-based compensation. Should the definition be modified to include additional or fewer forms of compensation and in what way? Is the definition sufficiently broad to capture all forms of incentive-based compensation currently used by covered institutions? Why or why not? If not, what forms of incentive-based compensation should be included in the definition?

We believe the current definition captures the information needed to enable investors to consider the potential effects of a compensation strategy. As long as disclosure is thorough and prompt, we believe it is reasonable to adopt the broad definition the agencies have chosen.

<u>Long-term incentive plan.</u> *The proposed rule defines "long-term incentive plan" as a plan to provide incentive-based compensation that is based on a performance period of at least three years. Any incentive-based compensation awarded to a covered person for a performance period of less than three years would not be awarded under a long-term incentive plan, but instead would be considered "qualifying incentive-based compensation" as that term is defined under the proposed rule. Long-term incentive plans are forward-looking plans designed to reward employees for performance over a multi-year period. These plans generally provide an award of cash or equity at the end of a performance period if the employee meets certain individual or institution-wide performance measures. Because they have longer performance periods, long-term incentive plans allow more time for information about a covered person's performance and risk-taking to become apparent, and covered institutions can take that information into account*

to balance risk and reward. Under current practice, the performance period for a long-term incentive plan is typically three years.

2.42. The Agencies invite comment on whether the proposed definition of "long-term incentive plan" is appropriate for purposes of the proposed rule. Are there incentive based compensation arrangements commonly used by financial institutions that would not be included within the definition of "long-term incentive plan" under the proposed rule but that, given the scope and purposes of section, should be included in such definition? If so, what are the features of such incentive-based compensation arrangements, why should the definition include such arrangements, and how should the definition be modified to include such arrangements?

The definition of "long-term incentive plan" is reasonable. In our conversations with investors and issuers, "long-term" is generally understood to mean a time period of three years or more.

<u>Performance period.</u> *The proposed rule defines "performance period" as the period during which the performance of a covered person is assessed for purposes of determining incentive-based compensation. The Agencies intend for the proposed rule to provide covered institutions with flexibility in determining the length and the start and end dates of their employees' performance periods. For example, under the proposed rule, a covered institution could choose to have a performance period that coincided with a calendar year or with the covered institution's fiscal year (if the calendar year and fiscal year were different). A covered institution could also choose to have a performance period of one year for some incentive-based compensation and a performance period of three years for other incentive-based compensation.*

2.43. Does the proposed rule's definition of "performance period" meet the goal of providing covered institutions with flexibility in determining the length and start and end dates of performance periods? Why or why not? Would a prescribed performance period, for example, periods that correspond to calendar years, be preferable? Why or why not?

It is reasonable to give issuers flexibility in determining the "performance period" that they wish to measure for the purpose of setting executive compensation. Industries differ in their product and innovation cycles, and it is therefore reasonable to expect differences in definitions concerning what is meant by a long-term performance period among companies and industries. Investors are typically sophisticated enough to understand these nuances and should have no difficulty analyzing performance periods that differ among sectors and industries.

§ ___.3 Applicability

CFA Institute has no comments in this section.

§ ___.4 Requirements and Prohibitions Applicable to All Covered Institutions

(b) Excessive compensation.

Section ___.4(b) of the proposed rule specifies that compensation, fees, and benefits would be considered excessive for purposes of section __.4(a)(1) when amounts paid are unreasonable or disproportionate to the value of the services performed by a covered person, taking into account all relevant factors. Section 956(c) directs the Agencies to "ensure that any standards for compensation established under subsections (a) or (b) are comparable to the standards established under section [39] of the Federal Deposit Insurance Act (12 U.S.C. 2 [sic] 1831p-1) for insured depository institutions." Under the proposed rule, the factors for determining whether an incentive-based compensation arrangement provides excessive compensation would be comparable to the Federal Banking Agency Safety and Soundness Guidelines that implement the requirements of section 39 of the FDIA. The proposed factors would include: (1) the combined value of all compensation, fees, or benefits provided to the covered person; (2) the compensation history of the covered person and other individuals with comparable expertise at the covered institution; (3) the financial condition of the covered institution; (4) compensation practices at comparable covered institutions, based upon such factors as asset size, geographic location, and the complexity of the covered institution's operations and assets; (5) for post-employment benefits, the projected total cost and benefit to the covered institution; and (6) any connection between the covered person and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the covered institution. The inclusion of these factors is consistent with the requirement under section 956(c) that any standards for compensation under section 956(a) or (b) must be comparable to the standards established for insured depository institutions under the FDIA and that the Agencies must take into consideration the compensation standards described in section 39(c) of the FDIA.

(c) Material financial loss.

Section 956(b)(2) of the Act requires the Agencies to adopt regulations or guidelines that prohibit any type of incentive-based payment arrangement, or any feature of any such arrangement, that the Agencies determine encourages inappropriate risks by a covered financial institution that could lead to material financial loss to the covered institution. In adopting such regulations or guidelines, the Agencies are required to ensure that any standards established under this provision of section 956 are comparable to the standards under Section 39 of the FDIA, including the compensation standards. However, section 39 of the FDIA does not include standards for determining whether compensation arrangements may encourage inappropriate risks that could lead to material financial loss. Accordingly, as in the 2011 Proposed Rule, the Agencies have considered the language and purpose of section 956, existing supervisory guidance that addresses incentive-based compensation arrangements that may encourage *inappropriate risk-taking, the FSB Principles and Implementation Standards, and other relevant material in considering how to implement this aspect of section 956.*

(d) Performance measures.

