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September 14, 2015 Via E-Mail: rule-comments@sec.gov

Brent J. Fields, Secretary
Office of the Secretary
U.S. Securities Exchange Commission
100 F Street NE
Washington, DC 20549

**Re: Listing Standards for Recovery of Erroneously Awarded Compensation,
File No. S7-12-15, Release 33-9861; 34-75342**

Dear Mr. Fields:

On behalf of the California Public Employees' Retirement System (CalPERS), thank you for the opportunity to provide our comments on the proposed rule and rule amendments to implement the provisions of Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), which added Section 10D to the Securities Exchange Act of 1934 (Proposed Rule). Section 10D requires the Securities and Exchange Commission (SEC or Commission) to adopt rules that direct the national securities exchanges and national securities associations to establish listing standards that require issuers to develop and implement a policy for the recovery of incentive-based compensation based on financial information. CalPERS fully supports this intention.

CalPERS is the largest public defined benefit pension fund in the United States (US) with approximately $301 billion in global assets.[1] We support the Commission moving forward with the Proposed Rule because it would correct a major deficiency in existing practice by providing a mechanism to finally get executive officers to return unearned compensation. Those same executive officers normally get line employees to return unearned compensation, but the practice stops at the top. The Proposed Rule goes a long way in correcting this fundamental problem.

There should be no controversy with the premise of the Proposed Rule. Incentive compensation based on results that are later proven false should be returned. Returning unearned compensation to shareowners clearly serves the interest of shareowners and better aligns the interests of executive officers and shareowners. Discussing the

[1] CalPERS investment fund values as of market close on August 3, 2015.

Proposed Rule on July 1, 2015 in a Statement at an Open Meeting on Dodd-Frank Act "Clawback" Provision, Chair Mary Jo White stated:

> The objective of this rule is an important one. Simply put, executive officers should not be permitted to retain incentive-based compensation that they should not have received in the first instance, but did receive because of material errors in their companies' publicly reported financial statements. The proposed rules are designed to prevent that from happening. By providing for recovery of compensation that was based on inaccurate financial reporting measures, the proposed rule should increase accountability and bring greater focus to the quality of financial reporting.[2]

We fully agree with the Chair's comments.

CalPERS Global Governance Principles (Principles) ask portfolio companies to develop executive compensation plans with a "clawback" policy.[3] Through our efforts to advocate for executive compensation reform, we emphasize improved disclosure, the alignment of interests between executive management and shareowners, and enhanced compensation committee accountability for executive compensation. The Proposed Rule contains all of these elements. The proposed rule summary states that:

> The proposed rule and rule amendments would direct the national securities exchanges and national securities associations to establish listing standards that would require each issuer to develop and implement a policy providing for the recovery, under certain circumstances, of incentive-based compensation based on financial information required to be reported under the securities laws that is received by current or former executive officers, and require the disclosure of the policy. A listed issuer would be required to file the policy as an exhibit to its annual report.[4]

We support the Commission's efforts to implement the Proposed Rule. Few commenters have argued against the concept that executive officers should return compensation that has not been earned. Commissioner Gallagher, in his dissenting statement posits that

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[2] U.S. Securities and Exchange Commission. Statement at an Open Meeting on Dodd-Frank Act "Clawback" Provision, Chair Mary Jo White, July 1, 2015. http://www.sec.gov/news/statement/listing-standards-for-clawing-back-erroneously-awarded-executive.html

[3] CalPERS Global Governance Principles, California Public Employees' Retirement System, Section 3. Executive & Director Compensation, Updated March 16, 2015. https://www.calpers.ca.gov/docs/forms-publications/global-principles-corporate-governance.pdf

[4] Listing Standards for Recovery of Erroneously Awarded Compensation, Securities Act Release No. 9861, exchange Act Release No. 75,342. Investment Company Act Release Release NO. 31,702, 80 Fed. Reg. 41,144 (proposed July 14, 2015), available at https://www.sec.gov/rules/proposed/2015/33-9861.pdf .

