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100 F Street, NE
Washington, DC 20549
RIN 3235-AL06
File Number S7-07-16

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Docket ID OCC-2011-0001
RIN 1557-AD39

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Via email: rule-comments@sec.gov ; regs.comments@occ.treas.gov ; Comments@FDIC.gov ; regcomments@ncua.gov ; regs.comments@federalreserve.gov ; RegComments@fhfa.gov

RE: Proposed Rulemaking on Incentive-based Compensation Arrangements (S7-07-16)

Dear Sir or Madam:

Glass Lewis appreciates the opportunity to comment on the joint proposed rule which would implement section 956 of the Dodd-Frank Act.

Founded in 2003, Glass Lewis is the leading independent provider of global governance services, helping institutional investors understand and connect with the companies in which they invest.

Glass Lewis provides proxy research and vote management services to more than 1,200 clients throughout the world covering more than 20,000 meetings across 100 countries each year. While, for the most part, institutional investor clients use Glass Lewis research to help them make proxy voting decisions, they also use Glass Lewis research when engaging with companies before and after shareholder meetings.

Glass Lewis' web-based vote management system, ViewPoint, also provides investor clients with the means to receive, reconcile and vote ballots according to custom voting guidelines and record-keep, audit, report and disclose their proxy votes. In 2014, Glass Lewis acquired Meetyl, a global, web-

based engagement platform that directly connects institutional investors and companies. Based in San Francisco, Meetyl is growing rapidly and already serves over 1,000 investor firms and companies throughout the world.

Thank you in advance for your consideration and please do not hesitate to contact us if you would like to discuss any aspect of our submission in more detail.

Respectfully Submitted,

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GLASS LEWIS

Glass Lewis Views on SEC Proposed Rule: Incentive-Based Compensation Arrangements

On balance, Glass Lewis is broadly supportive of the rule's current design as well as the rule's goal of limiting pay arrangements which would encourage risky behavior at covered institutions. In our view, measures which drive company management and other key employees to take longer-term views of the impact of their decisions have a positive impact on long-term shareholder value. The proposed rule includes several codifications of what we consider to be common market best practices while enhancing and formalizing several aspects of compensation design which are currently less consistent if still favorable. With this in mind, the focus of this response is generally centered around the questions posed and is specific to the more substantial features of the proposed rule as well as several areas where the rule could be more comprehensive or improved.

Definition of Covered Institutions

2.1. The Agencies invite comment on whether other financial institutions should be included in the definition of "covered institution" and why.

2.1: Glass Lewis considers the current list of covered institutions to be reasonable in that it covers a fairly broad range of financial firms to which the proposal's discussion of interconnectedness and negative externalities apply. However, a broader scope for the rule may be reasonable given the increasing degree of interconnectedness of institutions not currently included in the rule. In particular, the report's discussion of certain studies on pages 421 and 422 reinforces both the need for comprehensive protection across sectors and effective controls. Footnote 400's discussion of the linkage between hedge funds and insurance firms is particularly informative in this regard, as both institutions are outside of the scope of the rule. The recentness of this example and its growing importance, along with the potential for cascading effects throughout the market, suggests that the Agencies should consider the inclusion of such entities, among others.

Glass Lewis recognizes that a greater scope for the rule may require alternative definitions of size and thresholds for applicability than those which apply to the current covered institutions which are more fundamentally similar in operations. Similarly, the ability of the appropriate Federal regulators to designate additional financial institutions does add a measure of flexibility to a list for which the criteria is otherwise fairly well established. However, given the potential efficacy of the rules in enhancing long-termism among actors with such significant impact on domestic and international markets, we believe that an expansion of the rule on predetermined, rather than ad-hoc, terms may help protect stakeholders' interests more broadly. Whereas a more comprehensive list of covered institutions could expand important protections to more companies on a fairly equivalent basis, ad-hoc expansion (or insufficient applicability of the rule more broadly) could contribute to competitive disadvantages or an unbalanced playing field in the talent market. Moreover, such an approach could still allow for potential for gaps in the coverage of the rule.

