

similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within 10 days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

As indicated below, pursuant to 10 CFR 2.310(g), any hearing would be subject to the procedures set forth in 10 CFR Part 2, subpart M.

### III. Opportunity to Provide Written Comments

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

### IV. Further Information

For further details with respect to the proposed action, see the licensee's letter dated December 18, 2007 (See ADAMS ML073540523), a letter from NRC to the licensee dated February 1, 2008, requesting financial information from the potential buyer (See ADAMS ML080160032), a letter from NRC to the licensee dated February 1, 2008, acknowledging the receipt of the Application (See ADAMS ML080090595), a transmittal letter dated March 21, 2008, and affidavit requesting that the financial information provided to NRC be withheld from the public pursuant to NRC regulation 10 CFR part 2.390 (See ADAMS ML081420592), and a letter from NRC dated May 30, 2008, to the counsel representing the potential buyer agreeing with the 10 CFR Part 2.390 request (See ADAMS ML081440408), all of which are available for public inspection, and can be copied for a fee, at the U.S. Nuclear Regulatory Commission's Public Document Room

(PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852. The NRC maintains an Agency-wide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov>.

Persons who do not have access to ADAMS or who have problems in accessing the documents located in ADAMS may contact the PDR reference staff at 1-800-397-4209, 301-415-4737 or by e-mail at [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

Dated at Rockville, Maryland, this 11th day of June 2008.

For the Nuclear Regulatory Commission.

**Keith I. McConnell,**

*Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.*

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### OFFICE OF PERSONNEL MANAGEMENT

#### Proposed Personnel Demonstration Project; Performance-Based Pay Adjustments in the Department of Veterans Affairs

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Notice of a proposed demonstration project plan.

**SUMMARY:** Chapter 47 of title 5, United States Code, authorizes the U.S. Office of Personnel Management (OPM), directly or in agreement with one or more agencies, to conduct demonstration projects that experiment with new and different human resources management concepts to determine whether changes in human resources policy or procedures would result in improved Federal human resources management. The Department of Veterans Affairs (DVA) and OPM propose to test a performance-based pay system with open pay ranges linked to the corresponding minimum and maximum rates for the grades of the General Schedule pay structure. Section 4703 of title 5 requires OPM to publish the proposed project plan in the **Federal Register**. This notice fulfills that requirement. The proposed project plan has been approved by DVA and OPM.

**DATES:** Written comments must be submitted on or before July 18, 2008. A

public hearing on the proposed project plan is scheduled for Tuesday, August 5, 2008, and will begin at 10 a.m. Eastern Standard Time. The location of the hearing is: U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC 20420.

Public parking is limited, but the building is conveniently accessible to the "McPherson Square" Metro station. This is a secure facility. Members of the public must show a government-issued photo ID (e.g., State driver's license). Attendees will undergo electronic screening, and their personal belongings will be subject to a physical search. Personal items prohibited include devices that can transmit and record, weapons (guns, knives, explosives, etc.), and alcohol. A member of the public possessing such items will be barred from entering, and such items are subject to confiscation. There will be a sign-in table set up in the main lobby. A greeter, and signs, will direct attendees to the main auditorium location.

There will be a telephone call-in number for members of the public who cannot attend in person. That number will be 1-800-767-1750 (access code #28773), and the line will be active from 10 a.m. until the hearing is adjourned.

At the time of the hearing, interested persons or organizations may present their written or oral comments on the proposed demonstration project. The hearing will be informal. However, anyone wishing to testify should contact the person listed under **FOR FURTHER INFORMATION CONTACT**, so that DVA and OPM can plan the hearing and provide sufficient time for all interested persons and organizations to be heard. Priority will be given to those on the schedule, with others speaking in any remaining available time. Each speaker's presentation will be limited to 10 minutes. Written comments may be submitted to supplement oral testimony during the public comment period.

**ADDRESSES:** Comments may be mailed to Demonstration Projects, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7456, Washington, DC 20415 or submitted by email to [Demoprojects@opm.gov](mailto:Demoprojects@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** (1) Department of Veterans Affairs: Lauren Kuiper-Rocha, Demonstration Project Leader, Office of Human Resources Management (055), (202) 461-7804, VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420; (2) Office of Personnel Management: Patsy Stevens, Systems Innovation Group Manager, (202) 606-1574, U.S. Office of Personnel Management, 1900 E Street,

NW., Room 7456, Washington, DC 20415.

**SUPPLEMENTARY INFORMATION:** The goal of this demonstration project is to make employees' pay increases more performance-sensitive, so that only Fully Successful or better performers will receive any pay adjustments and the best performers will receive the largest pay adjustments.

**Linda M. Springer,**  
Director.

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## I. Executive Summary

This project was designed by DVA in consultation with OPM. The demonstration project will modify the General Schedule pay system by eliminating fixed steps within each grade and providing for annual pay adjustments based on performance. The proposed project will test the application of meaningful distinctions in levels of performance to the allocation of annual pay increases under the General Schedule.

## II. Introduction

### A. Purpose

The purpose of the proposed project is to modify the General Schedule (GS)

pay system to provide larger annual pay increases to employees who are better performers based on performance distinctions made under a credible, strategically-aligned performance appraisal program and thereby improve the results-oriented performance culture within the organization. The proposed project provides no pay increase to any participant rated below the Fully Successful performance level.

### B. Rationale for a New System

The current GS pay system provides annual pay increases to all employees, even those whose performance is less than Fully Successful. Similarly, periodic within-grade pay increases are virtually automatic. Although an employee's performance must be determined to be at an "acceptable level of competence" in order for the employee to receive a within-grade increase (WGI), this is only a single-level threshold and no further distinctions in levels of performance play a role. All performance levels above the threshold are treated the same for purposes of determining the amount of the increase and the rate at which an employee advances through the rate range of his or her grade. DVA and OPM believe that a more prudent use of the limited resources available to compensate Federal employees is to adjust the pay system to make pay more sensitive to performance.