"the broad theory of this rule makes some good sense…but the devils are in the details." Details are important, but the worst case is to continue to allow executive officers to keep unearned compensation because it may be difficult to recover. Companies routinely and effectively require line employees to return money. There should not be an exception for executive officers.

Joe Dear, former Chief Investment Officer of CalPERS, participated in the Investor's Working Group (IWG) July 2009 seminal report on improving the US financial regulatory system. The IWG concluded:

> Federal clawback provisions on unearned executive pay should be strengthened. Clawback policies discourage executives from taking questionable actions that temporarily lift share prices, but ultimately result in financial restatements. Senior executives should be required to return unearned bonus and incentive payments that were rewarded as a result of fraudulent activity, incorrectly stated financial results or some other cause.[5]

We continue to agree with the IWG's conclusions and believe that the Proposed Rule would greatly strengthen federal clawback provisions and benefit shareowners.

Section 304 of the Sarbanes-Oxley Act of 2002 (SOX) addresses clawbacks but does not include an effective enforcement mechanism. A recent Harvard study found that most firms lack a robust clawback policy – one that requires firms to recover extra pay by executives as a result of errors in performance measures. The study stated:

> The absence of such a policy is likely to reduce firm value by leading to the systematic overpayment of executives and, more important, by weakening and distorting executives' incentives. Dodd-Frank's clawback policy requirement can thus be expected to improve compensation arrangements at public firms.[6]

Additionally, a Pricewaterhouse Cooper study completed in 2014, on executive compensation clawbacks found that of the Fortune 100 companies, 92 percent have policies to recoup compensation if there is a restatement of financial results. However, of those that had a clawback policy, 73 percent require evidence that the employee caused

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[5] Member: Joe Dear, Chief Investment Officer, CalPERS and Chair, Council of Institutional Investors, *U.S. Financial Regulatory Reform*: "The Investors' Perspective, A Report by the Investors' Working Group", July 2009. http://www.law.harvard.edu/programs/about/pifs/symposia/europe/2010-europe/briefing-book/concept-papers/donaldson-et-al.pdf

[6] Jesse M. Fired, Professor of Law at Harvard Law School and Nitzan Shilon, S.J.D. candidate at Harvard Law School , "The Dodd-Frank Clawback and the Problem of Excess Pay," *The Corporate Board,* January/February 2012. *http://www.law.harvard.edu/faculty/jfried/1201FriedShilon.pdf*

or contributed to false or incorrect financial reporting, while only 27 percent require repayment in the event of a restatement without personal accountability.[7] With this insight, CalPERS backs the Proposed Rule on clawbacks to deliver the impetus for companies to fully adopt and implement the spirit of Dodd-Frank Section 954 and have executive officers return unearned incentive compensation.

We have attached our responses to certain questions included in the Proposed Rule. If you have any questions, please do not hesitate to contact me at (916)795-9058 or James.Andrus@calpers.ca.gov.

Sincerely,

JAMES ANDRUS
Investment Manager
Global Governance

cc: Anne Simpson, Investment Director, Global Governance

Attachment

[7]Ken Stoler, HR Accounting Advisory Leader and Nicole Berman, HR Accounting Advisory Director, Pwc, “Executive Compensation: Clawbacks, 2013 Proxy Disclosure Study”, April 2014. http://www.pwc.com/en_US/us/hr-management/publications/assets/pwc-clawbacks-2013-proxy-disclosure-study.pdf

Listing Standards for Recovery of Erroneously Awarded Compensation

1. Should the listing standards and other requirements of the proposed rule and rule amendments apply generally to all listed issuers, as proposed? If not, what types of issuers should be exempted, and why? Please explain the rationale that justifies exempting any particular category of issuer.

