

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2009-0622; Directorate Identifier 2009-CE-034-AD]

RIN 2120-AA64

**Airworthiness Directives; Pilatus Aircraft Ltd. Models PC-6, PC-6-H1, PC-6-H2, PC-6/350, PC-6/350-H1, PC-6/350-H2, PC-6/A, PC-6/A-H1, PC-6/A-H2, PC-6/B-H2, PC-6/B1-H2, PC-6/B2-H2, PC-6/B2-H4, PC-6/C-H2, and PC-6/C1-H2 Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Findings of corrosion, wear and cracks in the upper wing strut fittings on some PC-6 aircraft have been reported in the past. It is possible that the spherical bearing of the wing strut fittings installed in the underwing can be loose in the fitting or cannot rotate because of corrosion. In this condition, the joint cannot function as designed and fatigue cracks may then develop. Undetected cracks, wear and/or corrosion in this area could cause failure of the upper attachment fitting, leading to failure of the wing structure and subsequent loss of control of the aircraft.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by August 7, 2009.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

#### FOR FURTHER INFORMATION CONTACT:

Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329-4059; *fax:* (816) 329-4090.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2009-0622; Directorate Identifier 2009-CE-034-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each

substantive verbal contact we receive about this proposed AD.

#### Discussion

On September 13, 2007, we issued AD 2007-19-14, Amendment 39-15205 (72 FR 53920; September 21, 2007), which superseded AD 2007-15-09, Amendment 39-15138 (72 FR 41436; July 30, 2007), issued on July 19, 2007. AD 2007-15-09 superseded AD 2007-03-08, Amendment 39-14919 (72 FR 4635; February 1, 2007), issued January 24, 2007. Those ADs required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2007-19-14, Pilatus has developed new wing strut fittings that require repetitive visual and eddy current inspections. In addition, fatigue test results show the eddy current repetitive inspection interval for the old wing strut fittings can be extended to 1,100 hours time-in-service (TIS) or 12 calendar months, whichever occurs first.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2007-0241R3, dated May 6, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Findings of corrosion, wear and cracks in the upper wing strut fittings on some PC-6 aircraft have been reported in the past. It is possible that the spherical bearing of the wing strut fittings installed in the underwing can be loose in the fitting or cannot rotate because of corrosion. In this condition, the joint cannot function as designed and fatigue cracks may then develop. Undetected cracks, wear and/or corrosion in this area could cause failure of the upper attachment fitting, leading to failure of the wing structure and subsequent loss of control of the aircraft.

To address this problem, FOCA published AD TM-L Nr. 80.627-6/Index 72-2 and HB-2006-400 and EASA published AD 2007-0114 to require specific inspections and to obtain a fleet status. Since the issuance of AD 2007-0114, the reported data proved that it was necessary to establish and require repetitive inspections.

EASA published Emergency AD 2007-0241-E to extend the applicability and to require repetitive eddy current and visual inspections of the upper wing strut fitting for evidence of cracks, wear and/or corrosion and examination of the spherical bearing and replacement of cracked fittings. Collected data received in response to Emergency AD 2007-0241-E resulted in the issuance of EASA AD 2007-0241R1 that permitted

extending the intervals for the repetitive eddy current and visual inspections from 100 Flight Hours (FH) to 300 FH and from 150 Flight Cycles (FC) to 450 FC, respectively. In addition, oversize bolts were introduced by Pilatus PC-6 Service Bulletin (SB) 57-005 R1 and the fitting replacement procedure was adjusted accordingly.

Based on fatigue test results, EASA AD 2007-0241R2 was issued to extend the repetitive inspection interval to 1 100 FH or 12 calendar months, whichever occurs first, and to delete the related flight cycle intervals and the requirement for the "Mild Corrosion Severity Zone". In addition, some editorial changes have been made for reasons of standardization and readability.

Revision 3 of this AD refers to the latest revision of the PC-6 Aircraft Maintenance Manual (AMM) Chapter 5 limitations which includes the same repetitive inspection intervals and procedures already mandated in the revision 2 of AD 2007-0241. Besides the inspections, the latest revision of the PC-6 AMM contains the replacement procedures for the fittings.

Additionally, it is possible to replace the wing strut fitting with a new designed wing strut fitting. With this optional part replacement, in the repetitive inspection procedure the 1 100 FH interval is deleted so that only calendar defined intervals of inspections remain applicable.

You may obtain further information by examining the MCAI in the AD docket.