Definition of Senior Executive

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.
2.17. Should the Agencies include the chief technology officer ("CTO"), chief information security officer, or similar titles as positions explicitly listed in the definition of "senior executive officer"?

Why or why not? Individuals in these positions play a significant role in information technology management. The CTO is generally responsible for the development and implementation of the information technology strategy to support the institution's business strategy in line with its appetite for risk. In addition, these positions are generally responsible for implementing information technology architecture, security, and business resilience.

2.15 & 2.17: Glass Lewis considers the current definition of senior executive officer to be appropriate, if not necessarily comprehensive. In our view, the inclusion of the individuals most directly responsible for a firm's high-level strategy, the acceptability of that strategy and the determination of risk parameters across the covered institutions is congruous with the intended purpose of the rule. As such, Glass Lewis does not believe that any of the positions should be removed from the list as is currently proposed.

With respect to the Agencies' request for comment on the inclusion of chief technology officer ("CTO") in the list of covered senior executives, Glass Lewis believes it would be appropriate to include this position. The role of technology at individual firms and across the financial industry more broadly cannot be understated. The greater interconnectedness of financial markets is at least in part attributable to the improvements in the technologies underlying almost every aspect of finance, placing CTOs in a unique position for management of certain internal and external risks. Since implementing the architecture of a business strategy can be as important to defining the strategy's parameters, we believe that it would be appropriate to enhance the accountability of individuals charged with this responsibility. Further, firm and shareholder value may be particularly impacted by factors related to cybersecurity, as data breaches at companies in various industries have shown.

Definition of Significant Risk-Taker

2.28. Should the Agencies introduce an absolute exposure threshold in addition to a percentage of capital test if a per-transaction test was introduced instead of the annual exposure test? Why or why not? For example, would a threshold formulated as "the lesser of 0.5 percent of capital or $100 million" help to level the playing field across Level 1 covered institutions and the smallest Level 2 covered institutions and better ensure that the right set of activities is being considered by all institutions? The Agencies' supervisory experience indicates that many large institutions, for example, require additional scrutiny of significant transactions, which helps to ensure that the potential risks posed by large transactions are adequately considered before such transactions are approved. Would $100 million be the appropriate level at which additional approval procedures are required before a transaction is approved, or would a lower threshold be appropriate if an absolute dollar threshold were combined with the capital equivalent threshold?

2.28: Although the 0.5 percent of capital threshold does not appear to be unreasonable, Glass Lewis favors the inclusion of a secondary, absolute threshold. Given the size bands of the covered institutions, authority over 0.5 percent of capital could allow for the inclusion (or exclusion) or individuals with a broad range of individual authority. Without further clarification, this could lead to over-inclusiveness among smaller institutions or, moreover, the exclusion of individuals at larger institutions who have authority over sufficient amounts of capital to create negative externalities among other, smaller institutions (even if such exposure would not constitute a material financial loss for the institution itself). Particularly among the larger institutions, Glass Lewis believes that the risk of failing to be sufficiently inclusive is especially meaningful.

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?

2.30: In terms of individual compensation, Glass Lewis is wary of basing rules upon absolute compensation bright lines. Our concerns here are underscored by several components of the SEC Economic Analysis, including the discussion of the various possibilities which would lead employees to seek higher compensation as a result of the rule as well as the limited amounts of public information on the compensation of individuals who would be considered significant risk-takers. This context suggests firstly that predictable factors such as inflation are insufficient to consistently and meaningfully establish an effective threshold. Furthermore, unpredictable factors such as the compensation outlook for employees at covered institutions even in the medium term create a risk that assigning such a threshold would be an arbitrary exercise. Further, the proposed one-third threshold and the variability of incentive pay could increase the year-over-year inconsistencies in who is a covered employee, mitigating the benefits of the rule for covered persons who may be toward the lower end of the compensation spectrum. As these points relate to our discussion of question 2.28, however, we draw the distinction that individual compensation tends to be more volatile then firm assets and particularly so given the design of the respective tests covered by these questions.