Standards should apply to all listed issuers as proposed. At least one study clearly demonstrates that small companies are penalized for taking advantage of reduced transparency requirements.[1]

Dodd-Frank, Section 954 significantly expands repayment provisions. Legislation explicitly states that “all issuers must have a policy in place to recover compensation.” Interestingly, many of the small issuers offer substantial incentive compensation packages that rival large issuers. From our viewpoint, there is no reason to allow executive officers to keep compensation that has not been earned. Line employees in their own companies are not allowed to keep unearned compensation. There is no reason that the same standard should not apply to executive officers.

2. Should we distinguish among listed issuers based on the types of securities listed? Please explain the rationale for any such exemption. For example, do issuers with listed non-convertible debt or preferred stock that do not have listed common equity raise the same concerns as issuers with listed common equity? For listed issuers that do not have listed common equity, do the different residual claims against the cash flows of the issuer warrant a different treatment?

We should not distinguish based on the types of securities listed. The focus is the return of unearned compensation. If the goal is not properly reached, the prize should not be kept by executive officers.

3. Would the proposed listing standards conflict with any home country laws, stock exchange requirements, or corporate governance arrangements that apply to foreign private issuers? If so, please explain the nature of those conflicts. Should the proposed rule and rule amendments allow exchanges to permit foreign private issuers to forego recovery of erroneously awarded compensation if recovery would violate the home country’s laws and certain conditions were met, as proposed? Is such an exception necessary or appropriate? If no, why not? If not, are there more appropriate or effective means to address such conflicts?

Such an exception is not necessary. Given companies would be aware of the rules, they can comply with both home country and US rules when negotiating executive officer packages. There is no reason to draft in an exception that all companies with foreign operations may then use to weaken the rule.

[1] “Going Public After the JOBS Act” by Carlos Berajo, Loyola Law School, August 2014.

4.	In the event that a foreign private issuer's home country has a law that like Section 10D requires the issuer to disclose its policies on incentive-based compensation and recover erroneously awarded incentive-based compensation from current or former executive officers, should the foreign private issuer be permitted to comply with its home country law instead of complying with the listing standard of the U.S. exchange that lists the foreign private issuer's securities? Please explain why or why not.

This becomes a math problem. The executive officer would return an amount necessary to comply with the rules of both jurisdictions.

5.	Should there be a mechanism to determine whether additional categories of issuers and/or securities should be exempted from the proposed listing standards? If so, what mechanism would be appropriate? Should new financial products that may be developed in the future be subject to the proposed requirements? Why or why not? What principles or requirements, if any, should apply to any mechanism? In the absence of a discretionary mechanism for future exemptions, would the proposed rule potentially hinder competition? If so, how?

We believe in the principle that executive officers should not be allowed to keep unearned compensation, just as, employees should not be allowed to keep unearned compensation. We can think of no reason to violate this principle. In the case of executive officers, the compensation could be in the millions of dollars. There should not be an exception that would allow an executive officer to keep millions of dollars in unearned compensation that rightfully belongs to shareowners.

12.	For purposes of proposed Rule 10D-1, an accounting restatement would be defined as the result of the process of revising previously issued financial statements to correct errors that are material to those financial statements. Rather than including this definition in our proposed rule, should we refer to the definition of "restatement" in GAAP?76 If we do not refer to the definition in GAAP, is it appropriate to include in the proposed definition the phrase "errors that are material" or might it be confusing or redundant? Is our proposed approach the appropriate means to implement Section 10D, including its "material noncompliance" provision?

The reference to GAAP should be adequate. There can be an explanation that this materiality requirement fulfills the materiality requirement in the statute. Mentioning materiality a second time will create arguments that double materiality is required for a clawback to occur. We recommend avoiding a double materiality problem where the restatement which requires materiality would itself need to be material.

13.	If an issuer evaluates whether certain errors are material, and concludes that such errors are immaterial or are not the result of material noncompliance, should the issuer disclose its evaluation? If so, what should be disclosed and where should such disclosure be required?