The performance measures used in an incentive-based compensation arrangement have an important effect on the incentives provided to covered persons and thus affect the potential for the incentive-based compensation arrangement to encourage inappropriate risk-taking that could lead to material financial loss. Under section __.4(d) of the proposed rule, an incentive-based compensation arrangement would not be considered to appropriately balance risk and reward unless: (1) it includes financial and non-financial measures of performance that are relevant to a covered person's role and to the type of business in which the covered person is engaged and that are appropriately weighted to reflect risk-taking; (2) it is designed to allow non-financial measures of performance to override financial measures when appropriate; and (3) any amounts to be awarded under the arrangement are subject to adjustment to reflect actual losses, inappropriate risks taken, compliance deficiencies, or other measures or aspects of financial and nonfinancial performance.

(e) Board of directors.

Under section __.4(e) of the proposed rule, the board of directors, or a committee thereof, would be required to: (1) conduct oversight of the covered institution's incentive-based compensation program; (2) approve incentive-based compensation arrangements for senior executive officers, including the amounts of all awards and, at the time of vesting, payouts under such arrangements; and (3) approve any material exceptions or adjustments to incentive-based compensation policies or arrangements for senior executive officers.

4.1. The Agencies invite comment on the requirements for performance measures contained in section __.4(d) of the proposed rule. Are these measures sufficiently tailored to allow for incentive-based compensation arrangements to appropriately balance risk and reward? If not, why?

We feel the requirement for performance measures contained in section __.4(d) are adequate to allow incentive-based compensation arrangements to appropriately balance risk and reward.

4.2. The Agencies invite comment on whether the terms "financial measures of performance" and "non-financial measures of performance" should be defined. If so, what should be included in the defined terms?

We do not believe these terms need to be defined. Both issuers and investors will understand which measures are financial in nature and which are not.

Section ___.4(f) of the proposed rule would establish disclosure and recordkeeping requirements for all covered institutions, as required by section 956(a)(1).123 Under the proposed rule, each covered institution would be required to create and maintain records that document the structure of all of the institution's incentive-based compensation arrangements and demonstrate compliance with the proposed rule, and to disclose these records to the appropriate Federal regulator upon request. The proposed rule would require covered institutions to create such records on an annual basis and to maintain such records for at least seven years after they are created. The Agencies recognize that the exact timing for recordkeeping will vary from institution to institution, but this requirement would ensure that covered institutions create such records for their incentive-based compensation arrangements at least once every 12 months. The requirement to maintain records for at least seven years generally aligns with the clawback period described in section __.7(c) of the proposed rule

4.5. Is seven years a sufficient time to maintain the records required under section ___.4(f) of the proposed rule? Why or why not?

We do not feel there should be any maximum number of years for which issuers should maintain records. Perhaps seven years is an appropriate minimum to start with, but we can see the case for a longer record-keeping requirement should a company's long-term incentive plans cover a period of more than seven years.

§ ___.5 Additional Disclosure and Recordkeeping Requirements for Level 1 and Level 2 Covered Institutions.

Under section ___.5(a) of the proposed rule, a Level 1 or Level 2 covered institution would be required to create annually, and maintain for at least seven years, records that document: (1) its senior executive officers and significant risk-takers listed by legal entity, job function, organizational hierarchy, and line of business; (2) the incentive-based compensation arrangements for senior executive officers and significant risk-takers, including information on percentage of incentive-based compensation deferred and form of award; (3) any forfeiture and downward adjustment or clawback reviews and decisions for senior executive officers and significant risk-takers; and (4) any material changes to the covered institution's incentive-based compensation arrangements and policies.

The proposed recordkeeping and disclosure requirements at Level 1 and Level 2 covered institutions would assist the appropriate Federal regulator in monitoring whether incentive-based compensation structures, and any changes to such structures, could result in Level 1 and Level 2 covered institutions maintaining incentive-based compensation structures that encourage inappropriate risks by providing excessive compensation, fees, or benefits or could lead to *material financial loss. The more detailed reporting requirement for Level 1 and Level 2 covered institutions under section ___.5(a) of the proposed rule reflects the information that would assist the appropriate Federal regulator in most effectively evaluating the covered institution's compliance with the proposed rule and identifying areas of potential concern with respect to the structure of the covered institution's incentive-based compensation arrangements.*

5.1. Should the level of detail in records created and maintained by Level 1 and Level 2 covered institutions vary among institutions regulated by different Agencies? If so, how? Or would it be helpful to use a template with a standardized information list?

We believe the level of detail in records created and maintained by Level 1 and Level 2 covered institutions should be the same regardless of the agency that regulates them. Any other arrangement would invite regulatory arbitrage.

