Committee on Financial Services
Hearing on Compensation Structure and Systemic Risk
January 22, 2010

Testimony from Nell Minow
Editor, The Corporate Library

Mr. Chairman and Members of the Committee, thank you very much for inviting me back to continue the discussion of executive compensation. In previous appearances before this committee before and after the economic meltdown of 2008, I have called executive compensation both symptom and cause of the instability in the financial services sector and our capital markets. I regret to say that the problem continues.

Compensation has played and continues to play a significant role in providing perverse incentives and rewarding strategic decisions that are contrary to sustainable growth. This is true at the macro level, as the "too big to fail" culture is promoted by a transaction-based fee structure that awards mergers without regard to the value they create. And it is true at the micro level, where pay for the quantity of transactions rather than the quality of transactions was a key element in the explosion of the sub-prime and derivative markets. In both of these examples, as in many others, the structure of the incentive compensation was a direct and even controlling factor.

In the post-meltdown world, the pay packages and especially the bonuses continue to widen the gulf between pay and performance – and between integrity and outrageousness. What was once unfortunate excess has now become appalling, an embarrassment not just to the brand of Wall Street but to the very essence of American capitalism. As my grandmother would say, it is a shonda, Yiddish for a humiliation that reflects badly on the community as a whole.

I remember another bailout by the US taxpayers, the then-astronomical $1.5 billion loan guarantee given to Chrysler in 1979. CEO Lee Lacocca took $1 a year in salary and escalated stock options that would not be worth anything unless the stock price had a substantial increase. He accomplished two things. In the short term, he immediately established his credibility and accountability with investors, employees, suppliers, and taxpayers. In the long term, he made a lot of money. But that was after he performed. He knew that the essence of leadership is that he got paid only when he delivered and only after everyone else.

But that is not what happened here. Instead, first, the boards of Wall Street financial institutions implemented pay plans that were a major and direct cause of the financial meltdown. These purported bastions of capitalism protected themselves from risk by limiting their downside exposure while taking their pay off the top. Second, rinse and repeat – they took bailout money and kept paying themselves as though they earned it.

We don't ask Wall Street to be able to set public policy or be humanitarians. We ask only that they can do math. Their math was wrong. We can understand that; people make mistakes. And we were glad to help out. But they have failed to show any sense of responsibility for the failures of the past. Instead they have exhibited a sense of entitlement and shown contempt for shareholders and taxpayers by making cosmetic changes and hoping we do not notice.

For example, our Senior Research Associate specializing in executive compensation, Paul Hodgson, noted that instead of fixing the problem, Wall Street is attempting to disguise the problem: "it's euphemism time. The latest filing from Goldman Sachs apparently makes no mention of the word bonus at all, referring only to discretionary compensation. Even the comp consultants are getting in on the game. No bonuses now, only incentives." Who do they think this will fool?

A story from Reuters on this subject has a revealing comment:

Alan Johnson, a compensation consultant with his own New York-based firm, said the change in language is no coincidence. He has been advising his clients, which include the largest investment and commercial banks, to banish the word "bonus" and use "incentives" instead.

"We try to avoid the term wherever we can because it is a flash point," Johnson said. "We're going back to using what it really is, it's an incentive."

Johnson said for the top earners on Wall Street, their bonuses can be anywhere from 50 to 90 percent of their annual compensation, and is a built-in part of compensation, not an extra.

This is like something Lewis Carroll would think up. If it is built-in, how is it an incentive?

I am here as a passionate capitalist. I believe in the market. But I believe executives and their boards of directors have hijacked the market to externalize risk and it is doing critical damage to capitalism. All I am asking is for them to put their money where their mouths are. If they are not willing to bet on themselves, shareholders should not be willing to bet on them. And if they truly believed they had a good case to make, they would not rely on obfuscatory language. But then, if they truly believed in what they were doing, they would not insist on guaranteed pay.

