Social Investment Forum

Via Email

Sept. 14, 2009

Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission
100 F St., NE
Washington, DC 20549-1090

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

Dear Ms. Murphy:

On behalf of the Social Investment Forum (SIF), the U.S. membership association for socially and environmentally responsible investment institutions and professionals, I am writing to express our support for the Securities and Exchange Commission's (SEC) proposed rule, *Proxy Disclosure and Solicitation Enhancements*. We applaud the SEC for continuing to work toward making financial markets more transparent and accountable.

Of the seven elements in the SEC proposed rule, there are five key elements that are of particular interest to our members. We discuss these and respond to related questions posed by the SEC below.

Board diversity: *Should we amend Item 407(c)(2)(v) to require disclosure of any additional factors that a nominating committee considers when selecting someone for a position on the board, such as diversity? Should we amend our rules to require additional or different disclosure related to board diversity?*

SIF believes diversity in boardrooms is important for several reasons. A diverse board provides important oversight of management and human resource policies and can help companies more effectively prevent discrimination and promote inclusiveness. In doing so, diverse boards help companies recruit talent, retain staff and boost productivity. Moreover, diverse boards enhance a company's responsiveness to an increasingly diverse world of customers and stakeholders, thereby helping corporations improve community relations, address emerging public policy issues and related risks, and respond to changes in the marketplace for goods and services. In sum, diverse boards improve corporate financial performance.

In fact, dozens of companies speak publicly and proudly about how diversity on their boards adds to shareowner value and provides vitally important business insights. Avon, Colgate-Palmolive, General Mills, PepsiCo and Pfizer are but a few of the many companies that testify to the value a diverse board adds. In addition, a broad and growing group of investors supports boardroom diversity. For example, the Council of Institutional Investors amended its corporate governance policies earlier this year to support diversity among board members in experience, age, race, gender, ethnicity and culture. In short, this perspective is one that business leaders as well as investors have been making.

However, while many have confirmed board diversity as a good business practice, progress in gaining diversity on U.S. companies' boards has been slow. Catalyst, a leading human resources consulting and research firm, reported in its *2008 Census of Women Board Directors* that women represented only 15.2 percent of Fortune 500 directors in 2008, up only slightly from 13.6 percent in 2003. Similarly, a study released in July 2009 on African Americans on boards of directors of Fortune 500 companies commissioned by The Executive Leadership Council found that the number of board seats held by African Americans has declined since the group's inaugural board

910 17th Street, NW
Suite 1000
Washington, DC 20006
T 202 872 5361
F 202 775 8686
www.socialinvest.org

report in 2004. The percentage of African Americans on corporate boards decreased from 8.1 percent in 2004 to 7.4 percent in 2008, a 0.7 percent decline. Four years ago, African Americans held 449 corporate board seats, and today they hold 413, or 36 fewer. Disappointingly, corporate boardrooms are far from reflecting the diversity of the global marketplace.

Therefore, we believe the SEC should amend Item 407(c)(2)(v) and its proxy disclosure rules to make it mandatory for companies to disclose:

- Whether diversity is considered in the director nomination process, and
- The gender and racial breakdown of directors and director nominees.

We believe leading companies with good governance practices are those that specifically mention diversity in race and gender in their director selection criteria and consider candidates from non-traditional areas. In addition, companies should ensure that every time a slate of directors is provided, qualified women and minority candidates are included as part of the pool from which they are chosen. In fact, numerous companies have agreed with shareowners and added to the "job description" or bylaws describing the role of the nominating committee a section outlining their commitment to board diversity. We encourage the SEC to require companies to disclose whether they consider diversity in the nomination of directors. Such disclosure would give investors confidence that nominating committees are searching beyond traditional circles to consider fresh and independent viewpoints.

Furthermore, we believe companies should disclose director and nominee race, ethnicity and gender representation data. Gender representation can often, but not always, be determined by analyzing the proxy statement. However, investors are many times unable to determine accurately the level of minority representation on corporate boards. Representation data has been long sought by investors to make more knowledgeable voting decisions and to evaluate board composition. Investors need this additional disclosure to properly assess the makeup of boards and formulate comparisons across companies. These reforms, in turn, likely will increase board diversity, accountability and competitiveness.

Voting results: *To what extent would requiring the reporting of voting results on Form 8-K provide more timely information to investors and the markets? Are there any possible adverse consequences to requiring the disclosure of preliminary voting results in a contested election when the outcome is not final? For example, could the preliminary disclosure affect the final outcome? Should the filing period under Form 8-K for the reporting of voting results be longer than four business days? Should we require the reporting of preliminary voting results? Are there unique difficulties or significant costs in finalizing voting results at smaller reporting companies that would warrant a longer filing period for those companies? What factors should we consider in deciding whether to make the filing period longer? Are there situations other than contested elections that might warrant a longer filing period?*

SIF believes amending the current rule to require companies to report voting results on Form 8-K within four days of an annual or special meeting is a welcome and necessary change to the *status quo* of having shareholders wait for companies to issue a Form 10-Q, sometimes months after a meeting, to find out the results of key votes. We believe the value of vote totals is greatest immediately after an issuer's meeting. Furthermore, as the text of the proposed rule states, "If a matter is important enough to submit to a vote at a meeting of shareholders, it likely is important enough to warrant current reporting of the results on Form 8-K." This is true of corporate governance questions, as well as significant environmental and social policy issues. Given that widely used technologies enable companies to report voting results in a matter of days, if not hours, and the importance of transparency and accountability, we strongly believe that the proposed change is more than adequately justified and that it is incumbent on issuers to provide a highly compelling reason for a reporting deadline greater than four business days.

