August 17, 2009

VIA E-MAIL

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F. Street, NE
Washington, D.C. 20549-1090

Re: File Nos. S7-10-09
Comments to Release Nos. 33-9046; 34-60089
Facilitating Shareholder Director Nominations

Dear Ms. Murphy:

I am pleased to submit on behalf of Cummins Inc. this comment letter on the Securities and Exchange Commission's proposal to change the proxy rules under the Securities Exchange Act of 1934 to create a federal proxy access right in new Rule 14a-11 and to amend Rule 14a-8 to permit shareholder proposals relating to proxy access.

1. Overview

Cummins is committed to good corporate governance and has adopted formal corporate governance principles and practices, such as the annual election of all directors by a majority vote, to ensure that our shareholders play an active role in our management. An overview of our comments set forth below is as follows:

a. Reasons We Oppose the New Rule. We oppose adoption of the Commission's proposed mandatory proxy access rule as it is written because we believe:

- A "one-size-fits-all" approach to this issue is ill-advised. We believe that it is better corporate governance to allow each corporation and its shareholders to self-determine their own proxy access solution based on their own unique circumstances.

- The Commission's proposed proxy access rule will promote short-term thinking and opportunism by allowing hedge funds and special interest groups to leverage their proxy access rights for short-term gain at the expense of long-term shareholder interests.

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- The Commission's proposed proxy access rule will lead to more dysfunctional boards and will adversely impact the recruiting and retention of qualified directors, thereby diminishing a board's desired long-term corporate governance focus.

- The Commission's proposed proxy access rule is unnecessary given recent widely-adopted changes to the director election process, including broadly adopted majority voting provisions, the increased number of de-classified boards, implementation of e-proxy, the elimination of broker discretionary voting for directors under NYSE Rule 452 and amendments to state corporate law allowing companies and their shareholders to adopt their own self-determined proxy access bylaws.

b. Changes That Should Be Made to the Rule. If the Commission nonetheless adopts a proposed proxy access rule, we recommend including the following changes:

- Raise the shareholder ownership percentage to 5% from 1% for large accelerated filers (and do not allow group aggregation).

- Require a two-year continuous holding period instead of one year.

- Limit the number of proxy access director nominees to one and give priority to the largest and/or longest shareholder nominators, not the first nominator.

- Require a "bad governance" event to trigger the mandatory proxy access right.

- Require a cooling off period of two years before allowing repeat use of the rule by those who have previously tried and failed.

- Allow each company's shareholders to self-determine and adopt different proxy access requirements (either more or less stringent) if they so desire.

- Delay implementation of the rule until the 2011 proxy season.

2. Our Company and Corporate Governance Practices.

Our company, a global power leader, is a corporation of complementary business units that design, manufacture, distribute and service engines and related technologies, including fuel systems, controls, air handling, filtration, exhaust aftertreatment and electrical power generation systems. Headquartered in Columbus, Indiana, we serve customers in approximately 190 countries and territories through a network of more than 500 company-owned and independent distributor locations and approximately 5,200 dealer locations. We reported net income of $755 million on sales of $14.3 billion in 2008. As of December 31, 2008, we employed 39,800 persons worldwide and had approximately 3,711 holders of record of our common stock. As of the end of 2008, our shareholders had enjoyed a five-year average annual total return of 18 percent.

We have long believed that good corporate governance is important in ensuring that we are managed for the long-term benefit of our shareholders. We continuously review our Board of Directors' structure, policies and practices and compare them to those suggested by various authorities in corporate governance and to the best practices of other comparable public companies.

We have adopted formal corporate governance principles that demonstrate our commitment to corporate governance best practices, including with respect to director selection. For example, our corporate governance principles provide that a "substantial majority of the Board should consist of directors who are not employed by the Company and whose other relationships with the Company would not impair their independence." In fact, seven of our nine directors have been determined by our Board to be independent. In keeping with other provisions of our corporate governance principles, our Board has also adopted By-Laws provisions requiring that the entire Board be elected annually and that all directors in uncontested elections must receive an affirmative majority vote to be elected to a full one-year term. When Indiana's corporate law was amended earlier this year to impose a mandatory default standard of staggered terms for directors of public companies, our Board chose to affirmatively opt-out of the new mandate in order to preserve our shareholders' ability to elect our entire Board on an annual basis.

