J. L. WALLACE

Ms. Elizabeth M. Murphy

Secretary

U.S. Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549

Dear Ms. Murphy:

The Securities and Exchange Commission (SEC) recently has recently published proposed rules that would require reporting companies to include director nominees proposed by shareholders in the company's proxy materials, subject to certain eligibility, qualification and procedural requirements. This letter is provided in response to the Commission's request for comments in the release.

I represent *Organization,* which (organization description). *Organization* is opposed to federal shareholder access rights for the following reasons:

- Substantive regulation of shareholder rights and director elections fall squarely within the purview of state corporation law and pre-empt action by the SEC;
- Numerous reforms of recent years have provided shareholders with sufficient access to relevant information and to corporate decision-makers. Because of these reforms there is no compelling need for a federal access right; and
- The integrity of the voting system is a more urgent issue requiring the SEC's attention and should be addressed before putting further stress on the system with shareholder access

1. ***Shareholder Access is a Matter of State Law***

   Director elections and shareholder rights have been under the control of state law since the inception of the corporate structure

for well over 100 years. Because of this longstanding responsibility and the lack of authority by the SEC to act in this area of corporate governance, *Organization* believes the SEC should leave the rules and methods of electing directors, in the proper venue, the States.

No compelling reason exists to overturn the long-standing state law role in controlling the substantive rules regarding director election and that role should in fact be preserved and protected. Experience shows that the state law route is more likely to preserve flexibility for companies and shareholders to define the right approach given the circumstances at hand. The SEC can and should play a pivotal role by exercising its jurisdiction over disclosure to ensure that shareholders are fully informed about their rights and that there are transparent procedures for the exercise of such rights. Moreover, such a role is in accord with the SEC's limited authority under Section 14(a) of the Securities Exchange Act of 1934.

The pursuit of a federal right to access will lead to a one size fits all rule. This results in unnecessary burdens for small and mid sized companies which cannot afford the distraction and expense of the process. It means that all companies will be viewed similarly in determining access design features. However, it is obvious that no one approach can respond to the diversity in business strategy, profit model, size, scope and ownership structure that characterizes corporate America.

If, in the alternative, states are allowed to exercise their rightful authority, companies will be able to work with shareholders to determine the features that are meaningful and workable for them. By preserving flexibility in design and implementation, the competitiveness of American businesses will be enhanced. Currently, this is the model being used for majority voting of directors, staggered boards and the right of shareholders to call special meetings, among others. These changes have occurred through a dialogue between directors and shareholders, all without government mandates. This flexibility has served American companies and shareholders well and that preserving and even fostering it should be the touchstone for corporate governance reform. Accordingly, the thousands of public companies, through management, directors and millions of

shareholders will be allowed to foster a structure that best fits their needs.

2. ***Recent Reforms Have Expanded Shareholder Rights***

   In recent years, new and multiple rules have reformed corporate governance structures. These reforms include, but are not limited to, enhanced director independence, audit committee financial expertise, independent lead directors, majority voting for directors, decreased staggered boards, and enhanced disclosure of executive pay. In addition, companies have taken a variety of steps to enhance communication with shareholders.

   These steps include using web-based technology to communicate with shareholders, holding meetings with major holders and conducting shareholder surveys. In light of these reforms we do not see a need for a broad, uniform shareholder access rule. In fact, shareholders have made very limited use of their right to recommend candidates for nomination, evidence that there is no compelling need for access.

3. ***Communication and Proxy Voting Improvements Should be Reviewed***

We believe that shareholder access is outside of the scope of the SEC's authority, issues regarding the proxy system should be reviewed and action taken if warranted. As the marketplace has changed, issues have emerged that merit a review of proxy voting participation, including the lack of retail investor familiarity with the proxy solicitation process and the separation of voting and economic rights. For example, improvements to the Notice and Access framework are needed to increase retail investor participation and the appropriate disclosure of ownership interests may be needed. Additionally, new technologies can be introduced into the proxy voting system to better foster communications between investors and boards. Alternative voting processes also present opportunities to better balance the diverse voices of the investing community. The SEC should take a holistic view of all market participants in examining and improving broader proxy voting participation.

Organization strongly urges the SEC to reject this rule proposal because of the foregoing reasons. Thank you for providing the

opportunity to comment on the proposed rules of Facilitating Shareholder Director Nominations.

Sincerely,