



CENTER FOR CAPITAL MARKETS

C O M P E T I T I V E N E S S

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September 16, 2009

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

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

Dear Ms. Murphy:

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector and region. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. To achieve this objective, it is an important priority of the CCMC to advance an effective and transparent corporate governance structure. Accordingly, the CCMC is pleased to comment on the amendments to the disclosure rules under the Securities Exchange Act of 1934 (the "1934 Act"), the registration statements under the Securities Act of 1933 (the "1933 Act"), as well as the Investment Company Act of 1940 on July 10, 2009 in the release entitled "Proxy Disclosure and Solicitation Enhancements" (the "Proposals").

The CCMC believes that strong corporate governance is a cornerstone for a growing and prosperous economy and requires a robust dialogue between directors and shareholders. Effective disclosure policies are pivotal to this dialogue. Accordingly, the CCMC supports enhanced disclosures provided the disclosure is effective to investors' economic decisions. While the CCMC believes that the Proposals help to achieve those aims, the CCMC also has some general and specific concerns that it wishes to express. Additionally, while the CCMC is generally

supportive of disclosure, our position may change on some of the matters in the Proposals if prescriptive rulemaking or legislation were to be used to address the same issues.

Directors and shareholders share a unity of purpose—the long-term viability and profitability of a company. This unity of purpose requires talented and committed directors to manage the company effectively. For shareholders, it requires relevant and robust information about how directors carry out their duties and what they bring to the role. A balance must be struck that provides the right information without making disclosure so intrusive, irrelevant or prejudicial that it deters capable individuals from serving as directors.

With this perspective, the CCMC wishes to highlight some issues of concern so that the Securities and Exchange Commission (“the Commission”) can find that appropriate balance.

Enhanced Compensation Disclosure

As the Commission has noted, the Chamber has already stated that reasonable risk taking and a long-term focus are necessary for the development of appropriate compensation policies. On February 6, 2009, the Chamber wrote to Treasury Secretary Timothy Geithner and outlined the following principles for appropriate policy making related to corporate governance, investor responsibility, and executive compensation:

- 1) Corporate governance policies must promote long-term shareholder value and profitability but should not constrain reasonable risk-taking and innovation;
- 2) Long-term strategic planning should be the foundation of managerial decision making;
- 3) Corporate executives’ compensation should be premised on a balance of individual accomplishment, corporate performance, adherence to risk management, and compliance with laws and regulations, with a focus on shareholder value;
- 4) Management needs to be robust and transparent in communicating with shareholders.

These principles provide the basis for sound and rational policies that balance the need for long-term business decision making which allows for innovation and appropriate risk management, with the need for an on-going meaningful dialogue between shareholders and management.

Enhanced disclosure of compensation policies, including those of non-executives, must be material to the operation and risk assessment of a company. Such enhanced disclosure must be supplemented with appropriate contextual information to ensure that investors can properly assess compensation policies and appropriate risk management. The disclosure horizon should present itself across companies so investors can better understand the differences both within and across industry sectors. Suitable contextual information should include a discussion of business models, industry practices, long-term goals, and business evolution, etc. Of course, such contextual disclosure should not reveal business secrets or strategies that may create competitive harm to a company.

It could be inferred from some of the context in the Proposals that profitability is a *sine quo non* of excessive risk taking. The revelation of a company's profitability, and those of component divisions, is a part of the information needed by investors to appropriately assess risk management policies. The free enterprise system allows for success to be rewarded. A disclosure regime needs to guarantee that information, in the proper context, is used to evaluate unnecessary risk, not to be used to create disincentives for success.

Nevertheless, an information dump without appropriate context does not give investors the ability to understand materiality or relevance. Relevance and context need to be a guide in determining how these enhanced compensation disclosures are undertaken. The disclosure of irrelevant information and investor uncertainty regarding the materiality of certain facts will lead to misjudgments and harm to investors that can and should be avoided.

Enhanced Director and Nominee Disclosures

The CCMC believes that investors would benefit from a better understanding of the skills and expertise that a given individual will bring to the board. This is becoming increasingly important as directors are more closely scrutinized and as

elections become more frequent and perhaps more frequently contested in the future. Transparency and relevant information are indispensable tools needed for investors to make informed decisions about those charged with oversight of the corporation. We support the enhanced disclosures regarding director nominees contained in the Proposals. In developing final rules and in future enforcement actions, the Commission must strike a balance between information needed for investor action and potential disincentives for individuals to become directors. This balance is necessary to avoid corporate and investor harm.

