AFR Americans for Financial Reform

July 22, 2016

Mr. Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Mr. Robert E. Feldman. Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Mr. Alfred M. Pollard, General Counsel,
Federal Housing Finance Agency
400 7th Street SW
Washington, DC 20219

Mr. Gerard S. Poliquin, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218
Washington, DC 20219

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

Re: Notice of Proposed Rulemaking on Incentive Based Compensation Arrangements

Dear Secretary Frierson, Executive Secretary Robert Feldman, General Counsel Pollard, Secretary Poliquin, and Secretary Fields,

Americans for Financial Reform ("AFR") appreciates this opportunity to comment on the above-referenced Proposed Notice of Proposed Rulemaking (the "Proposal") issued by the Federal Reserve, FDIC, FHFA, NCUA, OCC, and SEC (the "Agencies"). AFR is a coalition of more than 200 national, state, and local groups who have come together to advocate for reform of the financial industry. Members of AFR include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups.[1]

Section 956 is a particularly significant and vital element of the Dodd-Frank Act. There is widespread agreement among students of the 2008 financial crisis that the design of bonus pay was a central contributor to the crisis. The Senate Permanent Subcommittee on Investigations found that pay incentives played a major role in inducing Washington Mutual to make inappropriately high-risk loans, eventually driving the firm into bankruptcy.[2] The Financial Crisis Inquiry Commission found that pay systems too often encouraged "big bets" and rewarded short-term gains without proper consideration of long-term consequences.[3] Perhaps most telling of all, multiple surveys have found that over 80 percent of financial market participants believe

[1] A list of AFR member organizations is available at http://ourfinancialsecurity.org/about/our-coalition/.
[2] United States Senate, Permanent Subcommittee on Investigations, "Wall Street and the Financial Crisis: Anatomy of a Financial Collapse", April 13, 2011.
[3] Financial Crisis Inquiry Commission, "Financial Crisis Inquiry Report", February 25, 2011. Available at https://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf

that compensation practices played a role in promoting the excessive risk accumulation that led to the financial crisis.[4]

Section 956(b) of the Dodd-Frank Act is a direct response to this concern. Section 956(b) mandates that you "prohibit any types of incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks".

Congress granted the Agencies significant discretion in implementing this directive. But the mandate itself is a forceful one. You are required to not simply provide better oversight but to actively prohibit any incentive based pay arrangements that encourage inappropriate risks. The mandate to prohibit incentive based compensation that induces inappropriate risk taking implies that the Agencies should not simply issue a vague principles-based directive to boards of directors at financial institutions, but take a more prescriptive approach to placing specific limits on executive compensation.

In this respect, the Proposed Rule is a substantial improvement on the 2011 proposed rule covering the same issues, which was extraordinarily weak.[5] The Proposed Rule makes a greater effort to impose specific limits that require pay to be held at risk long-term. Compared to the 2011 Proposal, the Agencies have greatly increased the reach of the deferral requirements and other specified limits on incentive pay. These requirements now apply to all significant material risk-takers in a company, not simply a few senior executives. We strongly support this change.

The new Proposed Rule is also a substantial improvement in other ways, for example by adding a claw back requirement that was not contained in the 2011 proposal, and setting out more specific requirements for governance of bonus pay in major Wall Street firms. We support the governance requirements laid out in Sections _8 to _11 of the rule, particularly the independent risk management framework laid out in Section _9 and the strong limitations imposed in Section _8 on inappropriate pay practices such as volume-based incentives, relative compensation, and bonus pay that is excessive compared to target levels. These must be maintained in the Final Rule. Other strengths of this proposal that should be maintained in the Final Rule include the requirements in Section _4(d) that incentive pay be linked to both financial and non-financial performance measures and regularly reviewed for adjustment based on actual outcomes, the strong limits on accelerated vesting of incentive pay in Section _7(a)(iii)(D), and the reservation of authority in Section _6 of the rule that permits the Agencies to impose stricter executive compensation controls on smaller (Level 3) institutions if such limits are justified by the complexity of the institution's operations.

