Reproposed Regulations Regarding Incentive Compensation at Financial Institutions Will Significantly Change the Structure of Incentive Compensation at Institutions with $1 Billion or More in Assets

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Nearly five years after they were first proposed, regulations with respect to incentive compensation arrangements of financial institutions have been reproposed under section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). These regulations implement the section 956 mandate that such arrangements not encourage inappropriate risks. The reproposed regulations will result in changes to many, if not most, incentive compensation plans at covered institutions (i.e., regulated financial institutions with assets over $1 billion).

While most commentary to date has focused on the rules applicable to entities with assets of $50 billion or more (Level 1 and Level 2 entities), the rules that affect Level 3 entities ($1 billion to $50 billion in assets) are also far reaching and will substantially affect the design and administration of their incentive compensation programs. In particular, it appears impermissible for any incentive compensation plan for any employee to provide payment based solely on quantitative criteria.

Since Level 3 entities greatly outnumber Level 1 and Level 2 entities, this summary primarily focuses on the rules applicable to them, but also provides a high level overview of the more prescriptive rules applicable to Level 1 and 2 entities (i.e., institutions with assets exceeding $50 billion).

The proposed regulations have a delayed effective date that will result in most cases in their not applying to compensation arrangements in place prior to 2019.

Background

Six federal agencies (the "Agencies")[1] have reproposed regulations[2] to implement section 956 of the Dodd-Frank Act. Section 956 reflected Congress's conclusion that the 2008 financial crisis resulted, at least in part, from compensation practices at financial institutions that encouraged overly risky behavior. The provision directs the Agencies to prohibit incentive-based compensation arrangements

[1] The Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the National Credit Union Administration (NCUA), the Federal Housing Finance Agency, and the Securities and Exchange Commission.

[2] Regulations were originally proposed in April 2011.

that encourage inappropriate risks by providing excessive compensation or that could lead to material financial loss. When final, these regulations may dramatically restructure incentive compensation arrangements at most covered financial institutions with $1 billion or more in assets. While section 956's impetus may have been a concern about potential bank failures, many financial institutions in addition to banks are potentially covered, including such entities as Federal savings associations, branches or agencies of foreign banks, bank holding companies, credit unions, registered brokers and dealers, investment advisers (which include private equity firms)[3], and Federal Home Loan Banks, among others.

The reproposed regulations[4] categorize financial institutions as Level 1, Level 2, and Level 3 institutions, depending on asset size. Level 3 institutions are those with assets of $1 billion or more but less than $50 billion, Level 2 institutions have assets from $50 billion to less than $250 billion, and Level 3 institutions have assets of $250 billion or more.

The most detailed provisions of the regulations only apply to Level 1 and Level 2 financial institutions, and these are the portions that have generated the most commentary. The number of Level 1 and Level 2 financial institutions is, however, only a small fraction of the financial institutions with assets of $1 billion or more. For example, as of the end of 2015, only 35 of the 558 U.S. chartered commercial banks with consolidated assets of $1 billion or more were Level 1 and Level 2 banks. Accordingly, it is useful to focus on the rules that affect Level 3 financial institutions, since these are the rules relevant to over 90% of the financial institutions.

An appendix to this memorandum (pages 11-12) briefly summarizes plan design rules applicable only to Level 1 and Level 2 institutions, which warrant summary due to the systemic importance of these larger institutions and the fact that the Agencies indicate at several points in the Supplementary Information accompanying the regulations that they are considering whether the final regulations should extend some of the Level 1 and Level 2 rules to Level 3 entities. ***To be clear, however, these proposed prescriptive requirements such as minimum deferrals, limits on incentive plan leverage, clawbacks, limits on the use of stock options, restrictions on equity acceleration, etc., do not apply to Level 3 covered institutions.***[5]

Although the Agencies have taken almost five years to repropose the regulations, the public has been given a short period of time to comment on them, with comments due by July 22, 2016. Since the regulations may have very important implications for the design and administration of incentive plans at all covered institutions, we encourage these institutions to submit comments to their respective regulators.

