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VIA E-MAIL

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

Re: File No. S7-10-09 Release No. 34-60089 Facilitating Shareholder Director Nominations

Dear Ms. Murphy:

Three and a half years ago I founded a company called 13D Monitor and have been operating the company on a full time basis ever since. We review every 13D filing and send detailed reports to our clients on all material 13D filings that are the subject of shareholder activism. Our clients participate on both sides of activist campaigns and include many of the largest institutional investors and hedge funds, the premier proxy solicitors and proxy advisory services, large multinational law firms and many others interested in shareholder activism. I also write a weekly column in Barron's magazine entitled *The Activist Spotlight*. Prior to founding 13D Monitor I was a principal in a private equity group and prior to that, practiced corporate and securities law at Weil, Gotshal & Manges.

I would first like to commend you and your staff on drafting and proposing these amendments. I think they go a long way towards your stated goal of improving "the corporate proxy process so that it functions, as nearly as possible, as a replacement for an actual in-person meeting of shareholders." I also think that the legislation will give shareholders a larger choice of nominees in the election of directors and make corporate boards more experienced and qualified. However, I fear that the large number of conditions and restrictions placed on the amendments will greatly frustrate its purpose if not render it useless. The following are my comments and suggestions.

State law and By-laws trumps Federal law: The amendment will allow state law or a company's by-laws to render the law inapplicable by providing that shareholders are prohibited from nominating directors on the company's proxy statement. While the state law provision is not bothersome, a company's board should not be able to unilaterally pre-empt a federal law that is designed to protect the rights of shareholders and potential director candidates in director elections. While shareholders could conduct a consent solicitation or submit a shareholder proposal to amend the by-laws, shareholder proposals are not binding so shareholders would still have to rely on the integrity of the entrenched directors to enact the proposal. Furthermore, this would be a costly process and ironically forces the shareholder to spend a great deal of money soliciting proxies to prevent the company from blocking a new SEC law that was intended to save shareholders money in the proxy soliciting process.

Change of Control: There is no reason why the law should limit the number of directors a shareholder may nominate. The release states: "We do not believe that an election contest conducted by a shareholder to change the control of the issuer or to gain more than a limited number of seats should be funded out of corporate assets." No individual minority shareholder can affect a change of control. The shareholder only has the power to nominate directors. The only way there can be a change of control is if a majority of shareholders vote for a majority of new directors. Furthermore, many companies have staggered Boards which prevent a change of control in any single election, even if a majority of shareholders want a completely new board. Why shouldn't the shareholders have the largest choice possible in selecting their board? If there are eight directors on a board, wouldn't it be preferable for the shareholders to choose from 16 qualified candidates as opposed to 10? If a majority of shareholders happen to think that the best board would be comprised of five new directors, why shouldn't they have that option? Put another way, if there are eight bad directors on a board why should six automatically get a stay just because they are not amongst the two worst? Why is it bad for all directors to know that there is actually a chance that they will be removed from the Board if they are not doing a good job? As for the cost, it does not cost any more to have eight nominees than it does to have two nominees and why shouldn't a change of control be funded out of corporate assets if a majority of the shareholders (the owners of the company) favor such a change.

1%, 3%, 5% Limitation: I understand that the idea here is to assure that "serious" shareholders nominate qualified directors, but also to make sure that smaller shareholders are not excluded from the process. However, I fear that this limitation is going to almost completely exclude small shareholders from the process. Under the proposed amendments, for a small shareholder to aggregate with a larger shareholder to meet the ownership threshold, the larger shareholder would be forced to: (i) hold its shares through the annual meeting, (ii) be liable for any false or misleading statements made in the proxy by the nominating shareholder, and (iii) monitor the holdings and intent of the others in the "group" (to make sure the "group" does not exceed 5% and trigger a 13G filing or to make sure nobody in the group changes its intent and triggers a 13D filing). Large institutional investors will not take on these burdens and liabilities just so a smaller shareholder can nominate directors.

1 year holding period: The holding period is actually a minimum of 1.5 years (since the nominating shareholder is required to hold the position through the annual meeting) and up to 2.5 years (if the shareholder falls a day short of the one year holding period). This holding period is required because the SEC believes "that long-term shareholders are more likely to have interests that are better aligned with other shareholders. . ." I am not sure that this is necessarily true and it is certainly not true in every instance. A short term shareholder has the same risk as a long term shareholder so why should he have inferior rights. In any event this requirement does not further the SEC's stated purpose of improving "the corporate proxy process so that it functions, as nearly as possible, as a replacement for an actual in-person meeting of shareholders." If a shareholder of ten months wants to nominate a qualified slate to the board, why should he be excluded just because he did not own the stock for another two months. Why should a shareholder have to wait up to 2.5 years to offer constructive changes to the Board.

Reimbursement of Expenses: The proposed amendments only save the nominating shareholder the costs of printing and mailing. Even the SEC release acknowledges that this is approximately an $18,000 savings on average for an activist campaign that costs an average of $368,000. The nominating shareholder would still have to hire a proxy solicitor, lawyers, public relations firm, etc. to be able to compete with the company's solicitation. To be on a level playing field, why not provide that under certain circumstances, the company must reimburse the shareholder for all of its reasonable expenses up to a cap of what the company spent on its proxy solicitation.

Race to File: The provision that the first to file is the shareholder who can use this rule is somewhat arbitrary and not likely to lead to the best competing slate of directors. In this situation, it is acceptable to favor the largest "group" since they are the ones who have the largest economic stake in the company and the ones with the best chances of victory, all other things being equal. Why should a 1% group be able to avail itself of this rule before a 20% group just because they filed their 14N first? Additionally, it is much more unlikely that the company will have an objection to the eligibility of a larger group since they exceed the filing threshold by a larger amount and the ineligibility of one small shareholder in the group would not necessarily disqualify the group. This solves another major potential problem, because under the filing procedures of the proposed rule, a disqualification of a group would likely result in no competing slate on the company's proxy.

The framework I would suggest solves all of these problems, will likely lead to the most qualified and competitive slate of directors and will bring you closer to your goal of "improving the corporate proxy process so that it functions, as nearly as possible, as a replacement for an actual in-person meeting of shareholders." This framework is to require the nominating shareholder to get the "endorsement" of a minimum of 1% of the shareholders (including its own holdings), regardless of the market capitalization of the company. This would just be an endorsement and not subject the endorsing shareholders to any liability or additional burdens. The nominating shareholder who gets the largest percentage of "endorsements" will be the one who will be awarded access and will be allowed to nominate a full slate of directors to the Company's board in the Company's proxy statement. Under this framework, the one year holding period can be eliminated because the endorsing shareholders will make their own judgment on the nominating shareholder, taking into account the amount and length of ownership. Additionally, if the nominating shareholder receives endorsements from at least 5% of the shareholders (including its own holdings), the Company would be obligated to reimburse it for its full solicitation costs up to a cap of what the company spent on its solicitation.

I hope these comments and suggestions are helpful and I thank you for the opportunity to submit them. Please feel free to call me at (212) 223-2282 if you would like to discuss this further.

Sincerely,

Kenneth B. Squire.