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September 15, 2009

Via E-mail: rule-comments@sec.gov

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

Re: **Proxy Disclosure and Solicitation Enhancements – File No. S7-13-09**

Dear Ms. Murphy:

We are pleased to submit this letter in response to Release No. 34-60280 (the "Proposing Release") in which the Securities and Exchange Commission (the "Commission") solicits comments on proposed new rules that would, among other things, expand disclosure of compensation and corporate governance matters, clarify issues relating to the solicitation of proxies and the granting of proxy authority and mandate prompt reporting of shareholder voting results on Form 8-K.

We support the Commission's efforts to improve communications with shareholders in a manner that would allow them to make informed voting and investment decisions and to clarify the proxy solicitation process. Set forth below are our suggestions on how the Commission could further these objectives in the context of the proposed rules.

A. Compensation Discussion and Analysis Disclosure.

The Commission has proposed to expand disclosure in the Compensation Discussion and Analysis ("CD&A") to encompass a discussion of how compensation practices for employees generally may have a material effect on an issuer's "risks". While we appreciate the Commission's goal of providing greater insight into how an issuer awards and incentivizes its employees, we are not certain the proposal will achieve this objective.

1. *The proposed disclosures should be limited to compensation practices applicable to executive officers.*

We are concerned that the Commission's proposal will not lead to meaningful disclosures to shareholders. In our experience, CD&As already tend to be long and dense. We believe that the proposal will only add to this length and density without a corresponding benefit to shareholders.

As proposed, the new disclosure may require an issuer to address employee compensation programs implemented at several different business units. We believe that this level of detailed disclosure will add to the length of the CD&A without any corresponding benefit.

We suggest that the proposed disclosures focus on the purpose of the CD&A – to give investors an insight into how an issuer compensates its senior management. Consistent with this goal, we would suggest that the proposed disclosure be limited to executive officers – the persons charged with implementing risk management policies.

2. *The proposed disclosures should relate to market, liquidity or credit risks.*

The proposed disclosure refers generally to compensation policies that have a material effect on "risk". We believe that, in order to provide guidance to companies in fashioning appropriate disclosure, the final rule needs to clarify the types of risks that should be addressed.

It seems clear from the discussion in the Proposing Release and the materials cited that the Commission is concerned with financial risks, and therefore we suggest that the final rule specify that references to "risk" mean market, liquidity and credit risks, as applicable. If the rules do not specify that the disclosure should focus on financial risks, companies may feel compelled to focus on risks relating to competition, litigation, regulation, natural disasters, or environmental, operational or political matters, which we do not believe would be consistent with the Commission's concerns.

3. *If a company determines that additional disclosure under the proposed amendments to the CD&A is not required, the company should not be required to state affirmatively 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.*

The proposed rule does not require disclosure unless a materiality threshold is met. We support the materiality qualifier contained in the proposal, and agree that a company should not be required to state affirmatively 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.

4. *The Commission should not require disclosure regarding whether a member of the compensation committee has expertise in compensation matters.*

We believe that it would be inappropriate for the Commission to require specific disclosure as to whether or not a compensation committee member has expertise in compensation matters. Under the rule as proposed, companies would describe the risk assessment skills, areas of expertise and other qualifications of directors, including compensation committee members, and as appropriate this would include any relevant compensation expertise. While some companies may determine that it is appropriate to have a director with specific compensation expertise, others may determine that it is better to have directors on the compensation committee with broader business or other experience, and that the specific compensation expertise should reside in the consultants or other advisors to the committee. The Commission's disclosure rules should not be biased toward any particular expertise or background. Directors provide oversight of the compensation policies and practices – they are not required to design or directly implement these policies and practices.

Furthermore, we believe that expanded disclosure as to specific expertise of compensation committee members would risk leading to expanded liability for these directors. Adoption of a safe harbor for these directors, similar to that provided for audit committee financial experts, would lessen, but not eliminate, this concern. Increasing liability, and expanding duties and responsibilities, of particular directors could make it more difficult for companies to find qualified directors willing to serve on compensation committees.

