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Protective
100 YEARS OF SERVICE

August 17, 2009

VIA E-MAIL (rule-comments@sec.gov;
File Number S7-10-09)

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

Re: File No. S7-10-09 Release No. 34-60089
Facilitating Shareholder Director Nominations

Dear Ms. Murphy:

In *Facilitating Shareholder Director Nominations,* Release No. 34-60089 (the "Release"), the Securities and Exchange Commission (the "SEC" or "the Commission") published proposed rules that would require companies to include in their proxy materials shareholder nominees for election as corporate directors and amend the Commission's shareholder proposal rules to permit shareholder proposals related to such nominations (the "Proposed Rules"). Protective Life Corporation ("Protective") recognizes the importance of ensuring that shareholders have a meaningful right to nominate and elect directors, and thanks the Commission for its thoughtful consideration of the role that the federal proxy rules should play in protecting those rights.

Protective has a long-standing commitment to good corporate governance practices. Currently, eleven of our twelve board members are independent outside directors; the Audit, Compensation and Management Succession, and Corporate Governance and Nominating Committees are composed entirely of independent directors; and our independent directors meet in executive session at each board meeting. All directors are elected annually by a majority of votes cast by shareholders. The board carefully evaluates each incoming director candidate based on selection criteria and overall priorities for board composition that are periodically re-examined by the

Corporate Governance and Nominating Committee with input from the other directors. Protective's board is also committed to practices that promote board and management accountability.

Protective has some concerns about the Proposed Rules (as discussed in detail below), and hereby requests that the Commission:

- extend the comment period;
- not adopt Proposed Rule 14a-11, and instead allow state law and the vote of the shareholders to determine a company's rules regarding shareholder nominations for directors; and
- if the Commission decides to adopt final rules, consider the enclosed comments on Proposed Rule 14a-11.

I. Request for Extended Comment Period

Under the Administrative Procedure Act ("APA"), the Commission must provide notice of a proposed rulemaking that is adequate to afford interested parties a reasonable opportunity to participate in the rulemaking process, including a comment period that enables the interested parties to provide meaningful comments. However, the Release gives interested parties only 60 days from publication in the Federal Register to comment on the Proposed Rules.

The Proposed Rules are extremely complex, and raise questions regarding the Commission's authority, the relative roles of the states and federal government in establishing shareholder rights and delineating the responsibilities of shareholders and boards of directors, and the impact of the proposals on corporate governance. Furthermore, the Release contains more than 500 questions and requests for data and information. Given the importance and complexity of the matters addressed in the Release, the 60-day period may not provide a sufficient opportunity for companies, shareholders and other interested parties to adequately assess and comment. Protective therefore requests the SEC to extend the comment period for at least 30 days to ensure that the Commission has the opportunity to benefit from comments provided by interested parties that wish to review and consider the Proposed Rules in more detail.

II. Proposed Rule 14a-11 Infringes on Concerns that Can and Should Continue to be Addressed by State Law

While Protective supports the SEC's goal of appropriate proxy access, Protective believes that a "one size fits all" proxy access system of the kind set forth in Proposed Rule 14a-11 is not the best means to attain that goal. State corporate law (particularly Delaware law, under which Protective is incorporated) is far more flexible than the Commission's rule making authority, and better able to deal effectively with the different circumstances that legislators and rulemakers cannot anticipate.

Delaware law confers broad power upon shareholders to adopt bylaws that establish the terms and conditions of rights relating to the election of directors. As noted in the Release, it is likely that other states will follow Delaware's lead and adopt similar provisions. Furthermore, many companies (including Protective) now apply a majority voting standard to the election of directors. In light of these developments, if shareholders and boards of directors are not constrained by mandatory, universally applicable rules like Proposed Rule 14a-11, many shareholders and boards will adopt proxy access bylaws that implement their own preferences on a basis tailored to the circumstances of the individual corporation.

Proposed Rule 14a-11, however, would substantially limit the ability of the shareholders and board of a corporation to set the terms of the corporation's proxy access system. This impairment of shareholder choice and intrusion into matters traditionally reserved for state law would have other effects as well:

- Adoption of the Proposed Rule would require a new and complex administrative system for dispute resolution. Such disputes could also proceed in federal courts, with the resulting potential for conflicting interpretations of the rule, "forum shopping" and for further burdens on the federal court system.

- Any set of proxy access rules will inevitably require further refinement. Such refinement, however, would be more readily accomplished through an incremental process guided by shareholder consensus at a particular corporation rather than through continual rulemaking by the Commission.

- Adoption of the Proposed Rule would effectively stop the ongoing evolutionary process of refining proxy access systems that would facilitate shareholder choice and be most likely to lead to the adoption of systems suited to the diverse conditions and needs of individual corporations and their shareholders.

The judgments of shareholders and boards of directors of individual corporations in establishing (or rejecting) a proxy access system are likely to give better effect to investor preferences than the process set forth in Proposed Rule 14a-11, so Protective urges the Commission not to adopt that Proposed Rule. Consistent with this view,

Protective supports adoption of Proposed Rule 14a-8(i)(8), which would give shareholders the right to submit proposals to adopt proxy access by-laws.

III. Comments on Proposed Rule 14a-11

As noted under Item II above, Protective believes that the Commission should not adopt Proposed Rule 14a-11 (or any similar proxy access rule) at this time. The comments set forth below generally attempt to clarify the Proposed Rule and reduce the disruption, compliance burden and expense that adoption of the Proposed Rule could entail, while still achieving its objectives. Due to the short time period that the Commission has provided for comment on the Proposed Rules, we have limited our responses to a small number of the Requests for Comment that are set forth in the Release. The Requests for Comment (or portions thereof) for which Protective is providing specific comments are set forth in italics below, following the numbering system used in the Release.

