NBIM
Norges Bank Investment Management

Securities and Exchange Commission
Att: Elizabeth M. Murphy
100 F Street, NE
Washington, DC 20549 – 1090
USA

Date: 14 September 2009

Your ref.:
File number S7-13- 09

Our ref.: RUR

Dear Commissioners,

File Number S7-13-09

Norges Bank Investment Management (NBIM) is a separate part of the Norwegian central bank (Norges Bank) and is responsible for investing the international assets of the Norwegian Government Pension Fund. NBIM also manages the major share of Norges Bank's foreign exchange reserves and the Government Petroleum Insurance Fund.

NBIM holds assets in excess of USD 400 bn globally, of which USD 66 bn is invested in equities of approximately 2200 U.S. companies. This equates to an average voting percent of 0.6 percent. We therefore have a strong interest to preserve the best aspects of U.S. corporate governance regulation and we support measures that seek to improve any regulations that would enhance shareholders ability to make informed voting and investment decisions.

Summary

We commend the SEC for proposing revisions to its rules that aim at improving the disclosure the shareholders of public companies receive. We regard the amendments as a positive step towards creating good company governance. Improved disclosure requirements on director qualifications and governance structure will enable shareholders to make more informed voting decisions, and is likely to add vitality and accountability to board elections.

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- We support the proposed amendments to Item 401 of Regulation S-K. We consider that it meets the Commission's stated objectives and is likely to enable shareholders to make more informed voting decisions.
    - The information on director qualifications should be thorough enough to enable shareholders to make informed voting decisions on how the board's overall competence and composition will be strengthened by adding the individual nominee to the board. The requirements should be formalized and ensure thorough disclosure on particular skills and experiences of each nominee and the role each nominee is anticipated to fill on the board of directors.
    - Board nominees should make themselves available to shareholder communication.

- We support the proposed new disclosure requirement to Item 407 of Regulation S-K and a corresponding amendment to Item 7 of Schedule 14A. However, we encourage the SEC to formulate the rule so that an independent chairman is the default from which any deviations should be explained by the company.
    - We see it as a next natural step to make it mandatory for companies to have an independent chairman.
    - Risk management should be seen as an integrated aspect of strategy evaluation.

- We support the changes to disclosure of vote results. We believe more timely disclosure of the voting result will make the information more useful to shareholders.

Our specific comments and recommendations are set out below.

Enhanced director and nominee disclosure to be formalized and thorough

We support the proposed amendments to Item 401 of Regulation S-K to expand the disclosure requirements regarding the qualifications of directors and nominees, past directorships held by directors and nominees, and the time frame for disclosure of legal proceedings involving directors, nominees and executive officers.

The election of board members is fundamental to the board's accountability towards shareholders. The board must be composed in such a way that the right competence is ensured, that the board spends sufficient time on their tasks and that the board is sufficiently independent from management. We share the opinion that the suggested enhanced disclosure requirements are likely to enable shareholders to make more informed voting decisions.

We would like to stress the importance that the disclosure requirements be formalized and

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thorough in order to ensure sufficient disclosure on competency, skills and experiences of the nominee, the nominee's views on issues material and relevant to the company, the role the nominee will fill on the board and how the board's overall competence and composition will be strengthened by adding the individual nominee to the board. The same requirements should apply for all companies.

The disclosure should be made annually for all board members and new candidates. The overall composition of the board changes when new nominees are introduced. Annual disclosure will facilitate shareholders' assessments of the quality of the board as a whole, which must be seen in relation to any changes in the company's strategy, relevant risks, operations and organization, as well as the market situation.

Additionally, the SEC should require companies with staggered/classified board to disclose why the company has chosen a practice with not all board members being up for election each year and the advantages and disadvantages of this practice to both the company and its shareholders. Annual elections of all directors are not incompatible with continuity and stability. Staggered boards are contrary to shareholder interests, the main motive for board classification is to make it more difficult to change control of the board, while annual elections increases board accountability towards shareholders.

Further, the SEC should require companies that fail to embrace majority voting for director elections explain their reasons for retaining a plurality standard and the advantages and disadvantages of this practice to both the company and its shareholders. The power to elect members to the board of directors is one of the fundamental rights of shareholders. Election through a plurality standard does not impose meaningful accountability since a director may be elected even though more withhold votes than supporting votes are cast.

