2099 Gaither Road
Rockville, MD 20850

August 14, 2009

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-1090

Re: File No. S7-10-09

Dear Ms. Murphy:

We appreciate the opportunity to submit our comments on the Securities and Exchange Commission's most recent proposed rule on security holder director nominations. This statement represents the views of RiskMetrics Group, in its capacity as a proxy advisor and thought leader in the area of corporate governance, and not necessarily those of our clients.

RiskMetrics Supports the SEC's Shareholder Access Rule Proposal

As communicated in our letters of Dec. 18, 2003 and Jan. 19, 2007, RiskMetrics Group (writing previously as Institutional Shareholder Services) supports ballot access for shareholders. Providing significant investors an opportunity to place nominees on corporate proxy ballots will improve board accountability, which will have a positive impact on board performance and boost investors' confidence in U.S. corporations. While unfettered access to the proxy would create unjustified expense and potential confusion, hurdles to the process should be reasonable and designed only to ensure that this right is used responsibly.

Reform is particularly needed in light of the market and economic crises that have recently called into question the effectiveness of boards in protecting shareholders' interests. Other reforms this decade, such as those addressing director independence and the recent elimination of uninstructed broker votes from routine board elections, are also ultimately aimed at enhancing boardroom oversight of management. Nevertheless, ballot access remains an important, market-based mechanism to strengthen director accountability. As noted in our previous letter in 2007, the growing spread of a majority vote standard for director elections also represents a complementary, rather than

alternative, means for shareholders to ensure board accountability: While majority voting may be seen as tantamount to a veto on ineffective directors, proxy access enables shareholders to make a more positive contribution in building a successful board. What is more, experience to date suggests that companies are unwilling to fully implement majority voting; virtually none of the resignations tendered by the handful of directors who have failed to receive majority support at companies with a "plurality plus" standard have been accepted on a timely basis.

The Commission's 2009 ballot access proposal differs from the prior one in some significant respects but continues to provide several safeguards against the potential for special-interest and other abuses:

- Authority to nominate director candidates will be limited to significant, long-term investors
- Contests for corporate control are excluded
- Nominees must satisfy listing standards for independence
- Disclosure requirements will provide sufficient information for informed voting decisions by shareholders
- Nominees must win a contested election to join the board

While we generally support the current proposal, we encourage consideration of some changes to the proposed rule that would provide additional safeguards. The proposal release includes a lengthy list of questions soliciting feedback on the specifics in the proposed rule as well as a number of implementation issues that could be addressed. In providing feedback, we have chosen to comment on the key provisions of the proposed Rule 14a-11 and amendment of Rule 14a-8, as well as selected additional questions that are primarily related to implementation issues.

Proposed Rule 14a-11

- **Is the proxy access rule from the SEC appropriate in light of other governance reforms, state law purview, etc.?** As noted earlier, RiskMetrics considers ballot access an important tool to ensure board accountability, one that would complement, rather than replace, other reforms. The last governance "crisis," precipitated by Enron's collapse, led to adoption of the Sarbanes-Oxley Act of 2002 and institution of several developments intended to improve board oversight. These, however, proved to fall short of the key goal of ensuring director accountability. The current system continues to tilt the election playing field in favor of management and incumbent directors; providing shareholders a rigorous but viable process to nominate alternative candidates will help level that playing field.

  The intersection of a Commission rule and state laws related to director elections is a complex aspect of the proposed proxy access process. Although states such as Delaware have adopted legislation to facilitate shareholder submission of proxy access bylaw proposals, state law regimes fail to provide uniformity and also leave companies open to continuing challenges by investors who find a company's bylaw objectionable. We believe that an SEC rule for director nominations by shareholders is in keeping with the Commission's authority to regulate shareholder proposals in

company proxy materials, and that a consistent approach for director nominations is superior.

- **A sliding ownership scale, based on the company's market capitalization, to determine nominator eligibility.** The proposed rule suggests eligibility thresholds of 1% for large accelerated filers or registered investment companies (RICs) with $700 million or more in net assets; 3% for accelerated filers and RICs with net assets of at least $75 million but less than $700 million; and 5% for non-accelerated filers and RICs with net assets less than $75 million.