The current GS pay system does provide some tools to address distinctions in levels of performance—namely, quality step increases (QSIs) and awards based upon performance. QSIs are discretionary adjustments that are not integrated into the normal pay adjustment process; thus, limited funds are available to provide QSIs, and the decision-making process may not be very transparent. In addition, there is no flexibility as to the amount of the QSI; a full step increase is required. Also, QSIs may be used only for those with the highest rating of record. In summary, QSIs alone cannot be relied upon to establish an effective link between pay and performance based on meaningful distinctions among different levels of performance.

As the discussion above reveals, the General Schedule has somewhat limited options for the purposes of establishing a more results-oriented performance culture. DVA would like to use the Human Capital Assessment and Accountability Framework (HCAAF) to make its system more performance-

sensitive. Within the HCAAF, a results-oriented performance culture effectively plans, monitors, develops, rates, and rewards employee performance, consistent with the merit system principle that "appropriate incentives and recognition should be provided for excellence in performance" (5 U.S.C. 2301(b)(3)).

### C. Changes Required/Expected Benefits

The proposed demonstration project responds to the limitation identified above by eliminating the 10 fixed steps within each of the 15 GS grades and by making annual GS pay adjustments performance-sensitive. Pay adjustments will be funded from a pay pool consisting of the amounts that would otherwise be used to pay the annual GS pay adjustment, WGIs, and QSIs to employees covered by the demonstration project. A share mechanism will be used to allocate pay increases among employees with different levels of performance. Implementation of the proposed pay system will result in larger pay increases going to employees who demonstrate higher performance. By regularly rewarding better performance with better pay, the participating organization will strengthen the results-oriented performance culture. Among other things, they will be better able to retain their good performers and recruit new ones.

### D. Participating Organizations

The Department of Veterans Affairs is committed to operating robust performance appraisal programs aligned to the organization's strategic goals and objectives. The Department of Veterans Affairs Veterans Health Administration (VHA) will be participating in the demonstration project. DVA is committed to providing the training and resources that will be needed to make performance management programs highly effective.

### E. Participating Employees

The demonstration project will cover all GS employees in the GS-0670 Health Systems Administrator series at the GS-14/15 grade levels who are organizationally titled Assistant Medical Center Director, Associate Medical Center Director, and Deputy Network Director. Table 1 shows the number of employees to be covered by the project by occupational series and grade.

TABLE 1.—COVERED EMPLOYEES, BY OCCUPATIONAL SERIES AND GRADE

Series	Grade																
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		
0670 .....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	52	98
Total .....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	52	98

Management has provided initial notice to affected employees and will continue consultation throughout project implementation.

*F. Project Design*

The project has been designed simply to ensure that no participating employee with a rating of record of less than Fully Successful will receive a pay increase and that funds available for pay adjustments will be allocated on the basis of performance.

**III. Personnel System Changes**

*A. Performance Appraisal*

DVA recognizes the importance of maintaining highly credible performance management systems. DVA will use a performance appraisal program under the Department of Veterans Affairs appraisal system that has been approved by OPM consistent with chapter 43 of title 5, United States Code. Throughout the duration of the demonstration project, the effectiveness of performance management within the project will be monitored by examining metrics and assessments that OPM and agencies generally apply to performance management systems and programs.

**1. Program Requirements**

The performance appraisal program, which is established under chapter 43 of title 5, United States Code, requires written performance plans for each covered employee containing the employee's performance elements and standards. The performance plan links the performance elements and standards for individual employees to the organization's strategic goals and objectives. Ongoing feedback and dialogue between employees and their supervisors regarding performance is required. In addition, the program provides for, at a minimum, one mid-year progress review.

The appraisal program, including its performance levels and standards, provides for making meaningful distinctions in performance. The program uses the following levels for official ratings of record: Outstanding, Excellent, Fully Successful, Minimally Satisfactory, and Unsatisfactory. Employees must be covered by their performance plan for at least 90 days

before they can be assigned a rating of record. Supervisors and managers apply the program to make appropriate ratings. Ratings given accurately reflect actual performance, and are linked, to the extent appropriate, to overall organizational performance. As a consequence, actual distinctions in levels of performance become apparent from the ratings given out. Employees receive a written performance appraisal (i.e., a rating of record) annually. There will be no forced distribution of ratings. Each annual appraisal period will begin on October 1 and end on the following September 30. Performance appraisals will be completed in a timely manner to support pay decisions in accordance with section III.C below.

**2. Supervisory Accountability**

Supervisors are responsible for providing appropriate consequences for employee performance by addressing poor performance and recognizing exceptional performance. Performance elements for supervisors and managers include the degree to which supervisors and managers plan, assess, monitor, develop, correct, rate, and reward subordinate employees' performance. It is recognized that specific training may be provided to prepare supervisors and managers to exercise these responsibilities.

**3. Reconsideration of Ratings**

To support fairness and transparency for the system and its consequences, employees have an opportunity to request formal reconsideration of a rating of record by a management official at the next level above the official who decided the rating. Requests for reconsideration must be in writing and be submitted no more than 15 calendar days after the official rating of record has been communicated to the employee. The request shall state the employee's reasons as to why the rating of record should be changed. The management official above the deciding official will discuss the request with the employee within 10 calendar days after receipt and provide a written response. If the employee is not satisfied with the decision of the higher level official the employee may then further request a secondary reconsideration of the rating

to the management official at the respective next higher level in the organization. This second level reconsideration must be submitted in writing to the management official at the respective next higher level in the organization within 10 calendar days of the receipt of the decision provided by the management official above the deciding official. This higher level official reviewing the secondary reconsideration will make the final decision after full consideration of the record, including any relevant information or pleading submitted by the employee, within 15 work days after receipt and provide the response in writing. The decision by this official will be the final administrative decision in the matter.