13. Continued…

Yes, we believe that although an issuer may determine that such errors are immaterial or not the result of material noncompliance; the issuer should disclose its evaluation and how it came to this conclusion. The issuer should disclose the issue, the economic impact and state why it is not material.

14.	Should any revision to previously issued financial statements that results in a reduction in incentive-based compensation received by an executive officer always trigger application of an issuer's recovery policy under the proposed listing standards? Why or why not?

Yes, if an individual received incentive-based compensation that was based on inaccurate information, then application of an issuer's recovery policy should be triggered. Companies recover compensation from line employees routinely. There is no reason to apply a different standard to executive officers regarding recovery.

As mentioned in our letter and reiterating Mary Jo White's Statement at an Open Meeting on Dodd-Frank Act "Clawback" Provision:

> The objective of this rule is an important one. Simply put, executive officers should not be permitted to retain incentive-based compensation that they should not have received in the first instance…By providing for recovery of compensation that was based on inaccurate financial reporting measures, the proposed rules should increase accountability and bring greater focus to the quality of financial reporting.[2]

16.	Should the proposed listing standards contain any anti-evasion language regarding the circumstances in which recovery would be triggered? If so, what should the language provide?

This issue should be addressed through transparency. Companies will have to disclose their arrangements. If those arrangements include evasive tactics, shareowners will know after a review of such disclosures.

17.	Is it appropriate to treat the earlier of the two proposed dates as "the date on which an issuer is required to prepare an accounting restatement" for purposes of triggering the Section 10D recovery obligation? If not, why not? Would using these dates provide sufficient certainty and transparency for issuers, investors and exchanges to determinewhen recovery would be triggered for purposes of compliance with the proposed listing standards? Are there additional triggers we should consider including?

[2] U.S. Securities and Exchange Commission. Statement at an Open Meeting on Dodd-Frank Act "Clawback" Provision, Chair Mary Jo White, July 1, 2015. http://www.sec.gov/news/statement/listing-standards-for-clawing-back-erroneously-awarded-executive.html

17.	Continued…

Yes, it is appropriate to treat the earlier of the two proposed dates as "the date on which an issuer is required to account for an accounting restatement," then the Section 10D recovery obligation should be triggered.

We believe it is imperative that issuers be discouraged to improperly delay filing a restatement to avoid recovery of excess incentive compensation.

21.	Are there any other officers, such as the chief legal officer, chief information officer, or such other officer, who by virtue of their position should be specifically named as executive officers subject to the issuer's recovery policy? If so, which additional officers should be subject to the issuers' recovery policy? If so, which additional officers should be subject to the issuer's recovery policy and why?

If there is a possibility that a person could be a named executive officer, that position should be included. It is our view that Section 954 intended to include the named executive officers and all additional executive officers. Given the list changes, it is reasonable to include such officers prospectively. It is not clear that without including a broader list of executive officers the principle of recovering unearned compensation could be otherwise maintained.

22.	Are there any other officers who should be included in the group of executive officers subject to the issuer's recovery policy, but who may not fall within the proposed definition? Is the definition of executive officer appropriate? If not, how else should executive officer be defined?

If for some reason the Rule 16a-1(f) definition of officer is not maintained as the definition of "executive officer" for purposes of Section 954, we support the "executive officer" definition recommended by Towers Watson. The recommendation uses the "executive officer" definition in Exchange Rule 3b-7.

23.	Alternatively, is the proposed definition of "executive officer" too broad? Should we instead limit the recovery policy to "named executive officers," as defined in Items of Regulation S-K or otherwise define a more narrow set of officers subject to recovery?

We do not believe the definition is too broad. Section 954 does not limit the term to named executive officers. It is important to note that the named executive officers may change based on compensation level. This creates an interesting issue if certain executives become named executive officers based on clawbacks being applied to other executive officers. It appears that we would need to capture each officer that could ever be listed as a named executive officer if each named executive officer would be subject to the clawback. We clearly need a broader definition that complies with Section 954. Regulation S-K itself contemplates a broad group of executive officers recognizing that not all executive officers will be named.