What they did before the bailout was counterproductive and misguided. What they have done since the bailout is an outrage. Since the only portion of pay that TARP did not restrict was base pay, everyone got a raise. For example, Wells Fargo's board approved a 522 percent salary increase for the CEO, from $900,000 to $5,600,000. The extra was paid in stock, just over 180,000 shares at August's rock-bottom prices. Thanks largely to the government bailout, two months later this was worth over $5.7 million.

These enormous grants of stock issued at historic low prices are resulting in enormous payouts based on the infusion from the bailouts and the overall market. It has nothing to do with the performance of the individuals involved. Even worse than large grants of stock are the grants of stock options that are so big that we have termed them mega-grants. Many of these were issued during the first two months of 2009 – before the pay limits were in place – when stocks were at their lowest possible ebb.

Companies in this category include:

Synovus Financial Services 750,000 stock options to the CEO with an exercise price of $13.18 Regions Financial 800,000 stock options at $21.94 US Bancorp 1.5 million stock options at $31.04 Wells Fargo 2 million stock options at $31.40 Citigroup 3 million stock options at between $24.40 and $36.60 JPMorgan 2 million stock options at $39.83 E*Trade 4 million stock options at $4.27 Advanta 1 million stock options at $5.39 Broadpoint 2 million stock options at either $3 or $4

Each of these stocks has risen in value since January and February 2009, some very substantially, resulting in instant profits for CEOs while shareholders are still a long way from regaining the value of their investment.

Americans are generous in times of need and forgiving of mistakes. But we are outraged at injustice. If people make poor choices, we understand. But if they profit at our expense from the consequences of those choices, we are appalled. There is simply no excuse for handing out stock or options without a discount to offset the subsidies from the bailout and an indexed formula so they pay out only when the company outperforms its peer group. Executives should be paid for their performance, not the market's performance.

Congress responded to our urging that companies must have clawbacks, so that any bonuses awarded on the basis of financial reports that are later corrected must be returned. However, too many companies have adopted the weakest possible clawback provisions, requiring a finding of malfeasance before the money must be repaid. If executives are paid on the basis of numbers that turn out to be false, all of the payments must be returned, no matter what the intention was. It was never their money and if we make returning it depend on proof of bad motives, we do not provide enough of an incentive to get the numbers right the first time.

It is also infuriating to hear the executives complain that they need these compensation plans to provide an incentive for performance because these pay plans are the opposite of pay for performance. If these people are as capitalistic and entrepreneurial and risk-taking as they say, they should be the first to insist on indexed options and long-term incentives tied to their performance rather than the performance of the market. The same goes for the even more absurd argument that these plans are necessary for retention, essentially conceding the pay for performance argument. I am all for closing the loophole to bring some sanity into the world of hedge fund fees, but even if we do not do that, I am enough of a free marketer to look forward to seeing the demand curve plummet as a bunch of sulky executives pour into the hedge fund marketplace. Anyone who says he or she will not stay without a guaranteed payout should be escorted out of the building. Putting pay at risk is the reason we pay them the big, big, big bucks.

We like to see:

1. Indexing options and tying option and stock grants to specific performance goals, as discussed above. Regardless of the form of compensation, if relative performance is being measured, executives should only be rewarded for levels of performance that are at or above the median of the peer group.

2. Banking of bonuses, preferable to clawbacks, a kind of escrow to ensure that any adjustments to the financial reports will result in adjustments to the bonus. This is essential not just in cases of fraud but also in cases of mistake, even honest mistake, because (a) there is no reason that executives should be unfairly enriched due to a mistake, (b) there is no reason that shareholders should have to pay for a mistake within the authority of the executives, (c) a bonus that is all upside and no downside provides a perverse incentive to be careless at best and manipulative at worst in preparing financial reports, and (d) intention is relevant to proving fraud but it is not relevant to determining the appropriate level of bonus. Just because a clerk at a retail store makes a mistake in giving you too much change does not mean you are entitled to keep it.