5. *The Commission should not make the CD&A a part of the Compensation Committee Report, and if it does the Compensation Committee Report should continue to be "furnished" and not "filed".*

We support the treatment of the CD&A under the Commission's rules as disclosure provided by the company generally, and not by the compensation committee specifically. In particular, we do not believe that it would be appropriate to require the compensation committee to assume responsibility for the CD&A. Directors are neither disclosure experts nor draftspersons. The role of the compensation committee is one of oversight, and the level of detail called for by the CD&A goes beyond that function. The compensation committee's role should be limited to review and approval of the CD&A as under the current rules. Including the CD&A in the Compensation Committee Report would conflate the role of directors with management and disclosure counsel.

Further, it would be, in our view, inappropriate to impose a heightened liability and responsibility on compensation committee members for the CD&A. Many of the same considerations discussed in Section A.4 above would apply with equal force to this proposal.

If the Commission nevertheless determines to make the CD&A part of the Compensation Committee Report, then it should be deemed "furnished" not "filed" for purposes of the liability and disclosure provisions of the federal securities laws.

B. Revisions to the Summary Compensation Table.

As the Commission is aware, the current method of valuing stock and option awards has resulted in confusing disclosures. For example, due to forfeitures or the failure to meet performance criteria, we have had clients report negative numbers in the stock and option awards columns of the Summary Compensation Table. Accordingly, we support the proposed changes to Item 402 of Regulation S-K to require that stock and option awards be reported in a company's Summary Compensation Table and Director Compensation Table based on their fair value on the grant-date, computed in accordance SFAS 123R, as opposed to the value recognized for financial statement reporting purposes pursuant to SFAS 123R. While we recognize that disclosure of stock and option awards based on their fair value on the grant-date could affect the identity of a company's named executive officers when the company makes large, multi-year grants to its executives and could potentially discourage companies from tying stock awards to performance conditions, these concerns could be addressed through disclosing performance awards in the year in which the relevant performance measures are satisfied, as described under Section B.1 below.

Set forth below are our additional suggestions on how we believe the Commission could improve the efficacy of, and transition to, the proposed rule in respect of stock and option award disclosure.

1. *The requirements for disclosing equity incentive awards should match the requirements for disclosing non-equity incentive awards.*

We believe that the rules relating to executive compensation disclosure should be focused on accurately reflecting actual compensation delivered for services performed during the fiscal year in order to provide meaningful and relevant information to investors and aligning the Summary Compensation Table with the CD&A. We believe that any changes to the existing rules should be guided by these general principles.

Requiring disclosure of stock and option awards based on their full grant-date fair value will provide investors with a more accurate picture of a company's actual compensation practices by better aligning the disclosure with the actual compensation decisions made. However, we believe that the timing of reporting in the Summary Compensation Table of an equity incentive award that is subject to performance conditions should be based on the year in which the relevant performance measures are satisfied, not the year in which the award is granted or the year in which the award is vested or paid. This would align the reporting of equity incentive awards with the reporting of non-equity incentive awards, which are included in the Summary Compensation Table in the year in which the relevant performance measures are satisfied, pursuant to Item 402(c)(2)(vii) of Regulation S-K. We believe that it is undesirable and unnecessary for the form of a performance-based award (equity vs. non-equity) to lead to differences in the timing of disclosure. In our experience, the reporting of non-equity incentive compensation under the current rules has caused much less confusion than the reporting of equity incentive compensation and should serve as the model for the reporting of performance-based equity awards. The award would still be included in the Grants of Plan-Based Awards Table in the year of the grant, and would be described as appropriate in the CD&A, so investors would be fully informed of the grant and its terms.

Including the full value of an award in the Summary Compensation Table that is subject to performance conditions in the year it is granted runs the risk of overstating compensation for services performed in that year and understating compensation for services performed in the later year (if any) in which the compensation is earned due to satisfaction of the performance criteria. We believe that, as suggested in the Proposing Release, this mismatch in reporting may discourage companies from granting equity incentive awards, and to favor non-equity incentive awards or equity awards with no performance criteria. We agree with the statement made by the Commission in its 2006 release that "satisfaction of the relevant performance condition (including an interim performance condition in a long term plan) is the event that is material to investors for Summary Compensation Table reporting purposes"[1] and believe that this is the appropriate standard for all incentive awards regardless of the form in which they are granted.