Pay disclosures and parity: *Would expanding the scope of the CD&A to require disclosure concerning a company's overall compensation program as it relates to risk management and or risk-taking incentives provide meaningful disclosures to investors? Should the scope of the amendments be limited in application to specific groups of employees, such as executive officers? Should it be limited to companies of a particular size, like large accelerated filers? Should it be limited to particular industries like financial services, including companies that have segments in such industries? Are investors interested in disclosure of whether the amounts of executive compensation reflect any considerations of internal pay equity? For example, would investors find such disclosure relevant in considering the motivation and effectiveness of broad based compensation plans? Should we consider proposing additional requirements to address this? For instance, should we consider proposing required disclosure regarding internal pay ratios of a company, such as disclosure of the ratio of the total compensation of the named executive officers, or total compensation of each individual named executive officer, to the total compensation of the average non-executive employee of the company?*

Compensation policies from the executive offices to the shop floor are important components of how companies recruit and motivate employees. Therefore, we believe, as the SEC's proposal outlines, that companies should disclose to shareholders the general design philosophy of the company's compensation policies for employees, as well as the risk assessment or incentive considerations, if any, in structuring compensation policies or in awarding and paying compensation. Keeping shareholders abreast of changes and potential risks as posed by developments in these areas also is paramount to good disclosure on pay practices.

Equally important to shareholders, we believe, is having the ability to analyze how pay practices across a company compare between top executives and line employees. Runaway executive pay has concerned shareholders for many years, and the current financial crisis has heightened scrutiny of executive pay practices. Sectors under distress during the crisis, including financial services, automotive manufacturing and airlines, have illustrated how stakeholders beyond shareholders, including customers and employees, seek to hold executives accountable and to ensure they are sharing the burden of reigning in costs and restructuring. Boards and company executives not paying close attention to pay practices can quickly experience a backlash from these important groups and run the risk of damaging a company's image, brand and share price.

However, assessing these matters should be an exercise born not out of turmoil but routine. Good shareholder and labor relations are key ingredients to a winning business plan and should be a matter of regular disclosure. Therefore, we believe companies should discuss how the spread between pay across major classifications of employees could pose risks, including employee, customer and shareholder discontent, by disclosing peer data and policies in these areas and offering comparisons and analysis.

Fees paid to compensation consultants: *Will this disclosure help investors better assess the role of compensation consultants and potential conflicts of interest, and thereby better assess the compensation decisions made by the board? Would the disclosure of additional consulting services and any related fees adversely affect the ability of a company to receive executive compensation consulting or non-executive compensation related services? If so, how might we achieve our goal while minimizing that impact? Are there competitive or proprietary concerns that the proposed disclosure requirements should account for? If so, how should the amendments account for them if the compensation consultant provides additional services?*

SIF supports the SEC's proposed amendments to Item 407 of Regulation S-K to require disclosure about the fees paid to compensation consultants and their affiliates when they play any role in determining or recommending the amount or form of executive and director compensation. As the SEC outlines, we also would like to see companies describe any additional services compensation consultants and any affiliates of the consultants provide the company and disclose any associated fees paid by the company for these services. Eliminating conflicts of interest in these areas will go a long way to increasing transparency of companies' executive and director pay practices and help assure shareholders that the information they are receiving through proxy materials in these areas is trustworthy.

Board oversight of compensation: *Should we consider requiring disclosure regarding whether a member of the compensation committee has expertise in compensation matters and whether the committee has the resources to hire its own independent legal counsel?*

Shareholders have long viewed having a certified financial expert sit on a company's audit committee as a necessity. However, board oversight is critical in many other areas of corporate conduct, especially compensation practices. Therefore, SIF would like to see the SEC require companies to disclose if its compensation committee has such expertise, the board member's credentials, as well as whether the compensation committee has access to resources to hire independent legal counsel. These types of disclosures would give shareholders the ability to scrutinize companies lacking adequate oversight of pay practices and to assess these risks along with others in making investment and voting decisions.

ESG disclosure: Many of the issues touched upon by the SEC's proposed *Proxy Disclosure and Solicitation Enhancements* rule speak to broader sustainability risks confronting companies and their shareholders. Board diversity is a prime example. In July, SIF sent a proposal to the SEC seeking revisions to current rules to make ESG disclosure mandatory for companies, using comparable sustainability indicators based on the Global Reporting Initiative's guidelines in annual reports and of sustainability risks material to shareholders in the management disclosure and analysis (MD&A) portion of 10-K filings. While we do not believe our broader request should be built into the SEC's proposed *Proxy Disclosure and Solicitation Enhancements,* we encourage the SEC and its staff to continue to investigate rule changes in this area.

Thank you for the opportunity to comment on these critical reforms to corporate disclosure practices.

Sincerely,

Lisa N. Woll

Lisa Woll
CEO
Social Investment Forum