In the case of cash compensation deferral should be mandated for a minimum of three years and should apply to at least 50 percent of any award. In the case of equity compensation deferral should be mandated until three years into the executive’s retirement and should apply to at least 75 percent of any award 3. Severance under any “not for cause” termination should be limited to a single year’s salary and benefits, plus any unvested stock awards should continue to vest on their normal schedule for only that 12-month period.

4. Incentive compensation should be based on more than one performance metric. Different performance metrics should be rewarded from within a single incentive plan rather than multiple plans each measuring a single metric.

5. Incentive compensation should measure performance over periods of one year or more. Multi-year vesting schedules do not measure long-term performance, so any long-term incentive compensation must be based on the measurement of two or more performance metrics over periods of three years or more.

6. We support rigorous and extended stock holding requirements, including substantial stock holdings for three years after leaving the company.

7. Companies should ensure that compensation policies are easy for both executives and shareholders to understand and should avoid multiplication of compensation plans, particularly incentive plans

8. Long-term performance-based compensation should always make up the majority of total realizable compensation for the most senior executives at the company.

We like to see non-performance-based compensation play a fairly small role in total compensation. Many of the companies that do best for long-term investors pay executives below-median base salaries. And they are careful about what their performance goals are. It works well to base performance pay on some form of return on capital measure – often a better measure of value growth than earnings – and, in many cases, these return measures also take into account the cost of capital, rendering the metric an even more efficient measure of value growth. There is no one best practice for the form of long-term incentive practice. Some companies opt solely for stock options, some for time and/or performance-restricted stock, and some for other performance-related long-term incentives.

But the key is the board. It is unfathomable to me that many of the very same directors who approved the outrageous pay packages that led to the financial crisis continue to serve on boards. We speak of this company or that company paying the executives but it is really the boards and especially their compensation committees and until we change the way they are selected, informed, paid, and replaced we will continue to have the same result. Until we remove the impediments to shareholder oversight of the board, we cannot hope for an efficient, market-based system of executive compensation.

Directors should not be allowed to serve unless they have received majority vote of the shares cast. That way, investors will be able to remove directors who approve dysfunctional pay packages. I support “proxy access,” to permit shareholders to have their candidates for the board on the company’s proxy, but I expect that to be used in a fraction of a percent of the elections each year. “Say on pay” would be useful but not sufficient for meaningful change. Every director should have to earn the support of a majority of investors every year; that will do more than any other change to ensure that directors remember where they owe their loyalty.

The government has done a poor job of making it possible for regulated institutional investors like mutual funds, banks, money managers, pension funds, and foundations to cast proxy votes in an economically optimal manner. Due to the collective choice problem and conflicts of interest, proxy voting has too often been compromised and “rationally ignorant.” As we look at the “supply side” of executive compensation, management and boards, we must also look at the “demand side” to make sure our investor community has the information, tools, and ability to respond effectively.

I ask this committee to lead the way in putting an end to “too big to fail,” the term and the concept. If a company is too big to fail, it is too big to succeed. Or, as the title of a thoughtful new book by Robert Pozen puts it, it is “Too Big To Save.” If an enterprise is too big to fail, it is a utility and should be regulated like one. And executives should be paid like public servants.

Banking is now divided into two parts -- public utility and casino. The public utility is the part that is explicitly or implicitly guaranteed by the taxpayers. The part where executives take risks, in theory, is the part that under Glass-Steagall had to be separate. It is only allowing these two to be combined that creates a huge "handle" to support these pay levels. And it is only by allowing what used to be partnerships to sell stock that allows them to have the access to capital of a public company but the percentage of revenues allocated to compensation of a private company. It is this fundamental structural problem that was in part perpetrated by the pay structure and abusive pay will not be fixed until it is addressed.

Wall Street boards and executives have abused shareholders by creating perverse incentives for themselves through their pay plans. And they are now doing their best to perpetuate this system by pouring over $70 million so far into fighting any meaningful reform. This is just another example of diversion of assets to perpetuate the externalization of risk onto the shareholders and the taxpayers. I hope that Congress will address this attempt to subvert the efficient oversight of the market and restore the credibility of our financial sector.

