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September 13, 2010

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

RE: File S7-14-10

Dear Ms. Murphy:

Several years ago I submitted the attached comments to the Commission in connection with its review of the proxy rules.

The Commission may find some of those comments pertinent in connection with its current review of the U.S. proxy system. That review focuses primarily on the mechanics of the system – not the proxy itself where my comments are directed.

Sincerely,

Attachment

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June 10, 2003

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0601

File: S7-10-03

Dear Mr. Katz:

I submit these comments in connection with the Division of Corporate Finance's review of possible changes in the proxy rules and regulations. In view of other developments in corporate governance, such a review is very timely.

I want to congratulate the Commission for its recent efforts to improve corporate governance. Its prompt and effective implementation by rule making of the provisions of the Sarbanes-Oxley Act; its encouragement of improved corporate governance through the listing standards of the NYSE and NASD and its requirements for disclosure by mutual funds of their proxy voting policies and procedures and their specific proxy votes at shareholders meetings. These steps, as well as others, will restore a better balance between ownership and control. The separation of ownership and control in publicly held companies substantially widened during the nineties as shareholders pursued investment returns and paid little attention to operating control issues. Institutional shareholders, in particular, were especially passive in exercising their responsibilities as owners.

As shareholders reassert their interest in control issues, the proxy remains the most important vehicle through which they can exercise ownership of publicly held corporations. While the Commission under the Exchange Act cannot express a point of view on the fairness or merits of proposals presented to shareholders, it can use disclosure to help shareholders exercise their voting and other rights more effectively. One of the key issues for the Commission in its review of the current proxy rules is to determine whether the various statutory, self-regulatory and other developments over the past several years to improve corporate governance require changes in the proxy rules. In my view, these developments also provide an opportunity to rethink the form and content of the proxy statement. These comments reflect my experience as a CEO and a director of many publicly held corporations.

Organization of the Proxy Statement

The Commission should consider reorganizing the proxy statement so that it becomes a more coherent document. One possibility is to organize disclosures around each of the major subjects to be considered by shareholders: election of directors, appointment of auditors, compensation policies, and shareholder proposals. These sections of the proxy provide a framework for describing the responsibilities of the three major committees required by the proposed listing standards of the NYSE and the NASD and how the board and its committees exercised those responsibilities.

Nomination and Election of Directors

The proxy should have up front a statement of corporate governance principles, including indemnification, mirroring those proposed by the NYSE in Section 303A(9) of its listing standards. The proxy statement should then go on to say that the Nominating Committee and the Board have applied these principles in recommending and proposing a slate of directors to shareholders. This section should describe, as proposed by the NYSE, any specific relationships or transactions which might influence independence or the "categorical standards" which the board uses in making those determinations and, where a director does not fit within those standards, the basis for its decision to nominate an individual. If the company CEO is aware of any non-compliance with any corporate governance standards, this should be disclosed in the proxy, as well as the annual report. Any letter of reprimand by the NYSE for violation of listing standards should also be disclosed.

This section should demonstrate that the board approaches its selection of directors as one of its most important responsibilities and that it has in place a careful, deliberative process governing the selection and qualifications of directors.

In its revision of the proxy rules, one of the most diffiult issues facing the Commission will be whether individual investors can nominate directors outside of the regular board nomination process or existing rules for contests in corporate control. The proxy rules now permit shareholders to withhold authority to vote for an individual nominee or the entire slate of directors and to recommend board candidates to the Nominating Committee. Permitting shareholders to nominate a director outside of the existing processes would be extremely unwise. It would be disruptive in managing a company and it would open the door to considerable mischief. To be effective, a board must in so far as possible operate as a team in monitoring the company for which it has oversight responsibility. Over the years, the Commission has carefully developed rules for changes in corporate control and there is no evidence that these rules have not worked.

Finally, permitting investors to nominate directors outside of the existing processes could turn the board into an amalgam of special interest representatives, many of whom would not be dedicated to the interests of shareholder. I would not recommend such an experiment in shareholder democracy.

Selection of the Auditor

Over the past two years, extraordinary attention has been devoted to the responsibilities of the Audit Committee and the selection of the external auditor. These responsibilities have now been incorporated in the proposed NYSE listing standards under Section 303A7(c) and (d). Because of the importance of these responsibilities, I would recommend they be summarized in describing what the Audit Committee does. However, since the proxy is asking shareholders to approve the selection of auditors, the proxy should concentrate on what the Audit Committee did in evaluating the auditor's qualifications, performance and independence. Since the PCAOB will be inspecting auditors and diagnosing audit failures, this information should be disclosed to the Committee by the auditor and the proxy should indicate that the Committee has reviewed such information before recommending the auditor to shareholders. This evaluation is at the heart of what shareholders want to know before approving the selection of the auditor. Emphasizing the evaluation of the auditor in the proxy will also go a long way towards both improving auditor performance and bringing the auditor into the mainstream of corporate governance.

For purposes of the proxy, the charter and Audit Committee key practices serve as background material and should be treated as such. They can be placed in an appendix or accessed via the corporation's website. I would not clutter up the proxy with a long detailed list of what the Audit Committee does.

Finally, I would recommend that the proxy rules require shareholders to approve not ratify the selection of auditors. Ratification downgrades the importance of auditor selection to shareholders.

Executive Compensation Policies

In my view, the most important issue in any revision of the proxy rules is: how can they give investors a better understanding of the compensation policies and procedures of the company and their implementation?

NYSE and NASD listing standards now require that companies have a Compensation Committee composed of independent directors. They also describe its duties and responsibilities. The essence of what listing standards require should be summarized in a separate section of the proxy devoted to executive compensation.

