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## **LIU, PENSION FUNDS: TOUGHER CLAWBACKS ON EXECUTIVE PAY NEEDED**

*Current compensation policies shield top executives from responsibility*

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NEW YORK, NY – City Comptroller John C. Liu and the NYC Pension Funds called on three corporate boards to hold senior executives financially accountable for losses that result from excessive risk-taking or improper or unethical conduct. The Funds filed the shareholder proposals at JPMorgan (NYSE: JPM), Goldman Sachs (NYSE: GS), and Morgan Stanley (NYSE: MS) because they are among the largest and have each come under scrutiny for improper practices leading up to the financial crisis. Each firm has paid more than \$100 million over the past 18 months to settle state or federal charges in connection with mortgage securities.

“No one should profit or be rewarded with bonuses when engaged in improper or unethical behavior,” Comptroller Liu said. “These tougher clawback provisions will not only recover money that shouldn’t have been paid in the first place, but also set the tone for a stronger standard of conduct for company executives as well as their bosses.”

The firms have clawback policies that allow them to recoup incentive pay from employees who act improperly. The proposals submitted by the Comptroller and the Pension Funds would strengthen these clawback policies in several ways. The proposals aim to prevent the perverse incentives and bad practices that were at the heart of the financial collapse of 2008.

The Comptroller and the Pension Funds have asked the firms to make three changes to their compensation clawback policies:

### **Increase executives’ accountability**

Goldman Sachs’ and JPMorgan’s current clawback policies only hold executives responsible for “material” losses, creating unrealistically high legal and financial standards for clawback actions. The proposal asks the word “material” be stricken from the two firms’ clawback policies in order to lower this barrier that protects executives from being held accountable. Morgan Stanley’s existing clawback policy does not include the “material” hurdle so this request is not part of the proposal filed at that firm.

### **Hold supervisors responsible for bad behavior**

Current policies at the three firms limit clawbacks to employees who take excessive risks or engage in improper or unethical conduct. Under the current system, a senior executive can

benefit when a subordinate engages in improper conduct that generates profits in the short-term, but that ultimately causes financial or reputational harm to the firm. The proposal seeks to eliminate this perverse incentive.

### **Disclose clawback actions**

The proposal asks that the three firms' clawback policies be amended to require disclosure of any decision by their boards on whether or not to recoup executive compensation. Currently, they do not have to make clawbacks decisions public.

The resolution at Goldman Sachs was co-filed by the UAW Retiree Medical Benefits Trust, which provides health care benefits to 840,000 auto industry retirees and has \$54 billion assets under management. The Trust owns 295,274 shares of equity in Goldman with a market value of \$25,895,529.80 as of December 19, 2011.

The New York City Comptroller serves as the investment advisor to, custodian and trustee of the New York City Pension Funds. The New York City Pension Funds are composed of the New York City Employees' Retirement System, Teachers' Retirement System, New York City Police Pension Fund, New York City Fire Department Pension Fund and the Board of Education Retirement System. The New York City Pension Funds as of 12/19/2011 hold a combined 15,449,153 shares at the three firms valued at \$483,273,254.98, which includes 10,564,231 shares at JPMorgan (NYSE: JPM) valued at \$324,321,891.70; 1,220,844 shares at Goldman Sachs (NYSE: GS) valued at \$107,068,018.80; and 3,664,078 shares at Morgan Stanley (NYSE: MS) valued at \$51,883,344.48.

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### **TEXT IN-FULL OF THE THREE SHAREHOLDER PROPOSALS:**

RESOLVED, that shareholders of JPMorgan Chase & Co. ("JPMorgan") urge the Compensation Committee (the "Committee") of the board of directors to strengthen JPMorgan's compensation clawback policy, as applied to senior executives, by:

- Deleting the word "material" from the requirements that, for recovery of compensation, there be "material financial or reputational harm" to JPMorgan or its business activities or a failure to properly identify, raise or assess "risks material" to JPMorgan;
- Providing that failure to appropriately manage or monitor an employee who failed to properly identify, raise or assess risks to JPMorgan or engaged in conduct that causes financial or reputational harm to JPMorgan (in either case as determined by the Committee), or who engaged in conduct constituting cause for termination, will support recovery of compensation; and
- Requiring disclosure in a filing on Form 8-K of any decision by the Committee or full board on whether or not to exercise JPMorgan's right to recover any particular award of compensation.

These amendments should operate prospectively and be implemented in a way that does not violate any contract, compensation plan, law or regulation.

"Recovery" of compensation includes cancellation, forfeiture and recapture.

