CHADBOURNE
& PARKE LLP

30 Rockefeller Plaza, New York, NY 10112
tel (212) 408-5100 fax (212) 541-5369

September 14, 2009

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File Number S7-13-09; Proposed Amendments to Rules for Proxy Disclosure and Solicitation Enhancements

Dear Ms. Murphy:

We are submitting this letter in response to the solicitation by the Securities and Exchange Commission (the "Commission") of comments on the proposed amendments to the Commission's rules for disclosures relating to compensation and corporate governance and communication of the results of stockholder voting results as contained in Release Nos. 33-9052; 34-60280; IC-28817 (the "Release").

We support and commend the Commission for these proposed enhancements to compensation and corporate governance disclosures in an effort to provide greater clarity and transparency for investors. We are submitting comments regarding certain aspects of proposed Items 402(c)(2)(v) and (vi), 401(e)(1) and 407(e) of Regulation S-K, proposed Item 5.07 of Form 8-K and in respect of certain requests for comments made by the Commission in the Release.

A. Proposed Item 402(c)(2)(v) and (vi): We agree with the revisions for disclosure of aggregate grant date fair value of stock and option awards.

The amended rules would revise Summary Compensation Table and Director Compensation Table disclosure of stock awards and option awards so that their aggregate grant date fair value would be reported instead of the amount recognized for financial reporting purposes for the year. We agree that the revision would provide more meaningful disclosure to investors.

We also agree with the proposal to eliminate the disclosure of the 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. We recognize that, if several grants were made during the same year to the same executive at different times, the current Grants of Plan Based Awards Table would disclose the grant date fair value of each award made during the year individually and not just on an aggregate basis. Nevertheless, we believe that disclosure in the Grants of Plan-Based Table of the grant date fair value would be duplicative of the proposed Summary Compensation Table disclosure and unwarranted.

B. Proposed Item 401(e)(1): Disclosure of the particular experience or skills that qualify a person to serve as a director of a registrant and as a member of any committee of the registrant should only be required the first time a director is nominated to be a director.

The proposed amendments to Item 401(e)(1) would require a registrant to disclose, for each director or nominee, the specific experience, qualifications, attributes or skills that qualify that person to serve as a director, and as a member of any committee of the board, at the time that the disclosure is made, in light of the registrant's business and structure. The Commission notes that registrants may, for example, describe a director's or nominee's area of expertise and any specific past experience that would be useful to the registrant and why the director's or nominee's experience and skills would benefit the registrant. We believe that requiring a registrant to disclose this information about a nominee for director the first time that person is nominated is sufficient to permit investors to determine whether that person is an appropriate choice as a new director of the registrant. Requiring a registrant to repeat this disclosure with respect to each director and nominee on a yearly basis will unnecessarily lengthen the registrant's proxy statement (or annual report), as we generally do not believe that the business and social environments in which most companies operate will change so meaningfully as to make a director's skills and experience described in a proxy statement in a previous year to not be relevant to the company in subsequent years. In addition, for incumbent directors, service on the company's board would be known to investors and the proposed disclosure would not provide meaningful information. Accordingly, we believe that investors will not gain any extra benefit from the proposed annual disclosure than if the disclosure were only required when the director is first nominated to be a director.

C. Proposed Item 407(e): Compensation Consultants

1. In order to mitigate proprietary and competitive concerns of compensation consultants relating to their fees, the proposed rules should require disclosure of the ratio of the amount of fees for additional services to the fees for services relating to executive and director remuneration, and not the dollar amount of fees.

The proposed amendments to Item 407(e) of Regulation S-K require disclosure of the aggregate fees paid to a compensation consultant for advising on executive and director compensation and also the aggregate fees for additional services in the event that the compensation consultant provides services that are not related to executive or director compensation. The payment to the consultant of fees for the additional services to management of the issuer may raise potential conflict of interest concerns when the consultant also advises on executive and director compensation. We believe that disclosure of the dollar amount of fees raises competitive and proprietary concerns for both the consultant and the

registrant. The appropriate disclosure should be the relation of the amount of fees for the additional services to the fees for services relating to executive and director remuneration and not the dollar amount of fees. We suggest that the proprietary and competitive concerns can be mitigated by the disclosure of the ratio of fees for additional services to the fees regarding executive and director compensation while still providing investors with disclosure regarding potential conflicts of interest.

2. Disclosure of a compensation consultant who advises on certain excess benefit plans should not be required assuming that such consultant does not play a role in determining or recommending executive and director compensation other than with respect to excess benefit plans and broad-based plans.