A.8. We also note concerns about board accountability and shareholder participation in the proxy process. Would the proposed amendments to the proxy rules address concerns about board accountability and shareholder participation on the one hand, and board dynamics, on the other?.....

Adoption of Proposed Rule 14a-11 as proposed is likely to have a significant adverse impact on board dynamics and the effectiveness of the board. For example, if the incumbent board believes that a shareholder nominee for director is unqualified (or less qualified than the current board members), the incumbent board will have a fiduciary duty to oppose that nominee's election, which is certain to affect board dynamics if the nominee is elected. Furthermore, the perception that a particular director is primarily concerned with the interests of a subset of the company's shareholders (as opposed to all shareholders) has the potential to stifle or fragment board discussion and debate, to the detriment of all shareholders.

B.15. In the 2003 Proposal, the rule proposed would have been triggered by withhold votes for one or more directors of more than 35% of the votes cast. Is it appropriate to apply such a trigger to current proposed Rule 14a-11? If so, what would be an appropriate percentage and why?....

Protective believes that, if adopted, a rule that permits shareholder nomination of directors should be triggered by one (or more) events that are objective and that demonstrate that shareholders have a significant level of dissatisfaction with the

company, its board of directors, and its director nomination process. Otherwise, the potential for abuse would seem to outweigh the potential benefits.

Protective recommends a variation of the "35% rule" suggested by the Commission in *Security Holder Director Nominations*, Release No. 34-48626 (the "2003 Proposal"). Under this approach, a "triggering event" would occur if, at any meeting at which directors are elected, at least one director had withhold votes of at least 35% of the votes actually *cast*, unless the director received a favorable vote of at least a majority of the shares *outstanding*. (This recommendation takes into effect the rescission of the 10-day "may vote" rule for broker/dealers that do not receive voting instructions from beneficial owners, since rescission of that rule will reduce the total number of shares actually voted in elections of directors.) Protective believes that this approach would properly balance shareholder concern about the board and the director nomination process with the unquestioned costs and disruptions that would occur if a small minority of shareholders were to nominate directors at a company at which a large majority of voting shareholders have demonstrated a general level of satisfaction with these matters.

B.16. If the Commission were to include a triggering event requirement, for what period of time after a triggering event should Rule 14a-11 apply (e.g., one year, two years, three years, or permanently)?....

If the Commission included a triggering event like those discussed in the 2003 Proposal or in Request for Comment B.15, Protective believes that Rule 14a-11 should be available to a shareholder or shareholder group with a sufficient long-term interest in the company (as discussed below) for the two meetings at which directors are elected after the date of the event.

B.18. If the proposed requirement applied only after a specified triggering event, how would the company make shareholders aware when a triggering event has occurred? If the rule became operative based on the occurrence of triggering events, should the rule require additional disclosures in a company's Exchange Act Form 10-Q, 10-K, or 8-K or, in the case of a registered investment company, Form N-CSR?....

If Rule 14a-11 applies only after a triggering event, Protective recommends that the company should be required to make disclosures consistent with those contemplated by Request for Comment B.18 in its Form 10-K, 10-Q or 8-K reports.

B.22. What provisions, if any, would the Commission need to make for the transition period after adoption of a rule based on this proposal? Would it be necessary

to adjust the timing requirements of the rule depending on the effective date of the rule (e.g., if the rules are adopted shortly before a proxy season)?

Implementation of rules providing for shareholder nomination of directors will demand a significant commitment of resources by companies, shareholders, proxy tabulators, proxy soliciting firms, proxy advisory firms, financial printers, counsel for all interested parties, and the Commission. Therefore, Protective recommends that if Proposed Rule 14a-11 is adopted (as proposed or in a modified form), the rule should not be effective for any shareholder meeting before 2011. Such a transition rule would give companies that have shareholder meetings shortly after the rules are issued, and other interested parties, time to adapt to the final rules, and would treat all companies in a reasonably equitable manner. Just as important, shareholders, companies and the Commission could review the director nomination process for meetings in the 2010 proxy season, and could evaluate Proposed Rule 14a-11 in light of that information.

C.6. Is the 1% standard that we have proposed for large accelerated filers appropriate? Should the standard be lower (e.g., $2,000 or 0.5%) or higher (e.g., 2%, 3%, 4%, 5%, 6%, 7%, 8%, 9%, 10%, 15%, 20%, or 25%)?....

In Protective's opinion, the 1% share ownership standard that the SEC has proposed for large accelerated filers is too low. Protective believes that a 3% standard for a single nominating shareholder, and a 5% standard for a group of shareholders, would be appropriate if the final rule provides for a triggering event of the type described in Request for Comment B.15. If the final rule does not have triggering events of this nature, Protective believes that 5% is the appropriate standard for a single nominating shareholder, and that 10% is the appropriate standard for a group of shareholders. (Protective notes that the Summary of Comments regarding the 2003 Proposal indicates that the majority of commenters supported a standard greater than 1%, with 3% to 5% having substantial support.)

C.7. Should groups of shareholders composed of a large number of beneficial holders, but who collectively own a percentage of shares below the proposed thresholds, be permitted to have a nominee included in the company proxy materials? If so, what would be a sufficiently large group? Would a group composed of over 1%, 3%, 5% or 10% of the number of beneficial holders be sufficient? Should there be different disclosure requirements for a large shareholder group?

