American Federation of Labor and Congress of Industrial Organizations

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September 14, 2009

Sent via Electronic and U.S. Mail

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 (File No. S7-13-09)

Dear Ms. Murphy:

On behalf of the American Federation of Labor and Congress of Industrial Organizations ("the AFL-CIO"), I welcome this opportunity to comment on the proposed rule, S7-13-09, on proxy disclosure and solicitation enhancements.

As a long-term investor entrusted with safeguarding the retirement savings of millions of American workers and retirees, the AFL-CIO applauds the efforts of Chairman Mary L. Schapiro and the Securities and Exchange Commission ("SEC") to require fuller corporate disclosures on executive compensation and corporate governance practices. We also welcome the SEC's solicitation of additional recommendations on enhancing transparency beyond the proposal.

The AFL-CIO is the country's largest labor federation representing 11 million members who participate in benefit plans with more than $4 trillion in assets. Union-sponsored pension plans own around $450 billion in assets, and union members also participate directly in the capital markets through 401(k) retirement plans and Individual Retirement Accounts.

While financial intermediaries have collected a lot of money in the last decade, the typical American investor has not fared so well.[1] The resurgence of multi-million dollar bonuses—particularly at the large financial institutions that needed billions of dollars in taxpayer assistance—the disconnect between compensation and long-term performance, and the increased use by top executives of lavish perquisites such as corporate jets for personal use even as they lay off thousands of workers, are constant reminders of the need for vigilance by investors.

[1] Aug. 31, 1999-Aug. 31, 2009 annualized returns on the S&P 500 (including dividends) were –0.73%. *Source: Howard Silverblatt, senior index analyst, Standard & Poor's.*

The SEC, the stock exchanges, and other regulatory bodies play a key role in ensuring transparency. As Justice Louis D. Brandeis famously put it, "Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."[2]

A. Enhanced Compensation Disclosure

i) Risk

The AFL-CIO strongly endorses the SEC's proposal to expand the scope of the Compensation Discussion and Analysis (CD&A) by including a new section on how a company's overall compensation policies for employees create incentives that can affect its overall risk profile and management of that risk. We agree with the Council of Institutional Investors that the disclosure should cover all employees "since opportunities and incentives for engaging in unnecessary risk-taking can extend far beyond the C-suite."[3]

However, we believe that there should be two separate discussions—one on the company's overall compensation program as it relates to risk, and a separate one for the five top paid executives or "named executive officers," as defined by the SEC. There are very real differences between the compensation of senior executives and junior employees. Both involve risk. But the possibilities of managing that risk are very different. For example, a mid-level executive compensated partly in company stock probably does not have the ability or the opportunity to manipulate or affect a company's stock price to the extent of a chief executive who is compensated largely with stock options.

To be sure, there are numerous examples—primarily at financial institutions—of how the compensation of mid-level executives brought the company to its knees. By now, the story of the traders at the London-based unit of AIG, who were guaranteed multi-million dollar bonuses while betting the entire company on the continuation of the housing bubble, has been repeated many times, as well as being the focus of Congressional hearings.[4]

We also believe that the risks involved in incentive compensation are *inherently* material, and the discussion of compensation policies and risk should be required of *all* companies. We concur with Jesse Brill's comments that the final rule should require companies to include a discussion by the compensation committee in the CD&A that addresses the connection between compensation and incentives for taking short-term risk, such as those inherent in stock option grants and restricted stock. Thus, the CD&A should include a section on provisions

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[2] "Other People's Money and How the Bankers Use it," (New York, NY: Stokes, 1914), Chapter V, *Louis D. Brandeis.*
[3] Comment letter, *Council of Institutional Investors, September 8, 2009.*
[4] "Paying Workers More to Fix Their Own Mess," *The New York Times, March 17, 2009.*

requiring the chief executive and other senior executives to hold a percentage of their equity awards past retirement, as well as "clawbacks" for bonuses linked to short-term results that could foster a short-term mentality.[5]

The AFL-CIO, along with several leading investors and business organizations, endorsed the Aspen Institute's recent principles: "Overcoming Short-Termism," which include greater transparency in investor disclosures to help corporations and senior executives maintain a long-term orientation.[6]

Shareholders must be able to easily assess, using a standardized measure, whether a chief executive's compensation is linked to short-term gains or long-term value creation. We believe that the SEC should take the lead in requiring companies to develop such a standardized measure, akin to the "duration" of a bond, that will enable investors to measure the sensitivity of the top executive's compensation package to time and risk, against that of other chief executives.