2. *The Commission should provide for an orderly transition to grant-date disclosure in the Summary Compensation Table.*

In the Proposing Release, the Commission recognized that a shift from the financial statement recognition model to the grant-date fair value recognition model may

1 *Executive Compensation and Related Person Disclosure*, Rel. No. 33-8732, [2006 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 87,620, at 83,419 (Aug. 11, 2006).

affect the identity of the company's most highly compensated executive officers (other than the principal executive officer and principal financial officer). To facilitate this transition, the Commission is considering whether to require companies that provide disclosure pursuant to Item 402 of Regulation S-K for a fiscal year ending on or after December 15, 2009 to recompute the disclosure contained in the Summary Compensation Table pursuant to the grant-date fair value method for disclosing stock and option awards.

If adopted, the transition rules being contemplated would result in an issuer restating its executive compensation for the prior two fiscal years for the named executive officers in its 2010 proxy statement, even if the named executive officer would not have been a named executive officer in either 2007 or 2008 based on the grant-date fair value methodology. The Commission also indicates that the transition rules being contemplated would not include a requirement to re-determine the named executive officers for the prior two years, or to amend any prior year's Item 402 disclosure in any previously filed document, including Form 10-K filings, to reflect the new grant-date fair value recognition model.

We strongly support these proposed transition rules and urge their adoption in substantially the form described. We would have serious concerns with any other alternatives that either (1) required an issuer to re-determine the named executive officers for the prior two years or (2) resulted in a disclosure that would mix pre-revision disclosure with post-revision disclosure. In the case of the former, re-determining an issuer's named executive officers would be time consuming and would not provide shareholders with any meaningful information about current compensation practices. In the case of the latter, mixing pre-revision disclosure with post-revision disclosure is likely to be unclear and create substantial investor confusion. We do suggest, however, that the Commission clarify that compensation will only need to be disclosed for prior years if the 2009 named executive officer was also an executive officer during 2007 or 2008.

3. *Grant-date disclosure should reflect awards made after year-end but that relate to services performed in the prior fiscal year.*

The Commission also requests comment on whether the Summary Compensation Table should report the aggregate grant-date fair value of equity awards granted for services in the relevant fiscal year, even if the awards were granted after a registrant's fiscal year-end.

We believe that the Summary Compensation Table should include compensation that is granted solely for services performed in the relevant fiscal year, regardless of whether the grant is made before or after fiscal year-end. Otherwise, the mere timing of the board and compensation committee meetings to determine year-end discretionary compensation will drive significant differences in Summary Compensation Table disclosure. The rules should align the Summary Compensation Table with the actual compensation decisions made for the relevant fiscal year (as described in the CD&A) which will enhance investor understanding of current-year compensation decisions. Under the current rules there is often a significant disconnect between the CD&A and the Summary Compensation Table. This has resulted in companies including their own compensation tables in the CD&A to explain the actual compensation decisions made and to reconcile these tables to the Summary Compensation Table. The rules as proposed would perpetuate this disconnect. In our view, this confuses disclosure, rather than enhancing it. We believe that the same approach should be taken for purposes of the Grants of Plan-Based Awards Table.

4. *We support the Commission's proposal to amend Instruction 2 to the salary and bonus columns of the Summary Compensation Table to provide that registrants will not be required to report in those columns the amount of salary or bonus forgone at a named executive officer's election, and that non-cash awards received instead are reportable in the column applicable to the form of award elected.*

The Commission has proposed amending Instruction 2 to the salary and bonus columns of the Summary Compensation Table to provide that registrants will not be required to report in those columns the amount of salary or bonus forgone at a named executive officer's election. Rather, non-cash awards received would be reportable in the column applicable to the form of award elected. We support this proposal and agree with the Commission's justification that it would allow the disclosure to reflect accurately the form of compensation ultimately received by the named executive officer. Again, this proposed change will facilitate investor understanding of compensation decisions by aligning the Summary Compensation Table with the form and type of consideration actually paid.

5. *The Summary Compensation Table and the Grants of Plan-Based Awards Table should be amended to avoid duplicative disclosures.*

We support the Commission's proposal to rescind the requirement to report the full grant-date fair value of each individual equity award in the Grants of Plan-Based Awards Table and the corresponding footnote disclosure to the Director Compensation Table on the basis that these disclosures will be provided in the Summary Compensation Table. There does not appear to be any reason to repeat these disclosures.