If the reconsideration of the appraisal results in a different rating of record, the revised rating of record will become the basis for the employee's pay adjustment(s) in accordance with section III.C below. If the adjustment occurs after all pay deliberations have been finalized, it does not result in a recalculation of other employees' pay adjustments.

The reconsideration request procedures outlined above do not apply to employees who receive a rating of Unsatisfactory. Rather, the employee's right to a review of an Unsatisfactory rating by an official higher than the approving official will occur in conjunction with the employee's right to appeal or grieve a subsequent personnel action based on the Unsatisfactory rating, such as a reassignment, demotion or removal from Federal service. Therefore, the employee's right to request reconsideration of the rating will occur within the right to file an agency grievance (in the case of a reassignment) or a statutory appeal right (in the case of a demotion or removal) and will be in lieu of the reconsideration request procedures outlined above.

*B. Open-Range Pay System*

Employees will continue to be covered by the 15-grade GS position classification system established under 5 U.S.C. chapter 51; however, the GS pay system established under 5 U.S.C. chapter 53, subchapter III, will be

modified as described in the following sections. Except as otherwise provided in this plan, demonstration project employees will be considered to be GS employees in applying other laws, regulations, and policies.

#### 1. Elimination of Fixed Steps

The 10 fixed steps of each GS grade will not apply to employees participating in the demonstration project. The fixed-step system was designed to reward longevity. An open-range pay system is an important element of any effort to make pay more performance-sensitive. No employee's pay will be reduced as a result of becoming covered by the demonstration project. However, demonstration project employees will no longer receive longevity-based, within-grade pay increases at prescribed intervals. Instead, they will be granted annual performance adjustments as described in section III.C below.

#### 2. Rate Range

The normal minimum and maximum rates of the rate range for each grade will equal the applicable step 1 rate and step 10 rate, respectively, in the General Schedule.

For employees with a rating of record below Fully Successful, the minimum rate of the range is extended 5 percent below the normal minimum rate. An employee's rate may fall below the normal range minimum when that minimum increases as a result of a rate range adjustment, but the employee cannot receive a pay adjustment because the employee's rating of record is below Fully Successful, as described in section III.C.4 below.

For employees with a rating of record at the highest level (Outstanding), the maximum rate of each range is extended 5 percent above the normal maximum rate. This feature will help ensure that the range of available pay rates will be adequate to recognize truly outstanding performance. If an employee within this range extension receives a rating of record below Outstanding, special provisions apply, as described in section III.B.3 below.

#### 3. Pay Administration

Performance-based pay adjustments described in section III.C below will be made to the rate of basic pay. These adjustments are scheduled to be made on the same date that annual rate range adjustments normally take effect—i.e., the first day of the first pay period beginning on or after January 1.

Locality-based comparability payments under 5 U.S.C. 5304 and special rate supplements under 5 U.S.C.

5305, as applicable, will be paid on top of the rate of basic pay in the same manner as those payments apply to other GS employees, except as otherwise provided in this plan. An adjusted rate cap 5 percent higher than the normal EX-IV cap is established to accommodate those Outstanding performers in the 5 percent upper range extension. This higher cap will apply only to employees receiving a rate within the upper range extension. If the locality rate for an employee at the normal grade maximum is affected by the EX-IV cap, resulting in an "effective locality pay percentage" that is less than the regular locality pay percentage, the locality rate for an employee in the upper rate range extension of the same grade will be computed using that same effective locality pay percentage. (For example, if the regular locality pay percentage is 30 percent, but the EX-IV cap causes the amount of locality pay actually received by an employee at the normal grade maximum to be 20 percent, that effective locality pay percentage of 20 percent would be used to compute locality pay for an employee in the upper range extension of the same grade. Similarly, if the special rate supplement-adjusted rate for an employee at the normal grade maximum is affected by the EX-IV cap, resulting in an "effective special rate supplement percentage" that is less than the regular special rate supplement percentage, the adjusted rate for an employee in the upper rate range extension of the same grade will be computed using that same effective special rate supplement percentage.)

Subject to guidance provided by OPM, DVA will establish pay administration rules for determining an employee's rate of pay upon initial appointment, promotion, demotion, transfer, reassignment, or other position change. In addressing geographic conversions and simultaneous pay actions, such rules must be consistent with 5 CFR 531.205 and 5 CFR 531.206, respectively.

Upon promotion, an employee is entitled to an increase of 8 percent, or a higher increase as necessary to set the employee's rate at the normal minimum of the range for the higher grade. DVA may establish exceptions to this policy to deal with employees receiving a retained rate, employees who are re-promoted shortly after a demotion, employees with exceptional performance warranting a larger increase with higher management approval, etc.

The grade retention provisions in 5 U.S.C. 5362 and 5 CFR part 536 continue to be applicable. The pay

retention rules in 5 U.S.C. 5363 and 5 CFR part 536 apply to demonstration project employees, subject to the following exceptions:

(1) An employee with a rating of record below Fully Successful may not receive an increase in his or her retained rate under the 50-percent adjustment rule in 5 U.S.C. 5363(b)(2)(B);

(2) The cap on retained rates is equal to the rate for level IV of the Executive Schedule plus 5 percent (instead of the EX-IV cap established in 5 CFR 536.306) in order to accommodate the upper range extension;

(3) An employee in the upper range extension who is rated below Outstanding will be converted to a retained rate before processing any other pay action; and

(4) The range maximum rate used in computing retained rate adjustments under the 50-percent adjustment rule will be the maximum rate of the highest applicable rate range (including any applicable locality payment or special rate supplement) taking into consideration an employee's rating of record. For retained rate employees rated Outstanding, the increase is 50 percent of the dollar change in the applicable adjusted rate for the upper range extension maximum. (Note that an employee rated Outstanding must have a retained rate in excess of the upper range extension maximum adjusted rate, since he or she would otherwise be converted to a rate within that range extension.) For retained rate employees rated below Outstanding, the increase is 50 percent of the dollar change in the applicable adjusted rate for the normal grade maximum.