Groups of shareholders who collectively own a percentage of shares below the thresholds adopted in the final rule should ***not*** be permitted to have a nominee included in the company proxy materials. For the reasons discussed in the Release and the 2003

Proposal, use of a company's proxy materials to nominate directors should be limited to shareholders with a substantial, long term interest in the company that is based on the shareholder's long-term ownership interest in the company's securities. Permitting large numbers of shareholders with a collective ownership interest of less than 1% (or such greater percentage as the final rule may specify) to nominate directors will greatly complicate administration of the rule for companies and the SEC, will significantly increase the chance that a tiny portion of a company's shareholders could require it to go through the expense and disruption of the processes contemplated by the Proposed Rule, and would increase the chance that the proxy access process will be abused by shareholders that do not have a substantial, long-term interest in the company.

C.14. Should there be a restriction on shareholder eligibility that is based on the length of time securities have been held? If so, is one year the proper standard? Should the standard be longer (e.g., two years, three years, four years, or five years)? Should the standard be shorter (e.g., six months)? Should the standard be measured by a different date (e.g., one year as of the date of the meeting, rather than the date of the notice)?

Use of a company's proxy materials to nominate directors should be limited to shareholders with a substantial, long term interest in the company that is based, in part, on the length of time that the shareholder has held the company's securities. In Protective's opinion, the appropriate standard is no less than two years as of the date of the shareholder's notice to the company. (Protective notes that the Summary of Comments regarding the 2003 Proposal indicates that the majority of commenters supported a standard of two years or longer.)

C.15. Should eligibility be conditioned on meeting the required ownership threshold by holding a net long position for the required time period? If the Commission were to adopt such a requirement, would this require other modifications to the proposal?

Protective believes that each shareholder should be required to meet the ownership threshold on each day of the required time period on a net long basis.

C.16. As proposed, a nominating shareholder would be required to represent its intent to hold the securities until the date of the election of directors. Is it appropriate to include such a requirement? What should be the remedy if the nominating shareholder or group represents its intent to hold the securities through the date of the meeting for the election of directors and fails to do so? Should the company be permitted to exclude any nominations from that nominating shareholder or member of a group for some period of

time afterward (e.g., one year, two years, three years)? If the nominating shareholder or group fails to hold the securities through the date of the meeting, what, if anything, should the effect be on the election? Should the nominee submitted by the shareholder or group be disqualified?

In Protective's opinion, a nominating shareholder or group should be required to represent its intent to hold an amount of securities on a net long basis above the specified ownership threshold until a specified date. (The specified date in the Proposed Rule is the date of the election of directors. As discussed in Request for Comment C.17, Protective believes that a nominating shareholder or group should be required to represent its intent to hold an amount of securities above the specified ownership threshold until the date of the election of directors or, if a nominating shareholder's or group's nominee is elected as director, the end of the director's term of service as a director.)

If the nominating shareholder or group fails to maintain share ownership at the specified ownership threshold prior to the election of directors, the nominating shareholder's or group's nominees should be disqualified for election to the company's board at the meeting in question, and the company should be allowed to exclude any nominations from the nominating shareholder (and each member of the group) at the next two elections of directors. If (as Protective suggests) a nominating shareholder or group whose nominee is elected is required to hold an amount of securities above the specified ownership threshold until the end of the director's term of service as a director, if the nominating shareholder or group fails to maintain share ownership at the specified ownership threshold after the election of directors, the rule should require each director who was so nominated to submit their resignation to the board, and the company should be allowed to exclude any nominations from the nominating shareholder (and each member of the group) at the next two elections of directors.

C.17. We are proposing that a nominating shareholder represent an intent to hold through the date of the meeting because we believe it is important that the nominating shareholder or group have a significant economic interest in the company. Is it appropriate to require the shareholder to provide a statement regarding its intent with regard to continued ownership of the securities beyond the election of directors? Should a nominating shareholder be required to represent that it will hold the securities beyond the election if the nominating shareholder's nominee is elected (e.g., for six months after the election, one year after the election, or two years after the election)? Would the answer be different if the nominating shareholder's nominee is not elected?

As noted in Request for Comment C.16, Protective believes that a nominating shareholder or group should be required to represent its intent to hold an amount of

securities above the specified ownership threshold until the date of the election of directors or, if a nominating shareholder's or group's nominee is elected as director, the end of the director's term of service as a director. If the nominating shareholder's or group's nominee is elected as director and the nominating shareholder or group fails to maintain share ownership at the specified ownership threshold after the election of directors, the rule should require each director who was so nominated to submit their resignation to the board, and the company should be allowed to exclude any nominations from the nominating shareholder (and each member of the group) at the next two elections of directors.

C.18. In the 2003 Proposal the Commission solicited comment on whether the rule should include a provision that would deny eligibility for any nominating shareholder or group that has had a nominee included in the company materials where that nominee did not receive a sufficient percentage of the votes. Commenters were mixed in their responses so we have not proposed a requirement in this regard, but are again requesting comment as to whether the rule should include a provision denying eligibility for any nominating shareholder or group who has had a nominee included in the company materials where that nominee did not receive a sufficient percentage of the votes (e.g., 5%, 10%, 15%, 25%, or 35%) within a specified period of time in the past (e.g., one year, two years, three years, four years, five years). If there should be such an eligibility standard, how long should the prohibition last (e.g., one year, two years, three years)?....

Again, there must be a balance between the rights of shareholders to nominate directors and abuse of the rules to the detriment of the company and all shareholders. To minimize the opportunity for abuse, Protective believes that the rule should include a provision that would deny eligibility for any nominating shareholder or group that has had a nominee included in the company materials where that nominee did not receive a specified threshold percentage of the votes. (Protective notes that eight of the ten commenters who addressed this issue with respect to the 2003 Proposal supported adoption of eligibility limits of this nature.) Protective believes that the rule should deny eligibility to submit director nominations if the nominating shareholder or group has a nominee included in the company proxy materials and the nominee receives a favorable vote of less than 35% of the outstanding voting shares.