The final regulations will be effective on the first day of the calendar quarter at least 540 days (18 months) after the final rule is published in the Federal Register. For example, if the regulations are

[3] With respect to the coverage of investment advisers, it is noteworthy that the asset test in the SEC reproposed regulations does not include non-proprietary assets, which will substantially decrease the number of investment advisers to which section 956 applies.
[4] For ease of reference, this presentation will refer to the reproposed regulations as the "regulations."
[5] There is one potential exception. The regulations reserve to the Agencies authority to apply to Level 3 entities with $10 billion or more in assets some or all of the provisions applicable to Level 1 and 2 entities, if it is determined that the Level 3 entity's complexity or operations are consistent with those of Level 1 or 2 entities.

finalized December 1, 2016, the effective date will be July 1, 2018. Since incentive compensation arrangements are grandfathered if their performance period began before the effective date, commentators expect that the first compensation arrangements to be affected will be those commencing in 2019.

Structurally, six sets of regulations are being proposed, one set by each Agency. The numbering and language in each set of regulations is generally substantially identical, so, for example, NCUA regulations section 751.4 is identical to section 42.4 of the OCC regulations. We will refer to this section of the regulations as "section 4." Section 4 of the proposed regulations is the focal point of this memo since it outlines the incentive compensation design related rules applicable to all covered institutions.

Section 4—Prohibitions Applicable to Covered Institutions with $1 Billion or More in Assets

The section 4 rules apply to Level 1, 2, and 3 entities and address (1) the magnitude of employee compensation, (2) necessary design features in incentive compensation, (3) administrative processes with respect to incentive compensation, and (4) recordkeeping requirements.[6] ***As discussed below, the rules with respect to design are the most far-reaching, and as written, contain the provisions that will require a re-evaluation of most incentive plans***.

Our description of the rules will use the nomenclature of the regulations, which uses the terms "incentive-based compensation arrangement," "incentive-based compensation-plan," and "incentive-based compensation program" to refer respectively, to an individual agreement providing incentive-based compensation, a plan document providing incentive-based compensation to one or more employees, and the entity's "framework for incentive-based compensation that governs incentive-based compensation and establishes related controls." To be clear, the regulations state that incentive-based compensation means "any variable compensation, fees or benefits that serve as an incentive or reward for performance."

The first thing to note about section 4 is that it appears to literally apply to all incentive-based compensation arrangements and plans, regardless of the degree to which the employees subject to the arrangement could impose a material financial risk on the entity. Section 4(a) prohibits "any" incentive-based compensation arrangement that encourages inappropriate risks by providing an employee with excessive compensation or that could lead to a material financial loss. While the reference to "material financial loss" would appear to indicate that arrangements involving small amounts that cannot create a "material" financial loss should be exempt from the regulations, section 4(c) states that any arrangement encourages inappropriate risks that could lead to material loss unless it contains the design features set forth in the regulations. A plan that provides additional compensation to the manager of a small branch of a bank based on the volume of new accounts thus appears just as subject to the regulations as the incentive compensation arrangements of the bank's CEO.

Excessive Compensation

Section 4(b) implements the prohibition on excessive compensation with general language that appears unlikely to require modification in current compensation practices. Compensation is deemed

[6] In addition to employees, the rules in section 4 also apply to members of a company's board of directors.

“excessive” if unreasonable or disproportionate to the value of services rendered after taking into account “relevant” factors, including the total value of compensation paid to the employee, the employee’s compensation history and that of other individuals with comparable expertise, the financial condition of the entity, the compensation practices of comparable entities, the cost and benefit of post-employment benefits, and any connection between the employee and “any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse” with regard to the entity.

All of these factors involve considerations that most HR departments and compensation committees routinely consider, with the possible exception of the last factor requiring consideration of a variety of bad acts by the employee. Since the Level 1 and 2 regulations contain specific language authorizing clawbacks of compensation already paid in the event of later discovered bad acts,[7] section 4(b) was obviously not mandating a general clawback provision in the case of bad acts, but exactly what it is requiring is not clear.

Plan Design Requirements

Section 4(d) states that an incentive-based compensation arrangement will not be considered to appropriately balance risk and reward unless three requirements are met:

> (1) The arrangement includes financial and non-financial measures of performance, including considerations of risk-taking, that are relevant to the employee’s role within the organization and to the type of business in which the employee is engaged and that are appropriately weighted to reflect risk-taking;
>
> (2) The arrangement is designed to allow non-financial measures of performance to override financial measures of performance when appropriate in determining incentive-based compensation; and
>
> (3) Any amount to be awarded under the arrangement is subject to adjustment to reflect actual losses, inappropriate risks taken, compliance deficiencies, or other measures or aspects of financial and non-financial performance.