If an employee is receiving a retained rate that is less than the applicable adjusted maximum rate (including any applicable locality payment or special rate supplement) for the upper range extension for the employee's grade, and if that employee receives a rating of record of Outstanding, the employee's retained rate will be terminated and converted to an equal adjusted rate (base rate in upper range extension plus applicable locality payment or special rate supplement). This conversion must be processed before any other pay adjustment.

For a retained rate employee with a rating of record of Outstanding, if a retained rate increase provided at the time of a range adjustment results in the retained rate falling below the applicable adjusted rate for the upper range extension maximum, the employee's retained rate will be terminated, and the employee's pay will be set at the maximum rate of the upper range extension.

For a retained rate employee with a rating of record of Fully Successful or Excellent, if a retained rate adjustment provided at the time of a range adjustment results in the retained rate falling below the applicable adjusted rate for the normal grade maximum, the employee's retained rate will be terminated, and the employee's pay will be set at the normal grade maximum rate.

For a retained rate employee with a rating of record below Fully Successful, the retained rate is frozen and not subject to adjustment. When such an employee's retained rate falls below the applicable adjusted rate for the normal grade maximum, the employee's retained rate will be terminated, and the employee's pay will be set at an adjusted rate equal to the retained rate (i.e., the rate is not set at the range maximum).

As required by 5 CFR 536.304(a)(2) and 536.305(a)(2), any general pay adjustment, including a retained rate adjustment as described in the preceding paragraphs, must be processed before any other simultaneous pay action (such as a geographic pay conversion).

When applicable, the saved pay rules in 5 U.S.C. 3594 and 5 CFR 359.705 for former SES members continue to apply to demonstration project employees, except that (1) an employee with a rating of record below Fully Successful may not receive an increase in his or her saved rate under 5 U.S.C. 3594(c)(2); and (2) the 50-percent adjustment rule must be applied in the same manner as it is applied for a retained rate under 5 U.S.C. 5363, subject to the modifications described in the preceding paragraphs. The rules regarding termination of a saved rate when it falls below the applicable adjusted maximum rate must be parallel to those governing termination of a retained rate under 5 U.S.C. 5363, subject to the modifications described in the preceding paragraphs.

An employee's rate of basic pay may not exceed the normal maximum rate for the employee's grade unless the employee is receiving a retained rate under 5 U.S.C. 5363, a saved rate under 5 U.S.C. 3594, or is entitled to a rate within the upper range extension for employees with an Outstanding rating of record, as provided under section III.B.2. An employee's rate of basic pay may not be below the normal minimum rate for the employee's grade unless the employee's most recent rating of record is below Fully Successful.

### C. Performance-Based Pay Adjustments

#### 1. Pay Pools

Funds that otherwise would be spent on the across-the-board GS pay adjustment, WGIs, and QSIs for demonstration project employees will instead be placed into a pay pool, which will be used to fund annual performance-based pay increases for those employees whose rating of record is Fully Successful or higher. A share mechanism will be used (1) to ensure that employees with higher ratings of record receive greater pay increases than employees with lower ratings and (2) to control costs without resorting to a forced distribution of ratings. Each employee will be assigned a certain number of shares, based on his or her rating of record in accordance with section III.C.2 below. All employees in the normal rate range whose rating of record is at least Fully Successful will receive an adjustment equal to at least the amount of the annual GS base pay comparability increase under 5 U.S.C. 5303. Employees with a rating of record below Fully Successful will not receive any pay adjustment.

DVA will establish one or more pay pools for allocating performance pay increases. DVA will determine which participating employees are covered by any pay pool and determine the dollar value of each pay pool. In setting the value of pay pools, at a minimum DVA will allocate an amount for performance pay increases equal to the estimated value of the WGIs, QSIs, and annual GS pay adjustments that otherwise would have been paid to participating employees. In computing the estimated value of WGIs and QSIs, DVA may use estimated Governmentwide averages as computed by the Office of Personnel Management.

#### 2. Performance Shares

DVA will establish rating/share patterns for each pay pool—that is, the relationship between a rating of record and a single number of shares. The DVA health care system is characterized by a dynamic employment environment, and thus DVA will use two sets of rating/share patterns based on the Veterans Health Administration's 2005 Facility Complexity Model.

The Veterans Health Administration's 2005 Facility Complexity Model assigns DVA Medical Centers into three complexity levels; one level contains two subcomponent levels. The complexity levels are based on a cumulative score in regard to seven individual variables, including but not limited to, complexity of intensive care units, availability of sub-specialty

services, diversity of residency training programs, and scope of research programs. The positions of Deputy Network Director and those Assistant Medical Center Directors and Associate Medical Center Directors assigned to a complexity level 1a facility deal with the highest level of patient complexity, teaching, and research, and their facilities have the greatest number and breadth of clinical specialists, as well as the most intensive care units.

In order to distinguish the higher degree of complexity the number of shares for each rating level for the positions of Deputy Network Director and Assistant Medical Center Director at a complexity level 1a facility will initially be as follows: 4.5 shares are assigned to the Outstanding rating, 3.5 shares to the Excellent rating, 2 shares to the Fully Successful rating, and 0 shares to a less than Fully Successful rating. The number of shares for each rating level for the positions of Assistant Medical Center Director and Associate Medical Center Director at complexity level 1b, 1c, 2, and 3 facilities will initially be as follows: 4 shares are assigned to the Outstanding rating, 3 shares to the Excellent rating, 2 shares to the Fully Successful rating, and 0 shares to a less than Fully Successful rating.

DVA may revise the rating/share pattern in coordination with OPM, and after giving affected employees advanced notice. Employees will be informed in writing at least 180 days before the end of the appraisal period of any decision by DVA to change the rating/share pattern. No shares may be assigned to any rating of record below Fully Successful, since no pay increase is payable to employees with such a rating of record. After the ratings of record and shares are assigned to employees, the value of a single share can be calculated.