C.20. If shareholders should be able to aggregate their holdings, is it appropriate to require that all members of a nominating shareholder group whose shares are used to satisfy the ownership threshold to meet the minimum holding period individually? If aggregation is not appropriate, what ownership threshold would be appropriate for an individual shareholder?

As discussed at Request for Comment C.6, Protective believes that shareholders should be able to form a nominating shareholder group if the aggregate of their holdings is (a) 5% or more (if the final rule requires there to be a triggering event of the type described in Request for Comment B.15), or (b) 10% or more (if the final rule does not require such a triggering event). If shareholders are allowed to aggregate their holdings, all members of a nominating shareholder group whose shares are used to satisfy the ownership threshold should be required to meet the minimum holding period individually. If the rule provides otherwise, a shareholder with a minimal long-term interest in a company could form a shareholder group comprised primarily of shareholders who have not demonstrated, through a continuous period of share ownership, a commitment to a long-term perspective of the company in question.

As discussed in Request for Comment C.6, if shareholders are not allowed to aggregate their holdings, Protective believes that 3% is the appropriate standard for a single nominating shareholder (if the final rule requires there to be a triggering event of the type described in Request for Comment B.15), and that 5% is the appropriate standard for a group of shareholders (if the final rule does not have such a triggering event).

C.23. What would be an appropriate method of establishing the beneficial ownership level of a nominating shareholder or group? What would be sufficient evidence of ownership? For example, if the nominating shareholder is not the registered holder of the securities, should the nominating shareholder be required to provide a written statement from the "record" holder of the securities (usually a broker or bank), verifying that at the time the nominating shareholder submitted its notice to the company, the nominating shareholder continuously held the securities for at least one year?

Protective believes that if the nominating shareholder is not the registered holder of the securities, the nominating shareholder should be required to provide a written statement from the record holder of the shares verifying that at the time the nominating shareholder submitted its notice to the company, the nominating shareholder continuously held the required minimum number of shares for at least the minimum holding period required by the final rule.

C.24. Should the Commission limit use of the rule, as proposed, to shareholders that are not seeking to change the control of the company or to gain more than a limited number of seats on the board of directors? Why or why not? Would it be appropriate to require the shareholder to represent that it will not seek to change the control of a company or to gain more than a limited number of seats on the board for a period of time beyond the election of directors? How should the rules address the possibility that a nominating shareholder's or group's intent may change over time?

Protective strongly believes that the Commission should limit use of the rule regarding shareholder nominations of directors to shareholders that are not seeking to change the control of the company or to gain more than a limited number of seats on the board. Each shareholder should be required to represent that it is not seeking to change the control of the company or to gain more than a limited number of seats on the board. If a nominating shareholder's or group's intent changes over time, the rule should require it to disclose its intent to change the control of the company or to gain more than a limited number of seats on the board to the company and to the SEC in an amendment to Schedule 14N, should require each director of the company who was nominated by the shareholder or group to submit their resignation to the board, and should permit the company to exclude any nominations from the nominating shareholder (and each member of the group) at the next two elections of directors.

D.1. Is it appropriate to use compliance with state law, federal law, and listing standards as a condition for eligibility?

Protective believes that it is it appropriate to use compliance with state law, federal law, and listing standards as a condition for eligibility of a nominee. Protective believes that certain other criteria described in Request for Comment D.2 should also be applied.

D.2. Should there be any other or additional limitations regarding nominee eligibility?....

Pursuant to Schedule 14A, Item 7(2)(ii)(H), a company must provide in its proxy materials a "description of any specific, minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the company's board of directors." Protective believes that shareholder nominees should be required to meet any such standards that a company has publicly disclosed and that will apply to all nominating committee-recommended nominees.

D.3. Should there be requirements regarding independence of the nominee and nominating shareholder or group and the company and its management? If so, are the proposed limitations appropriate? What other or additional limitations would be appropriate? If these limitations generally are appropriate, are there instances where they should not apply? Should the fact that the nominee is being nominated by a shareholder or group, combined with the absence of any agreement with the company or its management, be a sufficient independence requirement?

Protective agrees that each shareholder nominee for director of a company should be in compliance with the generally applicable independence requirements of the company's national securities exchange or national securities association (if applicable) that set forth objective standards, and that the nominating shareholder or group should be required to make a representation to that effect. Protective also believes that shareholder nominees should be required to meet any objective independence standards that the company has publicly disclosed and that will apply to all nominating committee-recommended nominees.

In Protective's opinion, the fact that a nominee is being nominated by a shareholder or group, combined with the absence of any agreement with the company or its management, is ***not*** a sufficient independence requirement.

D.4. How should any independence standards be applied? Should the nominee and the nominating shareholder or group have the full burden of determining the effect of the nominee's election on the company's compliance with any independence requirements, even though those consequences may depend on the outcome of any election and may relate to the outcome of the election with regard to nominees other than shareholder nominees? Should the rules specify that the nominating shareholder or group may rely on information disclosed in the company's Commission filings in making this determination?....

As discussed in Request for Comment D.3, Protective believes that shareholder nominees should be subject to the objective independence standards of the company (as disclosed in the company's Commission filings) and the objective independence standards of any applicable national securities exchange or national securities association. Since these standards are objective in nature, it is appropriate for the nominating shareholder or group to have the burden of determining the effect of the nominee's election on the company's compliance with the independence requirements.

