THERAGENICS CORPORATION®

August 14, 2009

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Ms. Elizabeth M. Murphy, Secretary

Re: File No. S7-10-09; Release Nos. 33-9046 and 34-60089
Facilitating Shareholder Director Nominations

Dear Ms. Murphy:

On behalf of Theragenics Corporation, I appreciate this opportunity to provide comments on the Securities and Exchange Commission ("SEC") proposal to require companies to include shareholder nominees for election as a director in company proxy materials under certain circumstances (the "Proposed Rules").

Theragenics is a medical device company serving the surgical products and cancer treatment markets, and we operate in two business segments. Our surgical products business consists of wound closure, vascular access and specialty needle products, which serves a number of markets and applications, including, among other areas, interventional cardiology, interventional radiology, vascular surgery, orthopedics, plastic surgery, dental surgery, urology, veterinary medicine, pain management, endoscopy, and spinal surgery. In our brachytherapy seed business, we produce, market and sell TheraSeed®, our premier palladium-103 prostate cancer treatment device; I-Seed, our iodine-125 based prostate cancer treatment device; and other related products and services. Theragenics has been public since 1986, and our common stock has been listed on the New York Stock Exchange since 1998.

We have significantly expanded our operations since 2003, when we manufactured a single brachytherapy product. Today, we manufacture over 3,500 products in the brachytherapy and surgical products sectors and provide full-time employment to over 500 employees across four states (Georgia, Texas, Massachusetts and Oregon). We believe nimble small cap companies such as ours provide the engine for job growth and innovation in our economy.

On a personal note, I was appointed Theragenics' Chief Executive Officer in 1993 and was elected Theragenics' Chairman in 1998. I have also served (and continue to serve) on the board of directors of both small and large public companies. My comments on the Proposed Rules are based on my perspective that has been developed over the course of my 15+ years of experience as a public

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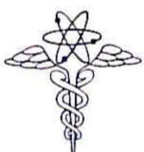
company CEO and director. My perspective is not aligned with any particular shareholder constituency such as institutional shareholders or corporate opportunists looking to turn a quick buck on a quick trade. Rather, my perspective is that of a person who is responsible for (i) running the business and affairs of a public company on a day-to-day basis and (ii) working as both management and an outside director in a constructive and collaborative manner with other outside directors and management. I ascribe to a long term vision for the success of the corporations that I serve in order to maximize the value of each shareholder's investment. However, in commenting on the Proposed Rules, I am articulating primarily my perspective of the impact of such rules on smaller public companies. Fundamentally, I believe that a one-size-fits-all approach to regulation is ineffective and will stifle smaller public companies like Theragenics by not affording the appropriate amount of flexibility. My comments follow.

Rule 14a-11 is Inconsistent with the Well-Established Doctrine that Internal Corporate Affairs are Governed by State Law

The traditional role of the SEC is to prevent fraud and to enhance disclosure rather than to regulate substantive corporate governance, an area that has always been governed by state law. The Proposed Rules represent a significant intrusion into what the proposing release itself recognizes as the "traditional role of the states in regulating corporate governance." Requiring all public companies to include nominees based on uniformly mandated procedures is not necessary, and will limit rather than enhance the ability of a majority of shareholders to implement proxy access in the fashion they determine most appropriate for a specific company. For that reason, proxy access should remain within the purview of applicable state law, which will facilitate the development of proxy access mechanisms tailored to the specific needs and preferences of companies and shareholders.

For example, Delaware has implemented a workable enabling approach to proxy access by adopting Section 112 of the Delaware General Corporation Law. The American Bar Association has proposed similar changes to the Model Business Corporation Act reflecting an enabling approach. Many states are expected to follow the Delaware or Model Act approach. The Delaware statute provides appropriate flexibility to boards and shareholders to implement the appropriate corporate governance procedures tailored to the unique needs of the specific company. The Delaware approach enables each corporation, through an amendment to the bylaws approved by its shareholders, to determine the appropriate mechanics of the relevant proxy access provisions. For example, these considerations would include (1) the minimum ownership threshold that must be met in order to be entitled to direct proxy access; (2) how long those shares must have been owned; (3) the type of ownership that will be considered and whether to include total return swaps; (4) the maximum number of nominees that may be proposed by the shareholders, and whether such limit is based on a percentage of the size of the board or is a fixed number; (5) any limitations on relationships between the nominee director and the nominating shareholder to prevent "single issue" directors; and (6) whether proxy access should be granted during a proxy fight. These types of process and policy decisions are best left to the shareholders of the specific corporation, rather than attempting to implement a one-size-fits-all approach designed by regulators in Washington. Unlike



