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September 15, 2009

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F St., NE
Washington, DC 20549-1090

Via e-mail

RE: Proxy Disclosure and Solicitation Enhancements (File No. S7-13-09)

Dear Ms. Murphy:

The Service Employees International Union ("SEIU") has 2.1 million members who work in healthcare, property services and the public sector. Our members participate in pension and benefit funds with more than $1 trillion in assets under management, a large portion of which is invested in equities of U.S. public companies. The losses suffered by these funds as a result of the financial crisis and resulting market turmoil show the dangers of lax oversight, poor risk management and misaligned compensation incentives. Accordingly, we applaud the S.E.C.'s effort to provide shareholders with more information about executive compensation, risk management and corporate boards.

We write in response to the S.E.C.'s release, "Proxy Disclosure and Solicitation Enhancements" (the "release"), proposing amendments to the rules governing the contents of company proxy statements and changes to certain of the proxy rules. As discussed more fully below, SEIU supports the changes outlined in the release, though we favor greater specificity in some instances. We also suggest several additional reforms that would promote greater board accountability and enhance executive compensation disclosure.

Reforms Dealing With the Board

The election of directors is one of the most important ways shareholders have a voice in corporate governance. In the last few years, shareholders have sought to make director elections more meaningful, primarily by advocating for a majority vote standard. It has become clear, however, that shareholders often do not have enough information about management's nominees to cast truly informed votes.

The release proposes several improvements to the disclosures in the proxy statement about the board and director nominees, all of which we support. First, companies would be required to disclose more about directors and nominees, including involvement in certain legal proceedings during the past 10 years, directorships held over the past five years and the qualifications, experience and skills that qualify a director or nominee to serve as a director.

In combination with the disclosure of minimum qualifications, specific qualities or skills required by Item 407(c)(2)(v), which we urge the S.E.C. to retain, this new information would be extremely useful to shareholders both in evaluating the board as a whole and deciding how to vote on individual nominees. The need to assess the board as a whole means that annual disclosure regarding all directors—even those not standing for re-election—makes more sense than disclosure only when shareholders are voting on a nominee. The S.E.C. has asked for comment on whether qualification disclosure should be extended to all of the board's committees, and we believe it should. Although the board's key committees—audit, compensation and nominating/governance—are important to investors, other committees such as risk management, corporate responsibility and environmental may be equally important at some companies.

Data on past directorships would aid shareholders in identifying potential conflicts of interest and assessing nominees' experience more completely. We agree with the S.E.C. that extended disclosure regarding the specified legal proceedings, which include bankruptcies, criminal proceedings and violations of securities laws, would give shareholders more insight into "an individual's competence and character." For proceedings reflecting adversely on an individual's integrity in the business realm—criminal fraud convictions, for instance—we would view favorably a requirement that companies disclose all proceedings regardless of when they took place.

Second, the release seeks to mandate disclosure regarding board leadership structure. Companies would be required to describe the board's leadership structure and state why the company believes it is the best fit. More specifically, companies would have to disclose whether and why they combine or separate the roles of chairman and CEO and whether and why they have a lead independent director (and if they do, what role the lead independent director plays in the board's leadership).

SEIU has long believed that robust independent board leadership is necessary if boards are to carry out their oversight function. I should note that the SEIU Master Trust, which manages the assets of three pension funds sponsored jointly by SEIU and many of our employers, is an active proponent of best corporate governance practices to enhance shareholder value. The Master Trust has submitted a number of shareholder proposals asking companies to adopt policies requiring an independent board chair. Indeed, this past year the Master Trust's binding proposal on this subject at Bank of America received support from holders of a majority of shares, leading Bank of America to change its policy and compel CEO Ken Lewis to relinquish the chairmanship. Accordingly, we support the S.E.C.'s proposed disclosures on board leadership. Requiring companies to articulate why they have adopted a particular board leadership structure will, we think, allow companies and their shareholders to engage more deeply on this important issue. It may also prompt re-examination of policies at companies whose boards had not needed to confront the question of which board leadership structure is optimal.

Finally, the Release proposes to require that companies disclose the board's role in the risk management process. Before the financial crisis, it was generally assumed that corporate boards fully understood and approved the types and amounts of risk companies took on. The effort to identify what went wrong revealed that at many companies, board-level oversight was lacking and directors seemed as surprised as everyone else at what lurked in companies' balance sheets.

We believe the S.E.C.'s proposed disclosure would allow shareholders to understand how much and what kind of board oversight is occurring with respect to risk management. This, in turn, would permit assessment of whether directors involved in such oversight have enough experience and the right skills. Disclosure regarding the reporting relationships of important risk management personnel—for example, whether the company's head of risk management reports directly to the board or relevant committee—would provide some insight into the standing those employees have within the company.

<u>Disclosure Related to Compensation</u>

Although the financial crisis heightened awareness of the damaging effect misaligned incentives can have on companies, SEIU and funds in which our members are participants and beneficiaries have been sounding the alarm for years about the dangers of executive short-termism. We have also been active in efforts to reform compensation practices to tie pay more closely to company performance and to give shareholders a nonbinding vote on executive pay.

We believe the S.E.C.'s proposals would significantly improve shareholders' understanding of both the process by which pay is set and the substantive policies that guide the compensation committee's determinations. The proposed new section of the Compensation Discussion and Analysis ("CD&A") describing compensation policies and practices creating risks that may have a material effect on the company would help investors identify inappropriate incentive programs or other practices that could destabilize a company. We are pleased that the proposed rule does not limit this discussion to policies and practices applicable to named executive officers or even senior executives. Incentives provided to employees such as traders or other employees who receive any incentive-based compensation may be equally important when it comes to risk management, and we hope the S.E.C. staff takes that into account when reviewing a company's disclosures.