I would like to thank Paul Hodgson and the staff of The Corporate Library for their assistance in preparing this testimony and the underlying data and analysis. I look forward to your questions.

Additional Materials

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    - Claes Dahlbäck
    - Stephen Friedman
    - William W. George
    - Rajat K. Gupta
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(877) 479-7500
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Investing in Corporate Governance: Return Of the Mega-Grant

The 1990s was the last time there was a significant number of companies awarding mega-grants of stock options (a mega-grant is any equity grant that exceeds half a million stock options). Such mega-grants have led to some of the largest stock option profits ever made. For example, Michael Eisner, former CEO of Walt Disney; Lawrence Ellison, CEO of Oracle; and Barry Diller, CEO of IAC/Interactive each made, over several years, well over half a billion dollars each in stock option profits on mega-grants made during the 1980s and 1990s. But with the change in accounting practice in 2005 that led to companies having to recognize the cost of stock options on their balance sheets, mega-grants became less common.

Suddenly, however, with the collapse in stock prices that has occurred since fall 2008, like some creature from the deep, the mega-grant has returned. This has largely been occasioned by the fact that boards are fixated on– regardless of the value of the company stock – delivering a certain level of target compensation to CEOs. The thought process seems to be that if a stock price is very low, then in order to achieve that elusive "target" level, many, many more options need to be awarded. The value of a stock option award (using, for example, the Black-Scholes valuation model) is predicated on a number of variables, including stock price volatility and the life of the option, but the two most important predicates are the number of options and the exercise or strike price. If the strike price goes down, in order to maintain value, the number of options must go up. It appears not to have occurred to boards that almost everyone's stock price is depressed – price depression is consistent particularly among companies within the same industry sector – therefore the desire to "keep up with the Joneses" by designing "competitive" pay packages needs to be adjusted similarly.

What is wrong with the mega-grant?

So what is wrong with the mega-grant? Fundamentally, like all market-priced stock option awards, executives benefit from the entire increase in the company's stock price whether it was due to market forces or the excellence of their management skills. If the option award is very large, this means that very small increases in stock price can lead to very significant rewards. A $1 increase over the exercise price of an award of 1 million stock options leads to a profit of $1 million. In other words, the award of mega-grants of stock options leads to executives benefiting from a potentially enormous upside. If the market recovers and stock prices rebound, shareholders will "recover" most of the value of their investments, and CEOs will make potentially millions of dollars worth of profits. This does not align the interests of executives and shareholders, it divorces them. The award of stock options with an exercise price at a significant premium to current depressed prices is the only way to align executives' interests with shareholders' in this kind of market, but few if any companies have taken this route.

The current report focuses on 12 mega-stock and stock option awards granted since October 2008 that The Corporate Library has identified. We have already written about the awards at SunTrust Banks in *2009 Proxy Season Foresights #4: CEO Compensation at the 20 Largest TARP Funding Recipients*, and this triggered our interest in identifying whether other companies were taking such ill-advised actions.

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About the mega-grants

Table 1 in the appendix gives the basic details of the grants. All but one of the grants in the table is a stock option award, though in some cases other equity grants accompanied the stock option award, such as at SunTrust and Seagate Technology. The only award that was not an option was the grant of phantom stock units at Dynegy. At almost 1.6 million shares, with essentially an exercise price of zero (this is outright stock, not options to buy stock, thus the exercise price of zero), the potential value of this is even higher than the stock option awards in the table, and this is why it is included.

The "grant date value" is a company-provided figure drawn from the SEC-required "Grants of Plan-Based Awards Table" that is a mandated part of each company's proxy statement. However, not every company provided a value in this table, as many of the awards were disclosed in other filings and in other forms. As an example of the effect of granting large numbers of stock options at depressed prices, our first step was to identify what had happened to the companies' stock prices since the dates of grant. We set a date of April 4, 2009 to collect stock price details and calculated the amount of profit CEOs had already made, sometimes in less than a month. The largest profit is associated with the largest stock option award, of 3.5 million shares at Seagate Technology. In only just over two months, the Seagate CEO has an intrinsic profit of more than $8 million with a stock price increase of barely more than $2. This amounts to more than $128,000 per day. At three companies, the stock price has fallen since the grant, so no profits are recorded, but the nine other CEOs have already seen potential profits that average almost $2.2 million.