However, we remain deeply concerned that the Agencies have permitted critical loopholes in the specified deferral and claw back requirements which will significantly undermine the

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[4] Financial Stability Forum, "FSF Principles for Sound Compensation Practices", April 2, 2009. See page 4, footnote 2, for a review of these surveys. Available at http://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Internationales_Finanzmarkt/2009-07-15-angemessene-vorstandsgehaelter-anlage1.pdf?__blob=publicationFile&v=2

[5] Americans for Financial Reform, "Comment Letter to Agencies on Implemention of Dodd-Frank Section 956", September 18, 2014. Available at http://ourfinancialsecurity.org/wp-content/uploads/2014/09/AFR-956-Comment-Letter-9.18.14.pdf .

effectiveness of the rule in practice. A close reading of this rule shows that at multiple points the Agencies have inserted 'back doors' that would permit large financial institutions to escape full compliance with key requirements to hold incentive pay at risk long-term. These loopholes could potentially allow financial firms to pay the great majority or all of bonus compensation to key personnel even if inappropriate risk-taking or misconduct occurred.

These problems are serious. Specific requirements to hold pay at risk long-term are at the heart of this rule. Therefore, a failure to address key issues outlined below – especially the issues connected to deferral length and implementation and the implementation of claw back -- will lead to an ineffective rule. At the same time, these are problems that can be addressed within the existing structure of this proposal by making targeted changes in details of the rule. We thus do not believe that correcting these issues requires a re-proposal of the rule.

We make specific recommendations for needed changes below. A number of our recommendations are drawn from policies already instituted by the U.K. Prudential Regulatory Authority (PRA), which has put in place limits on bonus pay that are structurally similar to those in this Proposal but significantly stronger in crucial details.

Issues Regarding the Effective Length of Deferral Requirements

A centerpiece of the rule is the requirement that a minimum fraction of bonus pay be deferred for material risk-takers and senior executives at large banks. The proposal requires 60% of bonus pay to be deferred for a period of four years for the most senior executives at the largest (Level 1) institutions, with lower levels of deferral (e.g. 50% for three or four years) for other material risk-takers and executives at midsize institutions. Pay can vest in equal (pro rata) shares each year. Based on the data laid out in the Economic Analysis included in the Proposed Rule, these deferral requirements in this proposal do not differ substantially from those already maintained by the majority of large financial institutions. We are concerned that their adoption in this proposal was driven by a desire to accommodate current practices rather than by an assessment of likely effectiveness.

The deferral requirements in the Proposed Rule would mean that even the very highest-ranking executives at the largest banks could receive 70% of incentive pay within two years and 85% within three years (40% in the initial performance year, and then an additional 15% per year after that). The Agencies themselves admit that the length of a typical business cycle is approximately six years, and a typical 'credit cycle' (the more relevant metric for a financial institution) is longer than that.[6] This means that the costs of inappropriate risk-taking may not be revealed until the great majority of incentive pay has been paid out. To take the example of the financial crisis, 85% of a bonus granted to a top executive in a major bank at the beginning of 2002 would have been paid by the close of 2005 – before the first cracks in the subprime mortgage market began to appear. For a significant risk-taker leading a major bank trading desk, 80% of such a bonus would have been paid by the close of 2004.

We believe that effective deferral periods must be longer in order to have sufficient incentive effects. This could be done by either lengthening the deferral period, changing from pro rata

[6] See footnote 154 in the Proposed Rule.

vesting to some form of cliff vesting (e.g. either receiving the entire deferred portion of pay at the end of the deferral period, or sharply limiting vesting in the early years of deferral), or both. The UK PRA has imposed a deferral period of seven years for senior executives, with pro rata vesting beginning no sooner than the third anniversary of the award (i.e. no deferred bonus available for the first three years after the performance period).[7] This is more than double the level of effective deferral that this rule requires for senior executives. For risk managers and heads of business lines, the PRA proposal requires a five year deferral with pro rata vesting.