We have consistently received a high corporate governance quotient from RiskMetrics Group, or RMG, as a result of our corporate governance policies, as well as other attributes that are considered positive by RMG. For example, we have not adopted a so-called "poison pill" and we have a well-defined lead director role. We also recently received a perfect score from GovernanceMetrics, or GMI, as one of only 43 companies out of 4,200 analyzed.

3. The Proxy Access Rule Embodied in Rule 14a-11 is Inflexible, Overly Broad and Unnecessary.

For the reasons outlined below, we oppose the federal proxy access right that proposed Rule 14a-11 would create. We advocate instead the more limited, less risky alternative of

amending Rule 14a-8(i)(8) to permit proxy access shareholder proposals, so long as certain additional amendments are adopted. Should the Commission nevertheless determine to adopt a new Rule 14a-11, we believe that significant changes to the rule are required.

We oppose the federal proxy access right in proposed Rule 14a-11 for several reasons. First, although the access right may be intended to promote greater accountability of directors to shareholders, we believe that its ultimate impact would be negative. The belief that the proposed right will result in better corporate governance is based on the faulty premise that good corporate governance requires broad access for small groups of shareholders to nominate directors. Typical corporate statutes, including Indiana Code § 23-1-33 and Section 8.01 of the Revised Model Business Corporation Act, mandate that the business of the corporation be managed under the direction of its board of directors. Shareholders generally have the right to (1) vote for the election or removal of directors, (2) amend the bylaws, and (3) vote on extraordinary transactions such as charter amendments, mergers or liquidation, if and when proposed by the board of directors.

Directors are fiduciaries, charged with exercising their oversight role in the best interests of the corporation and its shareholders. Under Indiana law, in considering the best interests of the corporation, directors may also consider, among other things, the effects of any action on other non-shareholder constituencies, including employees, suppliers, and customers of the corporation, and communities in which offices or other facilities of the corporation are located. As a collective body, the board oversees management, including hiring and firing senior officers and approving their compensation. As part of its oversight role, the board also provides overall strategic direction, including input regarding long-range business strategy and approval of annual business plans. Consequently, well-functioning boards tend to operate by consensus and to seek members who complement the backgrounds, experience and skills of existing directors, in light of the company's business needs. Directors should not be special interest group representatives elected to represent their respective constituencies.

Under the Commission's current proxy rules, shareholders must file and disseminate their own proxy materials in order to seek votes in favor of their own full slate of director nominees. The proposed right of proxy access in Rule 14a-11, by contrast, would require companies to include in their own proxy materials individual candidates nominated by shareholders. The presentation of multiple candidates in the company's own proxy materials would make more likely the election of a board consisting of directors nominated by a variety of special interest constituencies, including hedge funds and labor unions. Unlike long-term investors with substantial interests in the company, such constituencies are more likely to nominate "single-issue" directors to further only the agenda item most important to that constituency. Easy access to the company's proxy materials, and therefore easier election of directors, by such constituencies could lead to politicization and balkanization of the boardroom. Recent history shows the perils that can arise from a dysfunctional board that does not operate by consensus.

For this reason, commentators have suggested that when a board fails, "the board should be removed as a whole."[1] The procedures for shareholder nomination of full board of director slates under the current proxy rules require a more substantial commitment than would the proposed Rule 14a-11, and thereby discourage single-issue investors from pursuing the nomination of single-issue individual directors.

In addition to the adverse effects on board dynamics, the proposed federal proxy access right in Rule 14a-11 would have an adverse impact on corporate governance and corporate performance by amplifying a focus on short-term corporate performance and decision-making, discouraging qualified individuals from serving as directors, potentially making it more difficult to satisfy independence and expertise-related requirements applicable to directors and boards. This could increase the likelihood of the election of directors beholden only to select shareholders and enhance the influence of private proxy advisory firms.