Board nominees should make themselves available to shareholders well ahead of the election, for example through a conference call, where shareholders may ask questions on their qualifications and what value they will bring to the board.

Company Governance Structure

We support the proposed new disclosure requirement on company leadership structure to Item 407 of Regulation S-K and a corresponding amendment to Item 7 of Schedule 14A. At the same time, we encourage the SEC to formulate the rule so that an independent chairman is the default from which any advantages and disadvantages of any deviations should be explained by the company.

We voice concern that the disclosure requirements as proposed will not be formulated in such a way that the information provided by companies will be sufficiently thorough to give a sufficient insight for shareholders of the advantages and disadvantages of the chosen governance structure. It is important that companies give a real and balanced explanation in a formalized way. It should, for example, be disclosed whether the board has an annual

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review process of the governance structure and which factors that are included in such a process and whether the board actively seeks shareholder input to the process.

We see it as a next natural step for the SEC to make it mandatory for companies to have an independent chairman. The role of the chairman is fundamentally different from the role of the CEO. The chairman is to lead the board, which is to agree the strategy of the company and oversee its successful implementation leading to long term prosperity. The role of the CEO is to implement that strategy and manage the day-to-day operations. A balance of power and authority can only be ensured through an independent chairman. Different time horizons between the two roles and different competences needed for managing a company as compared to those required to oversee management adds to the factors that makes the two functions quite distinct and incompatible in the hands of one person. There is a trend towards split roles among US companies, shareholder proposals on splitting the roles are receiving higher support than before, both US and global shareholder groups give support to this principle and the norm internationally is to have split roles.

The new disclosure requirement to Item 407 of Regulation S-K and the corresponding amendment to Item 7 of Schedule 14A should not be named "Company Leadership Structure" since this could be misleading and supportive to the lack of distinction between the fundamental different roles of the CEO and the chairman. It is not a question about choosing between different models for company leadership structure, but about choosing between different company governance structures. An independent chairman does not need to challenge the company leadership. We suggest renaming the relevant text items to "Company Governance Structure".

The Board's Role in the Risk Management Process

We support the proposed new disclosure requirement on the board's role in risk management to Item 407 of Regulation S-K and a corresponding amendment to Item 7 of Schedule 14A. We would like to emphasis that board level risk management should be seen primarily in the context of the board's role in corporate strategy development. We would expect the board to understand and evaluate the market risk, credit risk and other business risk material to the activities of the company as part of the strategy process. The board should work with sensitivities and causalities of relevant risks. Based on this it should determine which levels of exposure to the various risks constitute the optimal strategy for the company. We would further expect the board to ensure that the strategy is communicated in such a way that investors can understand and evaluate the strategy chosen and its implicit main risk factors and levels.

As risk management should be seen as an integral aspect of strategy evaluation, execution, control, and communication we would like to caution that while establishing a board risk committee can sometimes be useful it will not free the board from treating risk as integrated in most of its decision making. Understanding risk is therefore a key competence of the board.

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Reporting of Voting Results

We support the Commission's proposal to transfer the requirement to disclose vote results from Forms 10-Q and 10-K to Form 8-K. We agree that more timely disclosure of the voting result will make the information more useful to shareholders. Matters submitted for shareholder vote naturally involve issues that directly impact shareholder interests, for example the composition of the board, executive compensation policies, investment or divestments, changes in shareholder rights and capital changes and timely disclosure of voting results become crucial.

We support that such rule changes should not cause any extra material costs for the companies, given technological advances in shareholder communications and the growing use of third-party proxy services that have increased the ability of companies to tabulate vote results and disseminate this information on a more expedited basis.

Conclusion

We reiterate our support for the adoption of the proposed changes and encourage its early adoption. We urge the SEC to avoid making any lengthy transition period after the adoption of the new rules and seek its introduction ahead of the 2010 proxy season. We welcome this opportunity to contribute to the rule making process and NBIM would be pleased to discuss our proposals directly with Commissioners should that be of value for the Commission's considerations.

Yours sincerely,

Anne K. Kvam
Global Head of Corporate Governance

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