September 15, 2009

<u>Via E-mail</u>
Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F St. N.E.
Washington D.C. 20549-1090

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

Dear Ms. Murphy,

The American Federation of State, County and Municipal Employees ("AFSCME") is the largest union in the AFL-CIO, representing 1.6 million state and local government, health care and child care workers. AFSCME members participate in over 150 public pension systems whose assets total over $1 trillion. These funds essentially "own the market" because they are extremely diversified and rely to a significant extent on passive investment strategies; as a result, AFSCME has a real stake in corporate governance practices that promote accountability and enhance company performance.

We write in strong support of the proposals in the Commission's release, "Proxy Disclosure and Solicitation Enhancements" (the "Release"). We applaud the Commission for moving to give investors more information on executive compensation and the board of directors. Further, the changes to the proxy solicitation rules described in the Release will eliminate uncertainty that has prevented shareholders from fully using the "vote no" exemption from the Commission's proxy statement filing requirement; we believe, however, that further guidance should be provided on the nature of "substantial interest" disqualifying a soliciting party from relying on that exemption.

<u>Compensation-Related Disclosure</u>

Long before the financial crisis highlighted the potentially damaging effects of certain compensation practices, AFSCME viewed executive compensation as a critical

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corporate governance issue. The process by which boards award compensation—and the ways they choose to deliver that pay—tell investors a great deal about the robustness of the oversight that board provides. Moreover, we were concerned that in some cases compensation practices, even those promoted as aligning executive and shareholder interests, provided incentives for executives to "take the money and run."

The AFSCME Employees Pension Plan (the "Plan") is a long-term shareholder that manages $850 million in assets for its participants, who are staff members of AFSCME and its affiliated subordinate bodies. For the past several years, the Plan has filed shareholder proposals that urged companies to adopt policies that would tie pay more closely to sustainable company performance and align the interests of top executives and long-term shareholders in ways that enhance shareholder value. These shareholder proposals advocated the use of performance-based stock options and restricted stock; retention requirements for equity acquired through compensation plans; and limits on the sale of stock by senior executives during share buyback programs. The Plan also submitted the first proposal promoting the shareholder advisory vote on executive compensation, or "say on pay."

More recently, the Plan has pressed companies to ensure that incentive pay is awarded on the basis of performance measurements that are sustainable. To that end, the Plan submitted shareholder proposals to establish a "bonus bank" system, in which a large portion of incentive compensation is held back and paid out over time only if the results on which the compensation was based are not reversed.

AFSCME supports the Commission's proposed rule that would require companies to disclose, in the Compensation Discussion and Analysis ("CD&A") section of the proxy statement, any compensation policies and practices creating risks that may have a material effect on the company, including extending the disclosure requirement beyond the most senior ranks to cover employees such as traders whose decisions can have far-reaching effects on risk.

At the same time we encourage the Commission to be more specific in requiring disclosure around certain policies and practices that clearly relate to executives' time horizons and degree of alignment with long-term shareholders:

- "Clawback" policies
- "Bonus bank" arrangements
- Retention requirements for equity obtained through compensation plans
- Performance targets

We are pleased that the Commission has returned to its original proposal from the last compensation disclosure rulemaking to require inclusion of the fair value on the grant date of stock option grants rather than the amount recognized for FAS 123R purposes. The current standard has distorted reported compensation amounts and has not given investors the information they need to assess the strength of the pay-performance relationship at companies.

We also commend the Commission for proposing improved disclosure regarding compensation consultants. The advice and benchmarking data provided by compensation consultants play an important role in the decisions made by many compensation committees, yet shareholders have no way of knowing if these consultants are free from conflicts of interest that could call into question their objectivity. Critical to this determination is the disclosure of fees proposed in the Release; without knowing the relationship between the fees paid for executive compensation/director consulting and other consulting services, an investor cannot assess whether the provision of these other services is problematic.

The proposed disclosure should also include information on compensation arrangements for consultants in a firm who provide executive compensation consulting services that could create an incentive to cross-sell other services or tie those consultants' compensation to revenues derived from other services. Specifically, incentive compensation arrangements based on cross-selling or overall firm financial measures (which would take into account the non-compensation-consulting revenues or profits) should be disclosed. In addition, companies should be required to disclose whether the consulting firm compensates executive compensation consultants using equity interests (including stock options and similar instruments) in the overall firm or has a policy regarding equity ownership by such consultants.

