

CHIMERA INVESTMENT CORP  
Form DEFA14A  
November 18, 2015

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the Securities  
Exchange Act of 1934 (Amendment No. )

- Filed by the Registrant  [X]  
Filed by a Party other than the Registrant  [ ]  
Check the appropriate box:  
 [ ] Preliminary Proxy Statement  
 [ ] Confidential, for Use of the Commission Only  
(as permitted by Rule 14a-6(e)(2))  
 [ ] Definitive Proxy Statement  
 [X] Definitive Additional Materials  
 [ ] Soliciting Material under Rule 14a-12

Chimera Investment Corporation  
(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- [X] No fee required.  
 [ ] Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
- |     |   |
|-----|---|
| (1) | Title of each class of securities to which transaction applies:   |
| (2) | Aggregate number of securities to which transaction applies:  |
| (3) | Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined): |
| (4) | Proposed maximum aggregate value of transaction:  |
| (5) | Total fee paid:   |

- [ ] Fee paid previously with preliminary materials.  
 [ ] Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
- |     |  |
|-----|--|
| (1) | Amount Previously Paid:                        |
| (2) | Form, Schedule or Registration Statement No. : |
| (3) | Filing Party:                                  |
| (4) | Date Filed:                                    |



Supplement to the Proxy Statement Dated October 28, 2015  
for the Annual Meeting of Stockholders to be held on December 10, 2015

On October 28, 2015, Chimera Investment Corporation (the "Company") filed a definitive Proxy Statement on Schedule 14A (the "Proxy Statement") in connection with its 2015 Annual Meeting of Stockholders to be held on December 10, 2015 (the "Annual Meeting"). At the Annual Meeting, the Company is requesting that the stockholders of the Company approve the Chimera Investment Corporation Amended and Restated 2007 Equity Incentive Plan (the "Plan"), as set forth in Proposal 3 of the Proxy Statement. A copy of the Plan is attached as Appendix A to the Proxy Statement.

After the mailing of the Proxy Statement, we updated the proposed Plan to clarify that the Board of Directors does not have the discretion to determine that a Change of Control, as defined in the Plan, has occurred. Specifically the following clause was deleted from the definition of Change in Control: (vi) the Board adopts a resolution to the effect that, in its judgment, as a consequence of any transaction or event, a Change in Control has effectively occurred. This change was made in response to a report issued by ISS on November 16, 2015 in which ISS recommended that the Company's stockholders vote "Against" the approval of the Plan based on this provision. We expect that ISS will revise its report to recommend a vote "For" the Plan as a result of the change described above. Other than the change described above, all other terms of the Plan remain the same as those described in the Proxy Statement. The text of the Plan is included as Annex A to this Supplement.

The Plan, as amended, will be presented for stockholder approval at the Company's Annual Meeting and its effectiveness remains conditioned on the receipt of such approval. If a stockholder returns his or her proxy card at any time (either prior to or after the date of this Supplement) indicating in favor of Proposal 3, such vote will constitute a vote in favor of such Proposal, as amended by this Supplement. If any stockholder has already returned his or her properly executed proxy card and would like to change his or her vote on any matter, such stockholder may revoke his or her proxy before it is voted at the Annual Meeting by submission of a proxy bearing a later date by mail, by voting again on the Internet or by telephone, or by voting electronically at the Annual Meeting. If any stockholder would like a new proxy or has any questions, he or she should contact Investor Relations at (866) 315-9930.

The information provided above may be deemed "additional soliciting materials" within the meaning of the Securities Exchange Act of 1934, as amended.

Sincerely,  
Phillip J. Kardis II  
Chief Legal Officer and Secretary

---

Annex A

---

**CHIMERA INVESTMENT CORPORATION**

**2007 EQUITY INCENTIVE PLAN**

**(as amended and restated effective December 10, 2015)**

Section 1. Purpose of the Plan

The purpose of the Plan is to aid the Company and its Affiliates in attracting, rewarding, and retaining employees, non-employee directors or other service providers and to motivate such employees, non-employee directors or other Persons who perform services for the Company or an Affiliate to stimulate their efforts toward the Company's continued success, long-term growth and profitability by providing incentives through the granting of Awards. The Company expects that it will benefit from the added interest which such key employees, non-employee directors or other service providers will have in the welfare of the Company as a result of their proprietary interest in the Company's success. The Plan has been amended and restated effective December 10, 2015 to (i) add provisions regarding cash-based performance awards, (ii) update certain provisions of the Plan regarding compliance with Section 162(m) of the Code and (iii) for other current needs. Such amendment and restatement of the Plan does not otherwise change the number of Shares reserved under the Plan, the categories of Share-based Awards or the individuals eligible to receive Awards.

