



THE COUNCIL OF URBAN
PROFESSIONALS

BOARD OF DIRECTORS

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Sunday Group

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The Cue Group

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Frankfurt Kurnit Klein & Selz PC

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UPS

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Paradigm Asset Management

David A. Hinson
Wealth Management Network

Matt HoganBruen
Bank of America

Maryana Iskander
Planned Parenthood

Cheryl Joyner
HAVEN MediaGroup

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JPMorgan

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Exact Capital

James Mason
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AIG Investments

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ICV Capital Partners

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BET Networks

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B.O.S. Development

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Kelly Williams
Customized Fund Investment Group

Joanne Yoo

EXECUTIVE DIRECTOR

Chloe L. Drew

September 14, 2009

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

Re: Release Number 33-9052, dated July 10, 2009, Proxy Disclosure and Solicitation Enhancements (the "Release") File Number S7-13-09

Dear Ms. Murphy:

The Council of Urban Professionals ("CUP") applauds the Securities and Exchange Commission (the "SEC") for seeking comments regarding diversity in the boardroom in its Proxy Disclosure and Solicitation Enhancements Proposal set forth in Release Number 33-9052, dated July 10, 2009 (the "Proposal"). CUP is a non-partisan, non-profit organization that advocates for the social, political and economic interests of Urban professionals. While not a market participant, CUP's membership is largely comprised of diverse professionals, including many investment and finance professionals who are employed by market participants. One of CUP's central objectives is promoting board diversity. CUP proposes (1) further changes to the amendments set forth in the Proposal with respect to Item 401(e) of Regulation S-K to improve disclosure regarding the background and qualifications of directors and nominees and (2) amendments to Item 407(c)(2) of Regulation S-K (as currently in effect) to require disclosure of the qualities and attributes that a nominating committee considers important for the board. Our proposals to Items 401(e) and 407(c)(2) are set forth in Exhibit A and Exhibit B, respectively, below.

Diversity of background and experience has become widely accepted as a key ingredient to ensure healthy debate and sound decision making across many spectra, including by the management teams of publicly held companies in the United States. Furthermore, the crisis of 2008/2009 has brought to the fore the importance of transparency in financial management and reporting. We at CUP believe that enhanced board diversity can strengthen corporate governance by creating new perspectives on the system of checks and balances that should be employed by public companies. While diversity efforts began as a way to break up the perception of an "old boys' network" that dominated the boards of U.S. companies, studies by organizations such as Catalyst¹ and Virtcom Consulting² have demonstrated that companies with diverse boards have been among the

¹ Virtcom Consulting, Board Diversification Strategies, 2009.

² Joy, Lois, Ph.D, et al. The Bottom Line: Corporate Performance and Women's Representation on Boards, October 2007.

leaders in stock performance when compared to companies with less diverse boards.

Given these findings, important institutional investors such as the California State Teachers' Retirement System ("CalSTRS"), the California Public Employees Retirement System (or CALPERS), The Teachers Insurance and Annuity Association and College Retirement Equities Fund (or TIAA-CREF), and The State of Connecticut Retirement Plans, among others, have come to view diversity as fundamental for increasing shareholder value.

During the last proxy season, CalSTRS made eight shareholder proposals in support of board diversity. As set forth in its supporting statement in connection with its stockholder proposal submitted to NutriSystems, Inc. (and included in the company's 2009 proxy statement), CalSTRS stated

"We believe that diversity is an essential measure of sound governance and a critical attribute to a well-functioning board. We believe that in an increasingly complex global marketplace, the ability to draw on a wide range of viewpoints, backgrounds, skills, and experience is critical to a company's success, as it increases the likelihood of making the right strategic and operational decisions and catalyzes efforts to recruit, retain and promote the best people, including women and minorities."³

CUP believes that the amendments advanced by the SEC in the Proposal should go further in requiring reporting companies to identify the diversity of current and proposed board members and in describing the registrant's approach (including through nominating or governance committee actions or charters) to obtaining a diversity of backgrounds and skills for its board. CUP believes that the SEC should also address the concentration of influence on public boards, to ensure that a diverse number of individuals serve market-wide so that corporate board leadership is not merely augmented, but fundamentally broadened. CUP believes that its proposal, if adopted, will give shareholders better disclosure on how registrant's view diversity, which will help shareholders evaluate management's performance in maximizing shareholder value.