Interestingly, two of the grants have performance conditions attached to them, though only to a fraction of the total award, at PNC Financial Services and Coca-Cola Enterprises.

12-month high and "all-time" high

While significant paper profits have been seen already, they are insignificant compared to the profits that could be made if the relevant stock prices rebounded to the high for the 12 months ending April 4, 2009. In this scenario, the average potential profit is almost $24 million. Again, Table 2 shows the highest potential profit is at Seagate at $65.6 million, but other CEOs at SunTrust, Ameriprise Financial, Capital One, and PNC Financial all could see profits of more than $30 million.

The numbers get even higher when the highest stock price recorded in a company's Outstanding Equity Awards Table is used to calculate potential profits. In this case, the average rises to more than $30 million. While the highest price recorded in the "Outstanding Equity Awards Table" is not strictly speaking the "all-time" high stock price, it does represent the highest exercise price at which stock options have been awarded at some time in the last decade (the life of an option is typically 10 years). Since the overwhelming majority of options granted in the U.S. are market-priced, it is a good approximation of the company's highest stock price over the last decade.

For almost all of the companies, the exercise price of the mega-grant is far lower than the highest price for outstanding equity, which illustrates that share prices have declined precipitously. As seen in Table 3, only at TD Ameritrade is the highest price for the CEO's outstanding equity lower than the exercise price for the mega-grant. However, the company's stock price has continued to fall from the $18.21 price on October 10, 2008, and it once traded at $23.49 during the 12 months prior to April 4, 2009.

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Majority have underwater options

All but one of the CEOs in the study has outstanding stock options that are far underwater. Options are termed “underwater” or “out-of-the-money” if their exercise price is higher than the current market price. Only the CEO at TD Ameritrade does not have any outstanding underwater stock options – although, of course, because the company’s stock price has continued to fall, the new mega-grant is now out-of-the-money.

Table 4 looks at the number of stock options awarded as a mega-grant and compares that to the number of outstanding stock options that are underwater (this latter figure excludes the latest mega-grant of options). As can be seen, 90 percent or more of the outstanding awards are underwater for ten of the 12 CEOs. Indeed, eight of them have no options that are in-the-money except for the new grant. In many cases – at Coca-Cola Enterprises, Seagate Technology, Brookfield Homes, NightHawk Radiology, and Teradata – the new mega-grant is almost equivalent to or far exceeds the number of underwater stock options. This – as we have already pointed out in *2009 Proxy Season Foresights #4* and *2009 Proxy Season Foresights #8* – is repricing in another guise.

Conclusion

Why do investors need to concern themselves with the return of the mega-grant? It is because such a practice sends a number of messages about governance at a company. First, especially in this kind of economic circumstance, it is one of the worst kinds of ‘pay for failure’. It allows executives to profit handsomely from a market recovery that may have nothing to do with their actions. Second, equity compensation is supposed to align the interests of management and shareholders, but such grants have the opposite effect; like repricing or exchanging stock options, they give executives a chance to wipe out losses – a chance that is not extended to shareholders. Finally, mega-grants tell a story about the relationship between the board and the CEO, indicating that the board’s priority appears to be to ensure that the CEO receives a large amount of compensation rather than effectively motivating the CEO to see to it that the value that shareholders have lost gets returned to them. After all, the surest way to incentivize a CEO to restore a stock price to its former level is to award stock options that are priced just at that level so that the only way for the management to make a profit is to fully restore the stock price to that former level. Setting such a target would not necessarily mean CEOs would not get adequately paid for the work involved in such a rebound; it would only ensure that such pay is earned.