Section 2. Definitions

The following capitalized terms used in the Plan have the respective meanings set forth in this Section:

- (a) *Act*: The Securities Exchange Act of 1934, as amended, or any successor thereto.
  - (b) *Affiliate*: Any entity directly or indirectly controlling, controlled by, or under common control with, the Company or any other entity designated by the Board in which the Company or stockholder of the Company has an interest.
  - (c) *Annual Incentive Award*: A cash-based Performance Award with a performance period that is the Company's fiscal year or other 12-month (or shorter) performance period as specified under the terms of the Award as approved by the Committee.
  - (d) ~~(e)~~ *Award*: An Option, Stock Appreciation Right, Restricted Stock, Dividend Equivalent Right, ~~or~~ Other Share-Based Award, or cash-based incentive award, including Annual Incentive Award, granted pursuant to the Plan. Certain Awards may be Performance Awards.
  - (e) ~~(d)~~ *Beneficial Owner*: A beneficial owner, as such term is defined in Rule 13d-3 and 13d-5 under the Act (or any successor rule thereto).
  - (f) ~~(e)~~ *Board*: The Board of Directors of the Company.
-

(g) ~~(H)~~ *Change in Control*: The occurrence of any of the following events:

- i. stockholder approval of the complete liquidation or dissolution of the Company;
- ii. the sale or disposition, in one or a series of related transactions, of all or substantially all of the assets of the Company to any Person or Group;
- iii. any Person or Group is or becomes the Beneficial Owner, directly or indirectly, of more than 50% of the voting shares of the Company;
- iv. a merger, consolidation or statutory share exchange where the Company's stockholders immediately prior to such event hold less than 50% of the voting power of the surviving or resulting entity; or
- v. during any period of two consecutive years, individuals who at the beginning of such period constituted the Board (together with any new directors whose election by such Board or whose nomination for election by the stockholders of the Company was approved by a vote of a majority of the directors of the Company, then still in office, who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board, then in office; ~~or~~.
- ~~vi. the Board adopts a resolution to the effect that, in its judgment, as a consequence of any transaction or event, a Change in Control has effectively occurred; except, in the case of clauses (i) (vi), if the Change in Control results from a transaction between the Company and the Manager or an Affiliate of the Manager or from a termination of the Management Agreement for cause (as such term is defined in the Management Agreement).~~

(h) ~~(E)~~ *Code*: The Internal Revenue Code of 1986, as ~~amended, or any successor thereto~~ now in effect or as hereafter amended. References to the Code shall include the valid and binding governmental regulations, court decisions and other regulatory and judicial authority issued or rendered thereunder.

(i) ~~(H)~~ *Committee*: The Compensation Committee of the Board or such other committee as may be appointed by the Board in accordance with Section 4 of the Plan. The Board may exercise any power or right of the Committee; provided, that, the Board may not grant any Award that is intended to be performance-based compensation under Section 162(m) of the Code.

(j) ~~(H)~~ *Company*: Chimera Investment Corporation, a Maryland corporation.

---

Edgar Filing: CHIMERA INVESTMENT CORP - Form DEFA14A

(k) *Covered Employee*: A Participant who is a covered employee within the meaning of Section 162(m) as qualified by Section 10(c) below.

(l) ~~(j)~~ *Dividend Equivalent Right*: a right awarded under Section 8 of the Plan to receive (or have credited) the equivalent value of dividends paid on common stock of the Company.

(m) ~~(k)~~ *Effective Date*: The date the initial public offering of shares of the Company's common stock.

(n) ~~(h)~~ *Fair Market Value*: On a given date, (i) if there should be a public market for the Shares on such date, the closing price of the Shares as reported on such date on the Composite Tape of the principal national securities exchange on which such Shares are listed or admitted to trading, or, if the Shares are not listed or admitted on any national securities exchange, the closing price on such date as quoted on the National Association of Securities Dealers Automated Quotation System (or such market in which such prices are regularly quoted) (the "NASDAQ"), or, if no sale of Shares shall have been reported on the Composite Tape of any national securities exchange or quoted on the NASDAQ on such date, then the immediately preceding date on which sales of the Shares have been so reported or quoted shall be used; provided that, in the event of an initial public offering of the Shares of the Company, the Fair Market Value on the date of such initial public offering shall be the price at which the initial public offering was made, and (ii) if there should not be a public market for the Shares on such date, the Fair Market Value shall be the value established by the Committee in good faith.

(o) ~~(m)~~ *Group*: A group as such term is used in Sections 13(d) and 14(d) of the Act, acting in concert.

(p) ~~(n)~~ *ISO*: An Option that is also an incentive stock option, as described in Section 422 of the Code, granted pursuant to Section 6(c) of the Plan.

~~(q) *Management Agreement*: The Management Agreement between the Company and the Manager, dated as of November 21, 2007, as the same may be amended from time to time.~~

~~(r) *Manager*: Fixed Income Discount Advisory Company, a Delaware corporation, or any successor or assign.~~

(q) *Option*: An option to purchase Shares granted pursuant to Section 6 of the Plan.

(r) *Option Price*: The purchase price per Share under the terms of an Option, as determined pursuant to Section 6(a) of the Plan.

(s) *Other Share-Based Awards*: Awards granted pursuant to Section 9 of the Plan.

---

(t) *Participant*: Members of the Board, employees of, or any Person who performs services for, the Company, ~~the Manager~~ or an Affiliate of ~~either the Company or the Manager~~ (whether as a consultant, advisor or otherwise) who is selected by the Committee ~~or designated by the Manager~~ to participate in the Plan.

