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Chapel Hill, NC 27599-3380

September 15, 2009

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

Re: Proxy Disclosure and Solicitation Enhancements Comment, File Number S7-13-09

Dear Ms. Murphy:

We are two professors at the University of North Carolina School of Law, writing in our individual capacity, but also based on significant work over the last six years as the director and a member of the Director Diversity Initiative at the UNC School of Law.¹ That work includes an interview study by Professors Broome, John Conley, and Kimberly Krawiec (Duke Law School) conducted with directors, CEOs, and others involved in board composition about how board diversity impacts board processes and corporate performance. We write today in our individual capacities, but informed by our professional backgrounds and work in this area.

The proposed rule invites comment on a number of important areas, but we wish to address only two specific questions highlighted at 74 Fed. Reg. 35084.

“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?”

We believe that it would be helpful to require disclosure of whether a nominating committee considers diversity when selecting someone as a nominee for a board position. More meaningfully, the Commission should also require disclosure of how diversity is defined by the nominating committee. Further, the SEC should require that if a nominating committee indicates that it does consider diversity, it should also explain *how* this consideration has impacted its process for recruiting new board candidates. For instance, what specific ways did the nominating committee attempt to identify qualified candidates that would add diversity to the board? Did the committee consult organizations that focus on gender, racial, and ethnic diversity for suggestions of networks to tap or specific individuals to consider?

¹ Professor Thomas Lee Hazen’s area of academic expertise is in securities regulation and corporate law. He is the author of numerous treatises and casebooks on those subjects and related subject, and serves on the board of advisors to the law school’s Center for Banking and Finance. Professor Lissa Lamkin Broome’s area of academic expertise is banking law and commercial law. She is the co-author of a banking law casebook. She also directs the Center for Banking and Finance and the Director Diversity Initiative at the UNC School of Law.

There are a number of organizations that spend considerable time and effort training and identifying potential diverse candidates. These organizations include Catalyst (women),² InterOrganization Network (ION composed of 12 regional organizations) (women),³ Forum for Women Entrepreneurs & Executives (women),⁴ The Executive Leadership Council (African-Americans),⁵ Hispanic Association on Corporate Responsibility (Hispanics),⁶ New America Alliance (Latinos and Latinas),⁷ Director Diversity Initiative (women, racial, and ethnic minorities),⁸ among others. Moreover, there are some executive search firms that also have a recognized expertise in diversity searches, such as The Prout Group,⁹ which has partnered with The Executive Leadership Council, the Hispanic Association on Corporate Responsibility, and Catalyst, which collectively form The Alliance for Board Diversity, to produce the survey on women and minorities on Fortune 100 boards.¹⁰

Many shareholders, including pension funds and large institutional investors, are also actively urging corporate boards to consider constructing a diverse board when making director nominations. Thus, requiring additional information in the proxy statement is a reflection of the concerns and interests of large and influential shareholders. CalPERS and CalSTRS co-sponsored a conference with Stanford Law School (and its Center on the Legal Profession and The Rock Center for Corporate Governance) on September 10, 2009, *Diversity On Corporate Boards: When Difference Makes a Difference*,¹¹ highlighting the recent initiatives of those organizations around increasing corporate board diversity, including the white paper prepared by Virtcom Consulting for CalPERS at the behest of California State Controller, John Chiang, *Board Diversification Strategy: Realizing Competitive Advantage and Shareholder Value*.¹²

“Should we amend our rules to require additional or different disclosures related to board diversity?”

We suggest that the SEC amend its rules to require director nominees and continuing directors to self-report their gender, and race and ethnicity under the EEO categories. Many of the organizations listed above spend countless hours trying to divine this information (with or without the cooperation of the companies) so that board racial and ethnic diversity may be measured. Gender may usually be determined by names, references to Ms., Miss, or Mrs., or by proxy statement pictures of director nominees. There is a significant risk, however, that the information obtained through the process currently being used regarding racial and ethnic diversity is not accurate. Moreover, the time and resources spent by these organizations on this counting activity could be much more profitably employed on other more worthwhile activities such as finding and training potential diverse directors, and identifying these potential diverse

² <http://www.catalyst.org/>.

³ <http://www.ionwomen.org/>.

⁴ <http://www.fweande.org/>.

⁵ <http://www.elcinfo.com/>.

⁶ <http://www.elcinfo.com/>.

⁷ <http://www.naaonline.org/>.

⁸ <https://ddi.law.unc.edu/default.aspx>.

⁹ <http://www.proutgroup.com/>.

¹⁰ See link from The Prout Group website, <http://www.proutgroup.com/>.

¹¹ <http://www.seeuthere.com/rsvp/invitation/invitation.asp?id=/m2c523-590FUYG3O5W2J>.

¹² Available at <http://www.calpers.ca.gov/index.jsp?bc=/about/press/news/invest-corp/home.xml>.

directors who provide needed expertise and experiences to corporate board nominating committees.

The Commission should also consider whether to require that proxy statements contain pictures of director nominees. A visual representation of the array of director candidates makes a quick and powerful statement about the amount of racial or gender diversity on the board.

As the Commission considers additional efforts to increase shareholder nominations of board candidates, the shareholders need to have a clear understanding of the composition of the current board as well as the company's nominees to the board positions, making information about board diversity more important than ever.

We appreciate the opportunity to comment on these aspects of the Commission's Proposed Rule and would welcome the opportunity for further discussion with SSEC staff about our views.

Sincerely,



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