Daniel Helming, CIA, CPA
Comments on Proposed Rule regarding Proxy Disclosure and Solicitation Enhancements
September 15, 2009

Disclosing Risk

The initial reaction to the proposed disclosure rules will likely be similar to other disclosures made in SEC documents regarding risk: companies will admit to the presence of risk, perhaps even amplify it. This is so that in the case of poor performance, they head off class action suits that claim they failed to adequately warn the shareholder of such risks. The sophisticated investor also understands that risk must be taken in order to obtain return so investors will not likely be dissuaded just from the disclosure of risk.

Ideally, the firm would agree and confirm that their compensation risk is at levels previously agreed to by the Board, and to confirm this to the shareholders.

The complexity of shareholders coming to any conclusion regarding compensation risk makes it a tedious exercise to present the raw data to the shareholders in hopes of their coming to an independent conclusion.

Rather, the risk of compensation programs should be rated against tolerances agreed to by the Board, and then represented to by Management and the Board that they satisfy the agreed tolerances. The conclusions should be audited internally, and the conclusions of the audit and representations, and summaries of the data should be presented to a vote of the shareholders that they accept the conclusions. Whether this would become a facet of the proposal or not, this would be a best practice of boards and their shareholders.

Since risk and risk tolerances easily can and should differ by business segment, they should be disclosed by business segment. How the risks diversify and how they rate in total should also be disclosed.

Risk tolerances represent a shut-off point for risk. If they are materially exceeded for any reporting period, that and the remediation method or plan to bring them back under tolerance should be disclosed.

Board Qualifications

The proposals for the reporting of risk management to the board are at least adequate and should be implemented.

Ideally, similar to the committees for audit, compensation, and audit/governance, a future proposal should be considered for a committee on risk, with at least one specialist qualified in the risk of the firm’s industries. A committee such as this would monitor keeping risk within tolerances, exceptions, and global events that would affect risk within the firm.