(u) *Performance Award*: An Award made subject to the attainment of performance goals (as described in Section 10) over a performance period established by the Committee, and includes an Annual Incentive Award.

(v) ~~(tt)~~ *Person*: A person, as such term is used for purposes of Section 13(d) or 14(d) of the Act (or any successor section thereto).

(w) ~~(ww)~~ *Plan*: The 2007 Equity Incentive Plan, as the same may be amended from time to time.

(x) ~~(xx)~~ *RSU*: A restricted stock unit, granted pursuant to Section 9 of the Plan, which represents the right to receive a Share.

(y) *Section 162(m)*: Section 162(m) of the Code.

(z) *Section 409A*: Section 409A of the Code.

(aa) ~~(zz)~~ *Shares*: Shares of common stock of the Company, subject to adjustment pursuant to Section ~~4011~~ of the Plan.

(bb) ~~(zzz)~~ *Stock Appreciation Right*: A stock appreciation right granted in connection with or independent of the grant of an Option, pursuant to Section 7 of the Plan.

### Section 3. Shares Subject to the Plan

Subject to this Section 3, and subject to adjustments as provided in Section ~~4011~~, the total number of Shares subject to Awards granted under the Plan, in the aggregate, may not exceed 8% of the authorized number of Shares of the Company on the Effective Date; provided, however, that no Award may cause the total number of Shares subject to all outstanding Awards to exceed 8% of the number of Shares outstanding on a fully diluted basis (assuming, if applicable, the exercise of all outstanding options and the conversion of all warrants and convertible securities into Shares) at the time of the Award. The Shares that may be used hereunder may consist, in whole or in part, of unissued Shares or previously issued Shares that have been reacquired by the Company. The issuance of Shares upon the exercise or payment of an Award shall reduce the total number of Shares available under the Plan, as applicable. Shares which are subject to Awards that terminate, lapse or are cancelled may again be used to satisfy Awards under the Plan. If the Option Price of any Option granted under the Plan is satisfied by delivering Shares to the Company in accordance with the terms of Section 6(b) of the Plan, only the number of Shares issued net of the Shares delivered shall be deemed delivered for purposes of determining the maximum number of Shares available under the Plan. To the extent any Shares subject to an Award are not delivered to a Participant because such Shares are used to satisfy an applicable minimum income tax withholding obligation, such Shares shall not be deemed to have been delivered for purposes of determining the maximum number of Shares available under the Plan. Shares subject to Dividend Equivalent Rights, other than Dividend Equivalent Rights based directly on the dividends payable with respect to Shares subject to Options, shall be subject to the limitation of this Section 3. If any Dividend Equivalent Rights or other equity-based Awards under Section 9 are paid out in cash, then, notwithstanding the first sentence of this Section 3 above the underlying Shares may again be made the subject of Awards under the Plan.

---



Section 4. Administration

The Plan shall be administered by the Committee, which may delegate its duties and powers in whole or in part as it determines, including to a subcommittee consisting of at least two individuals who are intended to qualify as non-employee directors within the meaning of Rule 16b-3 under the Act (or any successor rule thereto) and outside directors within the meaning of Section 162(m) of the Code. The Committee may grant Awards under this Plan only to Participants; provided that Awards may also, in the discretion of the Committee, be made under the Plan in assumption of, or in substitution for, outstanding awards previously granted by the Company or its Affiliates or a company that becomes an Affiliate. The number of Shares underlying such substitute Awards shall be counted against the aggregate number of Shares available for Awards under the Plan. The Committee is authorized to interpret the Plan, to establish, amend and rescind any rules and regulations relating to the Plan, and to make any other determinations that it deems necessary or desirable for the administration of the Plan. The Committee may correct any defect or supply any omission or reconcile any inconsistency in the Plan in the manner and to the extent the Committee deems necessary or desirable. Any decision of the Committee in the interpretation and administration of the Plan, as described herein, shall lie within its sole and absolute discretion and shall be final, conclusive and binding on all parties concerned (including, but not limited to, Participants and their beneficiaries or successors). The Committee shall have the full power and authority to establish the terms and conditions of any Award consistent with the provisions of the Plan and to waive any such terms and conditions at any time, in its sole discretion (including, without limitation, accelerating or waiving any vesting conditions and/or accelerating any payment). The Committee shall require payment of any amount it may determine to be necessary to withhold for federal, state, local or other taxes of any relevant jurisdiction as a result of the granting, vesting or exercise of an Award, or upon the sale of Shares acquired by the granting, vesting or exercise of an Award. For avoidance of doubt, if at any time the Committee determines that it has not received or required sufficient payment in respect of such withholding, the Committee is authorized to require such additional payments as it determines are necessary, and may withhold from such sources as it determines are necessary, including by payroll deductions.

Section 5. Limitations

No Award may be granted under the Plan after December 10, 2025 (the tenth anniversary of the ~~earlier of (i) the date that the Company's stockholders adopt~~ ~~or (ii) the date the Board adopts the Plan~~), but Awards theretofore granted may extend beyond that date and will continue to be governed by the terms of the Plan.