Each of these provisions raises questions.

Section 4(d)(1). There are at least three aspects of section 4(d)(1) that will require rewriting of many, if not most, incentive-based compensation arrangements:

1. ***Each arrangement will need to contain non-financial criteria.*** For instance, a bonus plan based solely on net income would not be permissible. Nor would an incentive-based compensation arrangement based solely on volume, such as an arrangement based on the volume of loans, fees, or deposits. Would the inclusion of a multi-year credit quality measure cause the arrangement to pass muster because credit quality is a “non-financial” measure? This does not appear clear from the Supplementary Information. While the Supplementary Information refers to “assessments of a covered person’s risk-taking or compliance with limits on risk-taking” as non-financial

[7] Section 7(c) provides a seven-year clawback period for certain types of misconduct, fraud, or intentional misrepresentations.

measures, it seems odd to conclude that, if the credit quality measure were mathematically calculated, it would still be a non-financial measure.

The requirement to include non-financial measures will be particularly troubling in the case of long-term incentive plans. Typically, the metrics for long-term plans are only financial metrics (net income, relative total shareholder return, return on assets, etc.). One of the reasons for this is that the inclusion of non-financial metrics, many of which are not subject to quantification, may make it impossible to achieve grant date accounting for stock-based long-term incentive plans.[8]

The required inclusion of non-financial criteria makes it particularly important to determine which arrangements constitute incentive-based compensation. Stock options and stock appreciation rights appear clearly covered. An important question is whether restricted stock and restricted stock units (RSUs) are also considered incentive-based compensation. There is no direct answer to this important question in the regulations and the Supplementary Information contains language that can be read to point in both directions. At one point the Supplementary Information states that "compensation, fees, or benefits . . . that are awarded solely for, and the payment of which, is tied solely to continued employment," is not incentive-based compensation. At another point the regulations state that dividends and appreciation on stock owned outright is not incentive-based compensation, but that stock is not owned outright while still subject to vesting. Taken together, these two provisions can be read to indicate that, in the case of restricted stock or RSUs, while an amount equal to the initial-share price might not be incentive-based compensation, any dividends or stock appreciation is covered. How this interpretation would work in practice is unclear.

2. ***Section 4(d)(1) appears to require that the non-financial criteria cannot simply be generic, but must be measures that are "relevant to a covered person's role within the entity and the type of business in which the covered person is engaged."*** This requirement of individual tailoring could impose a substantial burden on companies accustomed to a more general measure of employee performance. For example, a bonus plan might contain language providing that an employee's share of an annual bonus is determined by (1) first increasing or decreasing the target bonus by a factor reflecting financial outcomes (for example, the target is modified depending on the entity's performance against a net income goal), and (2) then further adjusting the bonus by a performance rating based on an overall evaluation of the employee. It is not at all clear that this type of structure would be sufficient any longer, as opposed to having to state for each employee (or class of employees) the relevant non-financial criteria applicable to that employee or class of employees.

[8] Grant-date accounting refers to accounting for the expense of shares paid under a long-term incentive award on the basis of their value at the time of grant, rather than the time of payment. This can result in a significant reduction in expense when the price of the stock has increased.

The Supplementary Information does acknowledge the obvious fact that some non-financial measures will not be susceptible to quantification,[9] but indicates the Agencies' view that in some cases reliable quantitative measures of risk and risk outcomes will be available.

3. ***Section 4(d)(1) requires that the non-financial criteria be "appropriately weighted."*** Simply saying that the non-financial criteria shall be considered and that the compensation committee can reduce the otherwise applicable payout by an appropriate amount would appear insufficient. Instead, the regulations appear to contemplate that the non-financial component be an explicit portion of the bonus, for example a provision that 25% of the target bonus is based on non-financial measures.

Commentators have noted that the new plan design requirements may prove particularly hard to implement in the case of private equity firms that compensate employees with carried interests or other incentive arrangements based on fund performance. A private equity firm with assets of $1 billion or more (for this purpose, non-proprietary assets are not included) would appear to be typically covered because the new rules apply to investment advisers, as defined under the Investment Advisers Act of 1940, whether or not the adviser is required to register under the act. For example, a carried interest might be awarded to an employee when a fund is formed and would entitle the employee to a share of the profits from the sale of portfolio investments. Typically no adjustments are made after the award of the interest, either for employee performance or any other factors. Assuming these types of arrangements are incentive-based compensation, it would appear that significant design changes will be necessary in order for them to comply with the regulations.