#### 3. Pay Adjustments

*In general:* DVA will determine the value of one performance share, expressed as a percentage of the employee's rate of basic pay, based on the value of the pay pool and the distribution of shares among pay pool employees. An individual employee's performance payout percentage is determined by multiplying the determined value of a performance share by the number of shares assigned to the employee. On the first day of the first pay period beginning on or after January 1 of each year, this amount must be paid as an increase in the employee's rate of basic pay, but only to the extent that it does not cause the

employee's rate to exceed the applicable maximum of the employee's rate range. Notwithstanding the preceding sentence, employees in the upper range extension rated below the highest level are subject to special rules as described in section III.B.2 and III.B.3. above. At the discretion of the Secretary or the Secretary's designee, any portion of the employee's performance payout amount not delivered as a basic pay increase may be paid out as a lump sum (with no charge to the pay pool). Such a lump-sum payment is not basic pay for any purpose and is not a cash award under chapter 45 of title 5, United States Code. Special rules apply to retained rate employees as described later in this section.

An employee with a rating of record of Fully Successful or higher may not receive a performance payout that is less than the percentage value of any simultaneous rate range adjustment, except for (1) an employee receiving a retained rate and (2) an employee in the upper range extension with a rating of record of Fully Successful or Excellent who is converted to a retained rate (as provided in sections III.B.2 and III.B.3 above). This guaranteed amount will be used in place of any lower performance payout resulting from the share methodology. Any additional costs of using the guaranteed amount will be funded outside the pay pool. Otherwise, the guaranteed amount is applied in the same manner as the regular performance payout.

The rating period of an employee who has been in the position less than 90 days as of September 30 will be extended and a rating of record completed after the employee has performed at least 90 days under the employee's performance plan. Performance payouts resulting from extended rating periods will be funded outside the pay pool and will be effective prospectively. Those payouts may be prorated to take into account the fact that an employee had less than a full year under the performance plan.

DVA may establish policies on prorating the performance pay increases and/or lump-sum payments for an employee who, during the period between annual pay adjustments, was (1) hired or promoted, (2) in an approved leave status, (3) on a part-time work schedule, or (4) in other circumstances that make proration appropriate. Such proration policies will provide each eligible employee with the full percentage adjustment used to adjust base rate ranges (if any) and may prorate any additional amount of performance pay increase that would be applicable to the employee.

If an employee's rating of record that is the basis for a performance payout is retroactively revised (after the regular effective date of performance payouts) through a reconsideration or appeals process, the employee's performance payout must be retroactively recomputed using the share value as originally determined. Any such retroactive corrections are not funded out of the pay pool and do not affect the performance payouts provided to other employees in the pay pool. In setting the size of a future pay pool, management will take into account past and projected corrections.

*Special provisions for employees returning to duty after an extended period of service in the uniformed services or in receipt of workers' compensation benefits:* Special pay-setting provisions apply to employees who were not able to perform under the performance plan for at least 90 days (including an opportunity for an extended rating period) and who are returning to duty status after a period of leave or separation during which the employee was (1) serving in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) with legal restoration rights (e.g., 38 U.S.C. 4316), or (2) receiving workers' compensation benefits under 5 U.S.C. chapter 81, subchapter I. In these cases, DVA will determine the employee's prospective rate of basic pay upon return to duty by making performance pay adjustments for the intervening period based on the last DVA rating of record for the returning employee if the last DVA rating of record is dated within 2 years of the employee's date of return to duty. If there is no previous DVA rating of record, as described, the employee will have pay set prospectively by applying the percentage increase equivalent to an Excellent rating. The performance pay increases during the intervening period may not be prorated based on periods covered by this provision. In addition, a performance pay increase that is effective after the employee's return to duty may not be prorated based on periods covered by this provision. A lump-sum payment for a period including actual service performed after the employee's return to duty must be prorated (based on service covered by this provision) under the same agency proration policies that apply generally to periods of leave.

*Special provision for employees receiving a retained rate of basic pay:* An employee receiving a retained rate under 5 U.S.C. 5363 or 5 U.S.C. 3594 is not eligible for a basic pay increase, except in conjunction with (1) a rate

range adjustment, as described in section III.B.3 above; or (2) a geographic conversion under 5 CFR 359.705(e) or 536.303(b), as applicable. At the discretion of the Secretary or the Secretary's designee, a retained rate employee may receive the same lump-sum payment approved for an employee in the same pay pool who is at the applicable range maximum and who has the same performance rating of record and number of shares.

#### 4. Employees Who Do Not Receive a Pay Adjustment

Employees with a rating of record below Fully Successful are prohibited from receiving a pay increase, except if necessary to prevent an employee's rate from falling more than 5 percent below the normal range minimum. When an employee does not receive a pay increase because of performance below the Fully Successful level, his or her pay rate may fall below the normal minimum rate of the grade, since that range minimum may be increasing. However, in no case may an employee's rate of basic pay fall more than 5 percent below the normal range minimum.

Each employee who does not receive an increase in basic pay because his or her performance is less than Fully Successful will be entitled to be notified promptly in writing of that fact. At the same time, the employee must be informed in writing of the right to request that the agency reconsider its determination, under the same procedures prescribed by OPM regarding the determination not to provide a within-grade increase under 5 U.S.C. 5335(c). The Merit Systems Protection Board will process any appeals under this section in the same manner that it processes appeals under 5 U.S.C. 5335(c).

#### 5. Locality Pay and Special Rate Supplement

When a locality-based comparability payment established under 5 U.S.C. 5304 is increased, a demonstration project employee whose most recent rating of record is below Fully Successful is entitled to the increased locality payment, but his or her underlying rate of basic pay will be reduced in a manner that ensures the employee's total rate of pay does not increase. This reduction is necessary to ensure, in an administratively feasible way, that an employee rated less than Fully Successful will not receive a pay increase; it does not constitute a reduction in pay for purposes of applying the adverse action procedures in chapter 75 of title 5, United States

Code. (Exception: An employee's rate of basic pay may not be reduced under this paragraph to the extent that the reduction would cause an employee's rate to fall more than 5 percent below the normal range minimum.)

