September 10, 2009

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

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

Dear Ms. Murphy:

We are pleased to submit comments in response to the Securities and Exchange Commission's recent proposed amendments to corporate governance related disclosure and proxy solicitation rules. This letter represents the views of RiskMetrics Group in its capacity as a proxy advisor and thought leader in the area of corporate governance, not necessarily the views of our clients.

The proposed rules related to executive compensation, director qualifications, board leadership structure, risk management, and vote disclosure are particularly welcome, and we commend the Commission's initiative to enhance corporate disclosures that are especially relevant to shareholders in light of their increasing need to closely monitor executive and board performance. Our comments and suggestions on specific aspects of the proposed Proxy Disclosure and Solicitation Enhancements are detailed below.

I. Compensation and CD&A Related

Enhanced Disclosure about Risk

RiskMetrics strongly supports the Commission's proposal to add a new section to the CD&A for discussion of how the company addresses potential risks raised by its compensation policies and practices, especially with regard to incentive programs that may motivate employees to focus on short-term results at the expense of long-term value.

We also note some techniques that have been proposed to lessen the chance that cash and equity based award systems might incentivize inappropriate risk-taking that could jeopardize a corporation's long-term health. For example, some advocates recommend that a substantial proportion of shares that an executive receives through equity incentives programs be held until (or even past) retirement in order to closely align these equity incentives with long-term shareholder value. Incentive "claw back" policies are suggested to deter misconduct that might result in financial restatements and to demonstrate to employees that the company is committed to a pay-for-performance philosophy. Bonus "banking" may ensure that executives are not excessively rewarded for short-term results that are not sustained for an extended period. The CD&A incentive risk discussion should require that companies address whether it uses these or other specific techniques to mitigate incentive-related risks.

We believe that the CD&A should include two additional disclosure items related to company policies that may impact long-term risk, either within the risk analysis section or separately. One would address pledging transactions by executive officers (in addition to the current requirement to discuss hedging transactions). Shareholders may experience an adverse impact when executives are forced to sell large blocks of company stock to satisfy margin calls, and they should understand what company policies are in place to protect their interests.

Also, as further discussed below, some investors have raised concerns about an aspect of compensation disclosure that remains consistently opaque; i.e., how companies adjust financial results for purposes of performance goal achievement. Many incentive programs that utilize financial related goals permit adjustments for "extraordinary" or "one-time" events that impact results. While some adjustments for one-time events are reasonable, this approach may also encourage certain behaviors that could increase inappropriate long-term risk. For example, excluding acquisition costs when determining profit for bonus plan purposes may encourage acquisitive activity that could be damaging to long-term value. Shareholders would benefit from an explanation and discussion of how the Compensation Committee considers these factors when making or approving adjustments to goals.

Equity Values in the Summary Compensation Table

RiskMetrics welcomes the proposal to revise the Summary Compensation Table ("SCT") and Director Compensation Table disclosures of stock and stock option awards to require presentation of the grant date fair value of these awards, computed in accordance with FAS123R, rather than the amount expensed in the compensation year for previously granted awards. This revision will provide investors much better insight into the compensation decisions made in the applicable fiscal year, which is critical to evaluating Compensation Committee performance.

While equity grant and award values are only estimates of the ultimate value that an executive may receive, they provide a reasonable representation of how the board intended to compensate executives, as well as which executives the board intended to compensate most highly. A grant-date value approach also avoids disclosure of negative numbers that can reduce Total Compensation amounts and are confusing to shareholders.

In cases where stock grants include performance conditions that are not reflected in the grant date fair value of the award, the company should highlight the performance features in a footnote to the SCT and continue to detail the vesting conditions for each relevant award in a footnote to the Grants of Plan-Based Awards Table. This would enable investors to consider the performance features in their evaluation of the awards and avoid the risk that presenting grant date values would discourage companies from tying stock awards to future performance (a practice that shareholders generally favor).

In the case of multi-year awards that may distort the picture of pay intended for the last completed fiscal year, the company should again provide meaningful disclosure to clarify the reason for a large multi-year grant, and how the impact of the grant is incorporated into decisions about total pay. We recognize that periodic multi-year grants could affect identification of the highest paid executives in a particular year (for SCT purposes) but note that such distortions already occur due to year-to-year variations in expensed values of outstanding awards. The grant-date value disclosure is optimal for providing shareholders with the best representation of what the board intended to pay to top executives in a given year.

Additional comments are summarized below:
Comparability: If the SCT is revised to include grant-date, rather than expensed values for equity-based awards, we encourage the Commission to require companies to show three years of recomputed values for those officers who are deemed to be the five highest paid (including the CEO and CFO) with respect to the fiscal year of compensation presented in proxy statements in the first year that the revision becomes effective. This will allow for year-over-year comparability of the revised SCT.