ii) Summary Compensation Table

We are pleased that the SEC is reverting to requiring the use of grant-date fair values in the disclosures of stock and option awards in the Summary Compensation Table ("SCT") and Director Compensation Table ("DCT"). The AFL-CIO was among the many organizations which expressed opposition and dismay at the unexpected change made in the original proposal in December 2006.[7] Unfortunately, while the SEC's current proposal attempts to rectify the situation, it does not go far enough to be entirely of use to investors. The SEC's 2006 proposal would have required companies to disclose the full grant-date fair value of *each* option and stock award made during the year to be reported in the SCT. Because companies can and do play games with option valuations, it is important for investors to see the grant-date fair value for each and every award. This is particularly so when multiple grants are made on the same date. We concur with Graef Crystal's assessment: "Producing the aggregate figure for all grants and then stuffing same into the SCT is not sufficient."[8]

We therefore recommend that the SEC require companies to provide two tables—the aggregate grant-date fair value for all equity awards in the SCT, and the full grant date fair

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[5] Comment letter to the SEC, *Jesse M. Brill, chair of the National Association of Stock Plan Professionals and CompensationStandards.com, August 18, 2009.*
[6] "Overcoming Short-termism: A Call for a More Responsible Approach to Investment and Business Management," *The Aspen Institute, September 9, 2009.*
[7] Comment letter to the SEC, *Richard Trumka, AFL-CIO Secretary-Treasurer, January 29, 2007.*
[8] "A Mixed Bag of Reform Proposals from the SEC," *Graef Crystal, professor emeritus, University of California at Berkeley, July 20, 2009.*

value of each equity award in the Grants of Plan-Based Awards Table and corresponding footnote disclosure to the DCT.

B. Enhanced Director and Nominee Disclosure

We wholeheartedly support the SEC's proposal regarding enhanced disclosures of director and nominee qualifications, past directorships, and the period for disclosure of legal proceedings involving directors, nominees and executive officers. It would also, however, be helpful if companies could clarify what qualifications companies are looking for in board leadership circles and if the SEC could encourage board reviews, as is already the case in some countries. In Canada, for example, companies are required to draw up job descriptions for independent board and committee chairs and directors assess each other's performance.[9]

C. Company Leadership Structure and the Board's Role in the Risk Management Process

The financial crisis has made the lack of board accountability glaringly apparent. It is simply not sufficient for companies to explain their current leadership if the chief executive also is the chairman of the board of directors.

The AFL-CIO believes that the chairman must be independent in order for corporate boards to truly perform their function of independent oversight of management. The AFL-CIO endorses the Council of Institutional Investors' policy that "the CEO and chair roles should be combined in very limited circumstances" and in those circumstances the board should explain what the combined role is in the best interest of shareholders.[10]

The AFL-CIO participates in the "Chairmen's Forum," an organization of non-executive chairmen of boards of North American companies seeking to promote greater accountability to investors and supports the Forum's view that an independent chairman is the "preferred model" for corporate governance. The Chairmen's Forum, in conjunction with the Millstein Center for Corporate Governance and Performance at the Yale School of Management, calls upon all North American companies to voluntarily adopt independent chairmanship "as the default model" in order to restore investor confidence in the capital markets.[11] "Companies that do not have an

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[9] Comment letter, *Richard W. LeBlanc, assistant professor of law, corporate governance ethics, York University, Canada, July 13, 2009.*
[10] Comment letter, *Council of Institutional Investors, September 8, 2009.*
[11] "Chairing the Board: The Case for Independent Leadership in Corporate North America," *Millstein Center for Corporate Governance and Performance, Yale School of Management, July 2009.*

independent chair should explain why they believe their leadership structure provides sufficient safeguards for shareholders (i) against the risks inherent in excessive concentration of power and conflicts of interest, and (ii) in providing truly independent leadership for the board in the oversight of management and succession."[12]

D. Compensation Consultants

While we support the SEC in seeking greater disclosure of potential conflicts of interest of compensation consultants, we are disappointed that the proposal is far weaker than the best practices already adopted by many of the nation's largest companies. In May 2008, the AFL-CIO participated in a coalition of 21 institutional investors, led by Connecticut Treasurer Denise Nappier, that petitioned the SEC to require companies to disclose *all* fees paid to a consulting firm advising the board on compensation matters as well providing other services to management. The investors, representing more than $1.4 trillion in assets, also asked the SEC to require companies to disclose in their proxy any ownership interest a consultant working for a compensation committee may have in the consulting firm's parent company.[13]

The draft Treasury regulations go even further. A compensation committee does not have to hire its own independent compensation consultant. But if it does not, it must explain to shareholders why it chose not to.[14]

The potential for conflicts of interest by compensation consulting firms providing other human resources services has become an even greater concern to investors following the announcement of a merger between Watson Wyatt and Towers Perrin Forster & Crosby, two of the largest compensation and benefits consulting firms.[15]

This is similar to the potential conflicts of interest of auditing firms that performed lucrative consulting services for companies whose financial reports they were auditing. This practice led to the passage of the Sarbanes-Oxley Act of 2002, which set new standards for auditor independence, and the SEC began requiring companies to disclose how much they were paying to accounting firms in auditing and consulting fees. We recommend that the SEC strengthen its proposal to model the fee disclosure of compensation consultants on auditor fees, as required by Item 9(e) of Schedule 14A of the Securities Exchange Act of 1934.

