DolmatConnell & Partners 201 Jones Road, Suite 104 | Waltham, MA 02451 | 781.392.3600 | www.dolmatconnell.com

August 24, 2009

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

Re: File Number S7-13-09

Dear Ms. Murphy:

This letter presents the comments of DolmatConnell & Partners, Inc. with regard to the above referenced File Number entitled Proxy Disclosure and Solicitation Enhancements. Our comments are limited to one key aspect of the Proposed Rule: Enhanced Compensation Disclosure, Compensation Discussion and Analysis Disclosure, information about the relationship of a company's overall compensation policies to risk.

DolmatConnell & Partners, located in Waltham, MA, and Menlo Park, CA, is one of the nation's leading, and fastest growing, truly independent executive compensation consulting firms, serving Board Compensation Committees as outside counsel and assisting companies in the creation and implementation of performance-driven compensation programs to attract, retain, motivate and appropriately reward executives and Board Directors. Our partners have consulted to over 400 clients over their careers, almost all at the Board level, ranging from Fortune 500 companies to smaller, private firms and not-for-profit organizations.

Overall Comment and Recommendation

While we agree that much of the proposed rule enhances good governance, we recommend that the proposed disclosures about policies regarding risk not be implemented until such time that the linkages between risk taking and executive compensation are more clearly understood and quantifiable, if at all.

Understanding business risks as they apply to corporate strategy is very complex. At best, risk taking is the cornerstone of the entrepreneurial spirit that has made the United States the preeminent industrial nation on earth. At worst, in a few instances, dubious risk taking aimed at self-enrichment by employees over the interests of shareholders has led to scandals and sometimes nefarious consequences.

It is in the above context that we recommend further study on this particular matter. The "solution to the problem" is not more disclosure. We provide the following to highlight the rational for our recommendation.

Key Questions about Risk

The scope of this letter does not allow for an exhaustive discourse on business risk. There are, however, certain aspects of risk and risk taking that are germane to the Proposed Rule. We discuss these in the form of three key questions.

What is risk? A shareholder or potential investor could determine company risks by merely reading the risk factor section in the most recent Form 10K. Or, the shareholder could read the more sophisticated securities analysts' reports of a company.

One of the problems in understanding risk is that shareholders can only estimate their tolerance for risk in a company by what they read. What they read may merely be completely boilerplate language. Notwithstanding any dictum by the SEC to avoid boilerplate, proxy statements may merely cite risks and iterate that executive pay packages are consistent with sound oversight and good governance. Such disclosures may not provide any more transparency than Forms 10K which did not foretell the current situations in the most severe TARP companies.

It is important to note that the level of risk and what level is acceptable varies significantly by investment category. Investors who want to minimize risk generally invest in large, blue-chip stocks with the lower risks and those investors are willing to accept lower returns. Alternatively, investors looking for high returns, assume an increasingly greater level of risk in, for example, smaller or mid-cap technology and life science stocks. Thus, some firms are going to want to encourage more risk taking than others and include this in the design of their executive compensation plans, a point which will likely be lost on the vast majority of proxy readers.

What is risky behavior? Needless to say, risky behavior is much easier to determine (or at least label as such) in hindsight than it is to predict it is in foresight. It may just take the media and regulators some time to sort out the facts.

What is the risk-to-reward of incentives? This question is at the heart of entrepreneurship in the corporate world. For the oversight of executive compensation, it is the background that drives a company forward.

Life science companies become committed to new drugs and new therapies. Software companies invest in new systems for the marketplace. Manufacturers retool to be more competitive in a global marketplace. Not to take these risks could doom some companies and thwart economic growth. Taking the risks may not always work out the way intended. These are "positive risks' at the core of business in the United States. Shareholders elect the directors who hire the mangers to take these risks on behalf of the owners (shareholders).

What is not so obvious about risks and incentives is the process by which performance targets are set. If the targets are too high or too low, a scenario is possible whereby executives could try to maximize their payouts with behaviors not necessarily beneficial to their employers. The public paperwork trail, aka the proxy disclosures, would have missed the possibility. Standardized disclosures would not have addressed this advance risk. In hindsight, it could be recorded that "the company got what it paid for".

The meltdown in the financial services sector focuses attention on the few firms where executive compensation practices have exceeded the bounds of marketplace norms. In some instances, such as the magnitude of annual bonuses, practices have been so insular that the self-contained "norms" may actually be outliers of common practice. In these instances, poor oversight of compensation may be at blame rather than lack of adequate proxy disclosure.

Key Questions about the Proposed Rule

In considering the potential impact of any new rule or regulation, it is important to view the proposal not only for its intent, but also for any unintended consequences. We discuss these in the form of two key questions.