Forgone Awards: We agree with the Commission's suggestion not to require companies to report the value of cash remuneration (either salary or bonus) in those applicable columns in the SCT if an executive has voluntarily elected to forgo receipt of the cash in exchange for a stock-based award. However, although the value delivered would be included in the aggregate grant-date value of stock and stock option awards, the company should detail in a footnote the terms of any such exchange, including whether the executive received any premium (or discount) as an incentive to forgo cash.

Grants of Plan-Based Awards Table: Although it is reasonable for companies to report the aggregate grant date fair value of stock and stock option awards in the SCT, it is also important for shareholders to understand the mix of values among various award types. Therefore, we encourage the Commission to <u>retain</u> the requirement to report the full grant date fair value of each individual equity award in the Grants of Plan-Based Awards table and corresponding footnote disclosure to the Director Compensation Table.

In addition, the Commission should address an apparent inconsistency in the reporting of dividend payments related to outstanding awards that are made to named executive officers ("NEOs"). Currently, per instructions under Item 402, dividends or other earnings on stock or option awards are only enumerated if their potential value was not factored into the grant date fair value that is reported in the Grants of Plan-Based Awards table. Some companies have interpreted this requirement to mean that no information about dividend payments need be reported if the value was reflected in the grant date valuation of relevant awards, which deprives shareholders of information that may be significant in their evaluation of an NEO's annual compensation. We urge the Commission to require the amount of dividends actually paid in a compensation year with respect to outstanding grants and awards to be fully reported and identified as such in a footnote to the Grants of Plan Based Awards table.

Timing of Awards: A frequent point of confusion with respect to disclosure of equity awards is their potential relevance to performance in a year other than the year of grant. The proposed rule revisions present an opportunity to redress this shortcoming.

For example, many companies make equity grants near the beginning of each year, which are then part of that year's reported compensation. Some of those companies indicate that the terms of such grants are, however, based on the evaluation of company and/or the executive's performance in the immediately preceding year. This disconnect is problematic for investors evaluating the relationship between performance and pay. RiskMetrics, for example, considers the pay-for-performance link to be a significant component of executive pay analyses, an approach that is strongly endorsed by many of our clients (in our most recent client survey, almost 60 percent of institutional investor respondents ranked pay-for-performance as critical to a "say on pay" evaluation, while another 35 percent deemed it to be important). The value of equity grants and awards generally represents a significant proportion of top executives' pay; if the grants are made subsequent to the "performance" year, disclosures may distort the pay-for-performance link.

The Commission asked for comment on whether equity-based grants should be reported for the relevant service year, if that differs from the grant year. We believe this approach is worth considering; however, year-to-year consistency would be a key factor. Companies that wish to report equity grant fair value disclosures as part of compensation for the performance period (i.e., the service year) on which they are based should be required to make an irrevocable election to do so, in order to preclude year-to-year inconsistencies that would distort comparability.

Alternatively, in the absence of a revision to the current grant-year disclosure approach, the Commission should encourage companies to clearly denote in the CD&A how the size and terms of equity-based awards are determined with respect to performance and other factors, and whether grants reported in the SCT are relevant to a previous year's performance. If that is the case, the company should separately disclose the number and value of the stock and option awards made in the current year that are related to service in the most recently completed fiscal year, so that this information can be considered in investors' evaluation of the pay-for-performance linkage.

Alternative disclosure petition: We do not support the rulemaking petition referenced in the proposed rule, which requested revision of the SCT disclosures so that the company reports only the annual change in value of outstanding stock and option awards. That information is not as important in evaluating compensation decisions made by the board, which we believe is investors' primary focus. The change-in-value amount could, however, help investors better understand the value of an executive's accumulating grants, so it may be appropriate to include a "One Year Change" column in the "Outstanding Equity Awards at Fiscal Yearend" table. Further, we urge the Commission to revise that table to include the dollar value of unrealized gains from outstanding exercisable and unexercisable stock options, based on the difference between each grant's exercise price and the fair market value of the company's stock on the last business day of the last completed fiscal year. That column, in conjunction with new columns showing the change in unrealized value from the prior year for both options and unvested stock awards would provide useful insight into the actual values accruing to executives from outstanding awards and their most recent trend.