24.	Will the scope of the term "executive officer" for purposes of Section 10D affect issuers' practices in identifying executive officers for other purposes? If so, how, and what if anything should we do to address that? Are there other means of simplifying the identification of "executive officers" for purposes of Rule 10D-1 that would promote consistency with identifying executive officers for other purposes, such as Item 401(b) of Regulation S-K? Is there another, more appropriate definition?

We believe that all unearned compensation should be returned. Companies routinely recover unearned compensation from line employees. There should be no gaps creating an opportunity for lower level executives to become among the highest paid executives in the company because such executives are able to maintain unearned compensation. Such executives would then have to be named executive officers and would be subject to the clawback themselves.

25.	Is it consistent with the purposes of Section 10D to apply recovery to any incentive-based compensation earned during the three completed fiscal years immediately preceding the date that the issuer is required to prepare a restatement if that person served as an executive officer at any time during the performance period? Alternatively, should an individual be subject to recovery only for incentive-based compensation earned during the portion of the performance period during which the individual was serving as an executive officer? Should an individual who is an executive officer at the time recovery is required be subject to recovery even if that individual did not serve as an executive officer of the issuer at any time during the performance period for the affected incentive-based compensation? If a different standard should govern the circumstances when an executive officer or former executive officer is subject to recovery, what should that standard be, and why should it apply?

We agree and support that Section 10D apply recovery to any incentive-based compensation earned during the three completed fiscal years preceding the date that the issuer is required to prepare a restatement. We would like a longer time period given our desire to have all unearned compensation returned. The executive should keep all properly earned compensation. We recommend the main threshold should be whether the compensation was erroneously awarded and again as Mary Jo White stated:

> Simply put, executive officers should not be permitted to retain incentive-based compensation that they should not have received in the first instance…[3]

26.	Is the scope of incentive-based compensation subject to recovery under Section 10D(B) properly defined by reference to compensation that is granted, earned or vested based wholly or in part upon attainment of any measure that is determined or presented in accordance with applicable accounting principles? If not, please explain what other forms of compensation should be covered and why.

[3] Id

26.	Continued…

CalPERS agrees with the SEC's principles-based approach in defining "incentive-based compensation." We feel it is important that the SEC maintain the suggested definition as "any compensation that is granted, earned or vested based wholly or in part upon the attainment of any financial reporting measure." The proposed definition further defines that financial reporting measures are determined and presented in accordance with the accounting principles used in preparing the issuer's financial statements. We agree the definition should include examples of financial reporting measures but would not be limited to these examples.

29.	Should compensation that is based upon stock price performance or total shareholder return be considered incentive-based compensation subject to recovery? If not, please explain why not. If compensation that is based on stock price performance or total shareholder return is included as incentive-based compensation subject to recovery, what calculations would need to be made to determine the recoverable amount? What are the costs and technical expertise required to prepare these calculations? Who would make these calculations for issuers? Would the costs be greater than for calculations tied to other financial reporting measures, which would be subject to mathematical recalculation directly from the information in an accounting restatement? Would the exchanges be able to efficiently assess these calculations for purposes of enforcing compliance with their listing standards? Why or why not? Should we require an independent third party to assess management's calculations?

Compensation based on stock performance should definitely be included. The nature of the calculations is dependent on the nature of the compensation. In cases when there is a "cliff" award based upon making a pre-determined target and the target is barely hit and there is a restatement, the calculation is easy. If there is a sliding target based on performance, smaller adjustments can be made. If there is fraud and the original numbers are fake, the calculation is again easy. The company's board would be responsible for making the calculations. The company's board should also reveal the result to shareowners in some detail. Companies routinely recover money from line employees and overcome all of the issues noted above. There is no reasonable reason the same standards should not apply to executive officers.