SUPPORTING STATEMENT

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In our view, compensation practices, especially in the financial sector, have contributed to excessive risk-taking, costly legal and regulatory compliance failures (particularly with respect to mortgages and complex mortgage securities), and socially undesirable behavior. The clawback provisions JPMorgan adopted in 2009 and 2010 are a useful first step in curbing these tendencies.

JPMorgan's current clawback provisions, which apply to awards under its long-term incentive plans, authorize recovery of compensation if the Committee determines that a recipient engaged in conduct that causes material financial or reputational harm to JPMorgan or, for certain senior executives, failed to properly identify, raise or assess risks material to JPMorgan. The provisions also provide for recovery if the recipient engages in conduct constituting cause for termination.

While a good start, these provisions fall short in three ways. First, requiring that risk-related or other detrimental conduct cause "material" harm to JPMorgan is too onerous. In our view, compensation recovery may be appropriate absent a material impact on the firm as a whole, especially given JPMorgan's size and diverse operations.

Second, JPMorgan's provisions cover only the employee whose own conduct is at issue. We think there are circumstances in which the employee's supervisor, or more senior executives, should be held accountable. The Committee should be empowered to recover compensation from senior executives upon a determination that they failed to appropriately manage or monitor subordinates.

Finally, shareholders cannot monitor enforcement without disclosure. JPMorgan should disclose the fact that the Committee or full board considered invoking a clawback provision as applied to a particular senior executive, and the decision made. We are sensitive to privacy concerns, and urge JPMorgan to adopt a policy that does not violate privacy expectations (subject to laws requiring fuller disclosure).

We urge shareholders to vote FOR this proposal.

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RESOLVED, that shareholders of The Goldman Sachs Group, Inc. ("Goldman") urge the Compensation Committee (the "Committee") of the board of directors to strengthen Goldman's compensation clawback policy, as applied to senior executives, by:

- Deleting the word "material" from the requirement that, for recovery of compensation, there be an expected "material adverse impact" on Goldman from participation in specified activities without appropriate consideration of the risk to Goldman or the broader financial system;
- Providing that failure to appropriately manage or monitor an employee who participated in specified activities without appropriate consideration of risk (as determined by the Committee) or who engaged in conduct defined as "Cause" will support recovery of compensation; and
- Requiring disclosure in a filing on Form 8-K of any decision by the Committee or full board on whether or not to exercise Goldman's right to recover any particular award of compensation.

These amendments should operate prospectively and be implemented in a way that does not violate any contract, compensation plan, law or regulation.

“Recovery” of compensation includes cancellation, forfeiture and recapture.

“Cause” is conviction of a felony or certain misdemeanors involving fraud or theft; conduct constituting an employment disqualification under applicable law; willful failure to perform duties; violation of securities or commodities law or regulation; violation of Goldman policy concerning hedging, pledging, confidential or proprietary information; material violation of other Goldman policy; acts or statements negatively reflecting on or disparaging Goldman’s name or reputation; and other conduct detrimental to Goldman.

#### SUPPORTING STATEMENT

Goldman’s current clawback provisions, which appear in award agreements under Goldman’s long-term incentive plans, authorize recovery of compensation if the Committee determines that a recipient participated in the structuring or marketing of any product or service, or participated in the purchase or sale of a security, “without appropriate consideration of risk” to Goldman or “the broader financial system as a whole.” Some agreements also provide for recovery if the recipient engages in conduct defined as “Cause” for termination.

While a good start, these provisions fall short in three ways. First, requiring that risk-related conduct have a “material” adverse impact on Goldman is too onerous. In our view, compensation recovery may be appropriate absent a material impact on the firm as a whole, especially given Goldman’s size and diverse operations.

Second, Goldman’s provisions cover only the employee whose own conduct is at issue. We think there are circumstances in which the employee’s supervisor, or more senior executives, should be held accountable. The Committee should be empowered to recover compensation from senior executives upon a determination that they failed to appropriately manage or monitor subordinates.

Finally, shareholders cannot monitor enforcement without disclosure. Goldman should disclose the fact that the Committee or full board considered invoking a clawback provision as applied to a particular senior executive, and the decision made. We are sensitive to privacy concerns, and urge Goldman to adopt a policy that does not violate privacy expectations (subject to laws requiring fuller disclosure).

We urge shareholders to vote FOR this proposal.

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RESOLVED, that shareholders of Morgan Stanley (the “Company”) urge the Compensation Committee (the “Committee”) of the board of directors to strengthen the Company’s compensation clawback policy, as applied to senior executives, by:

- Providing that failure to appropriately manage or monitor an employee who engaged in “conduct detrimental to the Company” (as determined by the Committee) or conduct constituting “cause” for termination will support recovery of compensation; and
- Requiring disclosure in a filing on Form 8-K of any decision by the Committee or full board on whether or not to exercise the Company’s right to recover any particular award of compensation.