Enhanced Disclosure about Compensation Consultants

Some investors have raised concerns about the role that compensation consultants may play in contributing to executive pay policies and packages that are not necessarily in shareholders' best interests. While we believe that most consultants aim to provide impartial advice to assist companies and boards in designing pay programs that are competitive and effective, we also recognize that there are many aspects of this process that involve a consultant's judgment, and that objectivity could be compromised in certain circumstances. As demonstrated during the scandals related to Enron, WorldCom, and other companies regarding auditor conflicts of interest, a firm that is hired to provide multiple services to a company may develop a bias against challenging or disagreeing with that company's management.

We therefore support the Commission's proposal to require more disclosure of fees paid to firms that provide advice related to the amount and form of executive and/or director compensation and that also provide additional services to the company. Specifically, disclosure should include the nature of, and fees for, the services provided to the company (or its affiliates) by the compensation consulting firm (or its affiliates), whether or not company management participated in the decision to engage the firm for non-executive compensation work, and whether the board or compensation committee approved the provision of other services. This information will help shareholders better evaluate whether potential conflicts of interest exist, and to what extent they might affect the compensation-related advice the board receives and considers in its decision-making process. In order to ensure that the information is meaningful, we recommend the following:

- Specific fees should be disclosed for two categories: (1) executive compensation consulting and (2) all other services in the aggregate. We do not believe that the company should be required to provide a breakdown of "other" fees, as that might create competitive/proprietary concerns (but of course the company could do so if it believes the information would be useful to shareholders). We do not recommend a "threshold" for fee disclosure because it could encourage artificial manipulation of fee levels. The disclosure requirement need only apply to a firm that provides advice/consulting on executive compensation and also provides other services; it need not apply if the firm provides compensation consulting solely on non-discriminatory programs (such as 401(k) or pension plans) that may include executive officer participants but have a broad participation base.

- The time period covered by the disclosure should include the preceding fiscal year and the following year if any services are contemplated (using estimates of expected total fees if necessary), in order to capture situations where services are not provided in the same fiscal year but could still raise conflicts of interest.

- The disclosure should indicate the form of payment made to any executive compensation consulting firm (i.e., cash, stock, or stock options), regardless of whether the firm provides other services to the company.

Additional Disclosures

The 2006 revisions to executive compensation disclosure requirements have significantly improved shareholders' ability to evaluate executive pay practices, and the current proposed changes will further enhance the value to investors of the CD&A. There remain a few additional areas where information should either be presented or clarified in the proxy statement, in order to minimize confusion and give investors a more complete picture of the company's compensation philosophy and practices.

Performance Goals: We believe that companies should generally be able to disclose performance targets on a retrospective basis for awards earned in completed periods and reported in the SCT, without the risk of competitive harm. It is difficult for shareholders to determine whether amounts actually paid or awards granted to NEOs under an incentive program were derived via a robust pay-for-performance structure unless the company clearly discloses the following:

- the measures(s) used (and rationale for the selections);
- the goal(s) that were set for each metric and the target (and, if relevant, threshold and maximum) payout level(s) set for each NEO;
- the reason that each goal was determined to be appropriate for incentive pay purposes (including the expected difficulty of attaining each goal);
- the actual results achieved with respect to each goal; and
- the resulting award (or award portion) paid to the NEO with respect to each goal.

The "quantitative" information above, i.e., metrics and results, should ideally be presented in a tabular format, to ensure clarity. The qualitative aspects (rationale for metrics and goals, their level of difficulty, and any additional information the company believes would help shareholders understand how the prior year's awards were derived) would be explained in accompanying narrative discussion, along with any reason that the company determines it is unable to present quantitative factors in a tabular format.

As noted under the "Enhanced Disclosure about Risk" discussion above, either the Risk discussion or the narrative discussion about non-equity incentive plans should also explain the impact of any adjustments made to financial results in determining the degree of goal achievement for award purposes. In our experience, CD&A discussions often indicate that adjustments to eliminate the impact of one-time or extraordinary items are made on a regular basis. However, without detail as to the specific adjustments applied in a given year, it is difficult for shareholders to effectively assess this impact on incentive payments in the context of overall company performance as reported in the company's financial statements.

All of the above information is essential to shareholders' understanding of the board's decision-making process in determining and approving executives' incentive compensation. As the Commission's own review of CD&A's has demonstrated, many companies fail to communicate how their compensation and incentive programs contribute to the accomplishment of corporate strategy and long-term value creation. Explicit requirements for more disclosure of these items will enable shareholders to better understand and appreciate the compensation decision-making process and its outcome.

If a company believes that retrospective disclosure of performance goals would cause competitive harm, it should explain the reason for that conclusion. In some circumstances, companies may legitimately be reluctant to specify performance goals for awards that will be earned for prospective periods, due to potential competitive harm. In these cases, the company should disclose the metrics related to incentive awards for NEOs, why the metrics were chosen, and how challenging the goals are deemed to be, if this information is relevant to decisions made in the last completed fiscal year.