We also believe that the proposed rule changes are unnecessary because of the significant changes in corporate governance that have occurred in recent years, including widespread adoption of majority voting in uncontested director elections, amendments to state corporate law in various states that either authorize proxy access bylaw amendments or create proxy access rights, the availability of proxy contests (the costs of which have been reduced by the Commission's e-proxy rules and the possibility of reimbursement under recent amendments to Delaware corporate law authorizing proxy reimbursement bylaws) and other avenues for shareholder input, including shareholder proposals and the increasing number of "vote no" campaigns. The impact of these changes is increasing as a result of the movement to majority voting in uncontested director elections and the recent amendment to New York Stock Exchange Rule 452 prohibiting discretionary broker voting in uncontested director elections. In our case, shareholders currently exercise significant influence in director elections through our majority voting standard, declassified board and our shareholders' ability to recommend director candidates to our governance and nominating committee, which applies the same standards to shareholder nominees as to nominees from other sources.

4. Revised Amendments to Rule 14a-8 Would be More Consistent with Private Ordering and Shareholder Choice than Adoption of Rule 14a-11.

We believe that the Commission should consider adopting revised amendments to Rule 14a-8 rather than creating a new mandatory federal proxy access right set forth in proposed Rule 14a-11. Amending only Rule 14a-8(i)(8) to permit shareholder proposals relating to proxy access, rather than mandating proxy access directly, would be consistent with shareholder choice and private corporate governance. The specific revisions that we would propose to the Rule 14a-8 amendments would be to raise the percentage ownership minimum threshold required for a

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[1] Leo E. Strine, Jr., "Toward a True Corporate Republic: A Traditionalist Response to Bebchuck's Solution for Improving Corporate America," 119 HARV. L. REV. 1759, 1776 (2006).

shareholder to submit a bylaw proposal relating to proxy access to 5% from the generally applicable Rule 14a-8 requirement of 1% or $2,000, and to require a continuous two-year holding period of such percentage for shareholders submitting such proposals, rather than the generally applicable requirement of a one-year holding period. These ownership requirements would allow only long-term shareholders with vested interests in the company's long-term performance the right to propose amendments relating to proxy access, and would not give short-term opportunists, like hedge funds, the same ability to change the company's governance structure or to use their new empowerment to force other short-term or short-sighted changes at the company.

5. If Rule 14a-11 is Adopted, Significant Changes to the Proposal Would Be Necessary.

If the Commission nevertheless determines to adopt the federal proxy access right in proposed Rule 14a-11, we believe that significant changes should be made. Perhaps most importantly, a federal proxy access right should not preempt state law and private ordering with a federal "one-size-fits-all" approach that substitutes the Commission's judgment for that of shareholders, boards and state legislatures who are responding to this issue. Preemption is inconsistent with the Commission's objective of removing impediments to shareholder use of state law rights and the long tradition of addressing corporate governance matters at the state level through private ordering by shareholders, boards and companies. For example, Rule 14a-11 would deprive shareholders of the choices that the recent Delaware proxy access amendment provides, including the ability to set eligibility criteria with respect to director nominations that will be included in company proxy materials.

a. Rule 14a-11 Should Permit Variation and Be Reserved for Bad Actors.

If the Commission adopts both Rule 14a-11 and the amendments to Rule 14a-8(i)(8), it should permit shareholder proposals relating to proxy access to contain different terms (e.g., ownership thresholds) than those of Rule 14a-11.

Moreover, any federal proxy access right should be conditioned on a triggering event, so that the right applies only to companies with a demonstrated need for greater director accountability. For example, greater accountability may be required in instances where a board fails to respond appropriately when directors repeatedly fail to implement a shareholder proposal that has received a majority of votes cast, where a company is delisted by an exchange or where there is an indictment on criminal charges. The bad actions of a few companies in the financial industry should not impact companies, such as ours, in other industries who have demonstrated commitment to good governance and the interests of their shareholders.

b. Proxy Access Should Be Reserved for Significant, Long-Term Shareholders.

