**Via Email**

Aug. 14, 2009

Elizabeth M. Murphy
Secretary
**United States Securities and Exchange Commission**
100 F St., NE
Washington, DC 20549-1090

**Re: Facilitating Director Nominations (File No. S7-10-09)**

Dear Ms. Murphy:

On behalf of The Corporate Library, an independent corporate governance research firm, we are writing to express our support for the Securities and Exchange Commission's (SEC) proposed rule, *Facilitating Shareholder Director Nominations*. The current financial crisis underscores both the complacency within some boards to protect long-term shareholders' interests and the need to strengthen accountability of boards and management.

We believe granting long-term shareholders the right to nominate directors, thereby ending the *de facto* monopoly the board and management has in picking director slates, is an important component of achieving the goals of effective oversight of U.S. publicly traded companies' boards and of broad financial reform. Therefore, we concur with the SEC that the reforms outlined in the SEC's proposed Rule 14a-11 and revisions to Rule 14a-8(i)(8), following decades of debate over proxy access, are long overdue and should be adopted swiftly. We support the application of Rule 14a-11 as proposed and welcome the opportunity to comment on points still under consideration.

We agree with the SEC's position that the proposed rule should:

- Permit shareholders to aggregate their holdings to meet the minimum share ownership thresholds.

- Grant only long-term shareowners, those holding stock for at least one year, access to nominate directors.

- Employ safeguards to ensure that access is not used as a takeover mechanism by short-term profit seekers.

- Require strong independence standards for director nominees.

- Require full and accurate disclosure by nominating groups, including all pertinent information about nominated directors.

- Allow nominating shareholders to make statements of opposition against the election of other board members on the company's slate in the proxy statement.

- Authorize shareholders to file resolutions related to the issue of board elections.

- Become effective immediately without a lengthy implementation period, associated triggering mechanism, or exemption or delay for smaller issuers.

We also would like to take this opportunity to comment in greater detail on several features of the proposed rule that are of particular interest to us:

- **Priority access:** We favor an approach whereby the largest beneficial owner or group of owners gain proxy access, as opposed to awarding access to the first shareholder or group of shareholders filing. We are concerned that a first come, first served approach might force shareholders to rush to file and result in a less thoughtful process than is otherwise possible. In the end, we also believe that the investor or group with the greatest stake in the director election and the company's long-term financial performance should prevail in these situations.

- **Failed nominations and resubmitting candidates:** We believe that there should not be any waiting period for resubmitting candidates failing to win election to a board.

- **Shareholder proposals:** We oppose permitting companies subject to Rule 14a-11 to exclude shareholder proposals that they otherwise would be required to include. We believe the shareholder proposal rule 14a-8 is an important conduit for opening dialogue between management and shareholders on key ESG environmental, social, and governance policy issues that have significant consequences for long-term shareholder value as well as society.

- **A uniform federal rule**: We would also like to stress that we favor a uniform federal rule on proxy access. While some of those commenting on the rule have urged that the Commission instead allow access regimes to be adopted on a company-by-company basis (with, for example, different ownership thresholds, holding periods, or triggering requirements), we believe this would result in an unworkable administrative burden for broadly invested shareholders that need to track deadlines and requirements at many different companies. In addition, the very companies that would benefit most from a shareholder access regime are likely to put up the stiffest resistance to adopting access. Some companies may have or adopt supermajority voting requirements to amend the bylaws or, in states that permit it, eliminate shareholders' right to amend the bylaws altogether. Similarly, although Delaware has recently adopted changes to its corporation code designed to clarify the validity of proxy access bylaw proposals, other states have

not done so. As a result, a company incorporated outside Delaware could stymie shareholder efforts to press for access by litigating the validity of a shareholder proposal, which would entail substantial expense and delay. Even Delaware-incorporated companies could mount challenges to the statute or particular drafting choices made by a proposal's sponsor, or their boards could repeal shareholder-adopted bylaws providing for access. (Unlike the Delaware statute on shareholder-adopted majority voting bylaws, the statute authorizing access and reimbursement bylaws does not state that such bylaws may not be repealed unilaterally by the board.)

Finally, we would like to express our view that the Commission has ample authority to adopt a uniform proxy access rule, contrary to the assertions of some who have commented on the proposed rule. Section 14(a) of the Securities Exchange Act empowers the Commission to issue rules regarding the solicitation of proxies. The Proposed Access Rule would not create a new substantive right for shareholders; indeed, it would operate only where state law gives shareholders the right to nominate directors. Like Rule 14a-8, the Proposed Access Rule serves a disclosure function. It would address the inclusion of an item in the company's proxy statement used to inform shareholders of matters management knows will be brought to a vote at the upcoming meeting. The Proposed Access Rule's eligibility criteria and procedural requirements for using the proxy access process are similar to those found in Rule 14a-8 and reflect the Commission's judgment regarding which items merit company-financed proxy disclosure. Put another way, both the Proposed Access Rule and Rule 14a-8 allow shareholders to exercise in a particular venue—the company proxy statement—a right they already have.

In sum, we feel there is a strong case for proxy access based on the issues of equity, good governance, transparency and accountability. Proxy access is a matter of fair corporate suffrage, necessary and appropriate for the protection of investors and the greater public good. Therefore, we strongly favor the SEC's approach to proxy access and appreciate the opportunity to express our views on this matter.

Sincerely,

Kimberly Gladman, CFA, Ph.D., Director of Research and Ratings
Beth Young, J.D., Senior Research Associate
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