Section 162(m): The CD&A should more clearly disclose the company's philosophy and policy regarding Section 162(m), limiting the deductibility of non-performance-based compensation to certain executive officers. Aside from the loss of tax deductions, an issue clearly of interest to shareholders, the company's actions with respect to Section 162(m) reflect its commitment to a pay-for-performance philosophy. The disclosure should address the company's policy regarding 162(m) related deductions, whether its incentive programs are designed to comply with guidelines to qualify payouts for exemption from the $1 million deduction limit management, and, if the company paid non-deductible compensation to any covered executives in the most recent reported fiscal year, to whom and how much. This disclosure will allow shareholders to better evaluate the impact of forgone deductions in light of the company's justification for paying nondeductible compensation.

Payments upon Termination: RiskMetrics respects the Commission's goal of establishing a principles based approach to executive compensation disclosure; however, this has resulted in inconsistent reporting of some important pay elements, especially the estimated termination-related payments to named executive officers ("NEOs"). Two changes would significantly improve insight into how the Compensation Committee incorporates all potential payments upon named executive officers' termination into their decisions about on-going compensation arrangements such as supplemental pensions and other compensation that is not linked to performance and can insulate top executives from the detrimental consequences of their decision-making. We urge the Commission to consider the following suggestions to make disclosure about potential termination-related payments to top executives more comprehensive and meaningful to shareholders' evaluation of the total pay program.

1) **Provide estimated payout amounts for the required termination scenarios in a standardized format**. The current rule allows companies flexibility in presenting potential termination-related payments, although it should be feasible to present this information in a fairly consistent manner. Many companies do use tabular disclosure, for example, but without a standard format the tables vary considerably. We recognize that not all companies provide the same pay elements; therefore, the requirement need only specify that potential payout information will be provided in a tabular format, with columns for each termination scenario (Death, Disability, Termination without Cause, Change in Control with Employment Termination, etc.) and rows for each pay element that would be delivered under one or more of the designated scenarios, with a separate table for each NEO. Providing potential payouts in a reasonably consistent format will facilitate shareholders' understanding of this important aspect of executive pay and minimize misinterpretation of the information.

2) **Include all potential payments that each NEO would receive or be entitled to upon the specified termination, not just those that vest or become payable only due to the termination circumstance.** The "Potential Payments upon Termination or Change in Control" section of executive compensation disclosures has limited value when showing only the amounts estimated to become payable solely due to the occurrence of the termination event. What is key to investors is the view into all accumulated amounts, plus any that will become payable solely due to the termination. This would clarify the total value of the "safety net" being provided to top executives in the event of their retirement or other termination (or upon a change in control), and would put into context the Compensation Committee's decision-making regarding future potential compensation. The company should elaborate in footnotes the portion of any indicated payment that would be made solely due to the occurrence of the termination circumstance. Presentation of total "walk-away" payments to top executives would provide shareholders with meaningful information that is typically opaque under current disclosure requirements.

CD&A Filing
The Commission has requested comment on whether the Compensation Disclosure & Analysis section should become part of the Compensation Committee Report and whether that should be a "filed" rather than "furnished" document.

RiskMetrics applauds the Commission for raising this issue. Investors rely on the Compensation Committee to provide oversight of executive pay and ensure that compensation programs and payments are closely aligned with performance, as well as being competitive. The Committee should bear ultimate responsibility for disclosures to shareholders about the pay programs and the decision-making behind them, but the transfer of key disclosures from the Compensation Committee Report to the CD&A submitted by management essentially diminished that responsibility. Giving "ownership" of the CD&A to the Compensation Committee would reinforce directors' accountability for both the disclosures and the decision-making behind them.

II. Other Enhancements

Enhanced Director & Nominee Disclosure

RiskMetrics supports the Commission's proposal to expand disclosure of information critical to shareholders' understanding of the qualifications of individual directors. Further, we recommend that the current requirement for registrants to discuss the minimum qualifications established by the nominating committee for all board candidates should be retained and should also include any minimum qualifications applicable for a director's service on a key board committee (audit, compensation, or nominating). Since both circumstances and qualifications may change at any time, we agree that those disclosures should be made on an annual basis for all continuing directors and new nominees, including:

- each individual's specific skills and past experience that are useful to the company and/or the board;
- the names of other public company boards on which the individual serves or has served within the prior five years; and
- any legal proceedings (of the nature outlined in the proposed amendment to Item 407) occurring within the prior 10 years involving the individual director or nominee.