  RiskMetrics supports a sliding scale ownership approach and the ability of shareholders to aggregate their holdings in order to meet this requirement. However, 5% may still be viewed as a relatively high hurdle for non-accelerated filers and small RICs. While we support the current proposal, we would consider acceptable a lower threshold for smaller filers. Alternatively, the Commission could consider a combination of a dollar value threshold or a combination of value and ownership stake, to ensure that the process does not exclude small but still significant shareowners from potential access to the ballot.

- **A one-year holding period for nominators.** RiskMetrics favors a requirement that nominators demonstrate long-term ownership. One year is a realistic minimum period and has been supported by a number of governance advocates. A substantial majority of the institutional investor respondents to a recent RiskMetrics survey indicated support for a one-year holding period. That said, RiskMetrics would also consider a two-year ownership minimum to be reasonable in light of concerns by some shareholders that the ballot access process be available only to investors with significant long-term economic interest in, and experience with, the company.

- **A maximum number of shareholder-nominated directors equal to one or 25% of board, whichever is greater.** We support the Commission's intent to avoid ballot access being used as a change-in-control mechanism. As cited in the proposed rule, it is unreasonable to expect all shareholders to bear the expense of a contest to effect a change in control of a corporation; thus, a limit on the number of shareholder nominees is advisable. A 25% limit would allow meaningful representation while precluding a change in board control.

  We further note that for the last four years RiskMetrics has tracked the returns of a portfolio of companies where activists gained board seats in 2005, and found that this portfolio outperformed the S&P 500 index even during the recent market turmoil. While this research is limited, there was no indication that the presence of dissident directors on boards has a detrimental impact on shareholder value, and it appears that election of a shareholder-nominated director may create value over a multi-year period.

  In keeping with the intent that proxy access not be used as a takeover mechanism, we generally support the proposal to count any director elected as a shareholder nominee pursuant to Rule 14a-11 as such, as long as he or she continues on the board. However, the Commission could consider a "cooling off" period (e.g., three years) after which a director who was initially elected via Rule 14a-11, but subsequently nominated under the board's standard nominating process, would no longer count for

purposes of determining the maximum shareholder nominees in a subsequent election.

In a controlled company, representatives of the controlling shareholder, or any directors subject to certain voting agreements with management, should be treated as management nominees for purposes of determining board size, with shareholders' entitlement to submit director nominees based on the entire board, rather than only the number of slots held by non-controlling shareholder nominees. To hold otherwise would further disadvantage minority shareholders in controlled companies, who are arguably the shareholders most in need of strong protections. For example, if the company is contractually obligated to permit a certain shareholder or shareholders to appoint five directors to its 12-member board, the maximum number of shareholder nominees permitted pursuant to Rule 14a-11 should be three (25% of 12), rather than one (the closest whole number that is less than 25% of seven, per the proposed Rule 14a-11).

With respect to classified boards, the limit on shareholder-nominated candidates should not be based on the number of directors to be elected at the current meeting, which would unreasonably disadvantage shareholders of companies with staggered board elections and, perversely, give some companies an incentive to establish or maintain classified boards. Instead, the maximum number of potential shareholder nominated candidates should be based on the total number of board seats.

- **"First come, first served" if the total number of shareholder nominated candidates exceeds the maximum.** This situation presents a particular challenge to implementing a fair, yet effective, ballot access process. "First come, first served" applies a long-standing conventional approach to dealing with oversubscription. RiskMetrics believes that in this instance, however, the rules should favor those shareholders who are most likely to effectively represent the interests of shareholders generally, i.e., the shareholder or group representing the largest ownership stake. A so-called "first in" approach could ultimately favor shareholder activists or single-issue advocates over traditional asset managers, and potentially crowd out candidates who would give primacy to broader shareholder interests. An analogous situation was seen with shareholder lawsuits, where class action litigation was often driven by the hand-picked plaintiffs, before the Private Securities Litigation Reform Act granted presumptive lead plaintiff status to the shareholder with the largest interest rather than the first to file. RiskMetrics is cognizant of the difficulties a shareholder could face in recruiting candidates to run for election to the board, in a situation where their candidacy could be preempted by a larger shareholder who subsequently decides to run a slate of its own. However, we feel these concerns are outweighed by the disadvantages associated with a "first in" approach.
- **Rely on listing standards to determine nominee independence**. RiskMetrics agrees that independence standards for shareholder nominees should not be higher than those for director nominees generally; nor should nominees necessarily be required to be independent of the nominator for purposes of qualifying as a nominee under Rule 14a-11. We note that in applying voting policy, RiskMetrics may consider

more rigorous independence standards for all nominees in determining a vote recommendation, including, for example, examination of the relationship between a shareholder nominee and the nominator.

