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February 12, 2010 Via E-Mail comments@FDIC.gov

Robert E. Feldman, Executive Secretary
Attention Comments,
Federal Deposit Insurance Corporation
550 17th Street N.W.
Washington, DC 20429

Dear Mr. Feldman:

Re: FIL-1-2010 - Incorporating Employee Compensation Criteria into the Risk Assessment System

The California Public Employees' Retirement System (CalPERS) welcomes the opportunity to provide comments to the Federal Deposit Insurance Corporation (FDIC) on its advance notice of proposal rulemaking regarding incorporating employee compensation criteria into the risk assessment system.

CalPERS is the largest state public pension system in the United States with approximately $197 billion under management. CalPERS provides retirement benefits to over 1.5 million public workers, retirees, and their families and beneficiaries. Acting as fiduciaries to the members of the system, the CalPERS Board of Administration and its staff invest the pension funds of its members over the long term throughout the global capital markets. CalPERS, which holds equity shares in more than 7,000 publicly-traded companies, views risk assessment as an issue of vital importance to all investors and thanks the FDIC for the opportunity to provide public comment.

CalPERS supports the FDIC exploring whether its risk-based assessment system could be changed to account for the risks posed by certain employee compensation programs. CalPERS believes establishing a risk-based assessment system that incorporates other factors such as employee compensation is relevant in assessing the probability that the Deposit Insurance Fund (DIF) will incur a loss from the failure of an insured depository institution. We believe the FDIC should consider incorporating a review of employee compensation criteria into its risk-based assessment system.

CalPERS agrees that clarifying the expectation and understanding of executive compensation criteria is the first step in assessing and adjusting risk-based deposit insurance assessment rates (risk-based assessment rates) to adequately compensate the DIF for the risks inherent in the design of certain compensation programs. CalPERS agrees the FDIC should seek to provide incentives for institutions to adopt compensation programs that align employees' interests with the long-term interests of the firm and its stakeholders.

CalPERS believes that compensation programs are one of the most powerful tools available to financial institutions to attract, retain, and motivate key employees to optimize operating performance, profitability and sustainable long-term shareowner return. Though, we also support the broad consensus that some compensation structures misalign incentives and induce imprudent risk taking within financial organizations. We believe some poorly designed compensation structures reward employees based on short-term results without full consideration of the longer-term risks to the firm. In so doing, they fail to align individual incentives with those of the firm's other stakeholders, including shareowners and the FDIC.

We agree that excessive and imprudent risk taking remains a contributing factor in financial institution failures and losses to the DIF, and also believe that to some extent these losses can be attributed to the incentives provided by poorly designed compensation programs. We support the FDIC's proposed steps through a risk-based assessment system provide incentives for institutions to aspire and adopt higher standards then what is required currently. With the above in mind we would suggest:

Effective Mechanism – Promotes Dialog

CalPERS believes shareowners should have an effective mechanism by which to periodically promote substantive dialogue, encourage independent thinking by the board, and stimulate healthy debate for the purpose of holding management accountable for performance through executive compensation programs. CalPERS fully supports that companies submit executive compensation policies to shareowners for non-binding approval on an annual basis to approve the compensation of executives.

Well-designed and Properly-Aligned Performance-Based Compensation

Executive compensation has always been an important topic to CalPERS, one which we have carefully monitored in our portfolio companies. The importance of executive compensation is highlighted with the quote from Timothy F. Geithner, Treasury Secretary on Wednesday, June 8, 2009, "The financial crisis had many significant causes, but executive compensation practices were a contributing factor. Incentives for short-term gains overwhelmed the checks and balances meant to mitigate against the risk of excess leverage." Time and time again, CalPERS has observed companies with extraordinary compensation packages (including high levels of base salary, non-executive compensation, perks, and severance packages) while exhibiting poor market performance. To this end, CalPERS has long been an advocate for executive compensation programs that are transparent and that align pay-for-performance.