---

Section 6. Terms and Conditions of Options

Options granted under the Plan shall be, as determined by the Committee, non-qualified stock options or ISOs for United States federal income tax purposes (or other types of Options in jurisdictions outside the United States), as evidenced by the related Award, and shall be subject to the foregoing, the following terms and conditions, and to such other terms and conditions, not inconsistent therewith, as the Committee shall determine:

(a) Option Price; Exercisability. Any Option granted under the Plan shall have an Option Price of not less than the Fair Market Value of one Share on the date the Option is granted, and shall be vested and exercisable in installments at such time and upon such terms and conditions, as may be determined by the Committee, but in no event shall an Option be exercisable more than ten years after the date it is granted.

(b) Exercise of Options. Except as otherwise provided in the Plan or in an Award, an Option may be exercised for all, or from time to time any part, of the Shares for which it is then exercisable. For purposes of this Section 6 of the Plan, the exercise date of an Option shall be the later of the date a notice of exercise is received by the Company and, if applicable, the date payment is received by the Company pursuant to clauses (i) through (v) in the following sentence. Except as otherwise provided in an Award, the purchase price for the Shares as to which an Option is exercised shall be paid in full at the time of exercise at the election of the Participant: (i) in cash or its equivalent (e.g., by check); (ii) to the extent permitted by the Committee, in Shares having a Fair Market Value equal to the aggregate Option Price for the Shares being purchased and satisfying such other requirements as may be imposed by the Committee; (iii) partly in cash and, to the extent permitted by the Committee, partly in such Shares; (iv) to the extent permitted by applicable law through the delivery of irrevocable instructions to a broker to sell Shares obtained upon the exercise of the Option and deliver promptly to the Company an amount out of the proceeds of such sale equal to the aggregate Option Price for the Shares being purchased or (v) to the extent permitted by the Committee, through net settlement in Shares (a cashless exercise). The Committee may also authorize the Company to make or facilitate loans to Participants to enable them to exercise Options to the extent not prohibited by applicable law. The Committee may permit Participants to exercise Options in joint-tenancy with the Participant's spouse.

(c) ISOs. The Committee may grant Options under the Plan that are intended to be ISOs. No ISO shall have an Option Price of less than the Fair Market Value of one Share on the date granted or have a term in excess of ten years. Additionally, no ISO may be granted to any Participant who, at the time of such grant, owns more than ten percent of the total combined voting power of all classes of shares of the Company or of any Subsidiary, unless (i) the Option Price for such ISO is at least 110% of the Fair Market Value of one Share on the date the ISO is granted and (ii) the date on which such ISO terminates is a date not later than the day preceding the fifth anniversary of the date on which the ISO is granted. Any Participant who disposes of Shares acquired upon the exercise of an ISO either (A) within two years after the date of grant of such ISO or (B) within one year after the transfer of such Shares to the Participant, shall notify the Company of such disposition and of the amount realized upon such disposition. All options granted under the Plan are intended to be nonqualified stock options, unless the applicable award agreement expressly states that the Option is intended to be an ISO. If an Option is intended to be an ISO, and if for any reason such Option (or portion thereof) shall not qualify as an ISO, then, to the extent of such non-qualification, such Option (or portion thereof) shall be regarded as a nonqualified stock option granted under the Plan; provided that such Option (or portion thereof) otherwise complies with the Plan's requirements relating to nonqualified stock options. In no event shall any member of the Committee, the Company or any of its Affiliates (or their respective employees, officers or directors) have any liability to any Participant (or any other Person) due to the failure of an Option to qualify for any reason as an ISO.

---

(d) Attestation. Wherever in this Plan or any agreement evidencing an Award a Participant is permitted to pay the Option Price (or taxes relating to the exercise of an Option) by delivering Shares, the Participant may, subject to procedures satisfactory to the Committee (and to the extent permitted by applicable law), satisfy such delivery requirement by presenting proof of record ownership of such Shares, or, to the extent permitted by the Committee, beneficial ownership of such Shares, in which case the Company shall treat the Option as exercised without further payment and shall withhold such number of Shares from the Shares acquired by the exercise of the Option.

Section 7. Terms and Conditions of Stock Appreciation Rights

(a) Grants. The Committee also may grant (i) a Stock Appreciation Right independent of an Option or (ii) a Stock Appreciation Right in connection with an Option, or a portion thereof. A Stock Appreciation Right granted pursuant to clause (ii) of the preceding sentence (A) may be granted at the time the related Option is granted or at any time prior to the exercise or cancellation of the related Option, (B) shall cover the same number of Shares covered by an Option (or such lesser number of Shares as the Committee may determine) and (C) shall be subject to the same terms and conditions as such Option except for such additional limitations as are contemplated by this Section 7 (or such additional limitations as may be included in a Stock Appreciation Right Award).