§ ___.6 Reservation of Authority for Level 3 Covered Institutions.

Section ___.6 of the proposed rule would allow the appropriate Federal regulator to require certain Level 3 covered institutions to comply with some or all of the more rigorous requirements applicable to Level 1 and Level 2 covered institutions. Specifically, an Agency would be able to require a covered institution with average total consolidated assets greater than or equal to $10 billion and less than $50 billion to comply with some or all of the more rigorous provisions of section ___.5 and sections___.7 through___.11 of the proposed rule, if the appropriate Federal regulator determined that the covered institution's complexity of operations or compensation practices are consistent with those of a Level 1 or Level 2 covered institution, based on the covered institution's activities, complexity of operations, risk profile, or compensation practices. In such cases, the Agency that is the Level 3 covered institution's appropriate Federal regulator, in accordance with procedures established by the Agency, would notify the institution in writing that it must satisfy the requirements and other standards contained in section ___.5 and sections___.7 through___.11 of the proposed rule. As with the designation of significant risk-takers discussed above, each Agency's procedures generally would include reasonable advance written notice of the proposed action, including a description of the basis for the proposed action, and opportunity for the covered institution to respond.

As noted previously, the Agencies have determined that it may be appropriate to apply only basic prohibitions and disclosure requirements to Level 3 covered institutions, in part because these institutions generally have less complex operations, incentive-based compensation practices, and risk profiles than Level 1 and Level 2 covered institutions. However, the Agencies recognize that there is a wide spectrum of business models and risk profiles within the $10 to $50 billion range and believe that some Level 3 covered institutions with between $10 and $50 billion in total consolidated assets may have incentive-based compensation practices and operational complexity comparable to those of a Level 1 or Level 2 covered institution. In such cases, it may *be appropriate for the Agencies to provide a process for determining that such institutions should be held to the more rigorous standards.*

6.1. The Agencies invite general comment on the reservation of authority in section ___.6 of the proposed rule.

We have no comments in this section.

§ ___.7 Deferral, Forfeiture and Downward Adjustment, and Clawback Requirements for Level 1 and Level 2 Covered Institutions

In order to achieve incentive-based compensation arrangements that appropriately balance risk and reward, including closer alignment between the interests of senior executive officers and significant risk-takers within the covered institution and the longer-term interests of the covered institution itself, it is important for information on performance, including information on misconduct and inappropriate risk-taking, to affect the incentive-based compensation amounts received by covered persons. Covered institutions may use deferral, forfeiture and downward adjustment, and clawback to address information about performance that comes to light after the conclusion of the performance period, so that incentive-based compensation arrangements are able to appropriately balance risk and reward. Section ___.7 of the proposed rule would require Level 1 and Level 2 covered institutions to incorporate these tools into the incentive based compensation arrangements of senior executive officers and significant risk-takers.

Under the proposed rule, an incentive-based compensation arrangement at a Level 1 or Level 2 covered institution would not be considered to appropriately balance risk and reward, as would be required by section ___.4(c)(1), unless the deferral, forfeiture, downward adjustment, and clawback requirements of section ___.7 are met. These requirements would apply to incentive-based compensation arrangements provided to senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions. Institutions may, of course, take additional steps to address risks that may mature after the performance period.

The requirements of section ___.7 of the proposed rule would apply to incentive based compensation arrangements for senior executive officers and significant risk-takers of Level 1 and Level 2 covered institutions. The decisions of senior executive officers can have a significant impact on the entire consolidated organization and often involve substantial strategic or other risks that can be difficult to measure and model— particularly at larger covered institutions— during or at the end of the performance period, and therefore can be difficult to address adequately by risk adjustments in awarding of incentive-based compensation. Supervisory experience and a review of the academic literature suggest that incentive-based compensation arrangements for the most senior decision-makers and risk-takers at the largest institutions *appropriately balance risk and reward when a significant portion of the incentive-based compensation awarded under those arrangements is deferred for an adequate amount of time*.

§__.7(a) Deferral.

As a tool to balance risk and reward, deferral generally consists of four components: the proportion of incentive-based compensation required to be deferred, the time horizon of the deferral, the speed at which deferred incentive-based compensation vests, and adjustment during the deferral period to reflect risks or inappropriate conduct that manifest over that period of time.

Section ___.7(a) of the proposed rule would require Level 1 and Level 2 covered institutions, at a minimum, to defer the vesting of a certain portion of all incentive-based compensation awarded (the deferral amount) to a senior executive officer or significant risk-taker for at least a specified period of time (the deferral period). The minimum required deferral amount and minimum required deferral period would be determined by the size of the covered institution, by whether the covered person is a senior executive officer or significant risk-taker, and by whether the incentive-based compensation was awarded under a long-term incentive plan or is qualifying incentive-based compensation. Minimum required deferral amounts range from 40 percent to 60 percent of the total incentive-based compensation award, and minimum required deferral periods range from one year to four years, as detailed below.