the Delaware approach, however, proposed Rule 14a-11 does not provide companies and their shareholders any flexibility to implement corporate governance procedures that are tailored to the distinct dynamics and culture of the company. Further, because Rule 14a-11 is mandatory rather than permissive, it does not allow shareholders to conclude that the various costs of proxy access outweigh the potential benefits, and therefore, not to implement proxy access.

The adoption of Proposed Rule 14a-11 may actually be counter-productive to advancing proxy access. The enabling approach of Section 112 of the Delaware General Corporation Law is leading many companies and shareholders to consider innovative proxy access structures tailored to their specific situations. That trend will grind to a halt upon the adoption of Rule 14a-11, and the authority of the Commission to adopt Rule 14a-11 is likely to be challenged by parties citing the long line of U.S. Supreme Court and D.C. Circuit cases emphasizing that state law governs the internal affairs of a corporation.[1] Whether or not such a challenge is successful, the process will freeze the development of innovative governance approaches under Delaware Section 112. Since a solution is evolving, regulators should stay their hand.

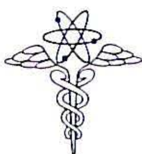
Ever-Increasing Regulatory and Compliance Costs

Continued increases in regulatory demands will constrain corporate America and yield the unfortunate result of lower economic growth. At an unprecedented time in our country's history, implementing federal regulation that would have this type of effect is unnecessary and unwise.

The implementation of the Proposed Rules will further increase the costs of running a public company and disproportionately impact smaller reporting companies. We anticipate that the Proposed Rules and other pending proposals will drive these costs even higher. Some of the additional costs companies like ours would incur as a result of the implementation of Rule 14a-11 are as follows: (i) costs associated with conducting the appropriate due diligence on shareholder nominated directors so the board can make the objective determination regarding independence as required by New York Stock Exchange Rules; and (ii) costs associated with addressing and responding to nominations that are not credible, bona fide, fit to serve, or result from personal grievances rather than differing views on corporate policy. We conduct extensive background checks on potential new directors in order to identify information relating to a candidate's qualifications and fitness to serve, and in order to protect our reputation. For non-accelerated filers in particular, the proposed ownership thresholds are low enough that a relatively small investment would be sufficient to provide proxy access. This could lead to nominations motivated by personal grievances, or nominations that are otherwise not bona fide.

There are indirect costs as well as direct costs associated with Rule 14a–11. In these tough economic times, it is critical for directors to focus on long term strategy so companies are well-positioned to weather the storm and to remain competitive going forward. Rather than address the

[1] *Cort v. Ash*, 422 U.S. 66, 84, 45 L. Ed. 2d 26, 95 S. Ct. 2080 (1975), *Santa Fe Industries v. Green*, 430 U.S. 462 at 479 (1977), *CTS Corp. v. Dynamics Corp. of America*, 481 U.S. 69, 89 (1987), and *Business Roundtable v. SEC*, 905 F.2d 406, 412 (D.C. Cir. 1990).



causes of the current economic crisis, direct proxy access would actually make matters worse by increasing the express and implicit pressure to focus on short-term results rather than long-term strategy and risk management.

Our Board consists of members who have the experience to focus on the unique strategic issues this economic downturn brings to the forefront of discussion. In the 23 years we have been publicly held, we have not encountered contested director elections. We have a collegial Board that engages in focused, meaningful discussion regarding the direction of the company. We engage in a rigorous director candidate selection process to ensure we have directors who are both experienced and well-suited for our company. We are concerned that the Proposed Rules would undermine the free flow of discussion based on collegial relationships, and inhibit the Board's deliberative and decision-making process. Theragenics could also suffer costs associated with the potential election of directors who have insufficient experience or capabilities to serve effectively, decreasing the overall quality and effectiveness of our Board.