32.	Should the definition of "incentive-based compensation" included in Rule 10D-1 be principles-based, as proposed? Alternatively, should the definition specify performance measures that may be affected by an accounting restatement? If so, please explain which examples should be included and why.

Yes, CalPERS believes the definition be principles-based, stressing the intent of Rule 10D-1. See response on # 26.

33.	Regarding the statutory provision that incentive-based compensation subject to recovery "includ[es] stock options awarded as compensation," does the proposed definition provide a basis by which issuers can identify equity awards that would be covered? If not, please explain why not. If all options should be subject to recovery, how should the amount subject to recovery following an accounting restatement be computed for time-vested options that are not granted based on satisfaction of a financial reporting measure performance goal?

Yes, we believe that equity awards are covered in the proposed definition. As part of the proposed rule, we believe issuers should disclose how the board defined incentive compensation and apply the clawback policy established by the issuer.

34.	Regarding bonuses granted from a "bonus pool," the size of which is based wholly or in part upon satisfying a financial reporting measure performance goal, does the proposed definition properly subject this form of compensation to recovery? If not, how should we treat such compensation for purposes of Rule 10D-1?

We believe the proposed definition of "any compensation that is granted, earned or vested based wholly or in part upon the attainment of any financial reporting measure" covers bonuses granted from a "bonus pool" and are subject to recovery.

43.	Do the proposed rule and rule amendments articulate an appropriate standard for calculating the amount of excess incentive-based compensation that listed issuers must recover? Why or why not?

CalPERS believes the proposed rule should require issuers to articulate on an annual basis how the board determined its clawback policy and what situations would trigger application of its policy. We believe boards should clearly explain how and if the policy is applied or explain why it was not applied when incentive compensation is received erroneously, if applicable.

51.	Is the proposed issuer discretion not to pursue recovery of incentive-based compensation consistent with the purpose of Section 10D? Is the scope of this discretion appropriate? Why or why not?

If a company routinely recovers amounts under $100 from employees, there is no reason to allow executives to maintain thousands or even millions of dollars and argue that there is difficulty recovering the money. It is quite easy to recover when there is the will to recover.

52. Should the standard for exercising discretion not to recover be limited to the extent to which that recovery is impracticable? Should direct costs of recovery be a basis for exercising discretion not to recover? If so, what specific costs of recovery should be considered? For example, should only direct expenditures to third-parties be considered, as proposed? Should we further define what constitutes "direct costs"? Should an issuer be permitted to consider indirect costs, such as opportunity costs or reputational costs? Should the issuer disclose the cost estimates in its Exchange Act annual reports? If the cost estimates are not disclosed in the issuer's annual reports, should those costs be independently verified?

Companies adopt processes to recover money from line employees that are often more costly than the amounts they recover. Given the limited number of executive officers involved, it should be easy to collect. Companies would only have to use the systems that are already in place. For avoidance of doubt, the unearned compensation should be returned even when the cost of recovery is greater than the amount being recovered. The expectation is that companies would comply with the contracts they drafted and use systems that are common to them in recovering the amounts. They will disclose the contract, the process and the recovery.

53. Should the issuer first be required to make a reasonable attempt to recover that compensation, as proposed? If so, should we specify what steps to recover excess incentive-based compensation should be required or what constitutes a "reasonable attempt" to recover such compensation? Should this requirement depend on what financial reporting metric triggers recovery? Should the issuer be required to document its attempts to recover, and provide that documentation to the exchange?

The issuer should actually recover from executive officers in a manner consistent with its disclosed contracts.

54. Should a listed issuer be permitted to forego recovering incentive-based compensation if doing so would violate home country law? In this circumstance, should the issuer first be required to obtain a legal opinion from home country counsel, as proposed? If not, why not? Are there any other conditions that should be met beyond a legal opinion from home country counsel before an issuer should be permitted to forego recovering incentive-based compensation in these circumstances? Should the proposed accommodation apply only to the extent that recovery would conflict with home country laws in effect before the date of publication of proposed Rule 10D-1 in the Federal Register, as proposed? If not, please explain why not. In addition, as proposed, the listed issuer would need to provide such opinion to the exchange upon request. Should a copy of this opinion be filed with the Commission as an exhibit? Why or why not?