6. *The Commission should not implement the changes requested by the rulemaking petition discussed in the Proposing Release.*

In the Proposing Release, the Commission referred to a rulemaking petition it had received that requested that the annual change in value of stock and option awards serve as the basis for disclosure. For restricted stock, restricted stock units and performance shares, the reported amount would be the change in stock price from year-end to year-end. For stock options, companies would report the change in the in-the-money value over the same period. We do not support this approach since it treats as "compensation" movements in an issuer's common stock price, could result in negative numbers appearing in the Summary Compensation Table, could impact an issuer's named executive officers simply due to an executive officer's holdings of equity securities of the issuer and would not accurately reflect the company's compensation decisions made with respect to the relevant fiscal year.

C. Enhanced Director and Nominee Disclosure.

The proposed amendment to Item 401(e)(1) of Regulation S-K would require a company to discuss the "specific experience, qualifications, attributes or skills that qualify that person to serve as a director for the registrant at the time that the disclosure is made, and as a member of any committee that the person serves on or is chosen to serve on (if known), in light of the registrant's business and structure". This additional disclosure is not limited to the existing five-year biographical requirement of Item 401(e)(1). While we appreciate the Commission's desire to provide investors with enhanced information concerning director nominees, we do not believe that the proposal reflects the manner in which directors are nominated. For most public companies, the company's slate of director nominees is determined by the board, based on a recommendation by an independent nominating committee of the board. The proposal seems to proceed on the assumption that each director shares the same reasons for nominating each nominee, and that management is in a position to summarize the collective views of the directors on this point. Obviously this is not true. While one member of the board or nominating committee may believe that the person has a particular skill in marketing, another may think that the nominee is insightful in risk management. Any disclosure that attributes these factors as a "consensus" would be inherently defective, because the only required consensus is an agreement that the person is an appropriate candidate, and not on the specific factors that makes the person an appropriate candidate. In addition, requiring the *company* to provide disclosure supportive of the board's nominees runs counter to the distinction between management and an independent nominating committee – a concept that is central to the stock exchange listing standards and a focus of the Commission's other disclosure rules. Due to the myriad factors that could drive each nominating director's decision, we believe that the disclosure that is likely to result from the proposed rule will be too broad and generic to provide investors with any real understanding of the factors the nominating committees and the board of directors considered when making a particular nomination. We believe that the appropriate disclosure is that currently required by Rule 407(c)(2), which requires disclosure of “any specific qualities or skills that the nominating committee believes are necessary for one or more of the registrant's directors to possess”.

Furthermore, we believe that the additional proposed disclosure requirement is unnecessary to the extent that the Commission proceeds with its proposals to facilitate inclusion of shareholder nominees in a company’s proxy materials, either through amendment of Rule 14a-8(i)(8) or adoption of new Rule 14a-11. If a company is required to include shareholder nominees in its proxy materials, whether under Rule 14a-11 or under a separate proxy access process, then it will necessarily have an incentive to support its director nominees by referring to their particular skills or expertise as compared to the shareholder nominees.

If despite these concerns the Commission decides to proceed with the proposal, we have additional comments and recommendations discussed below.

1. *Any proposal to expand the disclosures should relate only to new directors and should be limited to information that is material to the decision-making process.*

As we have suggested above, a requirement that a company disclose more information does not necessarily mean that it will disclose better information. In our view, if the proposed disclosure relates to incumbent directors, then the proposal will lead to issuers providing boilerplate disclosures, since the key factor in renominating an incumbent director will likely be the director’s performance to date (and the company’s performance under the oversight of the incumbent directors). An abstract discussion of the qualification of incumbent directors would be unnecessary when shareholders can evaluate the individual’s actual performance as a director. The decision-making process that is undertaken to select a new director is generally far more detailed in terms of the analysis undertaken to determine what strengths that director would bring to the board than the self-evaluation that boards undergo each year. Accordingly, we suggest that the Commission modify the proposal so that it applies only to the nomination of a new director.

In addition, the final rule should specify that any additional information required to be included regarding such individuals be limited to information that the company reasonably determines is material to an investor’s decision-making process. Disclosure of a laundry list of qualifications will not enhance shareholder voting decisions.

2. *The proposed additional disclosure required of directors or nominees should be narrowed.*

As a general matter, we do not believe that the expanded disclosure should be applied to candidates for membership on particular committees, for the same reasons it should not apply to directors generally – different board members may have different reasons for proposing or supporting a particular nominee, particularly as their qualifications relate to committee membership. In addition, as described above in Section A.4, we are concerned that enhanced disclosure of specific qualifications for committee membership will necessarily lead to the perception of enhanced responsibilities and the potential for greater liability, and will make it more difficult for companies to find qualified directors willing to serve in these roles. Finally, we note that a number of issuers have implemented term limits for committee memberships and, as a matter of course, rotate directors through different committees. These practices could be made more difficult to implement by the Commission's proposal.

