John R. Miller
[redacted]

August 10, 2009

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

Via Email: rule-comments@sec.gov

Re: Facilitating Director Nominations,
Release Nos. 33-9046; 34-60089; IC-28765;
File No. S7-10-09 (June 10, 2009)

Dear Ms. Murphy:

As someone who has served as a director of public companies for the better part of thirty years, I am pleased to accept the Commission's invitation to comment on the SEC's proposed proxy access rules. I am a former Director, President and Chief Operating Officer of a Fortune 25 company. I have served as an independent director of more than a dozen companies, almost all of which were subject to the federal proxy rules. I have chaired Governance Committees, Nominating Committees, Audit Committees and Compensation Committees. I currently serve as Non-Executive Chairman of two public companies and I am an independent director of a third public company and one private enterprise. My comments are based on this experience and are offered in the hope that the final rules you adopt will be improved as a result.

Over the years I've witnessed tremendous change in corporate governance practices and how boards comport themselves. Some of these changes were evolutionary as boards strove to improve their performance and adopted best practices. Others came as a result of requirements imposed upon boards from the outside. Most of these changes proved to be beneficial, but not all. And, in my opinion, a federal proxy access right would fall in the latter category. Such a proposal is not needed given the various means that already exist for company's owners to have meaningful input on corporate governance matters. My counsel would be to leave the matter of proxy access to the states to regulate. No states expressly prohibit stockholders from nominating director candidates and Delaware's recent passage of new provisions to allow shareholders to adopt bylaws that enable proxy access for director nominations establishes a reasonable solution that other states will most likely follow. That approach will, in turn, leave it to the directors and the shareholders of individual companies to determine what best suits their needs within the boundaries of whatever flexibility is permitted. I believe the results emanating therefrom would be far superior to what would otherwise be brought about by a single, rigid, federally mandated proxy access system with possible unintended consequences.

While I take issue with much of what is being proposed, my primary concern relates to the problems that almost inevitably result when a board is composed of directors with sharply divergent agendas. The proxy access proposal brings with it the likelihood of shareholder-nominated directors being put onboard to represent and promote narrow objectives. Setting aside the potential this has for distracting the board and preventing it from carrying out its responsibilities in an effective and timely manner, which is not to be dismissed lightly, the real concern, as I see it, is managing one of the most fundamental issues that a board must say grace over and that is the inherent tension between short and long-term results. Today, a goodly number of individual shareholders and investor groups have a strong preference for short-term, rapid stock price appreciation without regard to the long-term viability of the company. Investors of that ilk would be highly motivated to use the proposed proxy access rules to nominate directors that would embrace that approach. Unfortunately, the victims of such a strategy are those undertakings such as research and development, technological innovations and new products that don't have near-term payouts – exactly the kind of investments needed to sustain not only the enterprise in question but the economic well being of the country as a whole.

I would respectfully suggest that the Commission forego its efforts to adopt Rule 14a-11 and devote its time and attention to amending Rule 14a-8(i)(8) to allow shareholders proxy access. However, should the Commission see otherwise, modifications to Rule 14a-11 should be considered to mitigate possible negative impacts. Meaningful "triggers" should be incorporated so that proxy access can only be used for its intended purposes of dealing with those situations where lack of director accountability is the issue. Limitations on the amount of director "turnover" that could occur in any given proxy season should be imposed to enable effective assimilation of the new directors while minimizing disruptions that could cause a loss of focus on the task at hand. And, to avoid director nominees who bring with them agendas that may not be in the best interest of the owners, the ownership thresholds should be much higher both in terms of the amount of stock owned and the length of time its been owned. The same change should be made to Rule 14a-8(i)(8) in the amendment process.

One final comment if I may: In the *Overview* section of the Proposed Rule Release No. 33-9046 it was stated that the economic crises we are currently in the midst of has led many to raise serious concerns about the accountability and responsiveness of some companies and boards of directors to the interests of shareholders, and has resulted in a loss of investor confidence. It was in light of this economic crisis and these continuing concerns that the Commission decided to revisit whether and how the federal proxy rules may be impeding the ability of shareholders to hold boards accountable through the exercise of their fundamental right to nominate and elect members to company boards of directors. Moreover, in the *Request for Comments (A.7)* in that same release you asked whether amending the proxy rules as proposed would help restore investor confidence. Although admittedly my sample is very small indeed, all of my colleagues in the business world have been, and continue to be, responsive to and concerned with the impact of the

credit crunch and economic contraction on all of their companies' stakeholders. More to the point, when one considers the litany of challenges that must be addressed in order to get the economy growing once again, adoption of the proposed proxy access rule, in my humble opinion, will do little to restore investor confidence absent successful resolution of those other more significant issues.

I appreciate the opportunity granted me to comment on this proposal.

Yours truly,

John R. Miller

JRM/jm