For this rule to be effective, the extent of pay deferral must be significantly lengthened. At minimum, we recommend that at least half of incentive pay for senior executives and key material risk-takers should be deferred for the typical length of a business cycle. If this rule were changed to lengthen the deferral period to five years and require cliff vesting at the end of that period, 60% of senior executive incentive pay would be at risk for the typical six year length of a business cycle (one year performance period plus a five year deferral period). A similar objective could be attained by lengthening the deferral period further and permitting vesting only over the last several years of the deferral period.

As an additional note, we are also concerned that the definition of Long Term Incentive Plans (LTIPs) could potentially contribute to evasion of deferral requirements. The Proposed Rule offers a simple definition of LTIPs (incentive compensation plans with a performance period of at least three years). The deferral period for LTIPs (one to two years) is shorter than for other types of incentive compensation, apparently on the assumption that pay from LTIPs will generally not vest until the end of the three year performance period. However, nothing in the definition of an LTIP addresses when pay from a long-term plan will actually be received. It is possible that institutions will seek to use LTIPs in a manner that will effectively shorten deferral requirements. To avoid this, we suggest that the Agencies specify that no pay from an LTIP may vest before the end of the performance period, and then align deferral periods to ensure that pay from LTIPs are deferred to at least the same extent as other forms of incentive pay.

Issues Regarding The Implementation of Deferral Requirements

Deferral is actually given effect through the forfeiture and downward adjustment review required in Section _7(b) of the Proposed Rule. This section requires that covered companies "must consider" forfeiture of pay due to a number of adverse outcomes, including inappropriate risk-taking, financial losses due to non-compliance with risk controls, and enforcement or legal action brought against the company due to failure to comply with legal requirements.

The plain language of Section _7(b) implies that even if wrongdoing or inappropriate risk-taking takes place, the company is not required to actually reduce unvested compensation. Instead, the firm is required only to "consider" the reduction of the bonus pay. Section 956 of the Dodd-Frank Act requires that regulators ban forms of incentive compensation that induce inappropriate risk-taking. Yet even in a circumstance where inappropriate risk-taking or misconduct is clearly found, this Proposed Rule requires only that companies "consider" reducing bonus pay.

[7] Bank of England, "Strengthening the Alignment of Risk and Reward: New Remuneration Rules", Policy Statement PRA 12/15, FCA PS 15/16, June, 2015. Available at http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps1215.pdf

This language is far too weak, and would permit companies to undermine the purpose of deferred compensation by granting incentive pay even in cases where misconduct occurred. The requirement that companies simply "consider" reducing deferred incentive pay should be changed to require actual reduction of unvested bonus pay where clear misconduct or inappropriate risk-taking is found. Of the list of enumerated forms of misconduct in Section _7(b)(2), the first four are cases of clear misconduct where forfeiture of unvested pay should be required.[8] Furthermore, the Agencies should set a minimum level of forfeiture for these cases that is substantial and related to the gravity of the offense.

Issues Regarding Clawback Requirements

Besides the deferral requirements, the Proposed Rule also contains a requirement that covered companies institute a seven-year claw back provision for incentive pay that has already been vested. Legally, it is much more difficult to "claw back" pay that has already been given then it is to reduce or take back unvested incentive pay that has been deferred, so in general claw back requirements should not be viewed as a substitute for pay deferral. But a properly designed claw back provision can be a valuable way of reinforcing the positive incentives created by holding pay at risk long term.

However, we are concerned that the claw back provision here is too weak to play this role. Given the problems with the deferral requirements discussed above the weaknesses in the claw back requirements are especially concerning.

There are several major issues, involving the excessive level of discretion granted to covered companies as to whether to exercise claw back provisions and the vagueness of the triggers for claw back. The Agencies state at 37732:

> "In addition, while the proposed rule would require the inclusion of clawback provisions in incentive-based compensation arrangements, the proposed rule would not require that Level 1 or Level 2 covered institutions exercise the clawback provision, and the proposed rule does not prescribe the process that covered institutions should use to recover vested incentive-based compensation."

The only specificity concerning when and if the institutions should exercise claw back comes from the minimum triggers for claw back, which require that an employee engaged in:

> (1) Misconduct that resulted in significant financial or reputational harm to the 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.

