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

Re: File No. S7-10-09
Release Nos. 33-9046, 34-60089, IC-28765 ("the Release")
Facilitating Shareholder Director Nominations

Dear Ms. Murphy,

Barclays Global Investors ("BGI") supports the Securities and Exchange Commission's decision to review the issue of shareholder access to a company's proxy materials. BGI manages approximately $1.5 trillion in assets on behalf of investors throughout the United States and around the globe. As a large shareholder in many U.S. companies, we believe that the federal proxy rules should provide shareholders the opportunity, when necessary and under reasonable conditions applied fairly across the market, to nominate individuals to stand for election to company boards, using the company's proxy card.

The election of directors is one of the most important corporate governance decisions we make as a shareholder. One of the key requirements for a meaningful board election is an effective director nomination process. The current system of director nominations works well in most cases. Incumbent boards are best positioned to identify the skills that may be lacking, or the roles that require augmenting, within the boardroom. Incumbent boards also have a unique perspective into the personal dynamics of the boardroom that can inform decisions regarding board composition. By contrast, for legitimate competitive reasons, shareholders do not have a transparent window into the boardroom (unlike citizens with respect to their government), and are therefore at a disadvantage when trying to identify the best possible candidates for a board. Therefore, we believe that it is reasonable for boards to fulfill the primary nominating role. However, given the critical importance to shareholders of an ability to elect directors that represent their interests, and given that boards can, and occasionally do, fail in their duty to protect shareholder interests, shareholders should have a mechanism to insert new views in the boardroom where necessary. Hence we favor the general principle set forth in proposed Rule 14a-11 — that after meeting certain minimum threshold requirements, and only in non-hostile situations, long-term shareholders should have access to the company proxy to nominate director candidates.

In order to preserve the most effective approach to director nominations in the vast majority of circumstances, the right of shareholders to interject themselves into the nominating process should be limited so as to avoid harm to a company and its shareholders through costly and distracting board contests. We respectfully submit that a narrowly tailored approach with triggering mechanisms pointing to a failure of the board to fulfill their nominating function appropriately, prior to allowing access in any particular instance, is the most appropriate and most shareholder protective approach to shareholder access. We further observe that the implementation of shareholder access in the context of investment companies raises a distinctive set of concerns.

We respectfully offer the following views on some of the details of the proposed rule.

I. *The value of triggering events. (Response to question B.13-14)*

In general, we favor the sort of triggering events contained in the access proposal that was considered by the SEC in 2003, as we believe those limits would likely confine use of the rule to the most appropriate situations. Without a triggering event requirement, the shareholder access provisions will be more vulnerable to abuse by investors with short-term goals or take-over interests. We recommend the following triggers, which are derived from the 2003 proposal:

> a) At least one of the company's nominees for the board of directors for whom the company solicited proxies received "withhold" votes from more than 50% of the votes cast at an annual meeting of shareholders at which directors were elected (we note that a lower threshold may be appropriate if the company has a controlling shareholder or group of shareholders); or
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> b) A shareholder proposal providing that the company become subject to the shareholder nomination procedure was:
> (i) submitted for a vote of shareholders at an annual meeting of shareholders by a shareholder or group of shareholders who: (1) were entitled to vote on the proposal for one year prior to the date the proposal was submitted and (2) provided evidence of such holding to the company; and
> (ii) that proposal received more than 50% of the votes cast on that proposal at that meeting.

We recognize the concern that a triggering event may result in a shareholder nomination process being a multi-year event, but we believe that to be appropriate. A triggering event may well spur a sitting board to take action of its own accord to address shareholder concerns. Additionally, because the shareholder access rule is intended to be utilized by long-term investors, we believe that the longer cycle will not create a substantial risk of harm to investors.

II. *A threshold of 5-15% of shareholders required to submit a shareholder nomination. (Response to question C.6)*

We respectfully suggest that the Commission consider a higher ownership threshold than the proposed 1% ownership threshold for large accelerated filers as appropriate for the shareholder to be eligible to submit a nomination. While we believe that a 1% threshold is appropriate to submit a shareholder resolution for inclusion in a company proxy, we believe that maintaining a higher ownership threshold for the nomination of a director candidate is more appropriate. We respectfully suggest that a threshold range of 5-15% of outstanding shares, depending on the company's market capitalization, is more appropriate for submitting a shareholder nomination because this should protect shareholders and the companies they own from the unnecessary distraction and expense of including director nominees for whom support is limited and whose likelihood of election is low.

Our position is consistent with our view of the number of outstanding shares that should be required to act to call a special meeting. The right of shareholders to call a special meeting, which we believe is another fundamental right of shareholders, represents an excellent parallel for the right of shareholder access for director nominations. We generally consider 15% of outstanding voting securities as an appropriate threshold to call a special meeting, due to the potential for abuse at lower thresholds by narrowly supported interests that could result in significant waste of shareholder resources.

Although the Release noted that fewer large accelerated filers have a single shareholder with a greater than 3% position, we do not think that makes a higher ownership threshold inappropriate. Provided there are no impediments to shareholders collectively sponsoring a director nominee, we believe that a shareholder nominee who is supported by more than one shareholder (e.g., a group of shareholders whose aggregate holdings represent 5-15% of outstanding shares) is more likely to both be successful as a candidate, and to represent a wider range of investor concerns. If a candidate is nominated by a single investor, we believe that the candidate is more likely to have an agenda that is driven by narrowly supported interests.

