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September 15, 2009

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. S7-13-09
Proxy Disclosure and Solicitation Enhancements
(Release No. 33-9052; 34-60280; IC-28817)

Dear Ms. Murphy:

Mercer is submitting comments on the Proposed Rule on Proxy Disclosure and Solicitation Enhancements, published in the Federal Register on July 17, 2009. This letter comments on several of the proposed amendments set forth in Release No. 33-9052 (the “Proposals”) that we believe are generally important to the clients of our executive remuneration business. We are submitting comments on the proposed consultant fee disclosure under separate cover.

Mercer is a global company providing human resources and related financial advice, products, and services, including compensation consulting services, to corporations, boards of directors, and board compensation committees concerning the compensation of executives and directors. Mercer provides executive compensation consulting services to companies around the globe, including U.S. publicly-traded companies. We have extensive experience designing and implementing executive and director remuneration programs. As a result, we understand how compensation committees function and we have assisted countless companies in improving their executive compensation disclosure under the current reporting requirements. Mercer is a wholly-owned subsidiary of Marsh & McLennan Companies, Inc.

General Comments

We support the Commission’s efforts to enhance the quality of executive officer and director compensation disclosure so that investors have relevant information to assess how a company is deploying its resources to achieve its stated business objectives.

While we believe that the Proposals will, in general, improve the quality of disclosure and enhance the transparency of the compensation-setting process, they also raise several compliance and interpretive issues. We are also mindful of the amount of time and cost incurred in complying with the current disclosure regime. Additional disclosures should be implemented only where there is a compelling reason to do so and the benefits to investors outweigh this further burden on companies.

Specific Comments

Mercer has organized its comments around certain specific issues on which the Commission has requested responses.

I. Pay policies and risk management:

An important component of the proposal is a new requirement to discuss how incentive compensation plans could encourage executives and other employees to take risks that could threaten the company's health. The proposal would significantly expand pay policy disclosure by requiring companies to discuss how overall pay policies for *all* employees create incentives that can affect the company's risk and management of that risk. In explaining this change, the release states that "one of the many contributing factors cited as a basis for the current economic turmoil is that … the short-term incentives created by … compensation policies were misaligned with the long-term well-being of the companies." The disclosure would be part of the Compensation Discussion and Analysis (CD&A) and would be required only if the risk could have a "material" effect on the company. Whether a risk is "material" would be determined on a case-by-case basis, consistent with the rules' "principles-based" disclosure approach.

The Commission's request for comment in this area includes the following items:

Q: Would expanding the scope of the CD&A to require disclosure concerning a company's overall compensation program as it relates to risk management and or risk-taking incentives provide meaningful disclosures to investors? Should the scope of the amendments be limited in application to specific groups of employees, such as executive officers? Should it be limited to companies of a particular size, like large accelerated filers? Should it be limited to particular industries like financial services, including companies that have segments in such industries? Is the cost of tracking and disclosing the nature of the risk different at

different types of companies or company segments and if so, should that be reflected in our rules?

The premise for the proposed disclosure requirement is apparently based on the current economic turmoil, and the perception that incentive plans in the financial services sector contributed to excessive levels of risk. However, taking a one size fits all approach and extending this to all companies in all industries may not result in the most effective disclosure.

Companies and industries have various business models and the extent to which risk is part of the business model may vary. While certain industries, including financial services, are in the business of managing risk capital, other businesses, such as manufacturing companies, may not be subject to the same kind of risk.

Because the nature of a risk, and the possibility of its occurrence, may be company-specific, industry-specific, or even driven by the macro-economic environment, the Commission should suggest the method of the determination of risk for different types of companies, taking these considerations into account. A particular issue for consideration is whether risk is always determinable at the outset when a plan design is established or whether the determination of risk may be an assessment made after the fact -- due, for example, to the effect of unforeseen external or business factors. It may be necessary to assess the materiality standard in this analysis, as well, since that standard may apply differently to various types of companies or industries. At the same time, the proposed rule imposes a standard of compliance on companies with multiple businesses that may prove burdensome, and a specific assessment of difficulty should be performed by the Commission prior to any implementation. In addition, special issues also apply to the determination of risk for cost centers, sales compensation, and other special entities or pay features which may unduly influence the results of the disclosure, and this issue should also be addressed.

If an assessment of policies beyond those for the named executive officers is implemented, we believe it would be appropriate to assess incentive plans based on market practice, history of plan payouts, payouts as a percentage of revenue, payouts as a percentage of profits, or other factors in order to ease the burden and complexity of the proposed requirement.

The proposed disclosure raises the issue of the extent to which risky compensation policies are part of the overall business risk. The Commission should review the relationship

between any proposed disclosure of compensation policies that could put a company's financial health at risk and any other disclosure of business risk required in filings with the Commission. The degree of risk from compensation policies may be a very small (or perhaps not a very large) part of the overall business risk, and it is not clear in such a situation what value the proposed disclosure has and where the investor may get the best overall assessment of business risk which we believe is an important objective of disclosure.

Finally, we believe that compliance with the rule as written will be burdensome for many companies. Companies have multiple plans, in some cases they range from productivity measures in a fabrication plant to complex plans based on a variety of corporate or division financial goals. We urge the Commission to provide more guidance in the final rule for how companies can comply without requiring an exhaustive audit of all incentives.

Q: If a company determines that disclosure under the proposed amendments is not required, should we require the company to affirmatively state in its CD&A that it has determined that the risks arising from its broader compensation policies are not reasonably expected to have a material effect on the company?