Performance Measure Description

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?
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?

4.1-4.2: Glass Lewis believes that the terms noted, particularly "financial measured of performance" and "non-financial measures of performance" are fairly well understood by both companies and investors. As such, we do not believe that a significant expansion or clarification of these terms is crucial

Record Keeping and Disclosure

4.3. Would preparation of annual records be appropriate or should another method be used? Would covered institutions find a more specific list of topics and quantitative information for the content of required records helpful? Should covered institutions be required to maintain an inventory of all such records and to maintain such records in a particular format? If so, why? How would such specific requirements increase or decrease burden?

4.4. Should covered institutions only be required to create new records when incentive-based compensation arrangements or policies change? Should the records be updated more frequently, such as promptly upon a material change? What should be considered a "material change"?

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?

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?

5.2. In addition to the proposed records, what types of information should Level 1 and Level 2 covered institutions be required to create and maintain related to deferral and to forfeiture, downward adjustment, and clawback reviews?

4.3-4.5 & 5.1-5.2: Glass Lewis does not have a specific comment on the questions indicated, and this comment is accordingly a broad statement on the disclosure and recordkeeping rules proposed. Glass Lewis is cognizant of the potential sensitivity of the data to be collected and the competition for skilled talent among the covered institutions. In general, we believe that the board and management are best positioned to establish compensation for individuals below the level of senior executive and that excessive information on these matters can become a competitive liability and a distraction for companies and investors. However, we believe that the focus on compliance included in the recordkeeping and disclosure rules may not sufficiently serve the interests of all stakeholders, not least of which shareholders, given the magnitude of the factors in question.

The significance of the triggers for each of the proposed clawback, the downward adjustment reviews and actual downward adjustments, as well as the risks associated with each trigger given the "material financial loss" component in the definitions of "significant risk-taker" suggests that the rule would encapsulate a number of activities which could have a considerable impact on shareholder and firm value. These risks, in our view, should be made known to shareholders to some extent, whereas the proposed rule's treatment of all such information as confidential and nonpublic would preclude a more thorough assessment of a company's risk and control policies by stakeholders. Even where the required information would be commercially sensitive if disclosed in full, public disclosure of limited information on these activities, such as via a truncated form or for only certain covered individuals such as named executives, would allow shareholders a meaningful view into a company's risk-control procedures. We firmly believe that shareholders in particular should be afforded as much pertinent information as is reasonable into the activities of their holdings or potential investments.

Deferral

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?

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.

7.4 Commenters are also invited to address the possible impact that the required minimum deferral provisions for senior executive officers and significant risk-takers may have on larger covered institutions and whether any deferral requirements should apply to senior executive officers at Level 3 institutions.

7.2-7.4: Even the shorter deferral requirements in the proposed rule reflect increases to current holding periods for awards, both as noted in the SEC Economic Analysis of firms' practices and in Glass Lewis' experience evaluating executive pay practices at publicly traded financial institutions. The current minimums reflect favorable practices in place at a number of institutions which we have reviewed in the course of our say-on-pay analyses and would require improvements on the practices of numerous others. Glass Lewis believes that longer periods such as the suggest five years may be favorable, although the current terms may still be sufficient to protect both firms and the market from negative externalities resulting from short-sighted or poorly designed pay arrangements. The discussion on pages 211-212 of the possibility for excessive deferral periods is well taken, and, given the time horizons already in use for annual bonuses and long-term awards, the total deferral and payout periods proposed appear to strike a reasonable balance.

Broadly, Glass Lewis views deferral as a potentially highly effective mechanism for aligning employees' incentives with both individuals' risk appetites and the interests of long-term shareholders. Deferral of short-term incentives allows institutions to test the medium-term sustainability of short-term results, which can be particularly important where questions such as revenue recognition or the carrying value of assets may arise. Furthermore, deferral can serve as a retention tool, helping firms avoid costly transitions and disruptive departures without necessarily increasing compensation costs. In turn, deferral can directly improve protections of shareholders' interests and also encourage covered individuals to take a more comprehensive view of risk when making business decisions. In this context, the SEC Economic Analysis on page 425 describing the potential spillover of risk monitoring as executives have greater incentive to monitor the behavior of other significant risk-takers is also relevant. These factors are not limited to the largest financial institutions, and as such Glass Lewis would suggest further consideration of extension of the proposed rules to Level 3 institutions as well.

