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VIA E-MAIL

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

**Re: Request for Comment - File No. S7-13-09
Proxy Disclosure and Solicitation Enhancements**

Dear Ms. Murphy:

Thank you for the opportunity to comment and for the citation of my work.

The views expressed herein are solely my own and should not be attributed to York University or any organization with which I am associated. My affiliation is noted for identification purposes only.

I wish to address three issues:

1. Director Competencies and Skills Matrix
2. Separation of the Roles of Board Chair and CEO
3. Drafting Suggestions

The United States remains one of the few Anglo-Saxon economies that does not adequately vet and review the directors of its public companies, despite this recent push for new rules.

It is a noticeable omission in these latest reforms and the lack of proper governance has cost the US dearly in the past.

Director Competencies and Skills Matrix

While corporate Canada largely made the move to assessing directors based on competencies and skills in 2005 using the ‘comply or explain’ approach, US regulators have to date shied away from such measures.

Currently, it is possible to sit on a risk committee of a New York Stock Exchange-listed board and not be risk literate. One can sit on a compensation committee and not be compensation literate.

US investment banks, for example, have been criticized for their lack of risk management and industry expertise at the board level. Some blame this lack of oversight, coupled with regulatory failure, as a leading cause of the global credit crisis.

My own research suggests directors often poorly understand risk management. A competencies and skills matrix would combat this lack of understanding by exposing areas – in addition to risk management – where a board lacks expertise. The use of such a matrix also has positive implications for enhancing boardroom diversity, an issue that Commissioner Aguilar and your proposals have signaled as important.

Separating the Roles of Board Chair and CEO

All else equal, separating both roles is a good idea; however, the empirical evidence is mixed that an independent chair, *per se*, is good for shareholders, or makes the board more effective. Just because a board chair (or director) is independent, this does not mean the person is effective. A clever and autocratic CEO may push for a non-executive, non-effective chair. The upcoming Walker review of UK bank boards is expected to call for responsibility-based chairs.

In Canada, regulators have required listed companies to draw up position descriptions for independent board and committee chairs. Additionally, colleagues assess their fellow directors’ performance – including that of board and committee chairs, taking into account their position description – and boards act on those assessments in the selection and re-nomination process.

It is my view that public companies in the US need to start assessing individual directors, not just entire boards and committees.

The US now has an unprecedented opportunity, by spending political capital and seizing the will of the public, to make changes that could prevent a future financial collapse that is similar in scale to the current one. Why did the economic crisis happen? There is a view that many at the helm – including the regulators – did not have the skills to see it coming.

Drafting Suggestions

My detailed advice has helped shape the governance guidelines mandated for all Canadian public companies. My work has been looked to by other sectors, including hospitals, crown corporations, credit unions, co-operatives and not-for-profits.

You write at page 109:

“In addition, for each director or person nominated or chosen to become a director, briefly discuss the specific experiences, 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.” [Emphasis added.]

The word “briefly” is not used in similar UK or Canadian legislation, so far as I know. This word signals the diminishment of importance of what follows.

I suggest that the list be conjunctive (*i.e.*, use of the word “and”) rather than disjunctive (use of the word “or”), and the list recast, given the intent to align the competencies of directors with board and committee oversight and accountability requirements.

Under a rule-based regime, the use of the word “or” enables a registrant to comply by choosing any one of “experiences,” “qualifications,” “attributes” or “skills.” An “experience” is not the same as a “competency,” for example.

A definition for competency, synthesized from the suggestions of several hundred HR experts at a Johannesburg conference, is “a cluster of related knowledge, skills and attitudes that affect a major part of one’s job (a role or responsibility), that correlates with performance on the job, that can be measured against well-accepted standards, and that can be improved via training and development.” (Parry, 1996, p. 50).

In Canada, the words “competencies and skills” are used. Recent suggested modifications by the Canadian Securities Administrators include the words “competencies and other attributes” *e.g.*, “evaluating the necessary and desirable competencies and other attributes of directors”; “have directors with the requisite competencies and other attributes to fulfill the mandate of the committee”; and “Describe the relevant competencies and other attributes that each director brings to the board.”

The *New Shorter Oxford English Dictionary* defines an “attribute” as “A quality or character ascribed (especially in common estimation) to a person... An inherent characteristic quality or feature of a person...”

Lastly, you may wish to consider offering select guidance on the above disclosure. Adjectives that have been used to describe disclosure (within the field of corporate governance) include: clear, complete, up-to-date, understandable, detailed.

Thank you for the opportunity to comment.

Kind regards,

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