Please feel free to contact Chloe Drew at 646.619.5186 or B. Seth Bryant of Bryant Burgher Jaffe & Roberts LLP at 212.967.1800x103, if you have any questions or should you desire to discuss CUP's proposal.

Sincerely,



Chloe Drew
Executive Director

cc: B. Seth Bryant, Bryant Burgher Jaffe & Roberts LLP

³ NutriSystems, Inc., Schedule 14A, Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934, page 6.

EXHIBIT A

CUP's Proposed change to the SEC's proposed Item 401(e) of Regulation S-K (the new language is in bold, underlined text, deleted text is in "strikethrough" text (i.e., ~~STRIKE~~))

(e) Business experience. (1) Background. Briefly describe the business experience during the past five years of each director, executive officer, person nominated or chosen to become a director or executive officer, and each person named in answer to paragraph (c) of Item 401, including: Each person's principal occupations and employment during the past five years; the name and principal business of any corporation or other organization in which such occupations and employment were carried on; and whether such corporation or organization is a parent, subsidiary or other affiliate of the registrant. In addition, for each director or person nominated or chosen to become a director, briefly discuss the specific experience, qualifications, attributes **(including gender, race or ethnic diversity)** or skills that **(x)** 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 **or (y) add to the diversity of views represented on the registrant's board**. If material, this disclosure should cover more than the past five years, and include information about the person's risk assessment skills, particular areas of expertise, or other relevant qualifications. When an executive officer or person named in response to paragraph (c) of Item 401 has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation shall be included as to the nature of the responsibility undertaken by the individual in prior positions to provide adequate disclosure of his or her prior business experience. What is required is information relating to the level of his professional competence, which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

EXHIBIT B

CUP's Proposed change to the existing language in Item 407(c)(2) of Regulation S-K (the new language is in bold, underlined text, deleted text is in "strikethrough" text (i.e., ~~STRIKE~~))

2. Provide the following information regarding the registrant's director nomination process:

- i. State whether or not the nominating committee has a charter. If the nominating committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the nominating committee charter;
- ii. If the nominating committee has a policy with regard to the consideration of any director candidates recommended by security holders, provide a description of the material elements of that policy, which shall include, but need not be limited to, a statement as to whether the committee will consider director candidates recommended by security holders;
- iii. If the nominating committee does not have a policy with regard to the consideration of any director candidates recommended by security holders, state that fact and state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a policy;
- iv. If the nominating committee will consider candidates recommended by security holders, describe the procedures to be followed by security holders in submitting such recommendations;
- v. Describe any specific minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the registrant's board of directors, and describe any specific **or general** qualities **or attributes, including, without limitation, diversity of skills, gender, race or ethnicity** ~~or skills~~ that the nominating committee believes are necessary **is important** for one or more of the registrant's directors to possess;
- vi. Describe the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder;
- vii. With regard to each nominee approved by the nominating committee for inclusion on the registrant's proxy card (other than nominees who are executive officers or who are directors standing for re-election), state which one or more of the following categories of persons or entities recommended that nominee: Security holder, non-management director, chief executive officer, other executive officer, third-party search firm, or other specified source. With regard to each such nominee approved by a nominating committee of an investment company, state which one or more of the following additional categories of persons or entities recommended that nominee: Security holder, director, chief executive officer, other executive officer, or employee of the investment company's investment adviser, principal underwriter, or any affiliated person of the investment adviser or principal underwriter;
- viii. If the registrant pays a fee to any third party or parties to identify or evaluate or assist in identifying or evaluating potential nominees, disclose the function performed by each such third party; and

- ix. If the registrant's nominating committee received, by a date not later than the 120th calendar day before the date of the registrant's proxy statement released to security holders in connection with the previous year's annual meeting, a recommended nominee from a security holder that beneficially owned more than 5% of the registrant's voting common stock for at least one year as of the date the recommendation was made, or from a group of security holders that beneficially owned, in the aggregate, more than 5% of the registrant's voting common stock, with each of the securities used to calculate that ownership held for at least one year as of the date the recommendation was made, identify the candidate and the security holder or security holder group that recommended the candidate and disclose whether the nominating committee chose to nominate the candidate, provided, however, that no such identification or disclosure is required without the written consent of both the security holder or security holder group and the candidate to be so identified.