What is the goal of the proposed rule disclosure? We applaud the SEC's continued focus on more transparency in proxy disclosures. Shareholders should understand the rationale for executive compensation decisions. Such transparency also provides a framework for Compensation Committees in addressing and articulating their actions.

At this point in the commentary and discussion aspects of the Proposed Rule, the proposal relative to risk and risk taking seems more of having a disclosure for the sake of a disclosure. Our comments in this letter point out such limitations.

What are the unintended consequences of the new risk disclosures? Clearly this is one of the most important aspects to consider. We believe that because the linkages between risk and risk taking as they apply to executive compensation are not well understood, disclosures will become boilerplate based upon the first few filings of acceptable language. This is particularly troublesome because dubious risk taking is clearer retrospectively rather than prospectively. Most likely, boilerplate language could give investors a false sense of comfort regarding risk and risk taking.

From an executive compensation standpoint, the new disclosures may needlessly restrict the design of incentive plans. Incentive plans could become more generic, eschewing features that may be critical to long-term success of a company. Companies will be averse to disclosing "rationale" risks that provide too much competitive information. It is highly unlikely that dubious risks or risk taking would be disclosed.

Compensation Committee Oversight Best Practices

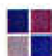
There are some best practices that help guide Compensation Committees through the uncertainties of risk and risk taking. A few of these are presented herein only as points of interest to this topic, not promulgated as an end-all on this matter.

Role of Compensation Committee: In an article published in the fourth quarter 2008 in *Directors & Boards* entitled "What should we pay board members for?". DolmatConnell & Partners raised the issue of whether Boards should be paid for oversight responsibility or performance of the company, or to what extent both. In that article, we discuss how this is one of the basic questions of Board membership. Unfortunately, the question is rarely asked.

For most companies, the role of the Board and its Compensation Committee is not at either end of that spectrum, but the dynamics of the industry segment, stage of development, financial strength and company image generally dictate a workable balance. In fact, there may be no cookie cutter answer to where on the spectrum risks and rewards of incentives belong. For example, at one end of the spectrum is the financial services industry where safety and soundness are primary goals and regulations are prevalent. Oversight responsibilities require Compensation Committees to have a different set of operating procedures than, for example, a life science company whose principal goal is development of a new drug.

Of the over 14,000 public entities, we suspect that nearly all have a reasonable grasp on their required balance between oversight and performance. We suspect that in those instances where dubious risks were taken, factors such as excessive greed or fraud may have been involved. Such illicit factors are not discussed in proxy disclosures before public discovery!

Independence and Control: Much has been written about the need for independence and control of the process of oversight of executive compensation and other aspects of Proposed Rule addresses independence. Independence and control by the Compensation Committee is critical to oversight of risk and risk taking as these relate to incentive compensation for executives.



Responses to Certain SEC Questions

The Release invites comments on several questions. We have comments on some of those.

Should it be limited to companies of a specific size, like large accelerated filers? In general, larger filers may be more prone to unforeseen risks and risky behaviors because Directors of these companies must rely so much on the reports of senior employees. In smaller firms, Directors typically have a more hands-on knowledge of a company and its key employees.

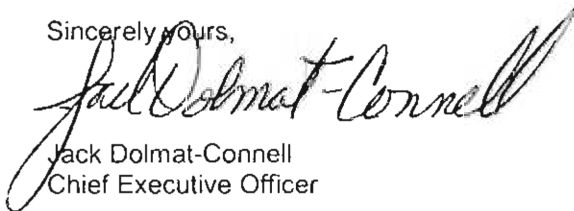
Should it be limited to particular industries like financial services, including companies that have segments in such industries? On a practical and experience front, we agree that the financial services industry requires focused disclosure on risk management and its links with executive compensation. We note, however, that the financial services industry is subject to a web of regulations, reviews, examinations, ratings, etc., that remain confidential, but which could provide better information to shareholders. Also, it is plausible to assume that in such a highly regulated industry, current regulations and reviews are inadequately addressing the relationships between risk and compensation.

Summary

Acting too quickly on new disclosures relative to risk taking and executive compensation may lead to unintended consequences when boilerplate language about risk and its relationship to compensation is included in proxy statements. The language used in the proxy statements of high profile bankruptcies and TARP companies' points out how well written disclosures don't necessarily insulate those firms from failure, bailout or controversy.

Unlike other disclosures in the Proposed Rule, such as improvement to the Summary Compensation Table, company leadership structure, director qualifications and potential conflicts of interests of compensation consultants, which improve understanding, information about the relationship of a company's overall compensation policies to risk are much more complex to be casually discussed in the proxy statement in a manner understandable to the average individual investor.

Sincerely yours,



Jack Dolmat-Connell
Chief Executive Officer