May 21, 2015 Via E-Mail: i9review@sec.gov

Keith F. Higgins
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Mr. Higgins:

Subject: PROXY ACCESS PROPOSAL RULINGS 14a-8(i)(9)

We are writing to you on behalf of the California Public Employees Retirement System (CalPERS) and the California State Teachers' Retirement Systems (CalSTRS). As two of the largest public pension funds in the United States, with close to $500 billion in assets invested on behalf of over 2 million beneficiaries, we view matters of corporate governance as critical elements of our investment strategy. In January of this year institutional investors, including the Council of Institutional Investors (CII), CalPERS, and New York City requested that SEC Division Staff revisit its interpretation of Rule 14a-8(i)(9) provided to Whole Foods Market, Inc. (Whole Foods) in the SEC's letter dated December 1, 2014. We thank you for the decision to reconsider and your request for further comment on this topic.

We request that the Division of Corporation Finance (Division) provide a clarifying interpretation of Rule 14a-8(i)(9) allowing for the submission of alternative shareowner and management proposals, unless neither alternative is precatory. We ask that the Division provide this clarification for all types of shareowner proposals and not limit the clarification to proxy access proposals. In finalizing your advice we ask that you keep two things in mind. First, we ask that you look at real world examples of alternative proxy access proposals recently presented to shareowners rather than the theoretical arguments presented by opponents of proxy access. Second, we ask that you evaluate the actual proxies and vote results consistent with your long-standing advice that Rule 14a-8(i)(9) be applied where multiple proposals "could provide inconsistent and ambiguous results." (EMC Corp. Feb. 24, 2009). We ask that you provide the requested clarification in time for the 2016 proxy season.

The reasons for our recommendation are twofold. First, we believe that precatory proposals do not directly conflict with other proposals on the same subject since, even if passed, the precatory proposal does not prevent the company from implementing a binding proposal or considering another precatory proposal. Second, we continue to echo

the CII's January 9, 2015 letter explaining why in evaluating a competing shareowner and company proxy access proposal "[a]ny of the four possible shareholder vote permutations would send a logically consistent message and have clear practical outcomes."

The 2015 proxy season provides strong evidence in support of our view that alternative proxy access proposals involving at least one precatory proposal do not directly conflict. We now have the benefit of at least four real world examples where shareowners actually voted on both a shareowner and a management proposal relating to proxy access. An additional three companies will offer shareowners the ability to vote on alternative proposals after the submission of this letter.[1] The Division should carefully review the proxies and vote results of these seven companies and compare the actual voting instructions and results with the Division standard for excluding proposal under Rule 14a-8(i)(9) as summarized in your February 10, 2015 speech:

> "The staff has generally agreed that a shareholder proposal conflicts with a management proposal where the inclusion of both proposals in the proxy materials could "present alternative and conflicting decisions for shareholders and that submitting both proposals to a vote could provide inconsistent and ambiguous results."

In each of the 2015 examples to date, shareowners clearly understood the intended impact of their votes, and companies were provided a clear and consistent view of their shareowners opinion, thanks to an explanation of the voting process provided by the companies. For example, the AES Corporation's definitive proxy statement provided voting direction consistent with our and CII's view on how to interpret the votes of alternative proxy access proposals:

> "Voting Standard and Effect of the Management Proxy Access Proposal
>
> Approval of the Management Proxy Access Proposal (this Proposal 7) is not conditioned on approval or disapproval of the Stockholder Proxy Access Proposal (Proposal 9). The Management Proxy Access Proposal is nonbinding. If the Management Proxy Access Proposal is approved, the Board expects to amend the By-Laws before our 2016 Annual Meeting of Stockholders to provide for a proxy access right reflecting the general terms set forth above. If stockholders do not approve the Management Proxy Access Proposal, the Board could determine not to adopt a proxy access right. However, the Board also may determine to provide for a proxy access right either on the terms set forth in this Proposal 7 or on other terms if stockholders do not

[1] The seven companies are The AES Corporation, Chipotle Mexican Grill, Inc., Cloud Peak Energy Inc., Exelon Corporation, Expeditors International of Washington, Inc., SBA Communications Corporations, and the Visteon Corporation.

> approve the Management Proxy Access Proposal, based on further engagement with the Company's stockholders and consideration of the voting results on the Stockholder Proxy Access Proposal."

The AES Corporation reported strong support of the Stockholder Proxy Access Proposal with over 411,136,143 votes in favor and only 208,374,419 votes against. The Management Proxy Access Proposal received 224,287,122 votes in favor and 395,753,313 votes against. This vote was clear and unambiguous, and the company was provided greater guidance on this issue than if only one of the proposals had been presented. Notably, similar observations can be made for the multiple special meeting proposals on the proxy. Finally, fewer voters abstained on the two proxy proposals than the company's vote on executive compensation indicating a lack of confusion and ambivalence.