(b) Terms. The exercise price per Share of a Stock Appreciation Right shall be an amount determined by the Committee but in no event shall such amount be less than the greater of (i) the Fair Market Value of a Share on the date the Stock Appreciation Right is granted or, in the case of a Stock Appreciation Right granted in conjunction with an Option, or a portion thereof, the Option Price of the related Option and (ii) the minimum amount permitted by applicable laws, rules, by-laws or policies of regulatory authorities or stock exchanges. Each Stock Appreciation Right granted independent of an Option shall entitle a Participant upon exercise to a payment from the Company of an amount equal to (i) the excess of (A) the Fair Market Value on the exercise date of one Share over (B) the exercise price per Share, times (ii) the number of Shares covered by the Stock Appreciation Right. Each Stock Appreciation Right granted in conjunction with an Option, or a portion thereof, shall entitle a Participant to surrender to the Company the unexercised Option, or any portion thereof, and to receive from the Company in exchange therefor an amount equal to (i) the excess of (A) the Fair Market Value on the exercise date of one Share over (B) the Option Price, times (ii) the number of Shares covered by the Option, or portion thereof, which is surrendered. The date a notice of exercise is received by the Company shall be the exercise date. Payment shall be made in Shares or in cash, or partly in Shares and partly in cash (any such Shares valued at such Fair Market Value), all as shall be determined by the Committee. Stock Appreciation Rights may be exercised from time to time upon actual receipt by the Company of written notice of exercise stating the number of Shares with respect to which the Stock Appreciation Right is being exercised. No fractional Shares will be issued in payment for Stock Appreciation Rights, but instead cash will be paid for a fraction or, if the Committee should so determine, the number of Shares will be rounded downward to the next whole Share.

---

(c) Limitations. The Committee may impose, in its discretion, such conditions upon the exercisability of Stock Appreciation Rights as it may deem fit; provided that no Stock Appreciation Right may remain exercisable more than 10 years after the date of grant.

Section 8. Terms and Conditions of Dividend Equivalent Rights

(a) Grants. Subject to the other terms of the Plan, the Committee shall, in its discretion as reflected by the terms of the Award Agreements, authorize the granting of Dividend Equivalent Rights to Participants based on the regular cash dividends declared on Shares, to be credited as of the dividend payment dates, during the period between the date an Award is granted, and the date such Award is exercised, vests or expires, as determined by the Committee. Such Dividend Equivalent Rights shall be converted to cash or additional Shares by such formula and at such time and subject to such limitation as may be determined by the Committee. With respect to Dividend Equivalent Rights granted with respect to Options intended to be qualified performance-based compensation for purposes of Section 162(m) of the Code, such Dividend Equivalent Rights shall be payable regardless of whether such Option is exercised. If a Dividend Equivalent Right is granted in respect of another Award hereunder, then, unless otherwise stated in the Award Agreement, in no event shall the Dividend Equivalent Right be in effect for a period beyond the time during which the applicable portion of the underlying Award is in effect.

(b) Certain Terms. The terms of a Dividend Equivalent Right shall be set by the Committee in its discretion. Payment of the amount determined in accordance with Section 8(a) shall be in cash, in Common Stock or a combination of the both, as determined by the Committee.

(c) Other Types of Dividend Equivalent Rights. The Committee may establish a program under which Dividend Equivalent Rights of a type whether or not described in the foregoing provisions of this Section 8 may be granted to Participants. For example, and without limitation, the Committee may grant a dividend equivalent right in respect of each Share subject to an Option, which right would consist of the right (subject to Section 8(d)) to receive a cash payment in an amount equal to the dividend distributions paid on a Share from time to time.

---

Section 9. Other Share-Based Awards

~~(a) Generally.~~ The Committee, in its sole discretion, may grant Awards of Shares, Awards of restricted Shares, Awards of RSUs and other Awards that are valued in whole or in part by reference to, or are otherwise based on the Fair Market Value, of Shares ( *Other Share-Based Awards* ). Such Other Share-Based Awards shall be in such form, and dependent on such conditions, as the Committee shall determine, including, without limitation, the right to receive one or more Shares (or the equivalent cash value of such Shares) upon the completion of a specified period of service, the occurrence of an event and/or the attainment of performance objectives. Other Share-Based Awards may be granted alone or in addition to any other Awards granted under the Plan. Subject to the provisions of the Plan, the Committee shall determine: (i) to whom and when Other Share-Based Awards will be made; (ii) the number of Shares to be awarded under (or otherwise related to) such Other Share-Based Awards; (iii) whether such Other Share-Based Awards shall be settled in cash, Shares or a combination of cash and Shares; and (iv) all other terms and conditions of such Other Share-Based Awards (including, without limitation, the vesting provisions thereof and provisions ensuring that all Shares so awarded and issued shall be fully paid and non-assessable).