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?

7.5: Glass Lewis recognizes the discussion of the potential inequity between covered and non-covered institutions. However, we maintain our support for the rule and do not believe that this potential issue merits weakening or abandoning the proposed rule. The positive potential impact of the rule on the practices of financial institutions and the potential benefits for stakeholders are immediately apparent in our view, and there are few if any instances where exemption from the rule would better protect stakeholders.

In Glass Lewis' view, this potential difficulty is best addressed by broader applicability of the rule among firms which compete for talent. Sufficient coverage could effectively level the playing field in this respect while enhancing protections of shareholders' interests among others.

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.

7.6: Glass Lewis believes that the differences between short- and long-term incentives and the proposed deferral periods are important in this regard. Short-term incentives can emphasize specific near-term goals, while long-term incentives reward broader achievements which may not be attributable to any single action undertaken by a company. Deferral of short-term incentives can better allow for an assessment of the medium-term sustainability of specific achievements and of the tactics through which those goals were achieved. Because of the time horizons for long-term awards, the medium-term sustainability of a strategy is already part of the payout determination process, and additional deferral then allows for a better evaluation of the long-term viability and appropriateness of strategy.

Glass Lewis recognizes that sufficiently long performance periods may achieve some of the same benefits as considerable deferral periods, and we note that many companies' incentive plans allow for negative discretion over awards which have not been yet been paid out. However, issuers frequently claim that performance goals are more difficult to set over longer periods, which may further complicate the balance between risk tolerance and averseness in structuring incentive pay. Additional deferral periods on long-term awards may then ensure a balance between compensation and long-term results even where goal-setting over ideally long periods may be problematic.

The variability in the length of performance periods for long-term awards is also worth considering, as this aspect of compensation design can vary significantly based on company strategy and risk factors. We do not, however, believe that it should impact the imposition of an additional deferral period. Glass Lewis recognizes the discussion of the possibility that covered persons may discount the value of incentives which include excessive deferral period as discussed on page 214, a concern which may apply to performance periods as well. In our view, compensation committees are well positioned to weigh this factor as well as the suitability and viability of longer performance periods, but the importance of deferral periods remains. Where these performance periods are shorter, a deferral period may help ensure a sufficiently long-term focus; where performance periods are longer, any discount to an incentive's effectiveness from additional deferral is counterbalanced by the retentive and risk-related benefits. As such, we maintain that the use of reasonable deferral provisions remains appropriate even for long-term awards.

Composition of Deferred Compensation

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?

7.14: Glass Lewis is largely agnostic on the composition of compensation as it relates to the proportion of equity-linked awards. While the linkage between executives' and shareholders'

interests resulting from equity-based compensation is all but intrinsic, other factors complicate the importance of equity-based compensation as a percentage of total pay. Two such factors include the equity holdings of recipients (particularly in cases of long-time CEOs or founders) and granting practices which focus on larger but intermittent equity awards. Furthermore, the board and management may be in the best position to determine what constitutes a reasonable exposure to the company's stock price for employees below senior management, which may include a number of significant risk-takers. Given the diversity of company pay practices and any reasonable interpretation of "substantial," Glass Lewis does not consider a bright-line test for this particular issue to be crucial.

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?

7.16: The use of awards structured with debt-like attributes may help mitigate the risks of relying on equity-based compensation while widening the range of stakeholders whose interests are aligned with those of key decision-makers. Debt-like instruments can help mitigate the variability of a recipient's wealth which results from extensive use of equity-based compensation, namely the exposure to changes in company share price and the deterioration of wealth diversification cited on page 448. As such, the use of debt-like instruments can enhance retention incentives for employees without necessarily undermining the alignment between executive and shareholder interests.