In addition, shareholders would benefit from the following additional disclosure items when the slate of nominees includes any new candidates proposed by management who have not previously served on the board:

- whether (and, if so, how) the nominating committee considers factors such as diversity of background (including racial or ethnic background) and experience in identifying new board candidates; and
- whether the committee considers how an existing personal relationship between a new candidate and company management may affect the director's effectiveness in his or her management oversight function.

New Disclosure Regarding Board Leadership

The Commission's proposed amendments to Item 407 of Regulation S-K and Item 7 of Schedule 14A regarding board leadership are particularly welcome. Events of the past few years have raised serious questions in the minds of many investors about the board's role in providing oversight of management actions and risks to shareholder value. Board leadership is a fundamental component of such oversight. Some governance advocates believe that a board chair who also serves as chief executive officer (CEO) cannot *prima facie* provide the leadership needed to ensure effective oversight. Since the board chair, by definition, heads the board, a combined role may thus deprive shareholders of a critical safeguard. While there may be some circumstances in which a combined role is appropriate, RiskMetrics believes that companies with this structure have a particular burden to explain the rationale for their approach.

Companies should disclose the specific duties performed by the board chair and/or independent lead director, to help shareholders assess the efficacy of the company's chosen structure. This information has particular relevance when there is, for example, a shareholder proposal on the ballot asking the company to separate the roles of board chair and CEO; even in the absence of that proposal, however, transparency provides valuable insight into the leadership structure that is important for investors to understand.

Accelerated Vote Disclosure
RiskMetrics welcomes the Commission's proposal to accelerate the timetable for disclosure of proxy item vote results to within four business days after the shareholder meeting at which the vote was held. The proxy vote is a key ownership asset, and vote results have become increasingly important in ensuring board and management accountability to shareholders. A delay in making the votes public diminishes their value to investors and the markets in this respect.

The four-business-days timetable for disclosures, excluding contested elections, seems reasonable. For contests, disclosing preliminary results within the required timeframe, followed by an amended 8-K with final results when available, is also reasonable.

We recommend that the Commission not implement the proposal to completely transfer vote disclosure from Forms 10-Q and 10-K to Form 8-K, however. Because companies may file numerous 8-K forms in a given period, it may be difficult for some shareholders to identify the location of a vote result; continuing to include this information in the 10-Q filed for the quarter in which the meeting was held will ensure that it remains reasonably accessible in all cases. We do not believe that requiring companies to continue including vote results in the relevant 10-Q filing (either in full or by reference to a specified 8-K filing) will add material cost.

III. Proxy Solicitation Process

RiskMetrics supports the Commission's proposed clarification on the "form of revocation," such that the exemption would continue to apply to a person (who is otherwise qualified) who provides an investor with a blank card, suggests a specific course of action (e.g., vote against management's nominees), and urges the investor to return the voted card to the issuer. It is also reasonable to require such parties to file the informational Notice of Exempt Solicitation. If the soliciting party asks the investor to give the unmarked card to them, the soliciting party should provide some enhanced disclosure, although that should not transform the unmarked ballot into a form of revocation.

With regard to the proposed amendment to clarify that a person need not be a security holder of the class of securities being solicited and a benefit need not be related to or derived from any security holdings in the class being solicited in order for the person to be disqualified from relying on the exemption, we are concerned about potential unintended consequences that could result in unnecessary litigation for groups (such as the Council of Institutional Investors or Interfaith Center on Corporate Responsibility) who do not directly own shares in a corporation but wish to urge support for a shareholder proposal, for example. The Commission cites as an example a potential competing bidder in an M&A setting who could have a significant financial interest in a solicitation without owning any shares. However, in practice such parties typically conduct full-blown solicitations, so this seems an unwarranted concern.

The Commission also proposes to revise Rule 14a-4(d)(4), to provide that the short slate "rounding exception" to the bona fide nominee requirement is available whether a non-management soliciting person attempts to round out its short slate with nominees named in the registrant's or in any other person's proxy statements. We note that the short slate rule was never intended to create end-runs on the solicitation process, but the proposed amendment opens that door. For example, a short slate campaign that culminates with a control ballot comprised of a single nominee and a field rounded out in the negative from a series of dissident ballots -- while allowing a workaround for the bona fide nominee rule -- invites manipulation and confusion. Dissidents should not be able to form groups or solicit on each other's behalf if they want to benefit from expansion of the rounding out rules; neither should a dissident be forced to round out only with incumbent nominees if there are other dissident nominees running. We believe that the Commission should put choice where it belongs--in the hands of the voters -- by allowing investors to vote via a single, unified (universal) ballot.

Respectfully submitted,

Carol Bowie

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