#### Relevant Service Information

Pilatus Aircraft Ltd. has issued Pilatus Aircraft Ltd. Pilatus PC-6 Service Bulletin No. 57-005, REV No. 2, dated May 19, 2008; and Chapter 57-00-02 of Pilatus Aircraft Ltd. Pilatus PC-6 Aircraft Maintenance, dated November 30, 2008 (referenced as revision 9 in EASA AD No.: 2007-0241R3). The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

#### FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

#### Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in

general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

#### Costs of Compliance

We estimate that this proposed AD will affect 50 products of U.S. registry. We also estimate that it would take about 7 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$28,000, or \$560 per product.

In addition, we estimate that any necessary follow-on actions would take about 30 work-hours and require parts costing \$5,000, for a cost of \$7,400 per product. We have no way of determining the number of products that may need these actions.

#### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the

distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39-15205 (72 FR 53920; September 21, 2007), and adding the following new AD:

**Pilatus Aircraft Ltd.:** Docket No. FAA-2009-0622; Directorate Identifier 2009-CE-034-AD.

#### Comments Due Date

- (a) We must receive comments by August 7, 2009.

#### Affected ADs

- (b) This AD supersedes AD 2007-19-14, Amendment 39-15205 (72 FR 53920; September 21, 2007).

#### Applicability

- (c) This AD applies to Models PC-6, PC-6-H1, PC-6-H2, PC-6/350, PC-6/350-H1, PC-6/350-H2, PC-6/A, PC-6/A-H1, PC-6/A-H2, PC-6/B-H2, PC-6/B1-H2, PC-6/B2-H2, PC-6/B2-H4, PC-6/C-H2, and PC-6/C1-H2 airplanes, manufacturer serial numbers (MSN) 101 through 999 and MSN 2001 through 2092, certificated in any category.

**Note 1:** These airplanes are also identified as Fairchild Republic Company PC-6 airplanes, Fairchild Industries PC-6 airplanes, Fairchild Heli Porter PC-6 airplanes, or Fairchild-Hiller Corporation PC-6 airplanes.

**Subject**

(d) Air Transport Association of America (ATA) Code 57: Wings.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states:

Findings of corrosion, wear and cracks in the upper wing strut fittings on some PC-6 aircraft have been reported in the past. It is possible that the spherical bearing of the wing strut fittings installed in the underwing can be loose in the fitting or cannot rotate because of corrosion. In this condition, the joint cannot function as designed and fatigue cracks may then develop. Undetected cracks, wear and/or corrosion in this area could cause failure of the upper attachment fitting, leading to failure of the wing structure and subsequent loss of control of the aircraft.

To address this problem, FOCA published AD TM-L Nr. 80.627-6/Index 72-2 and HB-2006-400 and EASA published AD 2007-0114 to require specific inspections and to obtain a fleet status. Since the issuance of AD 2007-0114, the reported data proved that it was necessary to establish and require repetitive inspections.

EASA published Emergency AD 2007-0241-E to extend the applicability and to require repetitive eddy current and visual inspections of the upper wing strut fitting for evidence of cracks, wear and/or corrosion and examination of the spherical bearing and replacement of cracked fittings. Collected data received in response to Emergency AD 2007-0241-E resulted in the issuance of EASA AD 2007-0241R1 that permitted extending the intervals for the repetitive eddy current and visual inspections from 100 Flight Hours (FH) to 300 FH and from 150 Flight Cycles (FC) to 450 FC, respectively. In addition, oversize bolts were introduced by Pilatus PC-6 Service Bulletin (SB) 57-005 R1 and the fitting replacement procedure was adjusted accordingly.

Based on fatigue test results, EASA AD 2007-0241R2 was issued to extend the repetitive inspection interval to 1 100 FH or 12 calendar months, whichever occurs first, and to delete the related flight cycle intervals and the requirement for the "Mild Corrosion Severity Zone". In addition, some editorial changes have been made for reasons of standardization and readability.

Revision 3 of this AD refers to the latest revision of the PC-6 Aircraft Maintenance Manual (AMM) Chapter 5 limitations which includes the same repetitive inspection intervals and procedures already mandated in the revision 2 of AD 2007-0241. Besides the inspections, the latest revision of the PC-6 AMM contains the replacement procedures for the fittings.

Additionally, it is possible to replace the wing strut fitting with a new designed wing strut fitting. With this optional part replacement, in the repetitive inspection procedure the 1 100 FH interval is deleted so that only calendar defined intervals of inspections remain applicable.

**Actions and Compliance**

(f) Unless already done, do the following actions:

(1) *For airplanes that have not had both wing strut fittings replaced within the last*

*100 hours time-in-service (TIS) before September 26, 2007 (the effective date of AD 2007-19-14) or have not been inspected using an eddy current inspection method following Pilatus Aircraft Ltd. Pilatus PC-6 Service Bulletin No. 57-004, dated April 16, 2007, within the last 100 hours TIS before September 26, 2007 (the effective date of AD 2007-19-14):* Before further flight after September 26, 2007 (the effective date of AD 2007-19-14), visually inspect the upper wing strut fittings and examine the spherical bearings following the Pilatus Aircraft Ltd. Pilatus PC-6 Service Bulletin No. 57-005, REV No. 2, dated May 19, 2008.