Section 4(d)(2). The requirement that non-financial measures can override financial measures is not readily reconcilable with the requirement of "appropriate weighting" in section 4(d)(1), since section 4(d)(2) suggests that, at least in some cases, the non-financial measure can account for 100% of the bonus, that is, extremely poor performance on a non-financial measure can reduce the bonus to $0. This ability for non-financial measures to override financial measures reinforces the concern that all long-term incentive-based compensation will be subject to variable accounting.

Section 4(d)(3). The final requirement that amounts to be awarded are subject to adjustment to reflect actual losses, inappropriate risks taken, etc., appears somewhat redundant since section 4(d)(2) already appears to provide that non-financial criteria can reduce the otherwise payable bonus to $0. Section 7(b) describes in detail how the downward adjustment process is to be implemented for Level 1 and 2 entities, and it is expected that Level 3 entities will use the specifics in section 7(b) as a template for designing their program. In particular, the Supplementary Information states that the following language would be adequate to subject incentive-based compensation to the downward adjustment process, so Level 3 entities might want to use this language in their incentive-based compensation program:

[9] As an example of permissible non-financial measures, the regulations use the example of a senior executive officer whose non-financial measures include "the extent to which the senior executive officer promoted sound risk management practices or provided strategic leadership through a difficult merger."

> "If an employee improperly or with gross negligence fails to identify, raise, or assess, in a timely manner and as reasonably expected, risks and/or concerns with respect to risks material to the institution or its business activities. . . ."

The regulations acknowledge that there is no precise method to determine downward adjustments. Section 7(b)(4) lists some of the factors that might be relevant in a particular situation, including such factors as the employee's intent, level of participation, etc.

Will section 4(d) make it impossible for incentive-based compensation to be deductible as performance-based compensation under Tax Code section 162(m)? Generally speaking, in the case of executive officers named in the proxy statement summary compensation table, compensation in excess of $1 million is not deductible unless it is performance-based compensation. One of the requirements of performance-based compensation is that it be payable pursuant to pre-established, objective performance goals. A goal is stated to be objective only if "a third party having knowledge of the relevant facts could determine whether the goal is met." It is not at all clear how or whether the requirement of specific, objective criteria can be reconciled with section 4(d)'s apparent requirement that non-financial criteria have the potential ability to reduce incentive-based compensation payouts to zero. Today some companies that use non-quantifiable metrics in their incentive compensation arrangements comply with section 162(m) through the use of negative discretion (as permitted under the regulations). A plan might provide, for example, that the maximum bonus is payable if certain financial criteria are met, but the compensation committee retains the complete discretion to reduce or eliminate the amount otherwise payable based on non-financial criteria. Because the reduction for non-financial criteria must be discretionary to comply with section 162(m), it is not at all clear that this approach can be reconciled with the required adjustments for non-financial criteria mandated by section 4(d).

Administrative Processes

There are three rules in the regulations pertaining to the administration of incentive compensation. Section 4(c) provides that every incentive compensation arrangement must be:

- "compatible with effective risk management and controls" and
- "supported by effective governance."

The third mandate in section 4(e) imposes specific duties on the board of directors or a committee of the board (because we expect these 4(e) duties will typically be carried out by the compensation committee of the board, the discussion of 4(e) will just refer to the compensation committee).

Effective risk management and controls. With respect to the first of these requirements, section 9 lists specific risk management and control requirements applicable to Level 1 and 2 entities. While the Supplementary Information indicates that less extensive controls may suffice at Level 3 entities, there is no specific guidance with regard to what procedural reduction might be permitted. This suggests that Level 3 entities at least examine the section 9 requirements as a starting point in designing their systems. The section 9 requirements are extensive:

- The entity must have a risk management framework that (1) is independent of any lines of business, (2) includes an independent compliance program that provides for internal controls, testing, monitoring, and training with written policies and procedures consistent with section 11 of the regulations,[10] and (3) is commensurate with the size and complexity of the organization;

- Individuals engaged in control functions must (1) have the authority to influence the risk-taking of the business areas they monitor and (2) be compensated in accordance with the achievement of performance objectives linked to their control functions and independent of the performance of the business areas they monitor; and
- There must be independent monitoring of (1) all incentive-based compensation plans to identify whether incentives appropriately balance risk and reward; (2) events relating to forfeiture and downward adjustment reviews in order to determine that they have been implemented consistent with the regulations,[11] and (3) compliance of the incentive-based compensation program with the entity's policies and procedures.