Exelon Corporation also provided its shareowners the opportunity to vote on both a management and a shareowner proposal addressing proxy access. Exelon Corporation's proxy statement on page 81 provided clear voting guidance when presenting alternative proxy access proposals to its shareowners:

> "Both the board's proposal and the shareholder proposal are advisory in nature, and each constitutes a recommendation to the board. Shareholders may vote FOR, AGAINST or ABSTAIN on each separate proposal. The board will take into consideration the shareholder vote for and against each proposal and will also seek additional shareholder input on proxy access through Exelon's long-standing program of outreach to its shareholders. If a majority of shares represented at the meeting in person or by proxy and eligible to vote are voted in favor of either proxy access proposal, Exelon intends to bring to a vote at the 2016 annual meeting of shareholders a binding proposal for amendments to Exelon's bylaws to implement some form of proxy access. Abstentions on a proposal will have the same effect as votes against that proposal."

Again the company was able to provide alternative proxy access proposals and clear voting guidance to its shareowners. Consistent with the voting advice, the Company recently announced in its April 28, 2015 8K:

> "Exelon's management proposal on proxy access passed with 52.05 percent of the votes cast. The shareholder proposal on proxy access presented by the New York City Comptroller's Office was not approved. It received 43.16 percent of the votes cast. The voting on the proxy access proposals reflects shareholder support for proxy access as formulated by the Exelon management proposal. Exelon's Board of

> Directors will consider the results of the vote on proxy access and further input from Exelon's shareholders and present a proposal at the 2016 annual meeting of shareholders to amend Exelon's By-laws to provide proxy access rights for shareholders."

In both examples above, clear voting directions were provided, and clear and unambiguous voting results were obtained. The vote results do not reflect an inconsistent result and allow each corporation to move forward with a much firmer view of its shareowners' position on proxy access. The real world examples strongly support the thesis put forward in the CII January 9, 2015 letter. Had the proposals directly conflicted then such clear direction could not have been sought or obtained. The clearest voting results where received last week by Cloud Peak Energy Inc., where 74% of the shareowners opposed the company's binding proposal while 71% voted in favor of the shareowner version of proxy access. Results at Chipotle Mexican Grill, Inc. indicated more tepid support for proxy access with a near-majority voting in favor the shareowner proposal and the management proposal receiving even less support.

CalPERS and CalSTRS are not surprised by the experiences at the four companies. Shareowners in 2015 are increasingly sophisticated. Much has changed since the exclusion currently reflected in Rule 14a-8(i)(9) was adopted by the SEC in 1967. Shareowners have access to more information than ever and can intelligently provide input on a broad variety of matters that impact the corporations they own. The fact that shareowners voted consistently on proxy access at these four companies is testament to the common sense of the investor community. Just as the Division has been willing to evolve its view on other exclusions, most notably Rule 14a-8(i)(7) related to ordinary business, the Division should recognize the increasing complexity of today's markets and shareowners' ability to keep pace with that complexity.

In evaluating 14a-8(i)(9) in the context of proxy access, we ask the Division to consider the broader implications of adopting the interpretation of Rule 14a- 8(i)(9) suggested by the corporate community. We are very concerned that adopting the logic of the Whole Foods letter will allow companies to circumvent responsible shareowner requests on a variety of topics, not just proxy access. For example, CalSTRS or CalPERS might seek to address an 80% supermajority requirement at a company by filing a binding proposal asking for a simple 50% majority vote threshold. Under the logic of the Whole Foods letter, a company could exclude the CalPERS proposal by merely submitting its own proposal seeking a 75% threshold. A fruitless endeavor would ensue as shareowners would then have to reply to the new threshold in the following years only to be out maneuvered with another inadequate corporate response.

We wholeheartedly agree with Chair White that "gamesmanship" has no place in the shareowner proposal process. As the AES experience illustrates, such "gamesmanship" can be avoided by allowing for management and shareowner proposal on a variety of topics. Therefore, we suggest that the Division provide the requested guidance and apply

it proxy access proposal as well as all other shareowner proposals, including but not limited to, special meeting thresholds.

If you have any questions, please do not hesitate to contact Anne Simpson at [redacted] or Anne Sheehan at [redacted].

Sincerely,

ANNE SHEEHAN
Director of Corporate Governance
California Teachers' Retirement System

ANNE SIMPSON
Senior Portfolio Manager, Investments
Director of Global Governance
California Public Employees' Retirement System

cc: Matthew Jacobs, CalPERS General Counsel
Hon. Mary Jo White, Chair, U.S. Securities and Exchange Commission
Hon. Luis Aguilar, Commissioner, U.S. Securities and Exchange Commission
Hon. Daniel M. Gallagher, Commissioner, U.S. Securities and Exchange Commission Hon. Kara M. Stein, Commissioner, U.S. Securities and Exchange Commission
Hon. Michael S. Piwowar, Commissioner, U.S. Securities and Exchange Commission