(2) *For all airplanes:* Within 25 hours TIS after September 26, 2007 (the effective date of AD 2007-19-14), or within 30 days after September 26, 2007 (the effective date of AD 2007-19-14), whichever occurs first, visually and using eddy current methods, inspect the upper wing strut fittings and examine the spherical bearings following Pilatus Aircraft Ltd. Pilatus PC-6 Service Bulletin No. 57-005, REV No. 2, dated May 19, 2008.

(3) After doing the inspection specified in paragraph (f)(2) of this AD or replacing the upper wing strut fitting, repetitively do the following inspections:

(i) *For all airplanes:* At intervals not to exceed every 3 calendar months visually inspect the upper wing strut fittings and examine the spherical bearings following Chapter 57-00-02 of Pilatus Aircraft Ltd. Pilatus PC-6 Aircraft Maintenance Manual, dated November 30, 2008 (referenced as revision 9 in EASA AD No.: 2007-0241R3). For airplanes equipped with wing strut fitting part number (P/N) 6102.0041.00, P/N 111.35.06.055, P/N 111.35.06.056, P/N 111.35.06.184, P/N 111.35.06.185, or P/N 111.35.06.186, you may also do these inspections following Pilatus Aircraft Ltd. Pilatus PC-6 Service Bulletin No. 57-005, REV No. 2, dated May 19, 2008.

(ii) *For airplanes equipped with wing strut fitting P/N 6102.0041.00, P/N 111.35.06.055, P/N 111.35.06.056, P/N 111.35.06.184, P/N 111.35.06.185, or P/N 111.35.06.186:* At intervals not to exceed every 1,100 hours TIS or 12 calendar months, whichever occurs first, visually and using eddy current methods, inspect the upper wing strut fittings and examine the spherical bearings following Pilatus Aircraft Ltd. Pilatus PC-6 Service Bulletin No. 57-005, REV No. 2, dated May 19, 2008, or Chapter 57-00-02 of Pilatus Aircraft Ltd. Pilatus PC-6 Aircraft Maintenance Manual, dated November 30, 2008 (referenced as revision 9 in EASA AD No.: 2007-0241R3).

(iii) *For airplanes equipped with wing strut fitting P/N 111.35.06.193, P/N 111.35.06.194, or P/N 111.35.06.195:* At intervals not to exceed every 12 calendar months, visually and using eddy current methods, inspect the upper wing strut fittings and examine the spherical bearings following Chapter 57-00-02 of Pilatus Aircraft Ltd. Pilatus PC-6 Aircraft Maintenance Manual, dated November 30, 2008 (referenced as revision 9 in EASA AD No.: 2007-0241R3).

(4) You may also take "unless already done" credit for any inspection specified in paragraph (f)(1), (f)(2), or (f)(3) of this AD if done before the effective date of this AD

following Pilatus Aircraft Ltd. Pilatus PC-6 Service Bulletin No. 57-005, dated August 30, 2007; or Pilatus Aircraft Ltd. Pilatus PC-6 Service Bulletin No. 57-005, REV No. 1, dated November 19, 2007.

(5) *For all airplanes:* If during any inspection required by paragraph (f)(1), (f)(2), or (f)(3) of this AD you find the following conditions, before further flight, replace the specified part following Chapter 57-00-02 of Pilatus Aircraft Ltd. Pilatus PC-6 Aircraft Maintenance Manual, dated November 30, 2008 (referenced as revision 9 in EASA AD No.: 2007-0241R3):

(i) Cracks in the upper wing strut fitting;

or

(ii) The spherical bearing is not in conformity.

(6) *For all airplanes:* Replacement of one or both upper wing strut fitting(s) does not terminate the repetitive inspection specified in paragraph (f)(3) of this AD.

**FAA AD Differences**

**Note:** This AD differs from the MCAI and/or service information as follows: No differences.

**Other FAA AD Provisions**

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):*

(i) The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; fax: (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(ii) AMOCs approved for AD 2007-19-14 are not approved for this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

**Related Information**

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2007-0241R3, dated May 6, 2009; Pilatus Aircraft Ltd. Pilatus PC-6 Service Bulletin No. 57-005, REV No. 2, dated May 19, 2008; Pilatus Aircraft Ltd. Pilatus PC-6 Service Bulletin No. 57-005, REV No. 1, dated November 19, 2007; Pilatus Aircraft Ltd. Pilatus PC-6

Service Bulletin No. 57-005, dated August 30, 2007; Pilatus Aircraft Ltd. Pilatus PC-6 Service Bulletin No. 57-004, dated April 16, 2007; and Chapter 57-00-02 of Pilatus Aircraft Ltd. Pilatus PC-6 Aircraft Maintenance Manual, dated November 30, 2008 (referenced as revision 9 in EASA AD No.: 2007-0241R3), for related information. Issued in Kansas City, Missouri, on July 1, 2009.