Deferred incentive-based compensation of senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions would also be required to meet the following other requirements:

• *Vesting of deferred amounts may occur no faster than on a pro rata annual basis beginning on the one-year anniversary of the end of the performance period;*

• *Unvested deferred amounts may not be increased during the deferral period;*

For most Level 1 and Level 2 covered institutions, substantial portions of deferred incentive-based compensation must be paid in the form of both equity-like instruments and deferred cash;

• *Vesting of unvested deferred amounts may not be accelerated except in the case of death or disability; and*

• *All unvested deferred amounts must be placed at risk of forfeiture and subject to a forfeiture and downward adjustment review pursuant to section ___.7(b).*

7.2 Are minimum required deferral periods and percentages appropriate? If not, why not? Should Level 1 and Level 2 covered institutions be subject to different deferral requirements, as in the proposed rule, or should they be treated more similarly for this purpose and why? Should *the minimum required deferral period be extended to, for example, five years or longer in certain cases and why?*

We question the wisdom of setting minimum deferral periods, as we believe it is up to issuers and investors to engage on this issue and determine what is appropriate on a case by case basis. What is appropriate for one issuer may not be appropriate for another.

7.3 Is a deferral requirement for senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions appropriate to promote the alignment of employees' incentives with the risk undertaken by such covered persons? If not, why not? For example, comment is invited on whether deferral is generally an appropriate method for achieving incentive-based compensation arrangements that appropriately balance risk and reward for each type of senior executive officer and significant risk-taker at these institutions or whether there are alternative or more effective ways to achieve such balance.

We believe deferral can be an appropriate method for achieving incentive-based compensation arrangements that appropriately match the deferral to the tenure of the relevant risks, thus balancing risk and reward for each type of senior executive officer and significant risk-taker. Deferral regimes should align the interests of management with those of investors without encouraging undue risk-taking.

7.5 A number of commenters to the 2011 Proposed Rule suggested that applying a prescriptive deferral requirement, together with other requirements under that proposal, would make it more difficult for covered institutions to attract and retain key employees in comparison to the ability of organizations not subject to such requirements to recruit and retain the same employees. What implications does the proposed rule have on "level playing fields" between covered institutions and non-covered institutions in setting forth minimum deferral requirements under the rule?

This is one of the reasons why we believe it is appropriate that the market itself helps determine which deferral levels are appropriate. Issuers can work with investors to craft adequate deferral periods that are appropriate to their situation and do not place the issuer at a competitive disadvantage.

7.6 The Agencies invite comment on whether longer performance periods can provide risk balancing benefits similar to those provided by deferral, such that the shorter deferral periods for incentive-based compensation awarded under long-term incentive plans in the proposed rule would be appropriate.

Shorter deferral periods coupled with longer performance periods could have the same effect as longer deferral periods. However, we do not believe the length of such periods should be prescribed by the Agencies, but should rather be determined through engagement between issuers and investors.

§__.7(a)(4) Composition of deferred qualifying incentive-based compensation and deferred long-term incentive plan compensation for Level 1 and Level 2 covered institutions.

7.14 In order to allow Level 1 and Level 2 covered institutions sufficient flexibility in designing their incentive-based compensation arrangements, the Agencies are not proposing a specific definition of "substantial" for the purposes of this section. Should the Agencies more precisely define the term "substantial" (for example, one-third or 40 percent) and if so, should the definition vary among covered institutions and why? Should the term "substantial" be interpreted differently for different types of senior executive officers or significant risk-takers and why? What other considerations should the Agencies factor into level of deferred cash and deferred equity required? Are there particular tax or accounting implications attached to use of particular forms of incentive based compensation, such as those related to debt or equity?

We believe the Agencies made the right decision by not proposing a specific definition of "substantial".

7.16 The Agencies invite commenters' views on whether the proposed rule should include a requirement that a certain portion of incentive-based compensation be structured with debt-like attributes. Do debt instruments (as opposed to equity-like instruments or deferred cash) meaningfully influence the behavior of senior executive officers and significant risk-takers? If so, how? How could the specific attributes of deferred cash be structured, if at all, to limit the amount of interest that can be paid? How should such an interest rate be determined, and how should such instruments be priced? Which attributes would most closely align use of a debt-like instrument with the interest of debt holders and promote risk-taking that is not likely to lead to material financial loss?

We do not believe the Agencies should prescribe the form of an issuers incentive compensation. The compensation committees of issuers can explore all options open to them in designing an incentive compensation system and should not be bound to include any specific type of incentive compensation.

7.17 The Agencies invite comment on the restrictions on the use of options in incentive-based compensation in the proposed rule. Should the percent limit be higher or lower and if so, why? Should options be permitted to be used to meet the deferral requirements of the rule? Why or why not? Does the use of options by covered institutions create, reduce, or have no effect on the institution's risk of material financial loss?

Companies should be free to use whatever form of compensation they feel best provides incentives that align the interests of management and investors. That said, options have tended to fall out of favor in some circles due to the risk of short-term behavior. Moreover, options may lead to dilution of shareowners. An issuer should engage with its shareowners concerning the appropriate level of options awarded to executives and employees in the aggregate.