In addition, as drafted, the proposal would apply to members or prospective members of all board committees, not just standing committees such as the audit, compensation and nominating committees. If not narrowed, the rule would apply to, among other committees, special litigation committees, committees established to approve security offerings and committees established to consider business combinations. We believe that applying this rule to special committees is unlikely to yield any additional disclosure that would be meaningful to investors, and carries the risk of burdening potential committee members with a requirement to disclose a large amount of irrelevant information. For these reasons, if the Commission determines nonetheless to require disclosure as to committee membership, we suggest that the rule be narrowed to apply only to the audit, compensation and nominating committees, which would be consistent with the focus of Item 407 of Regulation S-K.

We believe that the existing disclosure under Item 407(b)(ii) (relating to attendance at committee meetings) should be similarly narrowed. This Item, which refers to committees generally, predates the current Commission rules focusing on audit, compensation and nominating committees. In our experience, companies have faced difficulty in determining the application of this rule to various special committees and, because the rule provides only for an overall attendance percentage, inclusion of special committees makes the disclosure less meaningful to investors. Accordingly, we believe this rule should be limited to audit, compensation and nominating committees (or those performing similar functions), to be consistent with the focus of the current rules.

3. *Disclosure of other directorships held by directors and nominees should be limited to current directorships.*

The Commission has proposed requiring the disclosure of each directorship of a public company held by any person who was a director or nominee during the preceding five years, even if that person no longer serves on the other board. Under the current rule, directors and nominees for director are required to disclose only their current directorships. While we recognize that this additional disclosure might allow shareholders and potential investors to recognize potential conflicts of interest as they relate to a company's directors and nominees, this information will in many cases become voluminous and tend to obfuscate the nominee's most relevant credentials.

4. *New disclosure in respect of the background of directors and nominees of management investment companies should be required only in proxy or information statements relating to the election of directors, should relate only to new directors and should be limited to information that is material to the decision-making process.*

As proposed, management investment companies registered under the Investment Company Act of 1940 would be required to include the additional disclosure regarding its directors and nominees in registration statements filed on Forms N-1A, N-2, and N-3. We recommend that this additional information should be provided only in proxy and information statements where action is to be taken for the election of directors, and even in that case only in respect of nominees being elected for the first time (for the reasons discussed in Section C.1 above). To the extent the Commission does not agree with this approach, we recommend that the final rules distinguish between investment companies that hold annual meetings (i.e., listed closed-end management investment companies) and those that do not (most investment companies are not required by state law or otherwise to hold annual meetings of shareholders). To the extent that shareholders receive the enhanced disclosure annually in proxy statements, we do not think that they need to receive it elsewhere.

D. New Disclosure About Company Leadership Structure and the Board's Role in the Risk Management Process.

We do not believe that the proposed disclosures in either leadership structure or risk management will advance the Commission's objective of providing more meaningful disclosure to shareholders. With respect to an issuer's leadership structure, in practice there are three models – (i) a combined chairman/CEO, (ii) an independent lead director separate from the combined chairman/CEO and (iii) a chairman separate from the CEO. However, the actual dynamic of the interaction between the board and management is dependent on numerous factors that may or may not be driven by which structure an issuer has chosen. Disclosure of the structure chosen by any particular issuer will, in our view, result in boilerplate disclosure that will not provide investors with any additional insight into the actual process by which the board oversees management. In fact, the by-laws and corporate governance guidelines for many issuers already address this topic. As a result, we do not believe that the proposal will result in meaningful new disclosure.

With respect to the board's role in risk management, this is often delegated, at least in part, to the audit committee or a separately designated risk committee. To the extent such a delegation has been made, it will generally be disclosed in committee charters. In addition, companies are required to provide detailed market risk disclosure under Item 305 of Regulation S-K, including how such risk is managed within the company. Additional required disclosure will not, in our view, meaningfully enhance existing required disclosures.