- **Disclosure, notifications, and voting card.** RiskMetrics views the uniform disclosure regime proposed under Form 14N as reasonable to ensure adequate disclosure regarding any nominator's existing and continuing economic and voting positions, and certification that the nominator is acting independently, without placing undue burdens in excess of those required for any contested elections.

  The proposed rule stipulates a deadline for nominations of 120 days before the anniversary of the mailing date of proxy materials for the company's previous annual meeting, or alternatively, the deadline prescribed by advance notice provision in the company's bylaws. In considering this aspect of the proposal, RiskMetrics relied on its existing voting policy guideline regarding advance notice bylaws for shareholder proposals and director nominations. That policy requires that a company's submission deadline be not earlier than 60 days prior to the anniversary of the prior meeting, with a submittal window of at least 30 days prior to the deadline. A wider range might be appropriate for this purpose – for example, no sooner than 120 days and no later than 90 days prior to the anniversary, or simply no later than 90 days before the one-year anniversary date of the prior annual meeting date. One concern with the proposed 120-day deadline is that it would significantly pre-date release of the company's annual financial statements, information that might factor into a shareholder's decision to pursue proxy access.

  The additional deadlines that would be imposed in connection with Rule 14a-11 (e.g., the company's notification of its intent to exclude a shareholder nominated candidate from its proxy statement to occur no later than 80 days prior to the filing of its definitive DEF 14) are appropriate.

  The Commission asked several questions with regard to whether shareholder nominators should have an opportunity to "cure" certain deficiencies regarding eligibility. RiskMetrics recognizes the heightened sensitivity surrounding contested elections, and the need for all parties, including all voting shareholders, to have complete and conclusive information about an election involving the ballot access process. Nevertheless, the process of correcting errors could create undue confusion, so these opportunities should be minimized. In that light, the shareholder nominator's responsibility to select an eligible candidate should be paramount, and RiskMetrics does not believe that a nominator should have an opportunity to name a new nominee in the event its initial candidate is deemed ineligible. On the other hand, given that shareholders are permitted to aggregate their holdings in order to meet the Rule's ownership requirements, we recommend that the Commission consider allowing a nominator to redress a failure to meet that requirement if, within a specified period, the composition of the nominator group is changed appropriately. It is reasonable to allow a nomination to proceed in light of what might be an inadvertent deficiency on the part of the nominator that is curable if other shareholders are willing to participate in the nominator group.

RiskMetrics supports the proposed Rule 14a-11 provision requiring a company that will have shareholder-nominated candidates on its ballot to provide a "universal" proxy card listing all nominees and giving shareholders the opportunity to vote on each candidate. While an option to vote "for" all management nominees might be logistically convenient for some shareholders, it could potentially lead to confusion among others. Another advantage of individual voting is the resulting *de facto* plurality voting standard that would result from this approach, which is appropriate when there are more candidates than open board seats.