D.11. As proposed, the rule includes a safe harbor providing that nominating shareholders will not be deemed "affiliates" solely as a result of using Rule 14a-11. This safe harbor would apply not only to the nomination of a candidate, but also where that candidate is elected, provided that the nominating shareholder or group does not have an agreement or relationship with that director otherwise than relating to the nomination. Is it appropriate to provide such a safe harbor for shareholder nominations? Should the safe harbor continue to apply where the nominee is elected? If so, should the nomination and election of the shareholder's nominee be a consideration in determining whether the shareholder is an affiliate, or should the safe harbor be "absolute"?

Protective does not object to the Proposed Rule's provision that nominating shareholders will not be deemed "affiliates" of a company solely as a result of using Rule 14a-11. However, if the nominee is elected, this "safe harbor" should not apply, and the fact that the nominating shareholder's or group's nominee has been elected should be a factor that is considered in determining whether the nominating shareholder or group is an affiliate of the company. (This is especially important if the elected nominee is also a director, officer, employee or family member of the nominating shareholder or group, as permitted by the Proposed Rule.)

D.13. Should the eligibility criteria include a prohibition on any affiliation between nominees and nominating shareholders or groups? If so, what limitations would be appropriate? For example, should there be a prohibition on the nominee being the nominating shareholder or a member of the nominating shareholder group, a member of the immediate family of the nominating shareholder or any member of the nominating shareholder group, or an employee of the nominating shareholder or any member of the nominating shareholder group? Would such a limitation unnecessarily restrict access by shareholders to the proxy process?

A shareholder-nominated director who is a director, officer, employee or family member of the nominating shareholder or group faces a conflict of interest that can be resolved only by the director's exclusion from many deliberations and decisions of the board; even then, an apparent conflict of interest will still exist in the eyes of many shareholders. Therefore, consistent with the Commission's approach in the 2003 Proposal, Protective supports prohibiting a nominee from being the nominating shareholder (or a member of the nominating shareholder group), a member of the immediate family of the nominating shareholder (or any member of the nominating shareholder group), or a director, officer or employee of the nominating shareholder (or any member of the nominating shareholder group). Protective believes that such a provision is essential for achieving the objectives of the Proposed Rule, and will not unnecessarily restrict access by shareholders to the proxy process.

D.16. Should there be a nominee eligibility criterion that would exclude an otherwise eligible nominee where that nominee has been included in the company's proxy materials as a candidate for election as director but received a minimal percentage of the vote? If so, what would be the appropriate percentage (e.g., 5%, 10%, 15%, 25%, or 35%)? If so, for how long should the nominee be excluded (e.g., 1 year, 2 years, 3 years, 4 years, 5 years, permanently)?

Protective believes that the rule should exclude an otherwise eligible nominee where that nominee has been included in the company's proxy materials as a candidate

for election as director but received a favorable vote of less than 35% of the outstanding voting shares, and that the nominee should be excluded for three years.

E.1. Is it appropriate to include a limitation on the number of shareholder director nominees? If not, how would the proposed rules be consistent with our intention not to allow Rule 14a-11 to become a vehicle for changes in control?

It is appropriate (and indeed necessary) to include a limitation on the number of shareholder director nominees; otherwise, there is a significant likelihood that certain shareholders and shareholder groups would use Rule 14a-11 to attempt to effect changes in control.

E.2. If there should be a limitation, is the proposed maximum percentage of shareholder nominees for director that we have proposed appropriate? If not, should the maximum percentage be higher (e.g., 30%, 35%, 40%, or 45%) or lower (e.g., 10%, 15%, or 20%)? Should the percentage vary depending on the size of the board? Should the limitation be the greater or lesser of a specified number of nominees or percentage of the total number of directors on the board? Is it appropriate to permit more than one shareholder nominee regardless of the size of the company's board of directors?

Protective supports the proposed maximum percentage of shareholder nominees for director of 25%. Protective believes that the percentage should not vary depending on the size of the board, and the limit should not refer to a specified number of nominees.

E.3. In instances where 25% of the board does not result in a whole number, the maximum number of shareholder nominees for director that a registrant will be required to include in its proxy materials will be the closest whole number below 25%. Is it appropriate to round down in this instance? Should we instead round up to the nearest whole number above 25%? Is a rounding rule necessary?

Protective agrees that in instances where 25% of the board does not result in a whole number, the maximum number of shareholder nominees for director that a registrant will be required to include in its proxy materials should be the closest whole number below 25%. Protective does not believe a "rounding up" provision would be appropriate, and believes that a rounding rule is necessary to simplify and clarify interpretation and administration of the rule for nominating shareholders, companies and the SEC staff.

E.4. Should the proposed rule address situations where the governing documents provide a range for the number of directors on the board rather than a fixed number of board seats? If so, what changes to the rule would be necessary?

Protective believes that the number of directors that may be nominated by a nominating shareholder should be based on the number of directors on the company's board (as shown in the company's filings with the Commission) as of the date the nominating shareholder makes the Schedule 14N filing with the Commission and the company.

E.5. The proposal contemplates taking into account incumbent directors who were nominated pursuant to proposed Rule 14a-11 for purposes of determining the maximum number of shareholder nominees. Is that appropriate? Should there be a different means to account for such incumbent directors?

Protective believes that incumbent directors who were nominated pursuant to Proposed Rule 14a-11 should be included for purposes of determining the maximum number of shareholder nominees.

E.10. We have proposed a limitation that permits the nominating shareholder or group that first provides notice to the company to include its nominee or nominees in the company's proxy materials where there is more than one eligible nominating shareholder or group. Is this appropriate? If not, should there be different criteria for selecting the shareholder nominees (e.g., largest beneficial ownership, length of security ownership, random drawing, allocation among eligible nominating shareholders or groups, etc.)? Rather than using criteria such as that proposed, should companies have the ability to select among eligible nominating shareholders or groups? If so, what criteria should the company be required to use in doing so?