~~(b) Performance Based Awards.~~ Notwithstanding anything to the contrary herein, certain Other Share Based Awards granted under this Section 9 may be granted in a manner which is intended to be deductible by the Company under Section 162(m) of the Code (or any successor section thereto) (*Performance Based Awards* ). A Participant's Performance Based Award shall be determined based on the attainment of written performance goals approved by the Committee for a performance period established by the Committee (i) while the outcome for that performance period is substantially uncertain and (ii) no more than 90 days after the commencement of the performance period to which the performance goal relates or, if less, the number of days which is equal to 25 percent of the relevant performance period. The performance goals, which must be objective, shall be based upon one or more of the following criteria: (i) consolidated earnings before or after taxes (including earnings before interest, taxes, depreciation and amortization); (ii) net income; (iii) operating income; (iv) earnings per Share; (v) book value per Share; (vi) return on stockholders' equity; (vii) expense management; (viii) return on investment; (ix) improvements in capital structure; (x) profitability of an identifiable business unit or product; (xi) maintenance or improvement of profit margins; (xii) stock price; (xiii) dividend per Share; (xiv) revenues or sales; (xv) costs; (xvi) cash flow; and (xvii) return on assets. The foregoing criteria may relate to the Company, one or more of its Affiliates or one or more of its or their divisions or units, or any combination of the foregoing, and may be applied on an absolute basis and/or be relative to prior years for the Company, one or more peer group companies or indices, or any combination thereof, all as the Committee shall determine. In addition, to the degree consistent with Section 162(m) of the Code (or any successor section thereto), the performance goals may be calculated without regard to extraordinary items. The Committee shall determine whether, with respect to a performance period, the applicable performance goals have been met with respect to a given Participant and, if they have, shall so certify and ascertain the amount of the applicable Performance Based Award. No Performance Based Awards will be paid for such performance period until such certification is made by the Committee. The amount of the Performance Based Award actually paid to a given Participant may be less than the amount determined by the applicable performance goal formula, at the discretion of the Committee. The amount of the Performance Based Award determined by the Committee for a performance period shall be paid to the Participant at such time as determined by the Committee in its sole discretion after the end of such performance period; provided, however, that a Participant may, if and to the extent permitted by the Board and consistent with the provisions of Sections 162(m) and 409A of the Code, elect to defer payment of a Performance Based Award.

---

Section 10. Performance-Based Awards

(a) Performance Conditions. The right of a Participant to exercise or receive a grant or settlement of any Award, and the timing thereof, may be subject to such performance conditions as may be specified by the Committee. The Committee may use such business criteria and other measures of performance as it may deem appropriate in establishing any performance conditions.

(b) Performance Awards Granted to Designated Covered Employees. If and to the extent that the Committee determines that a Performance Award to be granted to a Participant who is designated by the Committee as having the potential to be a Covered Employee should qualify as performance-based compensation for purposes of Section 162(m), the grant, exercise and/or settlement of such Performance Award shall be contingent upon achievement of pre-established performance goals and other terms set forth in this Section 10(b). Notwithstanding anything herein to the contrary, the Committee in its discretion may provide for Performance Awards to Covered Employees that are not intended to qualify as performance-based compensation for purposes of Section 162(m).

(i) Performance Goals Generally. The performance goals for such Performance Awards shall consist of one or more business criteria and a targeted level or levels of performance with respect to each of such criteria, as specified by the Committee consistent with this Section 10(b). Performance goals shall be objective and shall otherwise meet the requirements of Section 162(m) and regulations thereunder including the requirement that the level or levels of performance targeted by the Committee result in the achievement of performance goals being substantially uncertain. The Committee may determine that such Performance Awards shall be granted, exercised and/or settled upon achievement of any one performance goal or that two or more of the performance goals must be achieved as a condition to grant, exercise and/or settlement of such Performance Awards. Performance goals may, in the discretion of the Committee, be established on a Company-wide basis, or with respect to one or more business units, divisions, subsidiaries or business segments, as applicable. Performance goals may be absolute or relative (e.g., to the performance of one or more comparable companies or indices or based on year-over-year growth). To the extent consistent with the requirements of Section 162(m), the Committee may determine at the time that goals under this Section 10(b) are established, the extent to which measurement of performance goals may exclude the impact of charges for restructuring, discontinued operations, debt redemption or retirement, asset write downs, litigation or claim judgments or settlements, acquisitions or divestitures, foreign exchange gains and losses, and other unusual, non-recurring or unbudgeted items, and the cumulative effects of tax or accounting changes. Performance goals may differ for Performance Awards granted to any one Participant or to different Participants.

---

(ii) Business Criteria. One or more of the following business criteria for the Company, on a consolidated basis, and/or specified subsidiaries or business units of the Company (except with respect to the total stockholder return and earnings per share criteria), shall be used exclusively by the Committee in establishing performance goals for such Performance Awards: (i) cash flow; (ii) earnings per share, as adjusted for any stock split, stock dividend or other recapitalization; (iii) other earnings or income measures (including EBIT and EBITDA); (iv) total stockholder return; (v) share price performance, as adjusted for any stock split, stock dividend or other recapitalization; (vi) dividends per Share; (vii) return measures (including, but not limited to, return on assets, capital, invested capital, equity, or revenue); (viii) revenue; (ix) profit margin; (x) expense targets; (xi) cost control measures; (xii) balance sheet metrics; (xiii) strategic initiatives; (xiv) implementation, completion or attainment of measurable objectives with respect to recruitment or retention of personnel or employee satisfaction; (xv) successful completion of, or achievement of milestones or objectives related to, financing or capital raising transactions, strategic acquisitions or divestitures, joint ventures, partnerships, collaborations, or other transactions, or improvements in capital structure; (xvi) debt levels or reduction or debt ratios; (xvii) operating efficiency; or (xviii) any combination of the forgoing business criteria; provided, however, that such business criteria shall include any derivations of business criteria listed above (e.g., income shall include pre-tax income, net income, operating income, etc.).

