

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

15 September 2009

**Proxy Disclosure and Solicitation Enhancements
(Release Nos. 33-9052; 34-60280)
Commission File No. S7-13-09**

Dear Ms. Murphy:

Ernst & Young LLP is pleased to comment on the Securities and Exchange Commission's (the "Commission" or the "SEC") proposed rule *Proxy Disclosure and Solicitation Enhancements* (the "Proposed Rule"), which seeks to enhance the disclosures regarding executive compensation and corporate governance matters in proxy materials. Our comments are limited to the proposed revisions to the compensation tables, the proposed disclosures about potential conflicts of interest involving compensation consultants, and our views regarding potential disclosures about the diversity of directors and director candidates.

Revisions to the Summary Compensation Table

Item 402 of Regulation S-K currently requires disclosure in the Summary Compensation Table (SCT) and Director Compensation Table (DCT) of the fair value of stock and option awards recognized for financial reporting purposes in accordance with the Financial Accounting Standards Board's Accounting Standards Codification (ASC) Topic 718, *Stock Compensation* (formerly Statement 123(R)). The Proposed Rule would amend Item 402 to require disclosure in the SCT and DCT of the aggregate grant date fair value of equity awards granted during the respective fiscal year, computed in accordance with ASC 718.

In our comment letter to the Commission dated 10 April 2006, we supported the view that the amounts and timing of the compensation reported in the SCT and DCT should be aligned with the recognition and measurement of compensation cost in the registrant's financial statements. We were concerned that reporting the grant date fair value of an award as compensation in the SCT and DCT could be confusing because the reported amounts of executive and director compensation would be inconsistent with the financial statements provided as part of the same proxy materials. We also were concerned that reporting the grant date fair value of an award as compensation in the SCT in the year of grant could, in some cases, overstate compensation earned related to services rendered for the year. We continue to hold the views expressed in our 10 April 2006 letter and believe our concerns are still valid.

If the Commission decides to proceed with requiring the disclosure of the grant date value of equity awards in the SCT and DCT, we believe there should be clear disclosure that the amounts disclosed in the SCT and DCT do not reflect the compensation cost recorded in the issuer's financial statements. To that end, we recommend that the SCT and DCT include supplemental disclosure of the annual amount of compensation cost related to equity awards recognized in the registrant's financial statements under ASC 718 for the respective individuals.

Compensation consultants

The Proposed Rule would amend Item 407 of Regulation S-K regarding compensation committee disclosures about the role of compensation consultants in determining or recommending the amount or form of executive and director compensation. As proposed, if those consultants provided any other services to the registrant during its most recent fiscal year, the registrant would be required to disclose:

- ▶ the nature and the extent of all additional services provided
- ▶ the aggregate fees for determining or recommending the amount or form of executive and director compensation
- ▶ the aggregate fees for the additional services
- ▶ whether the decision to engage the compensation consultant or their affiliates for the additional services was made, subject to screening, or recommended, by management
- ▶ whether the compensation committee or the board of directors approved the additional services

While we support the objectives of the proposed disclosures, we recommend several clarifications and refinements as discussed below.

Scope of proposed disclosures

As proposed, the new disclosures could apply to any compensation consultant that "plays any role in determining or recommending the amount or form of executive or director compensation." In some cases, a registrant might engage multiple compensation consultants. For example, the compensation committee might engage a compensation consultant to advise it regarding its approval of executive and director compensation, while management of the registrant might engage one or more compensation consultants to inform its recommendation regarding executive and director compensation to the compensation committee. In such a scenario, we suggest that the disclosures about potential conflicts of interest need to be provided only for the compensation consultant (including its affiliates, and any entities with which it is closely related based on ownership or shared economic interests) engaged by the compensation committee. When the compensation committee engages its own compensation consultant, it mitigates any concerns about potential conflicts of interest involving compensation consultants engaged by management.

We are concerned about the potential number of "compensation consultants" that could fall within the scope of the proposed disclosures. Specifically, the proposed rule's reference to "any role in determining or recommending the amount or form of executive or director compensation" potentially could apply to any attorney, consultant, advisor, auditor or accountant that addresses any matter involving an issuer's compensation programs and executive and director benefit plans. In our view, the proposed disclosure

should not apply if a third party's association with an issuer's compensation matters is limited to providing services related to legal, tax, accounting, risk management, or regulatory and contractual compliance. For this reason, we suggest that the Commission limit the proposed disclosures to compensation consultants that played "a material role in determining or recommending the amount or form of executive or director compensation ultimately paid, granted or authorized."