One particularly noteworthy element of section 9 is its requirement that persons engaged in control functions be compensated independent of the performance of the business areas over which they exercise a control function. What makes the scope of this limitation concerning is that the regulations define control function broadly:

> "'Control function' means a compliance, risk management, internal audit, legal, human resources, accounting, financial reporting, or finance role responsible for measuring, monitoring, or controlling risk-taking."

This broad language can be read to apply to individuals with only a modest role with respect to risk-taking. Does this mean, for example, that employees in the legal department involved in plan drafting or in the HR department involved in calculating bonus plan payouts may need to be excluded from the entity's general bonus plan if the general bonus plan uses financial measures? Further, if taken literally, section 9 implies that senior control function roles, such as the chief risk officer, head of audit, chief credit officer, head of human resources, general counsel, etc., may no longer participate in the same incentive plans available to the CEO and other senior officers if these incentive plans measure enterprise wide financial results, which is counter to most officer incentive arrangements allowing participation on a similar basis across the officer/executive population.

<u>Effective Governance</u>. Again, while there is no specific guidance for Level 3 entities with respect to effective risk management and controls, section 10 of the regulations contains specific guidance for Level 1 and 2 entities, and the Supplementary Information indicates some lighter form of section 10 may be appropriate for Level 3 entities. The section 10 requirements are:

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[10] Section 11 is, in turn, a very detailed list of features that must be set forth in writing with respect to an incentive-based compensation program. At a minimum they appear to require written documentation of every aspect of the incentive compensation process, including records of all decisions, the basis for all decisions, and the persons and their roles in all decisions.

[11] As previously noted, downward adjustment reviews concern events that occur during the performance period for an incentive-based compensation arrangement that may merit downward adjustment in the amount to be paid out. "Forfeiture reviews" relate to the forfeiture of compensation that has been earned but the payout of which is being delayed during a deferral period—this concept only pertains to Level 1 and Level 2 entities, since there are no mandatory deferral periods applicable to incentive-based compensation arrangements at Level 3 entities.

- A compensation committee composed of independent directors;
- The compensation committee obtains:
    - Input from the risk and audit committees of the board (or groups performing similar functions) and the entity's risk management function on the effectiveness of the risk measures and adjustments used to balance risk and reward;
    - An annual (or more frequent) written assessment of the effectiveness of the incentive-based compensation program in providing risk-taking incentives consistent with the entity's risk profile, which assessment is developed by management with input from the risk and audit committees of the board (or groups performing similar functions) and the entity's risk management and credit functions; and
    - An annual (or more frequent) independent written assessment of the consistency of the entity's incentive-based compensation program with the entity's risk profile, developed independently by the entity's audit or risk management function.

<u>Compensation Committee</u>. The compensation committee must:

- Conduct oversight of the incentive-based compensation program;
- Approve the incentive-based compensation arrangements for senior executive officers (SEOs), including the amount of all awards and payouts; and
- Approve any material exceptions or adjustments to incentive-based compensation policies or arrangements for SEOs.

Since most compensation committees are used to making compensation decisions for the entity's executive officers, these requirements may not appear to represent much of a change from current practice. The regulations, however, appear to define SEO more broadly than it is defined in the Securities Exchange Act of 1934, so, to the extent a compensation committee has been directly involved in decision making only for Exchange Act executive officers, it needs to expand its purview. By way of illustrating the greater scope of the SEO definition, it includes the chief investment officer, chief legal officer, chief lending officer, chief compliance officer, chief audit executive, chief credit officer, chief accounting officer, and the heads of any major business line or control function—depending on the circumstances, some of these individuals would not be considered executive officers under the Exchange Act rules.