Similarly, when a special rate supplement established under 5 U.S.C. 5305 is increased, a demonstration project employee whose rating of record is below Fully Successful is entitled to the increased supplement, but his or her underlying rate of basic pay will be reduced in a manner that ensures the employee's total rate of pay does not increase.

A locality rate and special rate cap 5 percent higher than the normal EX-IV cap is established to accommodate those Outstanding performers in the 5 percent upper rate range extension. See section III.B.3 for additional information.

#### IV. Training

Training for all involved is essential to the success of the demonstration project. Training will be provided to employees, supervisors, and managers before the project is launched and throughout the life of the project. It is important that employees perceive the performance management program as fair and transparent; therefore, supervisors and managers will be trained in the effective management of performance.

All employees will be trained in the performance appraisal process and the pay adjustment mechanism. Various types of training are being considered, including videos, on-line tutorials, and train-the-trainer concepts.

#### V. Conversion

##### A. Conversion to the Demonstration Project

Employees whose positions are converted to the demonstration project will be converted with no change in their rate of basic pay. Any simultaneous pay action that was scheduled to take effect under the GS pay system on the date of conversion must be processed before processing the conversion to the modified GS pay system. Immediately after conversion, eligible employees will receive an increase in basic pay reflecting the prorated value of the next scheduled WGI. The prorated value is determined by calculating the portion of the time-step an employee has completed towards the waiting period for his or her next step increase. This within-grade "buy-in" adjustment will not be made for (1) employees who are at the step 10 rate for their grade immediately before conversion to the demonstration project,

(2) employees who are receiving a retained rate of pay under 5 U.S.C. 5363 or a saved rate under 5 U.S.C. 3594 immediately before conversion to the demonstration project, or (3) employees whose rating of record is below Fully Successful. The first performance-based pay increase under the project's pay adjustment mechanism will be effective on the first day of the first pay period beginning on or after January 1, 2010.

For employees who enter the demonstration project by lateral reassignment or transfer (i.e., not by conversion of position), DVA may apply parallel pay conversion rules, including rules for providing a prorated adjustment reflecting time accrued toward a GS within-grade increase or similar within-range adjustment under another pay system. If conversion into the demonstration project is accompanied by a geographic move, the employee's pay entitlements under the former pay system in the new geographic area must be determined before the pay conversion.

##### B. Conversion to the General Schedule

If a demonstration project employee is moving to a GS position not under the demonstration project, or if the project ends and each project employee must be converted back to a GS position not covered by the project, the employee's rate of basic pay under the demonstration project as in effect immediately before conversion will be used in applying any simultaneous pay actions under the regular GS pay system that are effective on the date of conversion (e.g., promotion, geographic movement). If the rate of basic pay falls between steps after applying any simultaneous pay actions, the employee's rate will be set at the next higher step.

If a demonstration project employee is receiving a retained rate immediately before conversion back to the regular GS pay system, the employee will continue to be entitled to a retained rate upon conversion, but the retained rate thereafter will be governed by 5 U.S.C. 5363 and 5 CFR part 536 or 5 CFR 359.705, as applicable.

If a demonstration project employee is receiving a rate above the normal GS rate range because his or her rate is set within the upper range extension for Outstanding performers and converts to the GS pay system, that rate must be converted to a retained rate subject to the rules and limitations in 5 U.S.C. 5363 and 5 CFR part 536.

If a demonstration project employee is receiving a rate below the normal GS rate range because his or her rate has fallen within the lower range extension

for less than Fully Successful performers, that rate must be converted to the minimum rate for the grade upon conversion to the regular GS pay system.

#### VI. Project Duration

The initial implementation period for the demonstration project will terminate prior to the end of the 5-year period beginning on the date which the project takes effect. However, with OPM's concurrence, the project may be extended, modified or terminated on or before the expiration of the 5-year period.

#### VII. Project Evaluation

Section 4703(h) of title 5, U.S.C., requires an evaluation of the results of the demonstration project. DVA, in coordination with OPM, will develop a plan to evaluate the demonstration project to determine the extent to which the pay increases paid to participating employees reflect meaningful distinctions among their levels of performance. Workforce data will be analyzed to determine whether the project is achieving its goal and whether it is resulting in any adverse impact. Key features of successful performance-based pay systems, including leadership commitment, communication, stakeholder involvement, training, planning, mission alignment, and the rewarding of performance, will be assessed to determine the effectiveness of the demonstration project and ensure compliance with stated project goals. The evaluation will address the extent to which the project has incorporated the elements required by section 1126 of Public Law 108-136 (5 U.S.C. 4701 note). DVA will be accountable for exercising and maintaining fiscal responsibility in the execution of the demonstration project. The project will be examined during each phase of the evaluation to assess that costs are being managed effectively. Moreover, cost discipline will be examined during each phase of the evaluation to ensure spending remains within acceptable limits. Finally, employee feedback will be sought through surveys, interviews, and focus groups to assess employee perceptions of the fairness and integrity of the performance appraisal and pay adjustment processes.

#### VIII. Costs

##### A. Buy-in Costs

There will be added costs resulting from the within-grade increase "buy-in" provision described in section V above; however, those costs will be offset by the elimination of within-grade step

increases that otherwise would have occurred.

#### *B. Recurring Costs*

All funding will be provided through the organization's budget. No additional funding will be requested specifically for this project; all costs will be charged to available funds through existing appropriations, including those incurred in the areas of project development, training, and project evaluation.

### **IX. Waiver of Laws and Regulations Required**

#### *A. Waivers to Title 5, United States Code*

Chapter 35, section 3594: Saved pay for former members of the Senior Executive Service (only to the extent necessary to (1) bar employees with a rating of record below Fully Successful from receiving a saved rate increase under 5 U.S.C. 3594(c)(2); and (2) apply rules parallel to those governing adjustment and termination of retained rates under 5 U.S.C. 5363, as modified under this plan).