(iii) Individual Award Limits. Subject to adjustment under Section 11, the maximum number of each type of Award (other than cash-based Performance Awards) intended to constitute performance-based compensation under Section 162(m) granted to any Participant in any calendar year shall not exceed the following number of Shares: (i) Options and Stock Appreciation Rights: 2 million Shares; and (ii) all Other Share-Based Awards that are Performance Awards, including Dividend Equivalents on any such Awards: 2 million Shares. The maximum amount of cash-based Performance Awards intended to constitute performance-based compensation under Section 162(m) granted to any Participant in any calendar year shall not exceed the following: (i) Annual Incentive Award: \$7.5 million; and (ii) all other cash-based Performance Awards: \$7.5 million.

(iv) Timing for Establishing Performance Goals. Performance goals shall be established not later than 90 days after the beginning of any performance period applicable to such Performance Awards, or at such other date as may be required or permitted for performance-based compensation under Section 162(m).

---

(v) Settlement of Performance Awards; Other Terms. Settlement of Performance Awards shall be in cash, Shares, other Awards or other property, in the discretion of the Committee. The Committee may, in its discretion, reduce the amount of a settlement otherwise to be made in connection with such Performance Awards.

(vi) Other. All determinations by the Committee as to the establishment of performance goals, the amount of any Performance Award pool or potential individual Performance Awards and as to the achievement of performance goals relating to Performance Awards, shall be made in writing in the case of any Award intended to qualify under Section 162(m) to the extent required by Section 162(m). To the extent permitted by Section 162(m), the Committee may delegate any responsibility relating to such Performance Awards.

(c) Status of Section 10(b) Awards under Section 162(m). It is the intent of the Company that Performance Awards under Section 10(b) hereof granted to persons who are designated by the Committee as having the potential to be Covered Employees within the meaning of Section 162(m) shall, if so designated by the Committee, qualify as performance-based compensation within the meaning of Section 162(m). Accordingly, the terms of Section 10(b), including the definitions of Covered Employee and other terms used therein, shall be interpreted in a manner consistent with Section 162(m). The foregoing notwithstanding, because the Committee cannot determine with certainty whether a given Participant will be a Covered Employee with respect to a fiscal year that has not yet been completed, the term Covered Employee as used herein shall mean only a person designated by the Committee, at the time of grant of Performance Awards, as having the potential to be a Covered Employee with respect to that fiscal year or any subsequent fiscal year. If any provision of the Plan or any agreement relating to such Performance Awards does not comply or is inconsistent with the requirements of Section 162(m), such provision shall be construed or deemed amended to the extent necessary to conform to such requirements.

Section 11. ~~Section 10.~~ Adjustments Upon Certain Events

Subject to Section ~~4~~19 below, the following provisions shall apply to all Awards granted under the Plan:

(a) Generally. In the event of any change in the outstanding Shares after the Effective Date by reason of any Share dividend or split, reorganization, recapitalization, merger, consolidation, spin-off or combination transaction or exchange of Shares or other corporate exchange, or any distribution to stockholders of Shares other than regular cash dividends or any transaction similar to the foregoing, the Committee in its sole discretion and without liability to any person may make such substitution or adjustment, if any, as it deems to be equitable, as to (i) the number or kind of Shares or other securities available for issuance, issued or reserved for issuance pursuant to the Plan and pursuant to outstanding Awards; (ii) the maximum amounts of Awards that may be granted during a calendar year to any Participant pursuant to Section ~~3~~10(b); (iii) the Option Price or exercise price of any Stock Appreciation Right; and/or (iv) any other affected terms of any Award.

---



(b) Change in Control. In the event of a Change in Control after the Effective Date, the Committee may, in its sole discretion, provide for: (i) the accelerated vesting (including transferability) or exercisability of any outstanding Awards then held by Participants that are otherwise unexercisable or unvested, as the case may be, to the extent determined by the Committee and as of a date selected by the Committee; (ii) the earning of all or any outstanding performance shares or incentive awards; (iii) the termination of an Award upon the consummation of the Change in Control, and the payment of a cash amount in exchange for the cancellation of an Award which, in the case of Options and Stock Appreciation Rights, may equal the excess, if any, of the Fair Market Value of the Shares in the Change in Control subject to such Options or Stock Appreciation Rights over the aggregate exercise price of such Options or Stock Appreciation Rights; and/or (iv) the issuance of substitute Awards that will substantially preserve the otherwise applicable terms of any affected Awards previously granted hereunder.

Section 12. ~~Section 11.~~ No Right to Employment or Awards

The granting of an Award under the Plan shall impose no obligation on the Company or any Affiliate to continue the employment or service or consulting relationship of a Participant and shall not lessen or affect the Company's or Affiliate's right to terminate the employment or service or consulting relationship of such Participant. No Participant or other person shall have any claim to be granted any Award, and there is no obligation for uniformity of treatment of Participants, or holders or beneficiaries of Awards. The terms and conditions of Awards and the Committee's determinations and interpretations with respect thereto need not be the same with respect to each Participant (whether or not such Participants are similarly situated).