If the proposed rule is adopted, it will likely become common practice for a company to affirmatively state in the CD&A (if no disclosure of this type would be made) that it has determined that the risks arising from its broader compensation policies are not reasonably expected to have a material effect on the company's financial health. This will be the case, whether or not the Commission requires this specific disclosure.

II. Equity awards

The proposal would require reporting the full grant-date fair value of options and other equity awards, rather than their annual FAS 123(R) accounting expense in the Summary Compensation Table (SCT) and Directors' Compensation Table (DCT). If the company repriced or exchanged options or stock appreciation rights (SARs) or materially modified other equity awards, the equity award columns would include the resulting incremental fair value. To avoid repetition, the grant-date fair value column in the Grants of Plan-Based Awards Table and the analogous footnote to the DCT would no longer be required.

The Commission's request for comment here includes the following issues:

Q: Is the proposed Summary Compensation Table reporting of equity awards a better approach for providing investors clear, meaningful, and comparable executive compensation disclosure consistent with the objectives of providing concise analysis in CD&A and a clear understanding of total compensation for the year? Would the proposals facilitate better informed investment and voting decisions?

We strongly support this change, and it is our experience that investors and companies generally agree that SCT disclosure of the full grant-date fair value of equity compensation is likely to be less confusing and will facilitate pay comparisons. Because the value included in the SCT determines the identification of at least three of the named executive officers (other than the principal executive offer and the principal financial officer), disclosure of the full grant-date fair value would also better align the identification of these officers with company compensation decisions

Q: If the Summary Compensation Table is amended as proposed, should the Grants of Plan-Based Awards Table disclosure of the full grant date fair value of each individual award be retained, rather than rescinded as proposed?

We support rescinding the grant date fair value disclosure as proposed.

Q: The Summary Compensation Table requires disclosure for each of the registrant's last three completed fiscal years, and with respect to smaller reporting companies, for each of the registrant's last two completed fiscal years. Regarding transition, our goal is to facilitate year-to-year comparisons in a cost-effective way. To this end, we are considering whether to require companies providing Item 402 disclosure for a fiscal year ending on or after December 15, 2009 to present recomputed disclosure for each preceding fiscal year required to be included in the Summary Compensation Table, so that the Stock Awards and Option Awards columns would present the applicable full grant date fair values, and Total Compensation would be recomputed correspondingly. If a person who would be a named executive officer for the most recent fiscal year (2009) also was disclosed as a named executive officer for 2007, but not for 2008, we expect to require the named executive officer's compensation for each of those three fiscal years to be reported pursuant to the proposed amendments. However, we would not require companies to include different named executive officers for any preceding fiscal year based on recomputing total compensation for those years pursuant to the proposed amendments or to amend prior

years' Item 402 disclosure in previously filed Forms 10–K or other filings. Would recomputation of prior years included in the 2009 Summary Compensation Table to substitute aggregate grant date fair value numbers for the financial statement recognition numbers previously reported for those years cause companies practical difficulties? Is there a better approach that would preserve the objective of year-to-year comparability on a cost-effective basis as a transitional matter?

As the Commission's request for comments points out, the final rules will indicate transition procedures for treatment of the two prior years for which disclosure is required. We believe that it will not be burdensome for registrants to recompute the value of compensation for the two prior years under the proposed rules and will facilitate year over year comparisons. We do not support changing the named executive officers for those years.

III. Disclosure regarding leadership structure:

The proposal would require a company to explain why its board has chosen a particular leadership structure (e.g., an independent chair, non-independent chair or combined CEO/Chair). Among the issues on which the Commission seeks input here are the following:

- *Are there certain considerations that would affect the company's leadership structure that should be highlighted in the proposed amendment?.*
- *Are there any additional disclosures about a company's leadership that would be helpful to investors?*
- *Should we require disclosure of the specific duties performed by the board's chair or independent lead director?*

Some investors and commentators have been advocating the separation of the CEO and chair roles. While we believe the Commission is and should be, neutral in suggesting this proposal, some investors and registrants may infer that adding a disclosure requirement suggests that it is inappropriate to combine the CEO and chair roles. We agree with the Commission's view that ' … different leadership structures may be suitable for different companies depending on factors such as the size of a company, the nature of a company's business, or internal control considerations, among other things.' We suggest that the Commission further recognize in the final rule that a particular type of board structure may be appropriate for a company based on business and industry practice, market conditions, the executives available for leadership roles, and other factors.

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We think it likely that the disclosure of the rationale behind combining or separating the CEO and chair roles will quickly devolve to boilerplate statements in order to protect future structure changes. For example, it is not uncommon for companies to combine the roles, separate them, and later recombine them. These decisions are often based on the personal qualities, capabilities and performance of the individuals involved. Companies will be appropriately reluctant to disclose such sensitive information. Therefore, we believe that companies will spend time and effort to craft a disclosure that does not commit them to a specific strategy in case future changes are made. The Commission may wish to review whether discussing the rationale for the leadership structure will result in effective disclosure of information that is meaningful to investors in making investment decisions.

We do believe that it is appropriate for a company to describe for investors the duties or functions of a lead director or a non-executive chair. Market practices vary widely so investors cannot on their own deduce the impact of such individuals on the corporation's governance.

We appreciate the opportunity to comment on the Proposals, and respectfully request that the Commission consider the comments set forth in this letter. We are prepared to meet and discuss these matters with the Commission and its staff at its convenience. Any questions about this letter may be directed to Diane Doubleday (415) 743-8748.

Respectfully submitted,

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