- **Communication rules for nominators to promote their candidate(s).** It is appropriate for the company to include a nominator's supporting statement for its nominee in the proxy statement, and since the proponent will necessarily have to persuade shareholders to favor their candidate over another, it is acceptable for that to include a statement of opposition to one or more management nominated candidates. A limit of 500 words for this statement is reasonable, as long as the company is limited to the same with respect to supporting statements for management nominated candidates. RiskMetrics also supports the proposed rule's allowance for shareholder nominators to communicate with other investors to explain their nominee's qualifications and the rationale for proposing an alternative to the management nominated board slate, as long as they file all material with the SEC and do not solicit proxies on behalf of the candidate. This is in keeping with the goal of distinguishing the proxy access process from solicitations to effect a change in control.
- **Amendment of Rule 14a-8(i)(8).** RiskMetrics agrees with the Commission's proposal to amend Rule 14a-8(i)(8) to permit shareholders to submit proposals seeking additional methods for proxy access, as long as they do not conflict with an established Rule 14a-11. Once the Commission has implemented a proxy access rule, after considering all recommendations received during this comment period, such rule should become the "floor" that prescribes the maximum requirements to be met by a shareholder (or shareholder group) in order to place their nominee(s) on the corporation's ballot. If an investor wishes to propose less onerous restrictions, via a proposal submitted under Rule 14a-8 (which should be subject to existing procedures, including eligibility requirements), a company should be able to implement such a process as long as it does not conflict with Rule 14a-11, and, if it is submitted in binding form, subject to state law and its passage under applicable requirements for bylaw amendments according to the company's governing documents.
- **Resubmission Requirements.** While RiskMetrics strongly believes that proxy access is a critical investor tool, we recognize some potential for issuers to be unreasonably burdened by groups that may repetitively seek to place a candidate on the ballot, despite demonstration that he or she does not attract significantly broad support from shareholders. Therefore, we recommend that the Commission consider a voting support threshold to qualify a nominator or nominating group to resubmit a candidate for inclusion in the company's materials. While we do not strongly favor a particular threshold, one that is within a range of 15% to 25% or 30% support would be reasonable.

Beneficial Impact

Ballot access has been one of the most hotly debated corporate governance initiatives in the Commission's history. Some opponents have argued that shareholders will fail to use a thoughtful process or will be misled by special-interest groups in voting on shareholder nominated candidates who appear in the company proxy statement, or that the presence of non-management nominated directors on boards will be disruptive and impede the collaboration necessary for a smoothly run board.

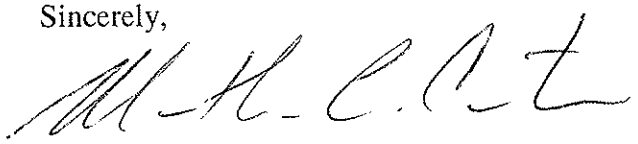
We believe that these concerns are unfounded, and that ballot access will have a significant positive effect on boards. Our experience working with institutional investors has shown that the vast majority approach corporate governance and proxy voting in a thoughtful, sophisticated manner, with the overriding aim of building value for their portfolio companies. As cited above, our findings show that the election of dissident directors at a troubled company is likely to be constructive. And most critically, the need for director accountability and shareholder empowerment, both of which will be enhanced by ballot access, has never been greater. The credit crisis and financial meltdown confirmed that board complacency – including the collegial relationships that can inhibit rigorous oversight of management – presents the most damaging risk to long-term shareholders, and one that is far greater than any posed by a rational process for ballot access.

We note that in several European markets, significant investors participate directly in selecting board candidates -- recognition of the importance of shareowner influence over that process. In addition, while the SEC's proxy voting rules have long denied investors the opportunity to place board nominees on U.S. corporate ballots, such a right also is fairly common outside the U.S. In fact, most European markets allow shareholders to file binding items for consideration at annual meetings (as well as to call special meetings), typically based on ownership thresholds ranging from one share to 5% or, in the case of Germany for example, 5% or EUR 500,000. Trends show that shareowners exercise this right judiciously. RiskMetrics' analysis of key European markets found that shareholder nominated candidates have appeared on fewer than 100 ballots across 13 markets in the last three years, including 23 in 2007, 39 in 2008, and 25 so far in 2009. In other words, while it is very common for shareowners of European companies to be able to nominate directors, it is not common for them to do so.

These statistics are similar to those for "short slate" proxy contests in the U.S., which saw 23 in 2007, 29 in 2008, and 25 through mid-June 2009. While implementation of a proxy access rule would likely result in many of these being pursued via the access process, as well as additional shareholder nominators stepping forward, there is no reason to believe that it would lead to an explosion in shareholder nominations. Even with a more level playing field, considerable effort will have to be expended by shareholder nominators to persuade other investors that their candidate is superior. The essential value of proxy access is in establishing the right of shareholders to effect board change, and thereby assure board accountability.

In conclusion, we believe that adoption of this proposal will be significantly beneficial, helping to transform board elections from symbolic to meaningful, and ensuring that all directors are vigilant in representing shareholders' interests. We applaud the Commission for moving forward with this proposal and strongly urge its adoption.

Sincerely,



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