These amendments should operate prospectively and be implemented in a way that does not violate any contract, compensation plan, law or regulation.

“Recovery” of compensation includes cancellation, forfeiture and recapture.

“Conduct detrimental to the Company” includes causing a significant financial loss or other reputational harm to the Company or one of its businesses.

#### SUPPORTING STATEMENT

In our view, compensation practices, especially in the financial sector, have contributed to excessive risk-taking, costly legal and regulatory compliance failures (particularly with respect to mortgages and complex mortgage securities), and socially undesirable behavior. The clawback provisions Morgan Stanley first adopted in 2008 are a useful first step in curbing these tendencies.

Morgan Stanley’s current clawback provisions, which apply to awards under the Company’s long-term incentive plans, authorize recovery of compensation if the Committee determines that a recipient engaged in “conduct detrimental to the Company.” This provision, which applies to deferred cash-based awards to named executive officers, also explicitly covers situations where there is a substantial loss on a holding, or any loss on holding where an employee operated outside the risk parameters applicable to such holding and, in either case, such holding was a factor in that employee’s compensation determination.

In addition to these provisions, the policy also provides for recovery of equity awards and deferred cash-based awards if the recipient engages in conduct constituting cause for termination. The Company defines cause to include, among other things, failure to comply with its compliance, ethics or risk management standards.

These provisions fall short in two ways. First, the provisions cover only the employee whose own conduct is at issue. We think there are circumstances in which the employee’s supervisor, or more senior executives, should be held accountable. The Committee should be empowered to recover compensation from senior executives upon a determination that they failed to appropriately manage or monitor subordinates.

Second, shareholders cannot monitor enforcement without disclosure. Morgan Stanley should disclose the fact that the Committee or full board considered invoking a clawback provision as applied to a particular senior executive, and the decision made. We are sensitive to privacy concerns, and urge the Company to adopt a policy that does not violate privacy expectations (subject to laws requiring fuller disclosure).

We urge shareholders to vote FOR this proposal.

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In addition to Comptroller Liu, the New York City Pension Funds trustees are:  
New York City Employees’ Retirement System: Ranji Nagaswami, Mayor’s Representative (Chair); New York City Public Advocate Bill de Blasio; Borough Presidents: Scott Stringer (Manhattan), Helen Marshall (Queens), Marty Markowitz (Brooklyn), James Molinaro (Staten Island), and Ruben Diaz, Jr. (Bronx); Lillian Roberts, Executive Director, District Council 37, AFSCME; John Samuelsen, President Transport Workers Union Local 100; Gregory Floyd, President, International Brotherhood of Teamsters, Local 237.

Teachers' Retirement System: Ranji Nagaswami, Mayor's Representative; Deputy Chancellor Kathleen Grimm, New York City Department of Education; Mayoral appointee Lisete Nieves and Sandra March, Melvyn Aaronson (Chair) and Mona Romain, all of the United Federation of Teachers.

New York City Police Pension Fund: Mayor Michael Bloomberg; New York City Finance Commissioner David Frankel; New York City Police Commissioner Raymond Kelly (Chair); Patrick Lynch, Patrolmen's Benevolent Association; Michael Palladino, Detectives Endowment Association; Edward D. Mullins, Sergeants Benevolent Association; Thomas Sullivan, Lieutenants Benevolent Association; and, Roy T. Richter, Captain's Endowment Association.

New York City Fire Department Pension Fund: Mayor Michael Bloomberg; New York City Fire Commissioner Salvatore Cassano (Chair); New York City Finance Commissioner David Frankel; Stephen Cassidy, President, James Slevin, Vice President, Robert Straub, Treasurer, and John Kelly, Brooklyn Representative and Chair, Uniformed Firefighters Association of Greater New York; John Dunne, Captains' Rep.; James Lemonda, Chiefs' Rep., and James J. McGowan, Lieutenants' Rep., Uniformed Fire Officers Association; and, Sean O'Connor, Marine Engineers Association.

Board of Education Retirement System: Schools Chancellor Dennis Walcott; Mayoral: Eduardo Marti, Gitte Peng, Jeff Kay; Tino Hernandez, Judy Bergrau, Freida Foster, Linda Laursell Bryant, and Lisette Nieves; Patrick Sullivan (Manhattan BP), Gbubemi Okotieuro (Brooklyn BP), Dmytro Fedkowskyj (Queens BP), Wilfredo Pagan (Bronx BP) and Diane Peruggia (Staten Island BP); and employee members Joseph D'Amico of the IUOE Local 891 and Milagros Rodriguez of District Council 37, Local 372.

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