If a company does use options, it should report their full grant-date fair value as part of the annual compensation/remuneration of senior executives using the same formulas used to value stock options for financial statement reporting purposes. Use of the same valuation methods in both compensation/remuneration disclosures and financial statement reporting ensures that the amounts reported are consistent. Reporting the full grant-date fair value of the stock option grant in the summary compensation table will ensure that investors are aware of the long-term potential dilutive effects of the current year's stock option awards.

§__.7(b) Forfeiture and Downward Adjustment.

Section ___.7(b) of the proposed rule would require Level 1 and Level 2 covered institutions to place incentive-based compensation of senior executive officers and significant risk-takers at risk of forfeiture and downward adjustment and to subject incentive-based compensation to a forfeiture and downward adjustment review under a defined set of circumstances. As described below, a forfeiture and downward adjustment review would be required to identify senior executive officers or significant risk-takers responsible for the events or circumstances triggering the review. It would also be required to consider certain factors when determining the amount or portion of a senior executive officer's or significant risk-taker's incentive-based compensation that should be forfeited or adjusted downward.

§__.7(b)(1) Compensation at risk.

Under the proposed rule, a Level 1 or Level 2 covered institution would be required to place at risk of forfeiture 100 percent of a senior executive officer's or significant risk-taker's deferred and unvested incentive-based compensation, including unvested deferred amounts awarded under long-term incentive plans. Additionally, a Level 1 or Level 2 covered institution would be required to place at risk of downward adjustment all of a senior executive officer's or significant risk-taker's incentive-based compensation that has not yet been awarded, but that could be awarded for a performance period that is underway and not yet completed.

§__.7(b)(2) Events triggering forfeiture and downward adjustment review.

Section ___.7(b) of the proposed rule would require a Level 1 or Level 2 covered institution to conduct a forfeiture and downward adjustment review based on certain identified adverse outcomes. Under section __.7(b), events189 that would be required to trigger a forfeiture and *downward adjustment review include: (1) poor financial performance attributable to a significant deviation from the risk parameters set forth in the covered institution's policies and procedures; (2) inappropriate risk-taking, regardless of the impact on financial performance; (3) material risk management or control failures; and (4) noncompliance with statutory, regulatory, or supervisory standards that results in: enforcement or legal action against the covered institution brought by a Federal or state regulator or agency; or a requirement that the covered institution report a restatement of a financial statement to correct a material error. Covered institutions would be permitted to define additional triggers based on conduct or poor performance. Generally, in the Agencies' supervisory experience as earlier described, the triggers are consistent with current practice at the largest financial institutions, although many covered institutions have triggers that are more granular in nature than those proposed and cover a wider set of adverse outcomes. The proposed enumerated adverse outcomes are a set of minimum standards.*

§__.7(b)(3) Senior executive officers and significant risk-takers affected by forfeiture and downward adjustment.

A forfeiture and downward adjustment review would be required to consider forfeiture and downward adjustment of incentive-based compensation for a senior executive officer and significant risk-taker with direct responsibility or responsibility due to the senior executive officer or significant risk-taker's role or position in the covered institution's organizational structure, for the events that would trigger a forfeiture and downward adjustment review as described in section __.7(b)(2). Covered institutions should consider not only senior executive officers or significant risk-takers who are directly responsible for an event that triggers a forfeiture or downward adjustment review, but also those senior executive officers or significant risk-takers whose roles and responsibilities include areas where failures or poor performance contributed to, or failed to prevent, a triggering event. This requirement would discourage senior executive officers and significant risk-takers who can influence outcomes from failing to report or prevent inappropriate risk. A covered institution conducting a forfeiture and downward adjustment review may also consider forfeiture for other covered persons at its discretion.

7.21 Should the rule limit the events that require a Level 1 or Level 2 covered institution to consider forfeiture and downward adjustment to adverse outcomes that occurred within a certain time period? If so, why and what would be an appropriate time period? For example, should the events triggering forfeiture and downward adjustment reviews be limited to those events that occurred within the previous seven years?

We do not believe the Agencies should limit the events that require a require a Level 1 or Level 2 covered institution to consider forfeiture and downward adjustment to adverse outcomes that occurred within a certain time period. We believe a certain level of flexibility and discretion should be given to the board in these situations, but that a board should be transparent about any decision that they make and the reasoning behind any such decision.

7.22 Should the rule limit forfeiture and downward adjustment reviews to reducing only the incentive-based compensation that is related to the performance period in which the triggering event(s) occurred? Why or why not? Is it appropriate to subject unvested or unawarded incentive-based compensation to the risk of forfeiture or downward adjustment, respectively, if the incentive-based compensation does not specifically relate to the performance in the period in which the relevant event occurred or manifested? Why or why not?

Incentive-based compensation (vested or unvested) that is subject to forfeiture or downward adjustment should be limited to the time period in which the incentives were in place and a triggering event occurred. It does not seem just to make compensation outside of a certain performance period that was not subject to the triggering event subject to forfeiture or downward adjustment.

§__.7(c) Clawback.