If the Commission nevertheless decides to proceed with this proposal, the new disclosure in respect of a company's leadership structure and the board's role in the risk management process should be required only in proxy or information statements where action is to be taken on the election of directors, as described in Section C.1 and C.4 above.

E. New Disclosure Regarding Compensation Consultants.

1. *Disclosure regarding compensation consultants should include only the general nature of any additional, non-compensation related services and should include only the aggregate fees paid for such services.*

The Commission has proposed expanding the disclosures required when the consulting services provided by a compensation consultant include not only a role in determining the amount or form of compensation for executives or directors, but also other services to the company during the most recently completed fiscal year. The additional disclosure would include, among other things, the nature and the extent of all additional services provided, as well as the aggregate fees paid by the company for the additional services and for determining or recommending the amount or form of executive and director compensation.

We are concerned that the proposal requires too much specific information and would not be justified in light of the additional burdens imposed on registrants. We believe that the proposal should be clarified such that companies would be required to disclose only the general nature of any services provided by compensation consultants that are not related to executive or director compensation. The payment of fees for compensation services does not present any potential for conflicts of interest.

Furthermore, it should be sufficient from the standpoint of investors, in assessing the independence of the consultant, for the disclosure relating to additional services to be general in nature and for the fees for additional services to be disclosed in the aggregate. Companies should not be required to disclose any details regarding additional services, which may reveal sensitive competitive or proprietary information about the company's business or other initiatives, nor should companies be required to disclose fees paid to compensation consultants for each service provided, as opposed to on an aggregate basis.

2. *The proposed exclusion for consulting services that are limited to broad-based, non-discriminatory plans is appropriate and should be retained and expanded.*

The proposal would create an exemption from the disclosure requirements regarding compensation consultants where the consultant's role in determining or recommending executive or director compensation was limited to consulting on any non-discriminatory broad-based plan that is generally available to all salaried employees (such as 401(k) and health insurance plans). This exemption would apply only so long as the compensation consultants limited their services to these types of broad-based plans; the exception would be lost if the consultants provide any other services, including other services relating to executive or director compensation. We agree with the Commission that these services are not likely to give rise to potential conflicts of interest and urge the retention of this exclusion. For this same reason, we believe that disclosure regarding consultation on broad-based plans should not be required even if the compensation consultant provides advice on matters unrelated to broad-based plans. In our view, due to the broad-based nature of these plans, disclosure of these services is not meaningful to investors.

F. Reporting of Voting Results on Form 8-K.

1. *The requirement to disclose the results of a shareholder vote on a Form 8-K should contain an additional exception for all votes if preliminary voting results have not been determined.*

The proposed rule would require the disclosure of the results of a shareholder vote to be reported within four business days after the voting has ended on a Form 8-K. Recognizing the accelerated nature of this timing, the Commission has proposed an exclusion for contested elections – reporting is not required until four business days after the preliminary voting results have been determined. We agree with this exclusion and believe it should apply generally to all votes where the preliminary voting results are not available by the end of the meeting. We see no reason to treat contested director elections differently than votes on other matters. Companies may be unable to determine preliminary voting results by the end of the meeting for any number of technical or logistical reasons, and shareholders would not benefit from the disclosure of questionable results.

2. *Failure to file a report on Form 8-K pursuant to new Item 507 should not be deemed to be a violation of Section 10(b) or Rule 10b-5 or result in a loss of Form S-3 eligibility.*

We believe that the disclosure of the results of shareholder votes is of the same general type and nature as the items that are currently excluded from liability under Section 10(b) of the Exchange Act and Rule 10b-5 under Rule 13a-11(c), and that do not result in a loss of Form S-3 eligibility under General Instruction I.A.3(b). In our view, it would be a draconian remedy to subject an issuer to Section 10(b) and Rule 10b-5 claims and to lose Form S-3 eligibility as a result of the late filing of a Form 8-K to report election results, especially in light of the Commission's historical practice on reporting election results.

G. Proxy Solicitation Process.

1. *Providing shareholders with an unmarked duplicate copy of management's proxy card should not disqualify a soliciting person from the exemption from the proxy solicitation rules if the person requests that the card be returned directly to the company.*

The Commission has proposed modifying Rule 14a-2(b)(1) to include an express statement clarifying that providing shareholders with an unmarked duplicate copy of management's proxy card and requesting that the card be returned directly to the company does not constitute a "form of revocation", thereby disqualifying the soliciting person from the exemption to the proxy solicitation rules provided therein. We agree with the Commission that this clarification would facilitate shareholder discussion on voting matters.