[8] These include the triggers listed in _7(b)(2)(i) through _7(b)(2)(iv) -- Poor financial performance attributable to a significant deviation from the risk parameters set forth in the covered institution's policies and procedures; inappropriate risk taking, regardless of the impact on financial performance; material risk management or control failures; and non-compliance with statutory, regulatory, or supervisory standards.

If the institution finds that any of these events occurred, it may consider attempting to exercise its claw back provisions, but is not obliged to do so.

We are concerned that this is an excessive level of discretion to grant to financial institutions that will be under competitive pressure to avoid a reputation for exercising claw back provisions. We are also concerned that the nature of the specified triggers will make it very difficult to successfully exercise claw back. The last two triggers – fraud and intentional misrepresentation of information – would require that fraudulent intent be demonstrated and would be a high bar to satisfy legally. So much of the weight here will fall on the first trigger of general 'misconduct' that caused harm to the institution.

However, the misconduct trigger appears to apply only to the individual employee, so that misconduct engaged in by others in the supervisory chain would not be captured, even if the employee failed to exercise adequate supervisory control or ignored misconduct that he or she should have known was occurring.

We recommend that the Agencies modify the current language in the Proposed Rule by adding claw back language used by the U.K. Prudential Regulatory Authority (PRA).[9] This language makes clear that the trigger for claw back includes situations where the employee "participated in or was responsible for" misconduct that resulted in significant losses to the firm. The Agencies should add the "participated in or was responsible for" clause to the first clawback trigger, and also make clear that participation and responsibility include situations in which a failure of oversight contributed to misconduct by other employees that the individual was responsible for supervising. Such language could draw on the current rule language in Section _7(3) applying to forfeiture reviews for unvested compensation, which makes clear that responsibility for general misconduct can attach to an individual due to the individual's role, position, or supervisory responsibilities.

We also recommend the Agencies adopt the following claw back language used by the UK PRA:

> "A firm must make all reasonable efforts to recover an appropriate amount corresponding to some or all vested variable remuneration where either of the following circumstances arise during the period in which clawback applies:
>
> (a) there is reasonable evidence of employee misbehaviour or material error; or
>
> (b) the firm or the relevant business unit suffers a material failure of risk management.
>
> A firm must take into account all relevant factors (including, where the circumstances described in (b) arise, the proximity of the employee to the failure of risk-management in question and the employee's level of responsibility) in deciding whether and to what extent it is reasonable to seek recovery of any or all of their vested variable remuneration."

[9] Bank of England, Prudential Regulatory Authority, "Clawback", Policy Statement PS 7/14, July, 2014. Available at http://www.bankofengland.co.uk/pra/Documents/publications/ps/2014/ps714.pdf

This language strikes the appropriate balance that the Proposed Rule fails to accomplish. First, it requires that a financial institutions pursue claw back as part of the remedy in all cases where there is misbehavior or a material failure of risk management. However, it also permits the financial institution to take into account the specific relationship of the employee to that failure. We recommend that the Agencies adopt this language in place of the current excessively vague and discretionary claw back requirements in the Proposed Rule.

Issues Concerning Controls On Hedging of Compensation

In our comments on the 2011 proposal, we urged the Agencies to ban hedging of incentive compensation, as such hedging would effectively undo positive incentives resulting from deferral, and was also associated with poor firm performance. We are glad that the Agencies have addressed this issue in the new Proposed Rule. However, the specific limits placed in hedging in the Proposed Rule appear highly inadequate, as they apparently apply only to the covered institution and not to the individual employee. Section _8(a) states only that:

> "Hedging. A Level 1 or Level 2 covered institution must not purchase a hedging instrument or similar instrument on behalf of a covered person to hedge or offset any decrease in the value of the covered person's incentive-based compensation."

While this addresses any hedging done for the employee by their employer, it does not appear to limit the ability of the individual employee to hedge their own compensation. This is clearly inadequate, as it would permit individuals to advance deferred pay or otherwise avoid long-term responsibility through a financial arrangement with a third party.