Notwithstanding our recommendation in the preceding paragraph, if the new disclosures could apply to more than one principal executive compensation consultant and one principal director compensation consultant, the SEC should establish some practical guidelines to limit the number of consultants subject to disclosure (e.g., compensation consultants with the largest specific fees for executive and director compensation services, respectively, and the compensation consultant with the largest aggregate fees for all services). Otherwise, the extent of the new disclosures might exceed what is necessary to achieve the SEC's stated objective. Additionally, with respect to the registered independent public accounting firm, the Commission's rules already require each issuer to disclose all fees paid to its principal auditor, and the Commission's rules set forth robust auditor independence criteria. Accordingly, we see no need for an issuer to be subject to the additional proposed disclosures when its principal auditor provides permitted services related to compensation matters.

Disclosure of aggregate fees

We agree that registrants should not be required to disclose the individual fees for specific additional services or types of service. However, we recommend that the proposal make clear that individual registrants be permitted to disclose the components of those aggregate fees in a manner they conclude would be informative to shareholders.

As proposed, the disclosure of the aggregate fees paid to a compensation consultant with respect to executive and director compensation matters would be required only if the consultant provided other services to the registrant during its most recent fiscal year. We recommend that such fees be disclosed on a comparative annual basis in all cases. Coupled with the existing disclosure of whether or not the consultants were engaged directly by the compensation committee, this would allow shareholders to assess the nature and terms of the consultant's engagement, and any perceived conflicts of interest, even when the consultant does not provide other services to the registrant.

Board diversity

Currently, Item 401 of Regulation S-K requires minimum proxy statement disclosure about executive officers, directors, and director nominees, including among other things: name, age, business experience for the last five years (e.g., principal occupation, name and principal business of their employers), and names of any other SEC registrants for which they serve as directors.

With respect to each director or director nominee, the SEC is proposing to amend Item 401 of Regulation S-K to add a requirement to briefly discuss "the specific experience, qualifications, attributes or skills that qualify that person to serve as a director for the registrant at the time that the disclosure is made, and as a member of any committee that the person serves on or is chosen to serve on (if known), in light of the registrant's business and structure." While this disclosure should include "information about the person's risk assessment skills, particular areas of expertise, or other relevant qualifications," a registrant would not be specifically required to discuss attributes of the director or

nominee that contribute to diversity in the board of directors. We believe investors should be provided with specific information to assess the diversity of a company's board of directors and the extent to which director nominees will enhance diversity.

Research has shown that diversity of thought drives better solutions for organizations and significantly contributes to innovation and growth. In response to the recent economic crisis, Ernst & Young commissioned a report to compile global research evaluating the impact of women and diversity on business and economic growth. A summary of this research is published in E&Y's report, "Groundbreakers: Using the Strength of Women to Rebuild the World Economy," which can be found online at <http://www.ey.com/groundbreakers>. We believe the data in this report are compelling and make the business case for encouraging inclusion and diversity. Of particular note, a 2007 Catalyst study found that Fortune 500 companies with more women on their boards of directors had better financial performance than those with fewer women,¹ which is consistent with the findings of other studies from a broad spectrum of organizations (e.g., Columbia University, McKinsey, Goldman Sachs, The Conference Board of Canada).

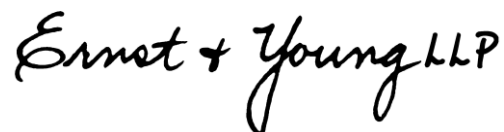
Academic research has found that diverse groups of people tend to outperform homogeneous groups if both groups' members have equal abilities. Moreover, new research by Scott Page, professor of complex systems, at the University of Michigan at Ann Arbor and Lu Hong of Loyola University Chicago demonstrates that groups with greater diversity tend to outperform homogeneous ones, even if the members of the homogeneous groups are more capable.² Page and Lu express this finding mathematically in a "Diversity Prediction Theorem," which states that the collective ability of any crowd will be equal to the average ability of its members plus the diversity of the group.

For these reasons, and many more, we believe that diversity is a significant issue for both corporations and shareholders. Accordingly, we recommend that the SEC amend Item 401 of Regulation S-K to require additional disclosure to allow shareholders to assess the diversity attributes of directors and director nominees. Relevant attributes for disclosure could include educational background, country of birth, ethnicity, gender, language fluency, and global experience, among others. Similarly, we recommend that the SEC amend Item 407(c)(2)(v) of Regulation S-K to require disclosure whether, and to what extent, the nominating committee considers diversity attributes when selecting director nominees.

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We would be pleased to discuss our comments with the Commission or its staff at your convenience.

Very truly yours,



¹ Catalyst; *The Bottom Line: Corporate Performance and Women's Representation on Boards*; (2007). <http://www.catalyst.org/publication/200/the-bottom-line-corporate-performance-and-womens-representation-on-boards>

² Page, Scott; *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools and Societies*; Princeton University Press; (2007)