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[12] Comment letter, *Chairmen's Forum, July 30, 2009.*
[13] *Petition to SEC Chairman Christopher Cox, May 12, 2008.*
[14] "Investor Protection Act of 2009," draft, *U.S. Treasury Department, July 16, 2009.*
[15] "Towers-Watson Deal Rankles Governance Activists," *Reuters, June 29, 2009.*

The Millstein Center for Corporate Governance and Performance at the Yale School of Management also recommends that corporate boards should also have in place policies and procedures for the selection, retention and evaluation of compensation consultants.[16]

The Treasury's draft regulations would also give compensation committees the authority to hire independent legal counsel.[17] Because of the potential for conflicts of interest if the legal counsel also represents the company on other matters, we ask that the SEC require companies to similarly disclose if the counsel advising the compensation committee are also retained by the company for other matters. The disclosures would also cover in-house counsel if they advise the board compensation committee, especially if they work on recommendations to the company on the chief executive's employment contract, draft a change in control agreement and other compensation-related issues.

Even more importantly, the Treasury's draft regulations would aim to ensure that the compensation committees setting and reviewing executive pay meet stronger standards for independence—just as Sarbanes-Oxley did for audit committees.[18] The Treasury's proposal recognizes that the stock exchanges' listing standards definition of independence do not go far enough. Under the New York Stock Exchange standards, directors can still be considered independent if they receive up to $100,000 in direct compensation from the company, and this does not include directors' fees, which can be nearly $1 million in some instances. And a director who owns or operates a business receiving up to $1 million in revenue from the company is considered independent under the NYSE standards.[19]

As we wrote in our April 5, 2006 comments to the SEC when the original executive compensation rules were proposed, the SEC's definition of independent directors, especially those on the compensation committee, could be vastly improved by relying on the Council of Institutional Investors' definition: "Someone whose only nontrivial professional, familial or financial connection to the corporation, its chairman, CEO or any other executive officer is his or her directorship. Stated most simply, an independent director is a person whose directorship constitutes his or her only connection to the corporation."

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[16] Policy Briefing No. 5: "Pay, Risk and Stewardship: Private Sector Architecture for Future Capital Markets," *Millstein Center for Corporate Governance and Performance, Yale School of Management, 2009*. Found at http://millstein.som.yale.edu/Policy%20Briefing%20No%205.pdf

[17] "Fact Sheet: Administration's Regulatory Reform Agenda Moves Forward: New Independence for Compensation Committees," *July 16, 2009*.

[18] "Fact Sheet: Administration's Regulatory Reform Agenda Moves Forward: New Independence for Compensation Committees," *July 16, 2009*.

[19] *Ibid.*

Additional Comments

The CD&A should be part of the compensation committee's report in order to ensure accountability by the compensation committee.

When there are restatements, the CD&A should discuss the impact of those on executive compensation, if any. If the restatements have no impact on executive compensation, the company should discuss why not. In case of mergers, the CD&A should explain compensation decisions made relative to the merger date, such as grants outstanding, new grants, change-in-control provisions and other executive pay decisions. Also, the CD&A should discuss historical targets (such as in the 2009 proxy for 2008) and why they were or were not met. Also, some companies have delayed equity and other incentive awards to just after the end of the fiscal year so that they do not have to report them in the SCT for that particular year. To avoid this abuse, companies should be required to disclose these as well as any other actions taken between the end of the previous fiscal year to the time the proxy is mailed, such as new grants, changes in base salary and other actions affecting compensation.

The SCT disclosures should also require companies to disclose the nature of consulting arrangements with former chief executives, describing in detail what the retired CEO is going to do for the company and the fees for such consulting work.

Reporting of Voting Results on Form 8-K

The AFL-CIO wholeheartedly supports the proposed rule on the reporting of voting results.

We appreciate the opportunity to comment on this proposal. If the AFL-CIO can be of further assistance, please do not hesitate to contact me at 202-637-5379.

Sincerely,

D. F. Pedrotty

Daniel F. Pedrotty
Director
Office of Investment

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