Chapter 53, section 5302(1)(A), (8) and (9): Definitions (only to the extent necessary to provide that employees under the demonstration project are not considered to be GS employees for the purposes of annual adjustments under section 5303 or similar provision of law governing annual adjustments for employees covered by section 5303).

Chapter 53, section 5303: Annual adjustments to pay schedules.

Chapter 53, section 5304(g)(1): Locality-based comparability payments (only to the extent necessary to (1) provide a locality rate may not exceed the rate for EX-IV, plus 5 percent for employees in the upper range extension; and (2) apply an "effective" locality pay percentage for employees in the upper range extension under circumstances described in the plan).

Chapter 53, section 5305(a)(1): Special pay authority (only to the extent necessary to (1) provide a special rate may not exceed the rate for EX-IV, plus 5 percent for employees in the upper range extension; (2) to interpret the references to the minimum and maximum rates of a grade as references to the normal minimum and maximum rates of a grade under this plan; and (3) apply an "effective" special rate supplement percentage for employees in the upper range extension under circumstances described in this plan).

Chapter 53, subchapter III: General Schedule pay rates (except that, for purposes of applying any other laws, regulations, or policies that refer to GS

employees or to subchapter III of chapter 53 of title 5, United States Code, the modified pay system established under this plan must be considered to be a GS pay system established under such subchapter III, except as otherwise provided in this plan; these purposes include, but are not limited to, references to the General Schedule in section 5304 (relating to locality pay, except as provided in the waiver above), section 5545(d) (relating to hazard pay), and sections 5753-5754 (dealing with recruitment, relocation, and retention incentives)).

Chapter 53, section 5363: Pay retention (only to the extent necessary to (1) bar employees with a less than Fully Successful rating of record from receiving retained rate increases under 5 U.S.C. 5363(b)(2)(B); (2) provide that pay (including any locality adjustment or special rate supplement) of an employee in the upper range extension who is rated below Outstanding will be converted to a retained rate before processing any other actions; (3) provide a retained rate that is less than the maximum rate (including any locality adjustment or special rate supplement) of the upper range extension for an employee who receives a rating of record of Outstanding will be terminated and converted to an equal adjusted rate; (4) provide the range maximum rate used to compute retained rate adjustments is the normal range maximum rate (including any locality adjustment or special rate supplement) for employees with a rating of record below Outstanding and the upper range maximum rate (including any locality adjustment or special rate supplement) for an employee with an Outstanding rating of record; and (5) provide when a retained rate for an employee with a rating of record below Fully Successful falls below the applicable adjusted rate for the normal band maximum, the retained rate will be terminated and the employee's pay will be set at an adjusted rate equal to the retained rate).

Chapter 75, section 7512(4): Adverse actions (only to the extent necessary to provide that adverse actions do not apply to reductions in rates of basic pay to offset a locality pay or special rate supplement increase as a result of receiving a rating of record below Fully Successful).

**Note:** If any of the provisions of title 5, United States Code, listed above are amended during the period this demonstration project is in effect, DVA may choose to terminate the waiver of one or more such provisions with respect to employees participating in the project, without formally modifying the project itself. DVA must notify OPM when any such waiver is terminated.

#### *B. Waivers to Title 5, Code of Federal Regulations*

Part 359, subpart G, section 359.705: Pay (only to the extent necessary to (1) bar employees with a rating of record below Fully Successful from receiving a saved rate increase under 5 CFR 350.705(d)(1); and (2) apply rules parallel to those governing adjustment and termination of retained rates under 5 CFR part 536, as modified under this plan).

Part 430, subpart B, section 430.203: Definitions (only to the extent necessary to allow an additional rating of record to support a pay decision under C.3 or 4 of this project plan).

Part 530, section 530.304(a): Establishing or increasing special rates (only to the extent necessary to (1) provide a special rate may not exceed the rate for EX-IV, plus 5 percent for employees in the upper range extension; (2) interpret references to the minimum and maximum rates of a grade as references to the normal minimum and maximum rates of a grade under this plan; and (3) apply an "effective" special rate supplement percentage for employees in the upper range extension under circumstances described in this plan).

Part 531, subpart B: Determining Rate of Basic Pay.

Part 531, subpart D: Within-Grade Increases.

Part 531, subpart E: Quality Step Increases.

Part 531, section 531.604: Determining an employee's locality rate (only to the extent necessary to apply an "effective" locality pay percentage for employees in the upper range extension under circumstances described in this plan).

Part 531, section 531.606: Maximum limits on locality rates (only to the extent necessary to provide a locality rate may not exceed the rate for EX-IV, plus 5 percent for employees in the upper range extension).

Part 536, subpart C: Pay Retention (only to the extent necessary to (1) bar employees with a less than Fully Successful rating of record from receiving retained rate increases under 5 CFR 536.305; (2) provide that a retained rate may not exceed the rate for EX-IV, plus 5 percent; (3) provide the pay (including any locality adjustment or special rate supplement) of an employee in the upper range extension who is rated below Outstanding will be converted to a retained rate before processing any other actions; (4) provide a retained rate that is less than the maximum rate (including any locality adjustment or special rate supplement)



of the upper range extension for an employee who receives a rating of record of Outstanding will be terminated and converted to an equal adjusted rate; (5) provide the range maximum rate used to compute retained rate adjustments is the normal range maximum rate (including any locality adjustment or staffing supplement) for employees with a rating of record below Outstanding and the upper range maximum rate (including any locality adjustment or staffing supplement) for an employee with an Outstanding rating of record; and (6) provide when a retained rate for an employee with a rating of record below Fully Successful falls below the applicable adjusted rate for the normal grade maximum, the retained rate will be terminated and the employee's pay will be set at an adjusted rate equal to the retained rate).