If the Agencies expect hedging controls to be effective, they should specify that covered firms must include a provision in employment contracts requiring that employees do not enter into financial arrangements with third parties designed to advance deferred compensation or otherwise undo incentive pay arrangements. The U.K. PRA directly addresses this issue in Section 13 of its remuneration rules, on personal investment strategies, stating:[10]

> "(1) A firm must ensure that its employees undertake not to use personal hedging strategies to undermine the risk alignment effects embedded in their remuneration arrangements.
>
> (2) A firm must ensure that its employees undertake not to use remuneration-related or liability-related contracts of insurance to undermine the risk alignment effects embedded in their remuneration arrangements.
>
> (3) A firm must maintain effective arrangements designed to ensure that employees comply with their undertaking."

[10] Bank of England, "Strengthening the Alignment of Risk and Reward: New Remuneration Rules", Policy Statement PRA 12/15, FCA PS 15/16, June, 2015. Available at http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps1215.pdf

We recommend that the Agencies adopt some version of this language and mandate its enforcement through employment contracts and other forms of oversight. Unless you do so, individual employees will be able to evade key elements of this rule through financial arrangements with third parties.

Issues Concerning the Structure and Composition of Incentive Pay

In our 2014 comment to the Agencies on Section 956, we discussed in detail the reasons to believe that equity-based compensation, particularly stock options, did not properly align the incentives of executives in heavily leveraged financial institutions that had an implicit safety net backstop with the interests of the public or with the interests of other key stakeholders in the firm.[11] We recommended that the Agencies require that a large proportion of incentive pay be given in the form of debt, bonds, or long-term convertible debt such as the unsecured holding company debt that would be issued under the new rules on Total Loss Absorbing Capacity (TLAC) from the prudential bank regulators.

This rule makes some progress in this area. Section _7(4) of the rule requires that deferred incentive based compensation must contain a "significant proportion" of both equity and cash, and must do so throughout the deferral period. It is particularly important to maintain the requirement that significant amounts of cash be actually deferred throughout the entire deferral period, as immediate cash contains no positive incentive effects while deferred cash would effectively be equivalent to a bond, and create incentives to avoid downside risk at the firm. However, the rule does not specify any minimum amount or proportion of cash that must be deferred. We recommend that the Agencies set a floor of at least half of deferred compensation being cash or bonds throughout the deferral period.

We are especially concerned about the treatment of stock options in the rule. Stock options can result in the most extreme form of unbalanced incentives, with the potential for nearly unlimited upside incentives with limited risk of downside loss. There is clear academic evidence of a link between stock option type incentives and increased risk of bank failure.[12] However, this rule does not place any hard cap on the amount of stock options that could be granted as part of an incentive compensation package. Instead, it simply states that only 15% of stock options can be counted toward deferral requirements – a provision that provides only indirect and uncertain incentives to limit stock option pay.

Adding to the problem, the rule does not address performance shares or other equity-based incentives that may mimic the incentive structure of stock options. This is particularly concerning since the economic analysis accompanying the Proposed Rule shows heavy use of

[11] Americans for Financial Reform, "Comment Letter to Agencies on Implemention of Dodd-Frank Section 956", September 18, 2014. Available at http://ourfinancialsecurity.org/wp-content/uploads/2014/09/AFR-956-Comment-Letter-9.18.14.pdf .

[12] Kogut, Bruce and Harnal, Hitesh, "The Probability of Default, Excessive Risk, and Executive Compensation: A Study of Financial Services Firms from 1995 to 2008" Columbia Business School Research Paper, February 21, 2010. Available at http://ssrn.com/abstract=1914542 . Bennett, Benjamin and Gopalan, Radhakrishnan and Thakor, Anjan V., "The Structure of Banker's Pay", June 22, 2016. Available at SSRN: http://ssrn.com/abstract=2795260

performance shares by large financial institutions. In a recent paper on executive pay, David Walker of Boston University has stated concerning performance shares[13]:

> "Although technically "stock" instruments, performance shares mimic the incentive characteristics of options….Performance share plans can be designed to be effectively in, at, or out of the money and these plans often employ relative performance measurement that makes them analogous to rarely observed indexed stock options."