Protective supports the provisions of the Proposed Rule that would permit the nominating shareholder or group that first provides notice to the company to include its nominee or nominees in the company's proxy materials where there is more than one eligible nominating shareholder or group. If the maximum number of directors allowed under the rule has not been nominated by any preceding nominating shareholder(s) or group(s) (including incumbent directors), the nominating shareholder or group that delivers the next most timely notice of intent to nominate a director pursuant to the rule would be included in the company's proxy materials, up to and including the total number of shareholder nominees required to be included by the company. This approach would be easier for companies to administer, and less subject to dispute, than the other suggested approaches (such as total level of beneficial ownership, random drawing, or

company selection of nominees). If a nominating shareholder or group has nominated more nominees than it is permitted after application of these rules, the company should be required to so advise it in the notice provided for in Proposed Rule 14a-11(f)(3), and the nominating shareholder or group should be required to withdraw the required number of nominees from nomination and advise the company of its decision in the notice provided for in Proposed Rule 14a-11(f)(5). (If the nominating shareholder or group does not provide the appropriate notice to the company, the company should be allowed to determine which nominee(s) will be excluded.)

E.12. Under the proposal, where the first nominating shareholder or group to deliver timely notice to the company does not nominate the maximum number of directors allowed under the rule, the nominee or nominees of the next nominating shareholder or group to deliver timely notice of intent to nominate a director pursuant to the rule would be included in the company's proxy materials, up to and including the total number of shareholder nominees required to be included by the company. Should the rule specify how to determine which of a second nominating shareholder's or group's nominees are to be selected where there are more nominees than available spots under the rule? Should Rule 14a-11 provide that only one nominating shareholder or group may have their nominee or nominees included in the company proxy materials, regardless of whether they nominate the maximum number allowed under the rule?

Please see the response to Request for Comment E.10.

F.1. Are the proposed content requirements of the shareholder notice on Schedule 14N appropriate? Are there matters included in the notice that should be eliminated (e.g., should the nominating shareholder be required to provide disclosure of its intention with regard to continued ownership of the shares after the election, as is proposed)?

Subject to the suggested changes to Proposed Rule 14a-11 set forth elsewhere in this letter, Protective supports adoption of the content requirements of Schedule 14N. Protective does not believe that any of the proposed disclosures or certifications should be deleted.

F.3. Are the required representations appropriate? Should there be additional representations (e.g., should the nominee be required to make a representation concerning their understanding of their duties under state law if elected and their ability to act in the best interest of the company and all shareholders)? Should any of the proposed representations be eliminated?

None of the proposed representations should be eliminated. Protective believes that the nominee should be required to represent that they understand their duties under state law if elected and to agree that they can and will act in the best interest of the company and all shareholders. If the rule permits a nominee to be a director, officer, employee or family member of the nominating shareholder or group, the nominee should also be required to acknowledge that they may, in certain circumstances, have a conflict of interest between their duties as a director under state law and their duties to the nominating shareholder or group.

F.6. What should be the consequence to the nominating shareholder or group of submitting the notice on Schedule 14N to the company after the deadline? What should be the consequence of filing the notice on Schedule 14N with the Commission after the deadline? Should a late submission to the company or late filing with the Commission render the nominating shareholder or group ineligible to have a nominee included in the company's proxy materials under Rule 14a-11 with respect to the upcoming meeting, as is currently proposed?

A late submission to the company or a late filing with the Commission should render the nominating shareholder or group ineligible to have a nominee included in the company's proxy materials under Rule 14a-11 with respect to the upcoming meeting. There should not be a "cure period" or similar process.

F.9. In the absence of an advance notice provision, the nominating shareholder or group would be required to submit the notice to the company and file with the Commission no later than 120 calendar days before the date that the company mailed its proxy materials for the prior year's annual meeting. Is this deadline appropriate and workable? If not, what should be the deadline (e.g., 80, 90, 100, 150, or 180 calendar days before the date that the company mailed its proxy materials for the prior year's annual meeting)?

Protective believes that the proposed 120 calendar days before the date that the company mailed its proxy materials for the prior year's annual meeting is too short, and recommends that the period be 150 calendar days before the date that the company mailed its proxy materials for the prior year's annual meeting.

F.14. As proposed, a shareholder's or group's notice of intent to submit a nomination for director is required to be filed with the Commission on Schedule 14N. Is such a filing appropriate? Should additional or lesser information be filed with the

Commission? Should a shareholder or group be required to send the notice to the company without filing the notice on Schedule 14N?

Protective agrees that a shareholder's or group's notice of intent to submit a nomination for director should be filed with both the company and the Commission on Schedule 14N.

F.15. When should the notice on Schedule 14N be filed with the Commission? Is it sufficient to require the Schedule 14N to be filed at the time it is provided to the company? Should an abbreviated version of the Schedule 14N be filed sooner, before the nominating shareholder or group provides notice to the company, such as at the time a shareholder or group first decides to make a nomination, when the nominating shareholder first identifies a nominee for director, or some other time? Should it be filed later?

Protective believes that the notice on Schedule 14N should be filed with the Commission at the time it is provided to the company.

F.16. The notice on Schedule 14N would be required to be amended promptly for any material change in the facts set forth in the originally-filed Schedule 14N. Should the nominating shareholder or group be required to amend the Schedule 14N for any material change in the facts? Why or why not?

The nominating shareholder or group should be required to amend the Schedule 14N for any material change in the facts. The information provided in Schedule 14N is critical to the company and its shareholders, and material changes to that information is likely to be relevant to the company and to the shareholders' vote on the nominating shareholder's nominee.