2. *We support the requirement in the proposed amendment to Rule 14a-4(d)(4) to permit a soliciting person to round out a short slate with both a registrant's and other persons' nominees if the soliciting person does not form a group with the other persons as determined under Section 13(d)(3) and is not a participant in the other persons' solicitations.*

The proposed rules would codify recent Commission staff guidance that permits non-management parties to round out their short slates with nominees from any other person's proxy statement. In order to afford itself the benefit of this exemption, the non-management soliciting person would be required to represent in its proxy statement that it has not agreed and will not agree to act, directly or indirectly, as a group or otherwise engage in any activities that would be deemed to cause the formation of a group as determined under Section 13(d)(3) with the other non-management person. We support this requirement and agree that these representations are integral to ensuring that parties are not acting in concert and that the proposed rule is not abused.

Furthermore, we support the Commission's decision to include an express requirement that these representations be included in the non-management person's proxy statement. Both the company and its shareholders should be able to rely on such representations and, accordingly, we recommend that the Commission retain the requirement that they be included in the person's proxy statement.

H. Technical Comments With Respect to the Commission's Proposed New Rules and Amendments.

We also have a number of technical comments for the Commission's consideration. Note that, for this section, we have commented on the Commission's proposals and amendments as contained in the Proposing Release and these technical comments do not reflect or implement our substantive comments contained above.

<u>Item 401</u>

1. Instruction 1 to Paragraph (f): Substitute "ten" for "five" in the first sentence.

<u>Item 402</u>

2. In change "s" to the amendments to Item 402, the first reference to "Instruction" should be changed to read "Instruction to Item 402(r)(2)(vii)".

3. Instruction 2 to Item 402(b)(1)(i) and (b)(1)(ii): In the second sentence, insert "but relate to compensation for services provided in the prior fiscal year" for clarity.

4. Item 402(b)(2)(viii) should be deleted as it is superseded by new Instruction 2 to Item 402(c)(2)(v) and (vi).

5. Item 402(c)(2)(ix)(G): Delete the "s" from the word "columns".

6. Item 402(k)(2)(iv): Delete "stock" before "option" to conform to Item 402(c)(2)(vi).

7. Instruction to Item 402(k): Add back in "Instructions 1 and 5 of paragraph (c)(2)(ix) of this Item" from the current rule.

8. Item 402(r)(2)(vii)(I): Replace "; and" with a period.

9. There do not appear to be any changes to Instruction to Item 402(r).

<u>Rule 14a-2</u>

10. Rule 14a-2(b)(1): In the first proviso, after "include", insert "the providing of"; and substitute "has provided" for "provides".

<u>Rule 14a-4</u>

11. Rule 14a-4(d)(4): Lower case the "T" in "to".

<u>Schedule 14A</u>

12. It is unclear to us why any change is being made to "Instruction to Item 22(b)(11)"; the format of the current instruction conforms to the instructions to the other sub-paragraphs of paragraph (b).

<u>Form N-1A</u>

13. Item 17(b)(3)(ii): Strike the (1) after "paragraph (a)" in order to pick up disclosure under paragraph (a)(2); delete "or in response to paragraph (b)(3)(i) of this Item 17" as unnecessary; and insert "or is chosen to serve on (if known)" after "serves on" to conform to Item 401(e).

<u>Form N-2</u>

14. Item 18, paragraph 6: Redesignate the "Instruction" as "Instruction to paragraph 6(a)".

15. Item 18, paragraph 17: Add "or is chosen to serve on (if known)" after "serves on" to conform to Item 401(e).

<u>Form N-3</u>

16. Item 20, paragraph (e): Redesignate the "Instruction" as "Instruction to paragraph (e)(i)".

17. Item 20, paragraph (o): Add "or is chosen to serve on (if known)" after "serves on" to conform to Item 401(e).

* * *

We appreciate this opportunity to comment on the proposed rule, and would be happy to discuss any questions with respect to this letter. Any such questions may be directed to Robert W. Reeder III (212-558-3755) or Glen T. Schleyer (212-558-7284) in our New York office or to Janet T. Geldzahler (202-956-7515) in our Washington, DC office.

Very truly yours,

/s/ SULLIVAN & CROMWELL LLP