Paul Hodgson, Senior Research Associate
June 1, 2009

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56 Northport Drive
Portland, Maine 04103
(877) 479-7500
(207) 874-6921
info@thecorporatelibrary.com
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Appendix

Table 1: Mega-Grants Immediate Gain on 4/4/09 (*Source: The Corporate Library*)

Company Name	CEO	Number of options awarded	Exercise price	Date of grant	Grant Date Value (if given)	Close on 4/4/09	Profit/gains at 4/4/09
Ameriprise Financial	James M. Cracchiolo	1,028,531	$21.34	2/2/2009		$22.84	$1,542,797
Brookfield Homes	Ian G. Cockwell	1,000,000	$2.65	2/2/2009	$1,620,000	$3.66	$1,010,000
Capital One Financial Corporation	Richard D. Fairbank	970,403	$18.28	1/29/2009	$4,000,000	$13.82	$0
Coca-Cola Enterprises	John F. Brock	1,010,600	$9.82	10/30/2008	$2,617,454	$14.09	$5,325,862
Dynegy	Bruce Williamson	1,592,291	$0.00	3/4/2009	$1,799,289	$1.64	$812,068
NightHawk Radiology Holdings	David M. Engert	750,000	$3.65	2/23/2009 & 12/22/2008		$2.94	$0
PNC Financial Services	James E. Rohr	690,400	$31.07			$35.80	$3,265,592
Seagate Techology	Stephen J. Luczo	3,500,000	$4.05	1/30/2009		$6.40	$8,242,500
St. Jude Medical, Inc.	Daniel J. Starks	600,000	$30.58	12/15/2008	$6,424,380	$35.07	$2,694,000
SunTrust Banks	James Wells	550,000	$9.06	2/10/2009		$12.70	$2,002,000
TD Ameritrade Holding Corporation	Frederic J. Tomczyk	1,150,000	$18.21	10/10/2008	$10,402,670	$14.38	$0
Teradata Corp.	Michael Koehler	679,612	$13.77	12/2/2008	$3,606,672	$16.38	$1,773,787
Average							**$2,222,384**

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Table 2: Mega-Grants Potential Gains based on 12-Month High (*Source: The Corporate Library*)

Company Name	CEO	Number of options awarded	Exercise price	Date of grant	Grant Date Value (if given)	12-month high at 4/4/09	Potential profit if stock price reaches 12-month high
Ameriprise Financial	James M. Cracchiolo	1,028,531	$21.34	2/2/2009		$55.97	$35,618,029
Brookfield Homes	Ian G. Cockwell	1,000,000	$2.65	2/2/2009	$1,620,000	$18.04	$15,390,000
Capital One Financial Corporation	Richard D. Fairbank	970,403	$18.28	1/29/2009	$4,000,000	$63.50	$43,881,624
Coca-Cola Enterprises	John F. Brock	1,010,600	$9.82	10/30/2008	$2,617,454	$24.52	$14,855,820
Dynegy	Bruce Williamson	1,592,291	$0.00	3/4/2009	$1,799,289	$9.92	$15,795,527
NightHawk Radiology Holdings	David M. Engert	750,000	$3.65	2/23/2009 & 12/22/2008		$9.78	$4,594,500
PNC Financial Services	James E. Rohr	690,400	$31.07			$87.99	$39,297,568
Seagate Techology	Stephen J. Luczo	3,500,000	$4.05	1/30/2009		$22.78	$65,572,500
St. Jude Medical, Inc.	Daniel J. Starks	600,000	$30.58	12/15/2008	$6,424,380	$48.49	$10,746,000
SunTrust Banks	James Wells	550,000	$9.06	2/10/2009		$64.00	$30,217,000
TD Ameritrade Holding Corporation	Frederic J. Tomczyk	1,150,000	$18.21	10/10/2008	$10,402,670	$23.49	$6,072,000
Teradata Corp.	Michael Koehler	679,612	$13.77	12/2/2008	$3,606,672	$27.32	$9,208,743
Average							**$24,270,776**