The excessive use of debt-like instruments, however, can de-link compensation from share price performance and in turn undermine the alignment of executive interests with those of one key stakeholder. Specifically, and assuming that recipients are not guaranteed payment in the event of insolvency, the solvency risk borne by debt holders and holders of debt-like compensation instruments creates a meaningful alignment between the interests of these two groups, while equity holders bear a considerable downside risk even if the firm maintains solvency. With respect to the question of interest, to the extent that it is determined that interest should be accrued on the debt-like instrument, we would suggest as a starting point the then-current yields on the institution's corporate bonds.

Glass Lewis does not believe that a specific mix of cash and equity compensation is ideal for all circumstances and generally considers the board and management to be in the best position to make this determination. Our concerns with the potential overreliance on debt-like compensation, however, are mitigated by the requirement under the proposed rule that a "substantial" portion of compensation be in the form of equity-like instruments. Although we do not consider a specific requirement for debt-like compensation to be critical for the effectiveness of the rule, we encourage the agencies to make clear in the final rule that these instruments can be beneficial if used prudently.

Options

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?

7.18 Does the proposed 15 percent limit appropriately balance the benefits of using options (such as aligning the recipient's interests with that of shareholders) and drawbacks of using options (such as their emphasis on upside gains)? Why or why not? Is the proposed 15 percent limit the appropriate limit, or should it be higher or lower? If it should be higher or lower, what should the limit be, and why?

7.17-7.18: Glass Lewis does not maintain a specific position on the ideal allocation of option awards within a compensation plan. As with the use of debt-like and equity-like instruments, we believe that a broad guideline would not be inappropriate in prescribing the use of these awards, and the proposed limit is not particularly contentious.

Particularly given the size, scope and complexity of the covered institutions in conjunction with the SEC Economic Analysis' of the risks and benefits of the use of options on page 362, we recognize that the excessive use of options may not be as suitable for the covered institutions. Investors firmly understand that smaller firms have more significant growth opportunities and risk tolerances than larger institutions, and we believe that the incentive arrangements between the two types of companies should ideally reflect this difference.

Downward Adjustment of Deferred Compensation

7.20 The Agencies invite comment on the forfeiture and downward adjustment requirements of the proposed rule.

7.20: Broadly, Glass Lewis considers the triggers and considerations listed for downward adjustments to be a fair codification of factors which should have a meaningful impact on the payout of deferred compensation. We concur with the SEC Economic Analysis' assessment of the prevalence of negative discretion over payouts, although the more structured list of criteria in the proposed rule may provide stakeholders with greater assurances that this discretion will be exercised appropriately.

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?

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?

7.23 Should the rule place all unvested deferred incentive-based compensation, including amounts voluntarily deferred by Level 1 and Level 2 covered institutions or senior executive officers or significant risk-takers, at risk of forfeiture? Should only that unvested deferred incentive-based

compensation that is required to be deferred under section ___.7(a) be at risk of forfeiture? Why or why not?

7.21-7.23: Glass Lewis believes that gains which are earned in a manner that creates undue risk for the organization should not be rewarded. At the same time, the rules discussion of the risks associated with too-extensive of a deferral period over which negative discretion may be exercised are highly relevant here. Given the overlap with the proposed clawback rule and with consideration again given to the discussion of excessive deferral or clawback periods beginning on page 211, Glass Lewis does not believe that the extension of indefinite malus provisions on top of the post-vesting clawback provision is fully necessary. The current combination of the proposed deferral and clawback mechanisms allows for an effective adjustment period of around a decade for most components of compensation at most covered institutions. If the time horizons of recent investigations and settlements regarding practices leading up to the financial crisis are any indication, this extended adjustment period appears to be reasonable for at a minimum the larger and more complex institutions which bear such systemic risk.

