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

Re: File Number S7-10-09

To Whom It May Concern:

I would like to take this opportunity to comment on the Security and Exchange Commission's proposed rules regarding shareholder nominations for the Board of Directors. Although I am an attorney this letter is being sent on my own individual behalf and neither on behalf of my firm, nor any particular client.

The SEC's proposed rule would allow shareholders to nominate directors and require the company to include such nominations on its proxy statements. Although noble in its efforts to the proposal is troubling in several aspects:

First, the boards of directors of corporations in the United States of America have essentially two functions, namely, as an advisor to the executive management of the corporation and as a monitor on behalf of the shareholders. These duties may be in tension at times or namely when the board feels that the executive management of a corporation is not performing on behalf of shareholders, and on the flip side, whereas management has a vested interest in the long term success of the corporation, shareholders do not. The SEC's proposed rule would favor a huge swing in Board responsibility toward a monitoring activity of a board rather than serving as advise and counsel to management. Such a swing could exacerbate adverse and confrontational roles between Boards and management, where the board of directors becomes more interested in the short terms goals of the shareholders than long term goals of management. This is especially true in that the proposed rules allow shareholders with as little as one percent, (including shareholders aggregating their shares to reach the one percent threshold who are more likely to be pro-holder activists and special interest holders).

Second, the SEC's role may be overlapping with existing state laws. By way of example, Delaware General Corporate Law, Section 112, provides certain procedures for shareholders to include in the corporation solicitation of proxies their own nominees and slate for directors. Historically, the federal government has left states to determine the internal affairs of the corporation recognizing that the internal affairs of the corporation regulation allow states to

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compete for various state businesses. The SEC's entry into the internal governance market may put some states that compete with Delaware at a significant disadvantage if this proposal were to be adopted.

Third, the rules proposed by the SEC provide that only certain significant shareholders or groups of shareholders would be allowed to nominate directors. Shareholders of the size proposed by the Security and Exchange Commission already have significant direct and indirect participation in management. Such a rule simply would not benefit ordinary investors whose investments do not qualify under the rules.

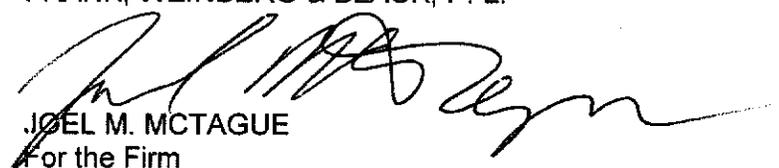
Fourth, I am troubled with the priority system if there are more shareholder nominations than slots available. The current rule as it is stated would allow the shareholders who get to the company first their nominations to be put on the proxy regardless of size. This is counter-productive to the shareholder democracy movement which would require the SEC's rule to allocate director nominations spots according to size by way of example, a long term institutional investor holding in excess of five percent of a company's equity would be subject to smaller shareholders who can run faster with their director nominations. This system will create an incentive for routine election contests rather than facilitate smooth an orderly corporate governance.

Lastly, this will only serve as an adverse affect on the valuation of companies because of the additional restrictions imposed by the commission. One major example is that shareholders would be required to certify that they are not holding their stock for the purposes of taking control of the company or gain more than a minority representation of the Board of Directors. By removing the possibility of the opportunity of changing control of the company, the commission would create a chilling effect on valuation of companies, in that in a company's valuation there may be albeit however small, some percentage for possible takeover bids.

Overall, I would strongly urge the commission to reconsider this rule proposal because of the foregoing reasons.

Sincerely,

FRANK, WEINBERG & BLACK, P. L.



JOEL M. MCTAGUE
For the Firm

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