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Table 3: Mega-Grants Potential Gains based on Highest Price of Outstanding Options (*Source: The Corporate Library*)

Company Name	CEO	Number of options awarded	Exercise price	Date of grant	Grant Date Value (if given)	Highest price of outstanding options	Potential profit if stock price reaches highest price
Ameriprise Financial	James M. Cracchiolo	1,028,531	$21.34	2/2/2009		$58.73	$38,456,774
Brookfield Homes	Ian G. Cockwell	1,000,000	$2.65	2/2/2009	$1,620,000	$52.00	$49,350,000
Capital One Financial Corporation	Richard D. Fairbank	970,403	$18.28	1/29/2009	$4,000,000	$87.28	$66,957,807
Coca-Cola Enterprises	John F. Brock	1,010,600	$9.82	10/30/2008	$2,617,454	$25.81	$16,159,494
Dynegy	Bruce Williamson	1,592,291	$0.00	3/4/2009	$1,799,289	$9.67	$15,397,454
NightHawk Radiology Holdings	David M. Engert	750,000	$3.65	2/23/2009 & 12/22/2008		$21.75	$13,572,000
PNC Financial Services	James E. Rohr	690,400	$31.07			$74.65	$30,087,632
Seagate Techology	Stephen J. Luczo	3,500,000	$4.05	1/30/2009		$24.63	$72,047,500
St. Jude Medical, Inc.	Daniel J. Starks	600,000	$30.58	12/15/2008	$6,424,380	$51.91	$12,798,000
SunTrust Banks	James Wells	550,000	$9.06	2/10/2009		$85.06	$41,800,000
TD Ameritrade Holding Corporation	Frederic J. Tomczyk	1,150,000	$18.21	10/10/2008	$10,402,670	$12.92	($6,083,500)
Teradata Corp.	Michael Koehler	679,612	$13.77	12/2/2008	$3,606,672	$27.98	$9,657,287
Average							**$30,016,704**

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Table 4: Underwater Options as a Percentage of Outstanding Options (*Source: The Corporate Library*)

Company Name	CEO	Number of options awarded	Underwater options	Number of underwater options	% of outstanding options that are underwater
Ameriprise Financial	James M. Cracchiolo	1,028,531	Yes	3,039,327	96
Brookfield Homes	Ian G. Cockwell	1,000,000	Yes	330,000	100
Capital One Financial Corporation	Richard D. Fairbank	970,403	Yes	8,336,112	100
Coca-Cola Enterprises	John F. Brock	1,010,600	Yes	1,388,300	100
Dynegy	Bruce Williamson	1,592,291	Yes	2,538,980	100
NightHawk Radiology Holdings	David M. Engert	750,000	Yes	64,318	100
PNC Financial Services	James E. Rohr	690,400	Yes	2,353,027	100
Seagate Techology	Stephen J. Luczo	3,500,000	Yes	110,000	100
St. Jude Medical, Inc.	Daniel J. Starks	600,000	Yes	1,056,000	49
SunTrust Banks	James Wells	550,000	Yes	953,000	100
TD Ameritrade Holding Corporation	Frederic J. Tomczyk	1,150,000	No	0	0
Teradata Corp.	Michael Koehler	679,612	Yes	332,915	92

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You may be interested in the governance risk profiles of the following companies mentioned in this report:

Ameriprise Financial
Brookfield Homes
Capital One Financial Corporation
Coca-Cola Enterprises
Dynegy
IAC/Interactive
NightHawk Radiology Holdings
Oracle
PNC Financial Services
Seagate Technology
St. Jude Medical, Inc.
SunTrust Banks
TD Ameritrade Holding Corporation
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By: Beth Young, Senior Research Associate
Published: May 18, 2009

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By: Paul Hodgson, Senior Research Associate; Kimberly Gladman, Director of Research and Ratings; Sandy Warrick, Adjunct Research Associate
Published: May 11, 2009