There should be no home country exemption. Why create a location for companies to move operations to avoid clawbacks?

55. Should the determination that recovery would be impracticable need to be made by the issuer's committee of independent directors responsible for executive compensation decisions, or in the absence of such a committee, by a majority of the independent directors serving on the board? If not, why not, and who should be authorized to make the determination?

55. Continued…

There should be no such determination if the company recovers money from line employees for any reason.

58. Would issuers be able to implement their recovery policies with respect to existing compensation agreements and arrangements through amendments to their by-laws?

Issuers will likely have to amend their existing contract arrangements. A by-law amendment will not suffice.

59. How and under what circumstances, if any, should the board of directors be able to exercise discretion regarding the amount to be recovered? What steps should the board of directors be required to take, if any, before exercising any permitted discretion about the amount to be recovered from individual executive officers?

The board should develop a process and reveal that process to shareholders. They should then apply the process that was developed in each case there is a potential recovery.

60. Are there any material tax considerations relevant to whether an issuer should be able to exercise discretion as to the amount of recovery? If so, please explain.

The company should be consistent and use a process similar to the one used when recovering from line employees. If taxes are considered in other recoveries, only then should they be considered for executive officers.

68. Should Rule 10D-1 specify the time by which the issuer must complete the recovery of excess incentive-based compensation required by the listing standards?

CalPERS believes Rule 10D-1 should provide for immediate recovery for any incentive compensation received erroneously.

77. Should an issuer also be required to disclose the basis of the determination of the amount of excess incentive-based compensation and any critical estimates used in determining the amounts? Should a listed issuer also be required to disclose the process or procedures by which it will seek to recover excess incentive-based compensation for amounts in which it is seeking recovery? Why or why not? If not, what should be disclosed and why?

Yes, we believe an issuer should be required to disclose the basis of the determination and estimates used in the determination of the clawback. Boards should articulate to shareowners the determination, method of calculation and efforts whether successful or not, to recapture incentive compensation that should not have been received.

84. How would the proposed Item 402(w) disclosure be used by institutional and retail investors, investment advisers, and proxy advisory firms in making voting decisions and recommendations on matters such as director elections and executive compensation.

CalPERS, as the largest Public Pension Fund in the United States and voter of over 10,000 proxies annually, believes company disclosure of recoupment activity would be relevant information towards applications of the CalPERS Global Principles and proxy voting. Specifically, CalPERS may consider holding members of the Compensation Committee accountable for failing to align the interests of management with shareowners in pay decisions. The information would also be used in executive compensation voting decisions.

85. Should we require that the disclosure required by proposed Item 402(w) be tagged in XBRL format, as proposed? Should we require a different format, such as, for example, eXtensible Markup Language (XML)? Would tagging these disclosures enhance the ability of shareholders and exchanges to assess issuers' compliance with their recovery policies? Alternatively, instead of requiring that either of these disclosures be tagged, should tagging this disclosure be optional?

CalPERS is a long-time supporter of tagging data through eXtensible Business Reporting Language (XBRL). We think the SEC should continue to require tagging. The future value of XBRL to investors is the efficiency in filtering data, obtaining accurate and comparable information and having the ability to drill down multiple levels of information when analyzing companies.

92. Should listed foreign private issuers, including MJDS filers, be exempt from the requirement to provide disclosure about compensation recovery policies? If so, please explain why.

Yes, this would place all costs back on shareowners which would totally defeat the purpose of establishing clawbacks in the first place. There should be no indemnification or payment of insurance.

94. Should such listing standards also prohibit issuers from indemnifying executive officers' litigation expenses in recovery actions?

Yes, if an executive officer sues to block a recovery that is consistent with the rule and the executives contract, the executive should cover their own legal expenses.