7.24 Are the events triggering a review that are identified in section ___.7(b)(2) comprehensive and appropriate? If not, why not? Should the Agencies add "repeated supervisory actions" as a forfeiture or downward adjustment review trigger and why? Should the Agencies add "final enforcement or legal action" instead of the proposed "enforcement or legal action" and why?

7.24: Glass Lewis is reticent to recommend in favor of adjustment actions for ongoing investigations or preliminary findings. Given the discretion afforded the covered institutions to consider downward adjustments upon "other aspects of conduct or poor performance" (page 565) and the general sufficiency of the "enforcement or legal action" language in the proposed rule, we do not believe that the addition of "repeated supervisory actions" or a revision to "final enforcement" is necessary.

Clawback

7.30 The Agencies invite comment on the clawback requirements of the proposed rule.

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

7.34 Do the triggers discussed above effectively achieve the goals of section 956? Should the triggers be based on those contained in section 954 of the Dodd-Frank Act?

7.30, 7.32 and 7.34: Glass Lewis notes the Agencies' consideration of the proposed rule as another overlapping component of other mandatory clawback provisions. In particular, the "no-fault" clawback under Section 954 of the Dodd-Frank act which applies for three years broadly covers issues which may arise regardless of misconduct, but the longer seven-year period under the proposed clawback reflects a more appropriate statute of limitations given the severity of the relevant criteria and the higher threshold for recoupment.

However, we remain concerned with the proposed rule's lack of specificity as to the requirement for current employment of covered individuals. Page 254 indicates that "a covered institution could require clawback irrespective of whether the senior executive or significant risk-taker was currently employed by the covered institution." We believe that applicability of the rule to former employees is crucial. In the absence of such protections, the risk calculus can change from parity with established risk parameters to "knowing when to fold," creating situations where covered individual may be able to weigh the chance of a clawback against the impact of separating from the company. Such a separation could be disruptive for firms and damaging on its own, while the very option

would mitigate the efficacy of the clawback. As such, we encourage the Agencies to clarify this point in the final rule.

Maximum Payouts

8.4. The Agencies invite comment on whether the proposed rule should establish different limitations for senior executive officers and significant risk-takers, or whether the proposed rule should impose the same percentage limitation on senior executive officers and significant risk-takers.

8.4: In light of the experiences of banks in the United Kingdom and the European Union upon the institution of a similar limit on leverage on compensation, Glass Lewis is concerned about the effectiveness of this component of the proposed rule. The discussion of the risks arising from excessive maximum awards are well taken, the efficacy of this approach in curtailing risks is unclear. Beyond the discussion of lowering individuals' appetites for appropriate risk taking and the resultant impact on firm value found on pages 476-477, there exists a potential that the lowered upside opportunity may result in upward pressure on target compensation. Furthermore, such pressure may become an industry-wide trend and accordingly avoid triggering the criteria discussed in the prohibitions on excessive compensation. As such, this provisions may ultimately prove counterproductive.

Relative Metrics

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(d) 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?

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

8.8-8.9: The Agencies' discussion of the risks of using exclusively relative metrics is well taken, particularly given the difficulty in predicting or measuring these factors. However, Glass Lewis believes that the inclusion of relative metrics as a component of payout determinations in general and in particular for senior management can allow for payouts which better track a company's performance and balance shareholders' and executives' interests. Comparative metrics provide rewards for providing stronger performance than peers, which provides benefits to employees in line with the reward reaped by investors. While some metrics (such as absolute revenue or net income) are not conducive to equivalent comparisons, judicious choice of metrics and comparator groups can enable longer-term measurement periods and better assessments of the company's relative health.

Page 268 cites the potential for rewards to executives based on relative underperformance despite poor absolute performance. Glass Lewis considers this to be a strength of relative metrics in many contexts, as outperformance in difficult business environments may be a sign that a firm is responding effectively to external factors. We emphasize, however, that absolute performance results should still be considered in determining payouts. To this end, we emphasize the conclusion reached on page 269 regarding the utility of a combination of relative and absolute metrics, and with this in mind we encourage the Agencies to avoid discouraging the use of relative metrics wholesale.