We are concerned that the proposed rule may not provide companies with enough guidance to determine whether the effect of a compensation policy or practice is material and that companies will take advantage of this lack of specificity to make boilerplate disclosures or omit information. We note that many companies' CD&As have fallen short of expectations, in part, it seems, because of the open-endedness of the requirements. Although principles-based disclosure works well in theory, as it avoids the gamesmanship associated with bright line requirements, development of a shared understanding regarding what needs to be included can take significant time and review and enforcement resources.

For that reason, we suggest that disclosure be mandated on specific compensation practices where we believe there is a solid consensus regarding the effect on risk preferences. First, we urge the S.E.C. to require companies to state in their CD&A whether and why they have adopted a "hold-to-retirement" or similar requirement covering company stock. Although such a policy is not a guarantee that executives will eschew short-term thinking, we believe that it is an important mechanism for promoting a more long-term orientation. Each company should explain how it addresses this issue.

Second, companies should have to describe any "clawback" or similar policy they have in place and explain why they have or have not adopted such a policy. While imperfect, a strong clawback policy communicates that compensation decisions can be revisited if performance measures turned out to be illusory.

Third, the S.E.C. should revisit its approach to performance target disclosure. We believe that disclosure—retrospective disclosure, at least—of specific performance targets would help shareholders identify when these targets are overly aggressive and encourage executives to "swing for the fences." For example, requiring executives or other employees to achieve an unrealistic objective like 20 percent year-over-year profit or sales growth before they are paid a target level bonus may well encourage executives to take too much risk, since they are so unlikely to meet the goal otherwise. Currently, most companies decline to disclose such performance targets, even after the fact, citing competitive harm. We urge the S.E.C. eliminate this basis for omission.

We also support the proposed revised treatment of equity awards to require inclusion of the fair value on the grant date rather than the amount recognized for FAS 123R purposes. The current standard has led to bizarre disclosures such as the reporting of negative compensation numbers and does a poorer job of reflecting compensation actually received by executives during the year than the proposed approach.

Finally, the proposed disclosure on compensation consultants would be valuable to shareholders, given the central role played by consultants and the benchmarking data they provide. Disclosure regarding the nature and extent of services other than consulting on executive compensation and the fees paid for such services would enable shareholders to identify conflicts of interest. Although compensation consultants do not provide a formal attestation in the same way that auditors do, companies often tout a consultant's involvement in the proxy statement as a way of bolstering the credibility of the compensation committee's decisions. Accordingly, information about any conflicts of interest that consultant may have is highly relevant to shareholders. Fee disclosure—because it illustrates the extent of a potential conflict—is crucial to accomplishing this objective.

The release asks whether the rule should require disclosure of any "currently contemplated" services, to capture situations where a consultant provides services related to executive pay in one year and other services in the following year. It would be difficult to capture in a rule situations where a consultant is only soliciting business. The S.E.C. could provide that disclosure is required of any formal agreement to provide other services in the future (and the fees agreed to), if that agreement was entered into in the same year the consultant provided executive compensation services.

In addition to the changes proposed in the release, we urge the S.E.C. to consider providing that the CD&A be included in the Compensation Committee Report and that the report be deemed "filed." In our view, it was a mistake to give ownership of the CD&A to management, when compensation committees are making the strategic decisions for which investors seek accountability. The poor quality of many CD&As since the section was created supports the notion that, at a minimum, not deeming the CD&A filed has not liberated companies to make more expansive, informative disclosure than they otherwise would have done. Restoring the compensation committee's accountability for compensation disclosure would, we think, improve the quality of that disclosure.

Accelerated Reporting of Shareholder Voting Results

The release proposes to significantly accelerate the reporting of shareholder voting results, a move we strongly favor. Currently, companies report such results in the 10-Q covering the meeting date. In this way, the results may be reported as long as four and a half months after the shareholder meeting. The S.E.C.'s proposal to require such reporting four business days after the close of the meeting will provide more timely results to investors and the markets; this is especially important when the matter voted has the potential to change investors' views regarding the value of the company's stock.

Amendments to the Proxy Solicitation Rules

We support the release's proposals to clarify and amend certain of the rules governing proxy solicitation. In particular, we believe that the proposed amendment to Rule 14a-2(b)(1) would eliminate confusion over the scope of the exemption to the proxy statement filing requirement for persons not seeking proxy authority (sometimes referred to as the "vote no" exemption because it allows the conduct of "vote no" campaigns without the filing of a separate proxy statement by the dissidents).

The S.E.C. notes that a decision of the Second Circuit Court of Appeals held that a blank duplicate of management's proxy card included in a mailing opposing a proposed merger was a "form of revocation," rendering the sender ineligible to rely on the vote no exemption. This holding came as a surprise to many shareholders because it was inconsistent with the policies underlying the 1992 proxy rule revisions, which focused on facilitating shareholder communication. The S.E.C.'s proposal to clarify that this is not the case, so long as the card is requested to be returned to management, would remove the obstacle to vote no campaigns and to shareholder communications posed by the Second Circuit's decision.

We appreciate the opportunity to express our views to the S.E.C. on this important rulemaking. If you have any questions or need anything further, do not hesitate to contact Lilah Pomerance at 202-730-7704.

Sincerely,

Anna Burger

Anna Burger
International Secretary Treasurer

LP:AB