As used in the proposed rule, the term "clawback" means a mechanism by which a covered institution can recover vested incentive-based compensation from a covered person. The proposed rule would require Level 1 and Level 2 covered institutions to include clawback provisions in incentive-based compensation arrangements for senior executive officers and significant risk-takers that, at a minimum, would allow for the recovery of up to 100 percent of vested incentive-based compensation from a current or former senior executive officer or significant risk-taker for seven years following the date on which such compensation vests. Under section ___.7(c) of the proposed rule, all vested incentive-based compensation for senior executive officers and significant risktakers, whether it had been deferred before vesting or paid out immediately upon award, would be required to be subject to clawback for a period of no less than seven years following the date on which such incentive-based compensation vests. Clawback would be exercised under an identified set of circumstances.

These circumstances include situations where a senior executive officer or significant risk-taker engaged in: (1) misconduct that resulted in significant financial or reputational harm192 to the covered institution; (2) fraud; or (3) intentional misrepresentation of information used to determine the senior executive officer's or significant risk-taker's incentive-based compensation.The clawback provisions would apply to all vested incentive-based compensation, whether that incentive-based compensation had been deferred or paid out immediately when awarded. If a Level 1 or Level 2 covered institution discovers that a senior executive officer or significant risk-taker was involved in one of the triggering circumstances during a past performance period, the institution would potentially be able to recover from that senior executive officer or significant risk-taker incentive-based compensation that was awarded for *that performance period and has already vested. A covered institution could require clawback irrespective of whether the senior executive officer or significant risk-taker was currently employed by the covered institution.*

7.31 Is a clawback requirement appropriate in achieving the goals of section 956? If not, why not?

We believe that a clawback requirement is appropriate in circumstances in which compensation targets were achieved due to certain behaviors such as misconduct, fraud, mistaken financial information or the misrepresentation of financial performance. Companies should disclose whether they have a mechanism to recapture incentive pay that is triggered by company results that are ultimately restated or changed in a manner that would have negated the original award. Investors need to determine whether the board has established mechanisms to recoup compensation/remuneration that is paid to an executive who benefits from faulty financial reporting, both for financial reasons and for decisions about whether the board is fulfilling its duties to shareowners.

7.32 Is the seven-year period appropriate? Why or why not?

The seven-year period is a good minimum to begin with, but believe it should be left up the market to determine what clawback standard issuers and investors can agree is in the best interest of investors.

§ ___.8 Additional Prohibitions for Level 1 and Level 2 Covered Institutions

Section ___.8 of the proposed rule would establish additional prohibitions for Level 1 and Level 2 covered institutions to address practices that, in the view of the Agencies, could encourage inappropriate risks that could lead to material financial loss at covered institutions. The Agencies' views are based in part on supervisory experiences in reviewing and supervising incentive-based compensation at some covered institutions, as described earlier in this Supplemental Information section. Under the proposed rule, an incentive-based compensation arrangement at a Level 1 or Level 2 covered institution would be considered to appropriately balance risk and reward, as required by section 261 ___.4(c)(1) of the proposed rule, only if the covered institution complies with the prohibitions of section ___.8.

§ __.8(a) Hedging

Section __.8(a) of the proposed rule would prohibit Level 1 and Level 2 covered institutions from purchasing hedging instruments or similar instruments on behalf of covered persons to hedge or offset any decrease in the value of the covered person's incentive-based compensation. This prohibition would apply to all covered persons at a Level 1 or Level 2 covered institution, not *just senior executive officers and significant risk-takers. Personal hedging strategies may undermine the effect of risk-balancing mechanisms such as deferral, downward adjustment and forfeiture, or may otherwise negatively affect the goals of these risk-balancing mechanisms and their overall efficacy in inhibiting inappropriate risk-taking. For example, a financial instrument, such as a derivative security that increases in value as the price of a covered institution's equity decreases would offset the intended balancing effect of awarding incentive-based compensation in the form of equity, the value of which is linked to the performance of the covered institution.*

8.1. The Agencies invite comment on whether this restriction on Level 1 and Level 2 covered institutions prohibiting the purchase of a hedging instrument or similar instrument on behalf of covered persons is appropriate to implement section 956 of the Dodd-Frank Act.

Many issuers have adopted anti-hedging policies as part of their compensation structures, as they believe that allowing management to hedge the risk involved in their incentive compensation packages defeats the purpose of incentive compensation. Moreover, such activities can insulate the negative effects an individual may experience as a consequence of risks they helped their institution incur. We therefore feel it is appropriate to include language prohibiting hedging instruments in the final rule.

8.3. Should the proposed rule include a prohibition on the purchase of a hedging instrument or similar instrument on behalf of covered persons at Level 3 institutions?

We believe such a prohibition should cover person at Level 3 institutions as well.

§ __.8(c) Relative performance measures

Under section ___.8(c) of the proposed rule, a Level 1 or Level 2 covered institution would be prohibited from using incentive-based compensation performance measures based solely on industry peer performance comparisons. This prohibition would apply to incentive-based compensation arrangements for all covered persons at a Level 1 or Level 2 covered institution, not just senior executive officers and significant risk-takers.

8.8. The Agencies invite comment on whether the restricting on the use of relative performance measures for covered persons at Level 1 and Level 2 covered institutions in section ___.8(c) of the proposed rule is appropriate in deterring behavior that could put the covered institution at risk of material financial loss. Should this restriction be limited to a specific group of covered persons and why? What are the relative performance measures being used in industry?