Before giving specific suggestions, I have some general comments on executive compensation which might help the Commission in thinking about this controversial subject.

A central issue emerging from the recent bubble is the feeling (even outrage) among shareholders as owners of American corporations that corporate governance is not properly structured so that financial gains are fairly negotiated between existing shareholders and corporate management. In my view, it is this issue that has emerged as most important to improved corporate governance. More transparency in executive compensation policies and how they are applied will go a long way towards enabling shareholders to judge how boards have exercised one of their major stewardship responsibilities. Present disclosures badly need to be improved to determine how well the board has acted as intermediary between management and shareholders.

There is a real danger that the issue of executive compensation could become politicized and that ill-conceived legislation (and regulatory steps) to deal with this issue would have unintended consequences. We have seen this result in the limitations on the deductibility of executive salaries which led to the explosion in performance related stock based compensation. Conscientious performance by boards and Compensation Committees in policing executive compensation and by the Commission in insuring full and open disclosure of compensation information can forestall ill-considered legislative action.

Enormous responsibilities lie with the Commission in its revision of the proxy rules to insure that executive compensation, in the words of the Conference Board's report on this subject, is not only "in plain English, but in plain sight as well". Through better disclosure, the market for executive talent can work more effectively and shareholders as owners can be more vigilant in restraining excesses in executive compensation.

One important example of where market and stockholder pressures can effect change is in the report of the Compensation Committee to shareholders.

Most Compensation Committee reports contain a rote recitation of the need to attract, incentivize, reward and retain executives of superior ability. Executive compensation is then usually divided into three elements - salary, bonus and long term incentives. The proxies then go on to say that the company must compete with a group of peer companies for executive talent. These statements of compensation policy tell shareholders little about how the market for executive talent works. Executive pay has become divorced from pay levels within companies through the creation of an artificial external market for executive talent that may bear no relation to internal pay levels. With the help of consultants, headhunters, and human resource executives, this artificial external market has been used to ratchet up executive pay.

Unfortunately, the proposed listing standards of the NYSE, while requiring an annual report on executive compensation for inclusion in the proxy statement, say nothing about its content. I am not suggesting that the Commission dictate what should be in a report on compensation policies. That responsibility lies with individual corporate boards. But, there is no reason why the Commission should not use its "bully pulpit" to demonstrate how present executive compensation policies have led to excessive executive compensation, thereby prejudicing shareholders. And, there are specific changes in the presentation of executive compensation in the proxy that could help shareholders in evaluating how well the board has negotiated the division of financial gains between management and shareholders.

Here are some specific suggestions for improving the presentation of compensation information in the proxy:

- In line with the recommendations of the Conference Board, the proxy should have a statement highlighting both earnings per share after dilution and the proportion of future stockholder value that equity based compensation plans would provide to executives and employees. As the Conference Board report states, "(this) disclosure should illustrate in plain language the percentage of total equity (market overhang) represented by unexercised options".

- What has disturbed shareholders is the revelation of various programs to enhance executive compensation that were not "in plain view" e.g., SERP's, severance arrangements, split dollar insurance, deferred compensation arrangements, change in control agreements, and so on. The Commission in its review of the proxy rules should seek ways to better inform stockholders of the total take by executives from the corporation in the future under various assumptions. It is true that much of this information is now in the proxy but it is not presented in a way which informs shareholders of the total extent of compensation when the executive retires, resigns or terminates.

- Finally, an issuer should indicate in its proxy whether it has a policy of forfeiture of option gains in the event of a restatement of results (as defined) within a period of time after exercise of an option. Such a provision will complement the Commission's enforcement policy requiring the disgorgement of unearned compensation that turns out to be fraudulent. Similarly, the proxy should indicate as part of the issuer's compensation policies whether the issuer will reimburse executives for fines or penalties imposed by the Commission or a court.

- The proxy in line with a recommendation of the Conference Board should disclose "in plain English" the significant terms of employment agreements entered into with top executives.

Shareholder Proposals

As shareholders have become more active in submitting proposals, the Commission has had to assume a greater burden in arbitrating between the proposer and the company. It would appear that many proposals that survive scrutiny by the Commission are frivolous or irrelevant. However, there are many others that raise serious issues and deserve serious consideration by the board and management of a company.

It strikes me that the Commission should increase the eligibility requirements for submission of proposals. It seems to me that a stockholder should have a substantial interest (far more than $2,000) to put the corporation through the expense of distributing a proposal to numerous stockholders.

Another thought for consideration would be to start from a standard of inclusion rather than exclusion from the proxy for certain types of proposals. The Commission could state that proposals involving director qualifications, selection of the auditor and executive compensation will automatically be included (providing the shareholder or shareholders have a substantial percentage of voting securities and meet other eligibility requirements). The Commission should aim at getting institutional investors more deeply involved in submitting shareholder proposals and hopefully eliminate from the proxy many proposals which are frivolous or irrelevant.

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In its proposed revision of the proxy rules, the Commission has embarked upon the difficult task of balancing shareholder democracy against the need in a market system for boards of directors to govern private enterprises with flexibility and independence. Corporate America feels that it has been overloaded with legislative and regulatory requirements and a major revision of the proxy rules threatens to add more burdens. However, as long as these revisions do not make fundamental changes in the governing structure of corporations (which would be a mistake). I see these revisions as codifying into proxy rules the many changes now mandated by the self-regulatory organizations and the Commission itself. Moreover, they also incorporate some of the recommendations made by prestigious private groups such as the Conference Board

I hope my comments and suggestions will assist the Commission in using the proxy rules to improve corporate governance.

Sincerely,