Board- and Director-Related Disclosure

A strong consensus exists among investors that meaningful director elections and a high-quality board are essential in ensuring that robust oversight is in place at a company. The election of directors is also a core governance right under state corporate law. The Plan has pursued a number of reforms aimed at reducing barriers to shareholder input on director elections, including majority voting, access to the company proxy statement and reimbursement of short slate proxy contest expenses.

More information about directors would improve shareholders' decision making on elections. We urge the Commission to require disclosure regarding directors' involvement in certain legal proceedings, past directorships and skills, experience and qualifications to serve on the board each year for every director, even if a director is not standing for election at that time due to a classified board. Such annual disclosure should also enable shareholders to evaluate the board as a whole by including other valuable measures such as board diversity, procedures for director succession planning and board evaluation processes.

Information on directorships held in the previous five years would help shareholders identify potential conflicts of interest and assess nominees' experience. Disclosure regarding specified legal proceedings, which include bankruptcies, criminal proceedings and violations of securities laws, in which directors have been involved over the past ten years, would give shareholders information relevant to directors' character. Disclosure of any legal proceedings involving fraud in a business context should also be required regardless of how long ago it took place.

The Commission has proposed to require disclosure regarding the board's leadership structure. Companies would have to describe the board's leadership structure and explain why the company believes it is the best fit. Additionally, 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).

We support the Commission's proposed disclosures on board leadership because this issue is an important one for investors. A board whose chairman is also the company's CEO may not be an effective monitor of the CEO. Shareholders deserve an explanation of why a company with a unified chair/CEO believes that this arrangement is superior to the alternatives.

The Commission has also proposed to mandate that companies disclose the board's role in the risk management process. It has become clear in the wake of the financial crisis that boards were far less involved in and knowledgeable about risk management than many investors assumed. Shareholders would value information on the extent and nature of board oversight of risk management, which assists in the evaluation of directors. This is especially important for evaluating directors who serve on risk management, audit and similar committees. It would also allow shareholders to determine whether the right reporting relationships are in place to ensure that members of management in charge of risk management have sufficient authority.

Amendments to the Proxy Solicitation Rules

AFSCME supports the Commission's proposed amendment to Rule 14a-2(b) (1) because it would clarify the scope of the "vote no" exemption to the proxy statement filing requirement for persons not seeking proxy authority. In our view, the decision of the Second Circuit Court of Appeals referenced in the Release, ruling that a blank duplicate of management's card distributed by the dissident in a vote no campaign was a "form of revocation" disqualifying the dissident from running an exempt solicitation, contravened the policy behind the 1992 proxy rule revisions that created the vote no exemption. The decision has led shareholders to be excessively cautious in conducting vote no campaigns, refraining from giving out duplicate proxy cards even with instructions to return the cards only to management.

As a general matter, the Commission's amendment to Rule 14a-2(b)(1)(ix) is sensible. However, this amendment clarifies that a "substantial interest" disqualifying someone from relying on the vote no exemption can be present even when the person does not own stock in the company and that the interest need not relate to ownership of the company's stock, but does not define what constitutes "substantial." We believe that further guidance on the definition of "substantial" will be helpful in removing ambiguity from Rule 14a-2(b)(1)(ix).

Accelerated Reporting of Shareholder Voting Results

We support the Commission's move to significantly accelerate the reporting of shareholder voting results. Under the current rule, months can elapse between the meeting date and the date on which shareholders are informed of voting results. In Fact, the Plan frequently has to wait for the final results until the next 10 (q) filing, which may mean having to wait for more than four months. The Release's proposal to require such reporting four business days after the close of the meeting will give all investors this information in a more timely manner. The voting results are important for the Plan in determining next steps in the engagement with the company. For others in the market, voting results can, at times, be material to the value of the stock.

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We appreciate the opportunity to express our views to the Commission on these valuable proposals.

Sincerely,

Gerald W McEntee

GERALD W. McENTEE
International President