Part 752, section 752.401(a)(4): Adverse actions (only to the extent necessary to provide that adverse action provisions do not apply to reductions in rates of basic pay to offset a locality pay or special rate supplement increase as a result of receiving a rating of record below Fully Successful).

**Note:** If any of the provisions of title 5, Code of Federal Regulations, listed above are revised during the period this demonstration project is in effect, DVA may choose to terminate the waiver of one or more such provisions with respect to employees participating in the project, without formally modifying the project itself. DVA must notify OPM when any such waiver is terminated.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57949; File No. 600-23]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Order Approving an Extension of Temporary Registration as a Clearing Agency

June 11, 2008.

The Securities and Exchange Commission ("Commission") is publishing this notice and order to solicit comments from interested persons and to extend the Fixed Income Clearing Corporation's ("FICC") temporary registration as a clearing agency through June 30, 2009.<sup>1</sup>

On February 2, 1987, pursuant to Sections 17A(b) and 19(a) of the Act<sup>2</sup>

and Rule 17Ab2-1 promulgated thereunder,<sup>3</sup> the Commission granted the MBS Clearing Corporation ("MBSCC") registration as a clearing agency on a temporary basis for a period of eighteen months.<sup>4</sup> The Commission subsequently extended MBSCC's registration through June 30, 2003.<sup>5</sup>

On May 24, 1988, pursuant to Sections 17A(b) and 19(a) of the Act<sup>6</sup> and Rule 17Ab2-1 promulgated thereunder,<sup>7</sup> the Commission granted the Government Securities Clearing Corporation ("GSCC") registration as a clearing agency on a temporary basis for a period of three years.<sup>8</sup> The Commission subsequently extended GSCC's registration through June 30, 2003.<sup>9</sup>

On January 1, 2003, MBSCC was merged into GSCC, and GSCC was renamed FICC.<sup>10</sup> The Commission subsequently extended FICC's temporary registration through June 30, 2008.<sup>11</sup>

On May 28, 2008, FICC requested that the Commission grant FICC permanent registration as a clearing agency or in the alternative extend FICC's temporary registration until such time as the

<sup>3</sup> 17 CFR 240.17Ab2-1.

<sup>4</sup> Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

<sup>5</sup> Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 34212; 28492 (September 28, 1990), 55 FR 41148; 29751 (September 27, 1991), 56 FR 50602; 31750 (January 21, 1993), 58 FR 6424; 33348 (December 15, 1993), 58 FR 68183; 35132 (December 21, 1994), 59 FR 67743; 37372 (June 26, 1996), 61 FR 35281; 38784 (June 27, 1997), 62 FR 36587; 39776 (March 20, 1998), 63 FR 14740; 41211 (March 24, 1999), 64 FR 15854; 42568 (March 23, 2000), 65 FR 16980; 44089 (March 21, 2001), 66 FR 16961; 44831 (September 21, 2001), 66 FR 49728; 45607 (March 20, 2002), 67 FR 14755; 46136 (June 27, 2002), 67 FR 44655.

<sup>6</sup> *Supra* note 2.

<sup>7</sup> *Supra* note 3.

<sup>8</sup> Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839.

<sup>9</sup> Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19639; 29236 (May 24, 1991), 56 FR 24852; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; 37983 (November 25, 1996), 61 FR 64183; 38698 (May 30, 1997), 62 FR 30911; 39696 (February 24, 1998), 63 FR 10253; 41104 (February 24, 1999), 64 FR 10510; 41805 (August 27, 1999), 64 FR 48682; 42335 (January 12, 2000), 65 FR 3509; 43089 (July 28, 2000), 65 FR 48032; 43900 (January 29, 2001), 66 FR 8988; 44553 (July 13, 2001), 66 FR 37714; 45164 (December 18, 2001), 66 FR 66957; 46135 (June 27, 2002), 67 FR 44655.

<sup>10</sup> Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (December 24, 2002) [File Nos. SR-GSCC-2002-07 and SR-MBSCC-2002-01].

<sup>11</sup> Securities Exchange Act Release Nos. 48116 (July 1, 2003), 68 FR 41031; 49940 (June 29, 2004), 69 FR 40695; 51911 (June 23, 2005), 70 FR 37878; 54056 (June 28, 2006), 71 FR 38193; and 55920 (June 18, 2007), 72 FR 35270.

Commission is prepared to grant FICC permanent registration.<sup>12</sup>

In April, 2006, FICC announced its plan to have its Mortgage-Backed Securities Division ("MBS Division") act as a central counterparty ("CCP").<sup>13</sup> Pursuant to this service, FICC would act as the CCP for MBS Division members and would become the new legal counterparty to all original parties for eligible mortgage-backed securities transactions. Currently, FICC through its Government Securities Division acts as the CCP for its members U.S. Government securities transactions.

Therefore, the Commission is extending FICC's temporary registration as a clearing agency in order that FICC may continue to operate as a registered clearing agency and to provide its users clearing and settlement services. The Commission will consider permanent registration of FICC at a future date after the Commission has further evaluated FICC's plans to have its MBS Division act as a CCP and after the Commission and FICC have had time to evaluate how FICC is functioning with its MBS Division acting as a CCP, assuming the MBS Division CCP service is implemented.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 600-23 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number 600-23. This file number should be included on the subject line if e-mail is used. To help the Commission 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/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements

<sup>12</sup> Letter from Nikki Poulos, Managing Director, General Counsel, and Chief Privacy Officer, FICC (May 28, 2008).

<sup>13</sup> See FICC White Paper: "A Central Counterparty For Mortgage-Backed Securities: Paving The Way" at <http://www.dtcc.com/downloads/leadership/whitepapers/ccp.pdf>.

<sup>1</sup> FICC is the successor to MBS Clearing Corporation and Government Securities Clearing Corporation.

<sup>2</sup> 15 U.S.C. 78q-1(b) and 78s(a).