F.19. Should a nominating shareholder or group be required to file Schedule 14N on EDGAR, as proposed?

A nominating shareholder or group should be required to file Schedule 14N on EDGAR.

G.2. As proposed, neither the composition of a nominating shareholder group nor a shareholder nominee could be changed as a means to correct a deficiency identified in the company's notice to the nominating shareholder or group. Should we permit the

nominating shareholder group to change its composition to correct an identified deficiency, such as a failure of the group to meet the requisite ownership threshold? Should the nominating shareholder or group be permitted to submit a replacement shareholder nominee in the event that it is determined that a nominee does not meet the eligibility criteria?

Any shareholder that wishes to nominate a director can easily obtain the information needed to provide a complete and accurate notice to the company and the SEC. The entire shareholder nomination process, as contemplated by the Proposed Rules, will be time-consuming and expensive for companies and the Commission, and will occur within a fairly short period of time. Therefore, Protective strongly believes that the final rule should provide that neither the composition of a nominating shareholder group nor a shareholder nominee may be changed as a means to correct a deficiency identified in the company's notice to the nominating shareholder or group.

G.7. Is the 14-day time period for the company to respond to a nominating shareholder's notice or for the nominating shareholder to respond to a company's notice of deficiency sufficient? Should the time period be longer (e.g., 20 days, 25 days, 30 days) or shorter (e.g., 10 days, 7 days, 5 days)? Should the rule explicitly set out the effect of a company providing the notice late (e.g., the company may not exclude the nominee) or of a shareholder responding to this notice late (e.g., the nominee may be excluded)?

Protective does not believe that either 14-day period is long enough, and recommends that each time period should be extended to at least 21 days. (To preserve the remainder of the timetable as described in the following Requests for Comment, if this recommendation is accepted, the SEC would also need to extend the period by which the nominating shareholder or group must provide its notice to the company and the SEC (e.g., to least 150 calendar days before the date that the company mailed its proxy materials for the prior year's annual meeting, without regard to any advance notice provisions that the company may have)). In order to provide some degree of certainty for shareholders, companies and the SEC staff, the rule should state that (1) if a company provides its notice late, the company may not exclude the nominee, and (2) if a shareholder responds to the company notice late, the nominee may be excluded.

G.8. Is the 80-day requirement for submission of the company's notice to the Commission sufficient? If not, should the requirement be increased (e.g., 90 days, 100 days, 120 days, or more) or decreased (e.g., 75 days, 60 days, or less)?....

Protective believes that the 80-day requirement for submission of a company's notice to the Commission is not sufficient, and recommends that it be increased to 90 days.

G.9. Is the 14-day time period for the nominating shareholder to respond to the receipt of a company's notice to the Commission of its intent to exclude the nominee sufficient? Should it be longer (e.g., 20 days, 25 days, 30 days) or shorter (e.g., 10 days, 7 days, 5 days)? Should the rule explicitly set out the effect of a shareholder responding to the company's notice late (e.g., the nominee may be excluded)?

Since the nominating shareholder has already received notice that the company intends to exclude its nominees and has been advised of the company's rationale for this decision, Protective believes that the 14-day time period for the nominating shareholder to respond to the receipt of a company's notice to the Commission of its intent to exclude the nominee is sufficient. In order to provide some degree of certainty for shareholders, companies and the SEC staff, the rule should explicitly state that if a shareholder responds to the company's notice late, the nominee may be excluded.

G.10. Is the requirement that the company notify the nominating shareholder or group of whether it will include or exclude the nominating shareholder's or group's nominee or nominees no later than 30 calendar days before the company files its definitive proxy statement and form of proxy with the Commission appropriate and workable? If not, what should the deadline be (e.g., 40 calendar days before filing definitive proxy materials, 35 days before filing definitive proxy materials, 25 calendar days before filing definitive proxy materials, 20 calendar days before filing definitive proxy materials)? Should the rule explicitly set out the effect of a company sending this notice late?

If the Commission accepts Protective's recommendation that the 80-day requirement for submission of a company's notice to the Commission be increased to 90 days (see Request for Comment G.8), then Protective does not object to the requirement that the company notify the nominating shareholder or group of whether it will include or exclude the nominating shareholder's or group's nominee or nominees no later than 30 calendar days before the company files its definitive proxy statement and form of proxy. However, if the Commission retains the 80-day period described above, Protective urgently recommends that the 30 day period be reduced to 20 days. In order to provide some degree of certainty for shareholders, companies and the SEC staff, the rule should explicitly state that if the company provides this notice late, the nominee must be included.

G.12. Do the proposed timing requirements, in the aggregate, allow sufficient time for the informal staff review process? How far in advance of filing definitive proxy materials do companies typically begin printing those materials? If the proposed timing requirements do not allow sufficient time for the informal staff review process, please tell us specifically which timing requirements pose a problem and suggest a specific alternative time that would be sufficient.

Protective does not believe that the proposed timing requirements, in the aggregate, allow sufficient time for the company and shareholders to review and respond to each other's notices or the for the SEC staff to conduct its review process in a thoughtful and diligent manner (especially during the "proxy season" for companies with a calendar fiscal year). As summarized in earlier Requests for Comment, Protective recommends that (1) the nominating shareholder or group must provide its notice of nominations to the company and the SEC at least 150 calendar days before the date the company mailed its proxy materials for the prior year's annual meeting (without regard to any advance notice provisions that the company may have), (2) the company should have a 21-day time period to respond to a nominating shareholder's notice, (3) the nominating shareholder should have a 21-day time period to respond to the company's notice of deficiency, (4) the company should be required to notify the Commission of its determination to exclude a nominee at least 90 days before it files its definitive proxy materials and form of proxy with the SEC, and (5) the company must notify the nominating shareholder of whether it will include or exclude the nominating shareholder's nominee or nominees no later than 30 calendar days before the company files its definitive proxy statement and form of proxy. This timetable gives all parties more time to review and consider matters of great importance to all company shareholders—the composition of the company's board of directors. If experience shows that this 150-day timetable can be shortened, the SEC can address this issue by a subsequent rulemaking. If the timetable is too accelerated initially, it will be detrimental to companies, shareholders and their nominees, and a significant distraction to the SEC staff.