III. *A limit on the number of board seats subject to the shareholder access process. (Response to question E.1)*

We believe the shareholder access mechanism should not be available for purposes of replacing an entire board or a majority of a board, even if through nominations by different shareholders or groups of shareholders. In our view, shareholder access nominations should be used in a limited manner to inject new thinking or additional oversight into the boardroom when necessary, but not to orchestrate a board takeover. We believe that the proposed 25% limit for board seats subject to shareholder access represents the highest percentage that would be reasonable. We would suggest that subjecting a maximum of 15-20% of board seats to shareholder access would also be reasonable, and might be less likely to create undue distraction and disruption in the board room.

We believe that Rule 14A-11 should clarify that if the percentage, when applied to a board, does not represent a whole number, then the maximum number of seats subject to shareholder nomination should be rounded down to a number not less than one.

Shareholders seeking to replace more than 25% of board members in any one election cycle should utilize the current proxy contest mechanisms. A shareholder seeking to pursue such a corporate transformation should expend their own resources to effect such a substantial change in the control of the board, rather than being able to leverage a shareholder access rule which requires expending the issuer's resources, thus imposing the costs on all shareholders.

IV. *Require a plurality vote standard for elections where nominees outnumber available board seats. (Response to question B.9)*

At companies that have adopted a majority voting standard, or a plurality standard with a resignation policy in place for directors who do not receive a majority vote, we believe an access rule should supersede company policy and require a plurality vote for elections where the director nominees outnumber the available board seats. We believe that requiring a majority vote standard in cases where the director nominees outnumber the available board seats could make it unreasonably difficult to secure board representation for shareholder nominees that receive more votes than incumbent nominees. We note that the existence of a majority voting standard for the election of directors should not exempt a company from also providing shareholders a right to proxy access.

V. *Inclusion of a "sunset" provision.*

A sunset provision on any rule that is adopted on this topic would provide an opportunity for the SEC and the market to evaluate whether a shareholder nomination right functions as intended, and also allow for the continued evolution of other corporate governance mechanisms (such as majority voting or plurality with resignation for directors who fail to achieve 50% support) that protect shareholders.

VI. *The proposed rule must account for the distinctive structure of investment companies. (Response to question B.4).*

We respectfully recommend that the proposed rule be revised to exclude investment companies, pending a more extensive review of how the proposed rule should be tailored to address the specific issues facing investment companies. The proposed rule does not reflect the distinctive issues of investment companies, and we believe that a thorough analysis of the issues that the proposed rule would pose for investment companies needs to be undertaken.

In recognition of their distinctive regulatory regime and historical development, investment companies registered under Section 8 of the Investment Company Act of 1940 (the "ICA") are treated differently from public companies in a number of ways, including their proxy voting process and their board composition. This different treatment reflects requirements of the ICA, which address conflicts of interest directly and proscriptively. Investment companies face special challenges when soliciting proxies due to the distinctive voting and quorum requirements of the ICA. The SEC has recognized this difference by establishing different rules for investment companies, for example, uninstructed broker voting is permitted for investment companies, but not for other issuers.[1] Unlike other public companies, investment companies are not required to hold a shareholder meeting on an annual basis, and instead only hold shareholder votes when required under specific circumstances detailed in the ICA. Investment company boards are subject to more rigorous independence requirements, such as a higher percentage of independent board members, than public companies. The shareholder access proposal represents an intersection of these two key areas in which investment companies are subjected to a different standard – proxy voting and board representation.

Although the Release for the proposed rule poses multiple questions regarding investment companies, it does not contain a full analysis of the distinctive issues faced by investment

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[1] *See* Securities Exchange Act Release No. 60215 (July 1, 2009).

companies. We believe that the rule, as proposed, reflects a limited review of investment company issues, and that the proposed rule has not been appropriately tailored to protect the interests of shareholders of investment companies.

For example, unlike most public issuers, investment companies are generally structured as series companies overseen by a single board. As such, an investment company may hold a proxy vote that addresses the concerns of a single series, but to elect directors, the investment company must hold proxy vote by the entire fund complex. Under the proposed rule, it is not clear whether a 1% holder of a single series would be permitted to nominate a director, or if a shareholder would have to be a 1% holder of the entire fund complex. We believe that the latter standard is more appropriate, and that such a standard would be clearly articulated if the rule's impact on investment companies were subjected to a more comprehensive review.

Until a more detailed analysis of the particular issues facing investment companies has been conducted, and an appropriately tailored rule developed, we recommend that investment companies be exempt from the proposed rule.

Conclusion

The right to have a board of directors of their choosing is one of the most basic and fundamental rights of a company's owners. The ability to nominate candidates to serve as directors is essential to securing that right. In circumstances where it is apparent that the current board is not properly fulfilling its nominating function, and where a sufficient percentage of total shareholdings demonstrate a shared concern on the part of shareholders, shareholders should not have to incur the expense or the burden of engaging in a costly, distracting and sometimes destructive campaign in order to exercise this right. We have confidence that, if given the opportunity to exercise a right to access, and with appropriate limitations in the framework for allowing such access, public company shareholders would use the right to further the long-term health of their investments and the companies they own. We respectfully request that the Commission adopt an access rule that will give shareholders the tools necessary to effectively steward their investments.

Thank you for considering BGI's views on this important issue.

Sincerely,

/s/ Abe M. Friedman

Abe M. Friedman

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Kathleen L. Casey, Commissioner
The Honorable Troy A. Paredes, Commissioner
The Honorable Elisse B. Walter, Commissioner