Disclosures Regarding Leadership and the Board's Role in Risk Management

We agree that disclosure and discussion of a company's leadership structure and risk management policies are important for shareholders to make investment decisions. Businesses, at varying stages of development, may appropriately adopt different leadership structures perhaps as a function of the capabilities and talents of their executives and directors. This may well change over time. We do not agree that the CEO and Chairman roles should be separated regardless of circumstances, and we therefore urge the Commission to ensure in its final rule that it encourages organizations to use a leadership structure that suits the organization's unique circumstances from time to time.

With respect to risk management, disclosure is useful only if it also provides an understanding of the size and potential future evolution of a company. Businesses engage in various levels of risk and risk is essential to success. Being that businesses are not static, it is better for investors to understand the current and potential future phases of development and how risk management fits into that picture.

Rounding Out of Short Slates

A short slate is when a solicitor proposes a number of nominees that is less than the full board. Under current rules, solicitors may not use other solicitor's short slate nominees to combine with their short slate to create a full slate of nominees.

The Proposal seeks to change existing rules and allow non-management solicitors to round out their short slate with any nominee named in another non-management person's proxy statement, provided that a representation is made in the

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 defined in Section 13 (d) (3) and Regulation 13D-G.

The CCMC is concerned that other changes to proxy election voting, such as shareholder access and elimination of the broker vote, are going to cause high-pitched controversial annual elections and inject politics into the board room. This will divert directors' focus from corporate business management to a new brand of political infighting that is detrimental to the unity of purpose at the core of the director-shareholder relationship. The rounding out of short slates will accelerate the politicization of the board room and ultimately harm investors.

Additionally, rounding out of short slates will further burden Commission resources in order to ensure that illegal collaborative efforts do not underlie a rounding out of short slates. The CCMC is concerned that the finite resources and time available to the Commission will not allow the Commission to adequately monitor the adherence to lawful activities in the rounding out of short slates. Furthermore, such electoral monitoring and enforcement activities will divert Commission resources and focus from other core responsibilities that may result in investor harm and endanger the safety and soundness of the financial markets.

The financial crisis has highlighted the need for enhanced Commission focus on investor protection and market soundness given its core priorities and finite resources, the Commission should not attempt to execute the duties of a Board of Elections. Accordingly, the CCMC respectfully requests that the short slate Proposal be withdrawn.

Proxy Advisory Companies

The CCMC also believes that the Proposal fails to take into account how the enhanced disclosures play into other changes surrounding proxy voting. With proposed changes to shareholder access and the elimination of the broker vote, it is expected that retail investor participation will continue to drop and that the institutional vote will carry more weight in the proxy voting. Accordingly, proxy advisory companies, who many investors rely on to assist in making decisions, will play a greater role in the packaging and dissemination of information related to

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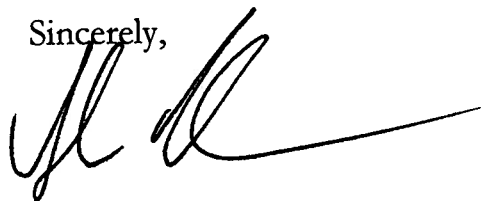
directors and nominees. Indeed, these companies will package and supply the information the Commission wishes to provide investors through the enhanced disclosures outlined in the Proposals.

This means that, for the most part, the enhanced disclosures will not provide information directly to investors. Rather, the information will pass through a filter, the proxy advisory companies, before reaching investors. While the Commission believes that the information provided through enhanced disclosures will benefit investors; this filtration of information may hamper the Commission's policy goals of greater transparency. This creates greater concerns as proxy advisory companies play an increasingly large role in this process, in some ways analogous to the role of credit rating agencies. Indeed the very transparency the Commission seeks through enhanced disclosure, could be thwarted as the information is used by Proxy Advisory firms that are used by investors to assist in decision making. This issue warrants a higher level of scrutiny from the Commission. Stronger oversight is needed to ensure that the enhanced disclosure regime meets the objectives of the Commission and to preserve the integrity of the information dissemination process.

Conclusion

The CCMC wishes to thank the Commission for the opportunity to comment on the proposals. While the CCMC believes that enhanced disclosures are a necessity for vibrant capital markets, the Proposals contain issues of concern that should be addressed. The CCMC also believes, as discussed, that certain relevant issues are not addressed at all. Accordingly, the CCMC stands ready to assist the Commission in developing and implementing enhanced disclosure policies that will benefit the capital markets and strike the appropriate balance in director-shareholder relations.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Quadman', with a long horizontal flourish extending to the right.

Thomas Quadman