Section 13. ~~Section 12.~~ Successors and Assigns

The Plan shall be binding on all successors and assigns of the Company and a Participant, including without limitation, the estate of such Participant and the executor, administrator or trustee of such estate, or any receiver or trustee in bankruptcy or representative of the Participant's creditors.

Section 14. ~~Section 13.~~ Transferability of Awards

Unless otherwise permitted by the Committee on such terms and conditions as it shall determine, an Award shall not be transferable or assignable by the Participant other than by will or by the laws of descent and distribution. An Award exercisable after the death of a Participant may be exercised by the legatees, personal representatives or distributees of the Participant.

---

Section 15. ~~Section 14.~~ Amendments or Termination

Subject to Section 4011 of the Plan, the Board may amend, alter or discontinue the Plan, but no amendment, alteration or discontinuation shall be made which would: (a) increase the maximum number of Shares available for Awards under the Plan (including the limits applicable to the different types of Awards) or change the class of eligible Participants under the Plan (other than amendments having such purpose that are approved by a majority of the Stockholders of the Company that are present and entitled to vote on such matter at a meeting duly convened for such purposes (or such other standard of Stockholder vote as may be required by applicable state or federal law)); (b) without the consent of a Participant, diminish any of the rights of the Participant under any Award theretofore granted to such Participant under the Plan; or (c) be prohibited by applicable law or otherwise require stockholder approval (whether in order to maintain the full tax deductibility of all Awards under Section 162(m) of the Code or otherwise); provided, however, that the Committee may amend the Plan in such manner as it deems necessary to permit Awards to meet the requirements of the Code or other applicable laws. In no event may the Board amend the Plan or any Award to provide for the repricing of any Option price or exercise price of any Stock Appreciation Rights without the approval by the Stockholders of the Company.

Without limiting the generality of the foregoing, to the extent applicable, notwithstanding anything herein to the contrary, this Plan and Awards issued hereunder shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretative guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the Effective Date. Notwithstanding any provision of the Plan to the contrary, in the event that the Committee reasonably determines that any amounts payable hereunder may be taxable to a Participant under Section 409A of the Code and related Department of Treasury guidance prior to payment to such Participant of such amount, the Company may (a) adopt such amendments to the Plan and Awards and appropriate policies and procedures, including amendments and policies with retroactive effect, that the Committee determines necessary or appropriate to preserve the intended tax treatment of the benefits provided by the Plan and Awards hereunder and/or (b) take such other actions as the Committee determines necessary or appropriate to comply with the requirements of Section 409A of the Code, provided that under no circumstances shall the Company or any affiliate be liable for or indemnify any Participant for any additional taxes or other amounts that may be imposed upon such Participant pursuant to or as a result of Section 409A of the Code.

Section 16. ~~Section 15.~~ International Participants

With respect to Participants, if any, who reside or work outside the United States of America, the Committee may, in its sole discretion, amend the terms of the Plan or Awards with respect to such Participants in order to conform such terms with the provisions of local law, and the Committee may, where appropriate, establish one or more sub-plans to reflect such amended or varied provisions.

---

Section 17. ~~Section 16.~~ Choice of Law

The Plan shall be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of laws.

Section 18. ~~Section 17.~~ Effectiveness of the Plan

The Plan shall be effective as of the Effective Date. The amendment and restatement of the Plan is effective as of December 10, 2015, the date the amendment and restatement was approved by the Company's stockholders.

Section 19. ~~Section 18.~~ Section 409A

~~No Award shall be granted, deferred, accelerated, transferred, paid out or modified under this Plan in a manner that would result in the imposition of a penalty tax under Section 409A upon a Participant. In the event that it is reasonably determined by the Committee that, as a result of Section 409A, payments in respect of any Award under the Plan may not be made at the time contemplated by the terms of the Plan or the relevant Award agreement, as the case may be, without causing the Participant holding such Award to be subject to an income tax penalty under Section 409A, the Company will make such payment on the first day that would not result in the Participant incurring any tax liability under Section 409A.~~

The Plan is intended to comply with Section 409A to the extent subject thereto, and, accordingly, to the maximum extent permitted, the Plan shall be interpreted and administered to be in compliance therewith. Any payments described in the Plan that are due within the short-term deferral period as defined in Section 409A shall not be treated as deferred compensation unless applicable laws require otherwise. Notwithstanding anything to the contrary in the Plan, to the extent required to avoid accelerated taxation and tax penalties under Section 409A, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to the Plan during the six (6) month period immediately following the Participant's separation from service within the meaning of Section 409A shall instead be paid on the first payroll date after the six-month anniversary of the Participant's separation from service (or the Participant's death, if earlier). Notwithstanding the foregoing, neither the Company nor the Committee shall have any obligation to take any action to prevent the assessment of any additional tax or penalty on any Participant under Section 409A and neither the Company nor the Committee will have any liability to any Participant for such additional tax or penalty.

---