We feel it is prudent to prohibit covered institutions from using incentive-based compensation measures based solely on industry peer performance, as these measures can be manipulated by selecting a favorable peer group. Moreover, basing such incentives on the activities of peers could encourage institutions to follow the strategies and tactics of competitors. In turn, this could increase the risk of systemic problems as losses at one institution might be mirrored at those who followed the similar strategies.

8.9. Should the proposed rule apply this restriction on the use of relative performance measures to Level 3 institutions?

We believe such a restriction should cover person at Level 3 institutions as well.

§ __.8(d) Volume-driven incentive-based compensation

Section ___.8(d) of the proposed rule would prohibit Level 1 and Level 2 covered institutions from providing incentive-based compensation to a covered person that is 270 based solely on transaction or revenue volume without regard to transaction quality or the compliance of the covered person with sound risk management. Under the proposed rule, transaction or revenue volume could be used as a factor in incentive-based compensation arrangements, but only in combination with other factors designed to cause covered persons to account for the risks of their activities. This prohibition would apply to incentive-based compensation arrangements for all covered persons at a Level 1 or Level 2 covered institution, not just senior executive officers and significant risk-takers.

8.10. The Agencies invite comment on whether there are circumstances under which consideration of transaction or revenue volume as a sole performance measure goal, without consideration of risk, can be appropriate in incentive-based compensation arrangements for Level 1 or Level 2 covered institutions.

We believe it is reasonable to prohibit the use of transaction or revenue volume as the sole performance measurement goal. The quality and risk of such transactions needs to be considered when designing an executive incentive program.

8.11. Should the proposed rule apply this restriction on the use of volume-driven incentive based compensation arrangements to Level 3 institutions?

We believe such a restriction should cover person at Level 3 institutions as well.

§ ___.9 Risk Management and Controls Requirements for Level 1 and Level 2 Covered Institutions

Prior to the financial crisis that began in 2007, institutions rarely involved risk management in either the design or monitoring of incentive-based compensation arrangements. Federal Banking Agency reviews of compensation practices have shown that one important development in the intervening years has been the increasing integration of control functions in compensation design and decision-making. For instance, control functions are increasingly relied on to ensure that risk is properly considered in incentive-based compensation programs. At the largest covered institutions, the role of the board of directors in oversight of compensation programs (including the oversight of supporting risk management processes) has also expanded.

Section ___.9 of the proposed rule would establish additional risk management and controls requirements at Level 1 and Level 2 covered institutions.

Section ___.9(a) of the proposed rule would establish minimum requirements for a risk management framework at a Level 1 or Level 2 covered institution by requiring that such framework: (1) be independent of any lines of business; (2) include an independent compliance program that provides for internal controls, testing, monitoring, and training with written policies and procedures consistent with section ___.11 of the proposed rule; and (3) be commensurate with the size and complexity of the covered institution's operations. Generally, section ___.9(a) would require that Level 1 and Level 2 covered institutions have a systematic approach to designing and implementing their incentive based compensation arrangements and incentive-based compensation programs supported by independent risk management frameworks with written policies and procedures, and developed systems. These frameworks would include processes and systems for identifying and reporting deficiencies; establishing managerial and employee responsibility; and ensuring the independence of control functions. To be effective, an independent risk management framework should have sufficient stature, authority, resources and access to the board of directors.

Level 1 and Level 2 covered institutions would be required to develop, as part of their broader risk management framework, an independent compliance program for incentive-based compensation. The Federal Banking Agencies have found that an independent compliance program leads to more robust oversight of incentive-based compensation programs, helps to avoid undue influence by lines of business, and facilitates supervision. Agencies would expect such a compliance program to have formal policies and procedures to support compliance with the proposed rule and to help to ensure that risk is effectively taken into account in both design and decision-making processes related to incentive-based compensation. The requirements for such policies and procedures are set forth in section ___.11 of the proposed rule.

The Agencies note that independent compliance programs consistent with these proposed requirements are already in place at a significant number of larger covered institutions, in part due to supervisory efforts such as the Board's ongoing horizontal review of incentive-based *compensation, Enhanced Prudential Standards from section 165 of the Dodd-Frank Act, and the OCC's Heightened Standards. For example, control function employees monitor compliance with policies and procedures and help to ensure robust documentation of compensation decisions, including those relating to forfeiture and risk-adjustment processes. Institutions have also improved communication to managers and employees about how risk adjustment should work and have developed processes to review the application of related guidance in order to ensure better consideration of risk in compensation decisions. The Agencies are proposing to require similar compliance programs at covered institutions not subject to the supervisory efforts described above, as well as to reinforce the practices of covered institutions that already have such compliance programs in place.*

Under section___.9(c) of the proposed rule, Level 1 and Level 2 covered institutions would be required to provide for independent monitoring of: (1) incentive based compensation plans to identify whether those plans appropriately balance risk and reward; (2) events relating to forfeiture and downward adjustment reviews and decisions related thereto; and (3) compliance of the incentive-based compensation program with the covered institution's policies and procedures.