CalPERS, as outlined in its Global Principles of Accountable Corporate Governance, believes well-designed compensation programs should be adequately disclosed and align management with the long-term economic interests of shareowners. We recommend the following:

Pay for Performance: Compensation should be driven predominantly by performance. The compensation committee should establish performance measures for executive compensation that are agreed to ahead of time and publicly disclosed. Performance measures applicable to all performance based awards (including annual and long-term incentive compensation) should reward superior performance — based predominantly on total stock return measures and key operational measures — at minimum reasonable cost and should reflect downside risk.

Compensation Committees: Compensation committees should review senior executive pay plans for unnecessary and excessive risk and provide annual descriptions and certifications regarding their evaluations and conclusions of risk assessment. The compensation committee should provide full disclosure of the performance goals used to determine annual and long-term incentive compensation. Also, the compensation committee should disclose annually to their shareowners how the executive compensation packages they have approved; align with its overall principles which contribute to long-term sustainable value. This type of disclosure will allow shareowners the necessary information to evaluate whether the compensation programs encourage excessive risk-taking. It is also the responsibility of the compensation committee to ensure that executive compensation programs are effective, reasonable and rational with respect to critical factors such as company performance, industry considerations and compensation paid to other employees inside the company.

External compensation consultants: To reduce potential conflicts of interest in the pay-setting process, the annual assessment of the compensation committee's advisers' independence should be disclosed, along with a description of the nature and dollar amounts of services that the company's management commissioned from the advisers and their firms.

Clawback Policy: Companies should recapture incentive payments that were made to executives on the basis of having met or exceeded performance targets during a period of fraudulent activity or a material negative restatement of financial results for which executives are found personally responsible.

Gross-ups: Senior executives should not receive gross-ups beyond those provided to all the company's employees.

Severance Payments: Executives should not be entitled to severance payments in the event of termination for poor performance, resignation under pressure, or failure to renew an employment contract. Company payments awarded upon death or disability should be limited to compensation already earned or vested.

Change-in-control Payments: Any provisions providing for compensation following a change-in-control event should be "double-triggered," stipulating that compensation is payable only: (1) after a control change actually takes place; and (2) if a covered executive's job is terminated because of the control change.

Deferred Compensation Plans: Investment alternatives offered under deferred compensation plans for executives should mirror those offered to employees in broad-based deferral plans. Above-market returns should not be applied to executive deferrals, and executives should not receive "sweeteners" for deferring cash payments into company stock.

Better Disclosure – Compensation Disclosure and Analysis (CD&A)

CalPERS advocates that all publicly-traded companies disclose the short-term and long-term risk decisions that executives made that year and how executive compensation packages align with those risk-taking decisions. Increased disclosure will allow investors to hold the Board to high accountability standards and require the Board to justify executive compensation package alignment with a pay-for-performance model.

Vesting Periods

Equity Grant Vesting Period: Equity grants should vest over a period of at least three years.

Equity Ownership and Holding

CalPERS believes equity ownership guidelines and holding requirements should be an integral component of company's equity plan and overall compensation philosophy. The compensation committee should ensure executives own and hold a significant portion of their equity-based compensation for a period beyond their tenure and a meaningful portion of executive pay should be equity-based.

Attestation

We would recommend that if firms are able to attest that their compensation programs include each of the best practices/ features listed above and as outlined in the advance notice of proposed rulemaking, that the FDIC might conclude a decreased risk to the DIF, and therefore would face a lower risk-based assessment rate than those firms that could not make such attestation. We agree with the proposed alternative that the FDIC could conclude that firms that cannot attest that their compensation programs include each of these features present an increased risk to the DIF, and therefore would face a higher risk-based assessment rate than those firms that do make such attestation.

<u>Size of Institution</u>

CalPERS believes the risk-based assessment rate and guidelines should apply to all insured depository institutions and the FDIC should not distinguish based on size.

Thank you for considering our comments. If you would like to discuss any of these points, please do not hesitate to contact me at (916) 795-4129.

Sincerely,

Mary Hartman Morris
Investment Officer

cc: Joseph A. Dear, Chief Investment Officer - CalPERS
Eric Baggesen, Senior Investment Officer - CalPERS
Anne Simpson, Senior Portfolio Manager – CalPERS