The proposed amendments to Item 407(e) would also require the identification of any compensation consultant who has a role in determining or recommending executive or director compensation "other than any role limited to consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the registrant, and that is available generally to all salaried employees." Management typically retains actuaries or other consultants (who are different than the compensation consultant advising on executive or director compensation) to advise on tax qualified retirement plans, such as 401(k) and defined benefit pension plans, which meet the criteria of this exception. The amount of contributions to, and benefits from, these tax qualified plans are limited by tax rules which apply to more highly compensated employees, such as executive officers. Registrants frequently maintain excess benefit plans which provide for the benefits authorized by the tax qualified plan benefit formula but which cannot be paid under the tax qualified plan because of the tax limitations. See, for example, Rule 16b-3(b)(2) of the General Rules and Regulations under the Securities and Exchange Act of 1934 defining an "excess benefit plan" as

> ". . . an employee benefit plan that is operated in conjunction with a Qualified Plan, and provides only the benefits or contributions that would be provided under a Qualified Plan, but for any benefit or contribution limitations set forth in the Internal Revenue Code of 1986, or any successor provisions thereof."

The consultant for these excess benefit plans is generally not the same consultant who advises on executive and director compensation, but instead is the consultant who advises on the tax qualified plan because the benefits from the excess benefit plan are derived from the tax qualified plan.

These excess benefit plans are not broad-based plans as they benefit only highly compensated employees, including executives, whose benefits under the tax qualified plan are

limited by the tax rules. Nevertheless, as the contributions to, and benefits from, these excess benefit plans are derived from the same plan formula as is applicable to all covered employees generally, we do not believe that disclosure of the consultant who advises on these excess benefit plans should be required, assuming that the consultant does not play a role in determining or recommending executive and director compensation other than with respect to these excess benefit plans and broad-based plans.

D. Proposed Item 5.07 of Form 8-K: Preliminary stockholder voting results should not be required to be disclosed.

Proposed Item 5.07 of Form 8-K would require disclosure of stockholder voting results within four business days after the meeting at which the vote was taken. If the vote involves a contested election of directors and the vote is not definitively determined at the end of the meeting, preliminary voting results would need to be disclosed on Form 8-K "within four business days after the preliminary voting results are determined" with an additional Form 8-K being required to be filed when final results are certified. We recommend the elimination of the requirement to report preliminary voting results – principally for the reason that they are *preliminary*. As the preliminary results are not definitive, we do not believe that they would provide material information to investors. Disclosure of preliminary results could be misleading to investors as definitive disclosure could reflect a different result.

Furthermore, there is nothing in the rule to specify when preliminary voting results are "determined." Because of their nature, preliminary voting results are constantly being compiled, checked and determined and re-determined. The issue could also be in litigation. If there is a concern that there could be an abusive delay in reporting voting results in a contested election, the rule could prescribe an outside date for filing (*e.g.*, 20 business days from the date of the meeting) subject to disclosure of the status (*e.g.*, in litigation) if definitive results have not been determined by that date.

E. Other Requests for Comments

Comment has been invited on additional possible reform and we would like to respond to two specific questions.

Should disclosure be required for compensation paid to each executive officer and not just the named executive officers? We think that this additional disclosure is not warranted. Depending on the organizational structure of the company, the inclusion of other executive officers could expand the disclosure significantly. The CD&A, tables and other required disclosure is already too lengthy and complex. Sufficient investor information is provided by looking strictly at the named executive officers. The additional incremental disclosure for other executive officers would not add much further information about the

manner in which a compensation committee deals with compensation decisions and policies but would unnecessarily lengthen and further complicate the disclosure.

Should the instruction that allows performance targets to be excluded based on competitive harm be eliminated? We believe the instruction serves an important purpose to protect competitively sensitive performance goals and believe strongly that it should be retained. A registrant could have a legitimate competitive need to keep confidential certain performance targets, for example, related to a particular business segment, geographic region or product. If a named executive officer in charge of a specific geographic region has a regional performance goal that is required to be disclosed, competitors could assess the registrant's strategy in the region, such as whether to sacrifice profits for the benefit of investment, and be able to respond and compete with that strategy. This may also be true not only with respect to current and future performance goals, but also for historical goals. If competitively sensitive historic goals are disclosed, a competitor could piece together a company's strategy (and changes in strategy) over a several year period. Registrants subject to the SEC disclosure requirements may be particularly disadvantaged when their competitors are not, *e.g.*, when the competitors are privately held or resident in a non-U.S. jurisdiction. We believe it would be erroneous to put shareholders and their company at the risk of competitive economic harm for the sake of disclosure of competitively sensitive performance goals.

* * * * *

We appreciate the opportunity to comment on the Release, and would be happy to discuss any questions the Commission or its staff may have with respect to our comments. Any such questions may be directed to Edward P. Smith (212-408-5371) or Benjamin Carson (212-408-5168).

Very truly yours,

Chadbourne & Parke LLP

VIA E-MAIL