**Scott A. Horn,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9-16142 Filed 7-7-09; 8:45 am]

BILLING CODE 4910-13-P

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR PART 240

[Release No. 34-60218; File No. S7-12-09]

RIN 3235-AK31

#### Shareholder Approval of Executive Compensation of TARP Recipients

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing amendments to the proxy rules under the Securities Exchange Act of 1934 to set forth certain requirements for U.S. registrants subject to Section 111(e) of the Emergency Economic Stabilization Act of 2008. Section 111(e) of the Emergency Economic Stabilization Act of 2008 requires companies that have received financial assistance under the Troubled Asset Relief Program (“TARP”) to permit a separate shareholder advisory vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission, during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding. The proposed amendments are intended to help implement this requirement by specifying and clarifying it in the context of the federal proxy rules.

**DATES:** Comments should be received on or before September 8, 2009.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/proposed.shtml>);
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-12-09 on the subject line; or

- Use the Federal Rulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number S7-12-09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission’s Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** John Harrington, Attorney-Adviser, or N. Sean Harrison, Special Counsel, Division of Corporation Finance, at (202) 551-3430, or Division of Corporation Finance, at (202) 551-3430, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-3628.

**SUPPLEMENTARY INFORMATION:** We are proposing a new Rule 14a-20 and amendments to Schedule 14A<sup>1</sup> under the Securities Exchange Act of 1934 (“Exchange Act”).<sup>2</sup>

#### I. Background

The American Recovery and Reinvestment Act of 2009 (“ARRA”) was enacted on February 17, 2009.<sup>3</sup> Section 7001 of the ARRA amended the executive compensation and corporate governance provisions of Section 111 of the Emergency Economic Stabilization Act of 2008 (“EESA”).<sup>4</sup> Section 111(e) of the EESA,<sup>5</sup> as amended, requires any

<sup>1</sup> 17 CFR 240.14a-101.

<sup>2</sup> 15 U.S.C. 78a *et seq.*

<sup>3</sup> Pub. L. 111-5, Title II, 110 Stat. (2009).

<sup>4</sup> 12 U.S.C. 5221.

<sup>5</sup> Section 111(e) of the EESA, as amended, states—

(1) ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION—Any proxy or consent or authorization for an annual or other meeting of the shareholders of any TARP recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding shall permit a separate

entity that has received or will receive financial assistance under the Troubled Asset Relief Program (“TARP”) to “permit a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material).”<sup>6</sup> Companies that have received financial assistance under the TARP are required to provide this separate shareholder vote during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding.<sup>7</sup> The shareholder vote required by Section 111(e) of the EESA is not binding on the board of directors of a TARP recipient, and such vote will not be construed as overruling a board decision or as creating or implying any additional fiduciary duty by the board.<sup>8</sup> The vote also will not be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.<sup>9</sup>

shareholder vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material).

(2) NONBINDING VOTE—A shareholder vote described in paragraph (1) shall not be binding on the board of directors of a TARP recipient, and may not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

(3) DEADLINE FOR RULEMAKING—Not later than 1 year after the date of enactment of the American Recovery and Reinvestment Act of 2009, the Commission shall issue any final rules and regulations required by this subsection.

<sup>6</sup> We do not believe this provision changes the Commission’s rules for a smaller reporting company that is a TARP recipient under the EESA with respect to the compensation discussion and analysis (“CD&A”) disclosure. Our compensation disclosure rules, as set forth in Item 402 of Regulation S-K [17 CFR 229.402], permit smaller reporting companies to provide scaled disclosure that does not include CD&A.

<sup>7</sup> Section 111 of the EESA defines this period to not include any period during which the Federal Government “only holds warrants to purchase common stock of the TARP recipient.” See 12 U.S.C. 5221(a)(5).

<sup>8</sup> Section 111(e)(2) of the EESA [12 U.S.C. 5221(e)(2)].

<sup>9</sup> Rule 14a-8 under the Exchange Act will continue to apply to shareholder proposals that relate to executive compensation. Rule 14a-8 provides shareholders with an opportunity to place a proposal in a company’s proxy materials for a vote at an annual or special meeting of shareholders. Under this rule, a company generally is required to include the proposal unless the shareholder has not complied with the rule’s procedural requirements or the proposal falls within one of the rule’s 13 substantive bases for exclusion. To date, the staff of