His research suggests that the movement from options to performance shares is driven less by a desire to avoid the negative incentive effects of stock options than by other issues, including changes in the expensing of stock options. He observes that "while conventional options may be on the way out, option-like leverage remains vibrant." Since it is option-like leverage that is the problem, a failure to address equity-based pay that mimics stock option incentives is a potentially major flaw in the rule.

We realize that the provision in Section _8(b) of the rule, which limits incentive compensation received to up to 150% of the target amount set at the beginning of the performance period, is also intended to restrict upside leverage in pay awards. We strongly support this provision in the rule. However, it is unclear to us whether covered institutions could in some way reset target amounts to preserve unbalanced incentives. We would also note that the 50% upside still represents significant leverage.

We urge the agencies to modify the Final Rule to place strict limits on the use of equity-based compensation that creates implicit option-type leverage and unbalanced upside incentives.

Issues Concerning Buy Outs of Deferred Compensation

It is a frequently the case that when employees move between firms, their old employer cancels their deferred bonus pay and their new employer compensates them for this loss in a lump sum payment. This buy out from the new employer effectively provides an acceleration of the deferred compensation. The UK PRA has discussed the ways in which such buy outs could undermine the incentives created by bonus deferral:[14]

> "The practice of buy-outs has the potential to undermine the effectiveness of the current remuneration rules. When a new employer buys-out an employee's cancelled bonus, the individual becomes insulated against the possibility of their awards being subject to ex-post risk adjustments through the application of either malus (the withholding or reduction of unpaid awards) or clawback (the recouping of paid awards). Through the practice of buy-outs, individuals can therefore effectively evade accountability for their actions."

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[13] Walker, David I., "The Way We Pay Now: Understanding and Evaluating Performance-Based Executive Pay", Boston Univ. School of Law, Law and Economics Research Paper No. 15-34 October 1, 2015. Available at SSRN: http://ssrn.com/abstract=2650532

[14] Bank of England, "News Release – Bank of England Proposes Tougher Rules on Bonus Buy-Outs", January 13, 2016, Available at http://www.bankofengland.co.uk/publications/Pages/news/2016/021.aspx .

The UK PRA has responded to this issue by proposing a requirement that pay continue to be held at risk even if it is bought out by a new employer. This requirement is implemented through a contract between the old and new employer requiring the new employer to reduce pay upon notification of cause by the old employer. The employee is protected from malicious or retaliatory behavior by the old employer through requirements that the old employer justify and document any such notification of cause, as well as a narrowing of the range of triggers for pay reduction as compared to those required for a current employee. Details of the proposal are included in a recent Consultative Paper.[15]

The Proposed Rule makes no mention of the issue of buy outs, nor does it appear to address it in any way. The Proposed Rule otherwise bans acceleration of deferred compensation but leaves the door open to such acceleration through buyouts connected to changes in employment. We recommend that the Agencies adopt a version of the UK PRA reforms described above in this area. Such requirements could only reach firms that the Agencies had jurisdiction over, but this would cover most of the financial sector.

In sum, while we support many elements of this Proposed Rule, we believe that modifications are necessary in order to truly realize the promise of Section 956 and eliminate incentives for inappropriate risk-taking that are created by Wall Street bonus pay. The effective deferral period should be lengthened, companies should be required to reduce unvested pay in case of significant misconduct, and claw back requirements must be strengthened to be effective. In addition, the Agencies should place additional restrictions on the structure of executive compensation to avoid the unbalanced upside incentives created by equity-based pay. Throughout this letter, we have provided specific recommendations for how such changes could be made in a targeted fashion that would preserve the basic structure of this rule and would not require a re-proposal. However, the issues are significant enough that we do not believe the rule will be effective unless key changes are made.

Thank you for the opportunity to comment on this Proposal. Should you have any questions, please contact Marcus Stanley, AFR's Policy Director, at marcus@ourfinancialsecurity.org or (202) 466-3672.

Sincerely,

Americans for Financial Reform

[15] Bank of England, Prudential Regulatory Authority, "Buy-Outs of Variable Remuneration", Consultation Paper CP 2/16, Available at http://www.bankofengland.co.uk/pra/Documents/publications/cp/2016/cp216.pdf