9.1 Some Level 1 and Level 2 covered institutions are subject to separate risk management and controls requirements under other statutory or regulatory regimes. For example, OCC-supervised Level 1 and Level 2 covered institution are subject to the OCC's Heightened Standards. Is it clear to commenters how the risk management and controls requirements under the proposed rule would interact, if at all, with requirements under other statutory or regulatory regimes?

It could be made clearer how the risk management and controls requirements under the Proposal would interact with and compliment with current requirements under other statutory or regulatory regimes. Issuers should communicate which statutory or regulatory regimes they operate under and about the risk management systems they have in place.

§ ___.10 Governance Requirements for Level 1 and Level 2 Covered Institutions

Section ___.10 of the proposed rule contains specific governance requirements that would apply to Level 1 and Level 2 covered institutions. Under the proposed rule, an incentive-based compensation arrangement at a Level 1 or Level 2 covered institution would be considered to be supported by effective governance, as required by section ___.4(c)(3) of the proposed rule, only if the covered institution also complies with the requirements of section ___.10.

Section __.10(b)(2) of the proposed rule would require the compensation committees to obtain from management, on an annual or more frequent basis, a written assessment of the covered institution's incentive-based compensation program and related compliance and control *processes. The report should assess the extent to which the program and processes provide risk-taking incentives that are consistent with the covered institution's risk profile. Management would be required to develop the assessment with input from the covered institutions' risk and audit committees, or groups performing similar functions, and from individuals in risk management and audit functions. In addition to the written assessment submitted by management, section __.10(b)(3) of the proposed rule would require the compensation committee to obtain another written assessment on the same matter, submitted on an annual or more frequent basis, by the internal audit or risk management function of the covered institution. This written assessment would be developed independently of the covered institution's management. The Agencies are proposing that the independent compensation committee of the board of directors to be the recipient of such input and written assessments.*

10.1. The Agencies invite comment on this provision generally and whether the written assessments required under sections___.10(b)(2) and___.10(b)(3) of the proposed rule should be provided to the compensation committee on an annual basis or at more or less frequent intervals?

We feel the written assessments required under sections___.10(b)(2) and___.10(b)(3) of the Proposal should be provided to the compensation committee on an annual basis, and that these assessments should be made public in an issuer's proxy statement.

10.2. Are both reports required under §__.10(b)(2) and (3) necessary to aid the compensation committee in carrying out its responsibilities under the proposed rule? Would one or the other be more helpful? Why or why not?

We believe that both reports will be helpful to the compensation committee and of interest to investors.

§ ___.11 Policies and Procedures Requirements for Level 1 and Level 2 Covered Institutions

We have not comments on this section.

§ ___.12 Indirect Actions

Section ___.12 of the proposed rule would prohibit a covered institution from doing indirectly what it cannot do directly under the proposed rule. Section ___.12 would apply all of the proposed rule's requirements and prohibitions to actions taken by covered institutions indirectly or through or by any other person. Section ___.12 is substantially the same as section ___.7 of *the 2011 Proposed Rule. The Agencies did not receive any comments on section ___.7 of the 2011 Proposed Rule.*

12.1. Commenters are invited to address all aspects of section ___.12, including any examples of other indirect actions that the Agencies should consider.

We agree with the Agencies that issuers covered by this rule should be prohibited from doing indirectly any action it is forbidden to do directly by the rule.

§ ___.13 Enforcement.

By its terms, Section 956 applies to any depository institution and any depository institution holding company (as those terms are defined in section 3 of the FDIA), any broker-dealer registered under section 15 of the Securities Exchange Act, any credit union, any investment adviser (as that term is defined in the Investment Advisers Act of 1940), the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

Section 956 also applies to any other financial institution that the appropriate Federal regulators jointly by rule determine should be treated as a covered financial institution for purposes of section 956. Section 956(d) also specifically sets forth the enforcement mechanism for rules adopted under that section. The statute provides that section 956 and the implementing rules shall be enforced under section 505 of the Gramm-Leach-Bliley Act and that a violation of section 956 or the regulations under section 956 will be treated as a violation of subtitle A of Title V of the Gramm-Leach-Bliley Act.

13.1. The Agencies invite comment on all aspects of section ___.13.

We believe that it is imperative that strong enforcement mechanisms are in place to ensure that any violation of this rule are effective and seen to be effective by the investing public. Past experience has shown us that if such strong enforcement mechanisms are not in place, the investing public and public at large will lose confidence in the integrity of the financial markets.

Concluding Remarks

CFA Institute welcomes the Proposal that would increase disclosures concerning pay and performance at corporate issuers. We also counsel issuers to use the rule as an opportunity to better tell their compensation story, and include a discussion of pay for performance metrics they may use that go beyond those required by the Proposal.

Yours faithfully,

/s/ James Allen

/s/ Matt Orsagh

James Allen, CFA
Head, Capital Markets Policy
CFA Institute
434-951-5558
james.allen@cfainstitute.org

Matt Orsagh, CFA
Director, Capital Markets Policy
CFA Institute
434-951-4829
matt.orsagh@cfainstitute.org