<u>Recordkeeping Requirements</u>

Relevant records must be preserved for seven years by all covered institutions. The records must be adequate to allow the Agencies to determine compliance with the regulations and must, at a minimum, include copies of all plans, a record of who is subject to each plan, and a "description of how the incentive-based compensation program is compatible with effective risk management and controls."

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General questions about this summary can be addressed to:

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Copies of this summary and other published materials are available on our website at www.fwcook.com.

APPENDIX

GENERAL OUTLINE OF THE ADDITIONAL PLAN DESIGN REQUIREMENTS APPLICABLE TO LEVEL 1 & 2 COVERED INSTITUTIONS:

Enhanced Requirements Apply To Two Groups of Covered Persons

Senior Executive Officers (SEOs)

Covered person holding title of or performing function of: President, CEO, COO, CFO, executive chairman, chief risk officer, chief legal officer, chief credit officer, chief audit executive, chief investment officer, chief lending officer, chief compliance officer, chief accounting officer, or head of a major business line or control function

Significant Risk-Taker (SRTs)

3 steps to determine SRTs:

Covered Person whose compensation is **at least 1/3rd incentive-based** and meets one of two tests:

1. **Relative Compensation Test**: Highest paid 5% (Level 1) or 2% (Level 2) of all covered persons (excluding SEOs) and/or:
2. **Exposure Test**: Can commit or expose 0.5% or more of a covered institution's capital

Summary of Level 1 & 2 Enhanced Requirements

	Level 1	Level 2
Deferral Amount (% of incentive compensation)	• SEOs: 60% • SRTs: 50%	• SEOs: 50% • SRTs: 40%
Deferral Period (following performance period)	• Less than 3-year performance period: 4 years • 3-year or longer performance period: 2 years	• Less than 3-year performance period: 3 years • 3-year or longer performance period: 1 year
Clawback (years from end of vesting)	7 years (applicable to "incentive-based compensation")	
Vesting During Deferral Period	Vesting must begin at least one year following the end of the performance period with no vesting faster than on a pro rata annual basis	
Acceleration of Incentive-Based Payments	Only permissible in cases of death and disability (includes equity)	
Limitation on Leverage (maximum % of target)	SEOs: 125% SRTs: 150%	
Performance Measurement Approach	Incentive plans measuring only relative performance are not permitted, but relative measurement allowed if coupled with absolute measurement	
Limitation on Stock Options	Of the total amount of incentive compensation used to determine the minimum deferral, options or SARs can only count up to 15% of the total	

Downward Adjustment, Forfeiture and Clawbacks

The proposed rules require Level 1 & 2 institutions to structure incentive plans so that payments are subject to downward adjustment, forfeiture and recovery (clawback)

Performance Period	Deferral Period	Post-Deferral
Downward Adjustment	**Forfeiture**	**Clawback**
Up to 100% of potential incentive plan award subject to reduction	During the deferral period all deferred awards must be subject to forfeiture	Once vested, all incentive plan awards are subject to clawback provisions
Time Horizon: Length of performance period	Time Horizon: 1 to 4 years	Time Horizon: 7 years

From the end of the performance period until the end of the post-deferral clawback period, a portion of a SEO/SRT's incentive plan award is subject to risk for 8-11 years depending on institution level and type of covered person

Questions/Implications/Concerns:	
• May hinder ability to recruit and retain qualified talent, especially when recruiting from outside the financial services industry	• Vesting treatment of equity upon or following a change-in-control must be revisited to address acceleration prohibition
• Equity based awards likely subject to variable accounting due to downward adjustment, forfeiture and clawback requirements	• Potential for increases to non-incentive based compensation elements (salary and time-based restricted stock), resulting in reduction of performance-oriented plans and alignment with shareholders?
• Discretionary approach to incentive plan award payouts at odds with proxy advisory group expectations	• Will reduction in leverage affect goal setting (i.e. should performance goal resulting in payout of 125% require the same amount of "stretch" as the former 200% goal)?
• Increases to incentive plan target opportunities possible to reflect lack of upside leverage and deferral requirements	• Could see more scorecard based incentive plans to address financial and non-financial metric mandate
• Will time-based restricted stock remain an element/component of the "normal" LTI grant or will the RSU grant value be transitioned to the annual incentive plan so that amount would be subject to annual performance and therefore be eligible to satisfy deferral requirements, thereby shielding a portion of the annual cash payout from deferral	