Shareholders should be eligible to nominate proxy access directors only if they hold a significant percentage of a company's shares for a substantial period of time. The ownership threshold in the proposed rule (1% for individual shareholders and groups alike as applied to large accelerated filers, such as Cummins, and a one-year holding requirement) could be too easily satisfied by opportunistic, relatively short-term investors, such as hedge funds, and be a "Trojan horse" for takeover activity. Even for many large companies, a 1% threshold would include dozens of investors. By way of example, as of a recent date, we had 36 shareholders with a greater than 1% interest in our common stock. In contrast, we believe that only individual shareholders that have held at least 5% of a company's outstanding shares for at least two continuous years should be eligible to include director nominees on the company's proxy statement.

We also do not believe that shareholders should be permitted to aggregate their share holdings to meet the ownership eligibility threshold. A 5% ownership threshold with a two-year holding requirement would ensure that only shareholders who have a demonstrated, substantial interest in the company's long-term performance may nominate directors and that shareholders with narrow agendas or otherwise short-term interests in the company will not have the same ease of access.

c. Repeated Use of Proxy Access Should Be Limited and Certain Costs Internalized.

Under the proposed rules, there would be no limits on a shareholder's repeated use of the proxy access right regardless of how much or how little support the shareholder's candidates received. In our view, there should be limits on such use to mitigate the cost to the company associated with addressing shareholder nominations and use of the company's proxy statement, and to permit other shareholders to include their nominees. Specifically, we propose that, if a federal proxy access rule is made effective, it should provide that a shareholder is not permitted to nominate proxy access directors for at least two years if the shareholder's prior proxy access nominee failed to receive a significant percentage (at least 25%) of votes cast.

In addition, to mitigate the costs of proxy access to the company, we propose that any proxy access right include a requirement that nominating shareholders reimburse the company for the incremental costs associated with including such shareholders' nominees in the company's proxy statement if the nominees do not receive a certain percentage of the shareholder vote.

d. Shareholder Nominees Should Be Limited and Prioritized According to the Nominating Shareholders' Interests in the Company.

If a federal proxy access rule such as Rule 14a-11 is adopted, we would advocate limiting the number of proxy access nominees to one director rather than, as under the current rule, up to 25% of the entire board.

In the case of multiple proxy access nominees, the rule should provide that the nominee submitted by the shareholder who has the most significant holdings or who has held company shares the longest should be included, rather than the "first in time" standard included in the proposed rules. The first in time rule would result in a perverse incentive for shareholders to propose director nominees even when they are not dissatisfied with the company's slate, simply to preempt other shareholders from proposing nominees to which the shareholder may object. A "largest" or "longest" holding rule would ensure that shareholders with the longest interest in the company are able to access the company's proxy statement and would remove the incentive for a shareholder to submit a nomination merely to preserve its ability to do so.

We also advocate prohibiting the proxy access nominee from being affiliated with the nominating shareholder and require the proxy access nominee to satisfy the company's director qualification/independence standards.

e. Responding to a Proxy Access Right Will Require Significant Resources and More Time Than Proposed Rule 14a-11 Permits.

There are also various workability concerns with proposed Rule 14a-11. As a result, we believe that a delayed effective date, until the 2011 proxy season, is necessary so that companies have time to amend their bylaws and take other necessary preparatory actions. (Companies will require time to make any necessary amendments to their bylaws to comply with the notice deadlines and procedures in the proposed Rule 14a-11.) We also believe that the proposed back-and-forth process for exclusions, involving the Commission staff as "referee," will impose an enormous burden on both the companies' and the Commission's resources.

For these reasons, we respectfully recommend against adoption of the proposed Rule 14a-11 and for adoption of a revised amendment to Rule 14a-8 regarding the director nomination process.

Thank you for the opportunity to comment on these important issues. I would be happy to discuss any questions that the staff may have regarding the above comments. Please call me at (812) 377-5000 if you have any questions.

Sincerely,

Marya M. Rose
Vice President – General Counsel,
Cummins Inc.

cc: Theodore M. Solso
Board of Directors of Cummins Inc.