SOCIETY OF CORPORATE COMPLIANCE AND ETHICS

September 29, 2009

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

Via email: rule-comments@sec.gov

Re: File No. S7-13-09; Release Numbers: 33-9052, 34-60280; IC-28817

Dear Secretary Murphy:

We write on behalf of the Society of Corporate Compliance and Ethics, a non-profit organization comprised of more than 1500 members, dedicated to improving the quality of corporate governance, compliance and ethics. The SCCE champions ethical practice and compliance standards in all organizations, and seeks to provide the necessary resources for compliance professionals and others who share these principles.

The SCCE strongly supports the Commission's goals of enhancing disclosures by public companies with respect to issues that we believe are of particular importance to organizations' compliance and ethics programs, including risk management, board skills and leadership and the incentives associated with an organization's compensation policies. Accordingly, we read with interest the Commission's proposed rule, "Proxy Disclosure and Solicitation Enhancements," File No. S7-13-09. Because the SCCE believes that (i) it is essential that the board of directors of every corporation take an active role in the oversight of compliance and ethics programs; (ii) at least one member of the board of directors should have expertise in compliance and ethics; (iii) effective risk management includes management of *legal and compliance* risks; and (iv) compensation structures can play an important role in ensuring legal compliance, we wish to comment on the proposed rule.

To effectively represent the interests of shareholders, the board of directors must fulfill its role of ensuring that the corporation 1) is operated under a system of effective and, when appropriate, transparent corporate governance, 2) appropriately manages the risks undertaken by the entity, and 3) is committed to operating all business activity with ethics and integrity in compliance with legal requirements. As has been noted in other comments,[1] there is a positive correlation between companies with effective compliance systems and their financial performance. The SCCE therefore offers the following comments on the Commission's Proposed Rule, and notes its endorsements of proposals set forth in the September 15, 2009, filing by the Ethisphere Institute:

1. **Compensation Discussion and Analysis Proposal.**

The SCCE strongly agrees with the Commission that "[c]ompanies, and in turn investors, may be negatively impacted where the design or operation of their compensation programs create incentives that influence behavior inconsistent with the overall interests of the company." The SCCE also suggests that appropriately designed compensation programs can not only "enhance a company's business interests," but can also increase the probability that company employees and agents will conduct company business in compliance with the law. This proposition has been embraced by the United States Sentencing Commission in the Sentencing Guidelines for Organizations, which articulate the definition and framework that most organizations utilize in developing their compliance and ethics programs,[2] and which has been a point of reference for the United States Department of Justice in making enforcement decisions regarding organizations[3]. The Guidelines provide that an effective compliance and ethics program should "be promoted and enforced consistently throughout the organization through appropriate incentives to perform in accordance with the compliance and ethics program."[4] In other words, in order to have an effective compliance and ethics program, an organization must create incentives for officers, managers and employees to act in compliance with the law.

Accordingly, the SCCE recommends that the Commission modify its proposal with respect to Compensation Discussion and Analysis to require organizations to include in their discussion of compensation whether and to what extent the registrant's compensation program includes "appropriate incentives to perform in accordance with the organization's compliance and ethics program."

2. **Director and Nominee Qualifications and Experience and the Board Committee Qualifications**

The Commission has proposed expanding the disclosure requirements of Items 401 and 407 of Regulation S-K regarding director and nominee qualifications and experience and the qualifications of board committee members.

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[1] As in the comments of Ethisphere Institute, Sept. 15, 2009.
[2] United States Sentencing Guidelines Manual § 8B2.1.
[3] United States Attorneys' Manual 9-28.300, item 5; 9-28.800.
[4] United States Sentencing Guidelines Manual § 8B2.1(b)(6)(A).

Just as it is important to have a financial expert guiding the audit committee, the SCCE recommends that this proposal be modified to require each board to designate a member as the lead compliance director, and disclose in Item 407 of Regulation S-K the significant experience and expertise in corporate compliance programs that would qualify that director for the position. The lead compliance director could function as part of the risk oversight committee (as specified in the New York Stock Exchange Listing Requirements), but this risk analysis function should not be limited to financial risks, but should also include the risks that are included in a compliance risk assessment, such as risk of legal violation and attendant penalties, including damage to reputation.

The SCCE also recommends that the Commission, as part of its proposed revisions to Item 401 of Regulation S-K, require that each board nominee be required to disclose his or her experience with and understanding of corporate compliance and ethics programs that are part of the qualifications to serve as director.

3. Disclosure Regarding the Board's Role in the Risk Management Process

The SCCE supports the Commission's proposal to require additional disclosures in proxy and information statements regarding the board's role in the company's risk management process. In discussing this proposal, the Commission recognizes that "companies face a variety of risks, including credit risk, liquidity risk, and operational risk." The SCCE respectfully suggests the proposal be expanded to require organizations to disclose the board's role in the company's compliance and ethics risk management process, as well as its financial and operational risk management process.

An effective compliance and ethics program, including a chief ethics and compliance officer with experience in the field of compliance and ethics who is fully empowered, independent and included in key decision making, is an important bulwark against corporate fraud and misconduct. Indeed, controlling the risk of compliance violations is critically important to organizations' ability to control risks more generally, and compliance programs are the best means of controlling for compliance risks. The SCCE therefore suggests that the Commission consider requiring companies to disclose whether they have a compliance and ethics program and, if not, why not. The Commission could include in the regulations a description of compliance and ethics programs based upon the definition of an effective compliance and ethics program as set forth in the U.S. Sentencing Guidelines for Organizations, which, as mentioned above, is generally considered the preeminent definition of an effective compliance and ethics program.

Of course, no compliance and ethics program is perfect, and companies or their employees may still violate the law. But SCCE believes that by requiring every registered company to have qualified board members overseeing its compliance program and to disclose whether the company has a compliance and ethics program and if not, why not, the Commission will be doing shareholders a great service by reducing the likelihood that a company's employees, directors or agents may engage in illegal conduct or that a company, even without the intent to violate the law, may not provide adequate resources to ensure a sufficient compliance and ethics program.

Thank you for allowing SCCE to comment on these proposals.

Sincerely yours,

Roy Snell
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