D. Request for Comment

1. We request comment on all aspects of the economic effects, including the costs and benefits of the proposed rule and rule amendments, and identification and assessment of any effects not discussed herein. In addition, we seek estimates and views regarding these costs and benefits for particular types of issuers, including SRCs, EGCs, FPIs, registered management investment companies, and issuers that only have listed debt or preferred equity securities, as well as the costs or benefits for any other types of issuers that may result from the adoption of these proposed amendments.

The rule stems from a basic principle that unearned compensation should be returned. Companies routinely meet this standard when line employees must return money. It is reasonable that the same standard should be applied to executive officers.

3. Would proposed Rule 10D-1 lead to higher quality financial reporting? If so, explain how this would occur, and how the rule might be revised to mitigate any adverse unintended consequences?

The incentive to manufacture success when the numbers are close but do not meet the goal would be reduced. This should lead to more accurate financial reporting.

4. Would proposed Rule 10D-1 incentivize listed issuers to conclude that a material error is not material in order to avoid recovery of incentive-based compensation? Would the proposed rule and rule amendments incentivize listed issuers to delay investigating or reporting a material error?

There may be that incentive, but in the current environment, executive officers can keep unearned compensation regardless of the amount. The current outcome is worse than the proposed fix.

5. What is the likely effect of the requirement on executive compensation practices of listed companies, and how would this effect likely vary according to the issuer's size or line of business?

Executive compensation practices will change less than some might think. Many companies already do a good job and have compensation issues under control. This rule will bring the lower performing companies in line. We have seen that issuer size may be divorced from executive compensation and may be more important with smaller companies. Therefore, alignment with shareowners remains important.

6.	What is the likely burden that listed issuers would incur to modify the compensation packages of executive officers?

Issuers should have been recovering unearned compensation prior to the rule. The cost incurred is the cost to do the right thing. It is hard to argue that shareowners should bear such costs.

7.	What would be the burden if issuers were required to recover only the amount of excess incentive-based compensation tied to accounting-based performance metrics? Would the burden be different in the case of recovery of excess incentive-based compensation tied to market-based performance metrics? What are the benefits of each approach?

All unearned compensation should be recovered. There is no reason to allow executive officers to keep unearned compensation.

8.	What implementation issues, if any, would issuers encounter in conducting an event study or otherwise establishing the “but-for” price?

In most cases, there will not be a need to establish a “but-for” price. This issue should not derail the rule. Companies should not create compensation plans where they cannot easily compute the payment amount. Given that many plans have “cliffs,” it will be relatively easy to determine whether certain goals are met. When the issuer surpasses a goal by far and there is a restatement that impacts the numbers in a small way, there would be no recovery. If a goal is barely met and there is a restatement, all of the incentive compensation for that goal should be given back to shareowners.

9.	What is the cost of establishing a “but for” price and determining the amount of excess incentive-based compensation to be recovered? What factors affect the determination of reasonable estimates of the “but for” price and of this amount? Would issuers seek expert help in making such determinations? If so, what would be the costs to issuers of retaining such experts?

There should be no gap in the rule that would make the rule meaningless. If companies choose to provide compensation in which a “but-for” price needs to be determined, then when there is a restatement, the board can establish a process, determine a price and apply the price.

12.	How is this rulemaking likely to affect the market for executive officers?

The market will become fairer given that some companies already have good clawbacks. If all listed companies are following the same rules, the market will improve and be fairer. Leaders should agree to be treated the same way that they treat line employees regarding returning unearned compensation.

13.	What is the likely effect of this rulemaking on the decision to be a listed issuer in the United States, and how does this effect vary according to the size or line of business of the issuer?

It is hard to imagine that certain issuers would only list if executives can maintain unearned compensation. Companies should comply with the rule even if it requires some structuring. They will reap enhanced reputational benefits and produce a great impression on investors. This would work well for large and small companies.