Disproportionate Impact on Smaller Companies

The costs identified above will disproportionately impact smaller public companies. The continued increase in the costs associated with running a public company is a constant struggle and has a proportionately greater impact on the earnings of smaller companies. The current economic crisis was set off by actions and conditions at large enterprises posing systemic risk to the economy as a whole, primarily in the financial services sector. We do not believe there is any evidence indicating corporate governance issues at smaller cap companies contributed in a significant way to current economic conditions. Since the current economic crisis appears to be a primary premise for the SEC's Proposed Rules, their application should be limited to large accelerated filers. In that light, if the SEC adopted a final rule similar to the proposed Rule 14a-11, it should only apply to large accelerated filers because we believe that the costs associated with the implementation of Rule 14a-11 outweigh the benefits with respect to other public companies. Alternatively, Rule 14a-11 should be implemented on a pilot basis for large accelerated filers, and the impact reviewed in two years to determine whether the benefits outweigh the costs for smaller companies, or if other revisions should be made.

Potential Alternatives to Reduce Disadvantages

We believe that many of the goals identified by the Commission could be advanced by the proposed amendments to Rule 14a-8 enabling shareholder proposals relating to proxy access without incurring the significant disadvantages of proposed Rule 14a-11.

If the SEC nevertheless determines to adopt Rule 14a-11, we believe that proposed Rule 14a-11 should be revised in several significant respects:

- Eligibility of Nominating Shareholders. Nominating shareholders should be required to have held the designated ownership level for at least two years. It is our view that shareholders holding stock for at least two years are the shareholders who have demonstrated a significant, long-term interest in the issuer.

- Qualification of Nominees. Director nominees should be required to meet the same independence and qualification standards generally applied by the issuer. For example, we adopted independence standards and related party policies that are more stringent than those mandated by the NYSE. Our policies should also apply to any shareholder nominee to our Board. To assure compliance with a company's policies, the nominee should be required to complete the issuer's standard form of Directors and Officers questionnaire, and to provide such other information and consent to such background investigations as a company may require of other director nominees in accordance with the company's corporate governance guidelines.

- Triggering Events. Direct proxy access should only be mandated following a triggering event as proposed by the SEC in 2003. This would limit the risk of candidacies arising from personal matters rather than corporate policy.

- Disclosure of Plans and Proposals. The Proposed Rules would only require limited information to be disclosed about the nominating shareholder and the nominee. In order for shareholders to avoid buying a "pig in a poke" when making a voting decision, shareholders need to be informed of any plans or proposals of the nominee or nominating shareholder relating to fundamental matters such as those required to be disclosed under Item 4 of Schedule 13D. While we understand that the SEC seeks to limit the compliance burden on shareholder nominations, we respectfully submit that shareholders' need for this information is particularly acute when being asked to vote in a contested election.

- Definition of Ownership and "Empty Voting". Before implementing a proxy access system, it is critical that the SEC refine the concept of ownership and address the problems of empty voting. Shares that have been hedged by the use of derivatives or otherwise such that the nominal holder does not bear the economic risk of ownership should not be counted for determining eligibility for proxy access.

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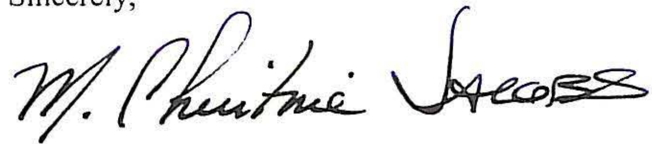
Theragenics embraces the SEC's goal of maintaining a fair proxy system that protects the investing public. We are here for our shareholders and want to implement actions supported by them. We believe, however, that proxy access is an issue that should be addressed by the applicable state law to ensure that (1) the corporation's shareholders have an opportunity to determine whether proxy access is appropriate for the corporation and (2) how proxy access should work at the corporation. Moreover, the costs associated with Rule 14a-11 outlined above suggest that a federally mandated one-size-fits-all approach is ineffective. For these reasons, we urge the SEC to reconsider its proposal.

Sincerely,



M. Christine Jacobs
Chairman and Chief Executive Officer