G.20. How should we address the situation where a nominating shareholder qualifies, provides its notice, and submits all of the nominees a company is required to include, then becomes ineligible under the rule? Under what circumstances should a second shareholder or group be able to nominate directors? If the second nominating shareholder or group provided a notice before the first shareholder became ineligible? Should it matter whether a company had notified the second nominating shareholder or group that it intended to exclude their nominee or nominees?

The shareholder nomination process will be expensive and time-consuming for companies and will require extensive use of the Commission's resources. Furthermore,

in Protective's opinion, the timetables contemplated by the Proposed Rule are likely to be very "tight" if a company determines that it may exclude one or more nominees. For these reasons, Protective believes that if a nominating shareholder qualifies, provides its notice, submits all of the nominees that a company is required to include, and then becomes ineligible under the rule, the company should not be required to include either that shareholder's nominees or the nominees of any other shareholder, *unless* the first nominee became ineligible (and the company received notice thereof) before the date that the initial notice of nominations was due (in the Proposed Rule, at least 120 calendar days before the date that the company mailed its proxy materials for the prior year's annual meeting).

L.1. Is an amendment to Rule 14a-9 the appropriate means to assign liability for materially false or misleading information provided by the nominating shareholder or group to the company that is included in the company's proxy materials? If not, what would be a more appropriate means? Should we characterize the disclosure provided to the company by the nominating shareholder or group and included in the company's proxy materials as soliciting material of the nominating shareholder or group, as we proposed in 2003?....

Protective believes that amendment to Rule 14a-9 is the appropriate means to assign liability for materially false or misleading information provided by the nominating shareholder or group to the company that is included in the company's proxy materials, and that the disclosure provided to the company by the nominating shareholder or group, as included in the company's proxy materials, should be treated as soliciting material of the nominating shareholder or group. Protective believes that additional changes should be made to Rule 14a-9, as discussed in Requests for Comment L.2 and L.3.

L.2. Does the language of proposed new paragraph (c) of Rule 14a-9 make clear that the nominating shareholder or group would be liable for any information included in its Schedule 14N or notice to the company that is included in the company's proxy materials? If not, what specific changes should be made to the proposed rule text?

The language of proposed new paragraph (c) of Rule 14a-9 does ***not*** make it clear that the nominating shareholder or group would be liable for any information included in its Schedule 14N or notice to the company that is included in the company's proxy materials. A sentence should be added to the end of such paragraph (c) as follows: "The responsibility and liability for any such statements or omissions shall be imposed solely upon the nominee, nominating shareholder or such nominating shareholder group that is responsible therefore."

L.3. Does the proposal make clear the company's responsibilities when it includes such information in its proxy materials? Should the proposal include language otherwise addressing a company's responsibility for repeating statements that it knows or has reason to know are not accurate? Are there situations where a company should be responsible for repeating statements of the nominating shareholder or group?....

The proposal ***does not*** make clear the company's responsibilities when it includes information provided by a nominee, nominating shareholder or group in its proxy materials. All of the information to be provided by a nominee, nominating shareholder or group is within their scope of knowledge and should be their responsibility, and the rule should explicitly state that this is the case. (Protective notes that all commenters on the 2003 Proposal who addressed this point agreed with this view.) In Protective's opinion, the company should not be responsible for repeating statements that it knows or has reason to know are not accurate unless either (1) the nominee, nominating shareholder or group has agreed to deletion or revision of the statements and the company has published the original statement; or (2) the company has objected to the statements in a "no action" request to the Commission staff, the staff has agreed to (or not objected to) deletion or revision of the statements, and the company has published the original statement.

To make these points clear, the rule should explicitly state that the company is not required or obligated to investigate or assess the accuracy or truthfulness of any information provided by a nominee, nominating shareholder or group. The rule should also explicitly permit a company to include the following statements in its proxy materials regarding the statements in the nominating security holder's notice: (1) the information concerning the nominee was provided by the nominating shareholder and not the company; (2) the company is not required or obligated to investigate or assess the accuracy or truthfulness of any information or statements provided by a nominee, nominating shareholder or group for inclusion in the proxy statement, and (3) the company is not responsible and liable for such information or statements (except in the limited circumstances discussed above).

L.4. Should information provided by nominating shareholders or groups be deemed incorporated by reference into Securities Act, Exchange Act, or Investment Company Act filings? Why or why not?

Information provided by a nominee, nominating shareholder or group ***should not*** be deemed incorporated by reference into Securities Act, Exchange Act, or Investment Company Act filings. As discussed in Request for Comment L.3, such information should be the sole responsibility of the nominee, nominating shareholder or group, and there is no compelling reason to automatically incorporate it into or make it a part of other filings by the company.

L.5. Should information, if incorporated by reference into Securities Act or Exchange Act filings, still be treated as the responsibility of the nominee rather than the company? As proposed, are we creating a disincentive to incorporation by reference?

As noted in Request for Comment L.4, Protective believes that information provided by a nominee, nominating shareholder or group ***should not*** be deemed incorporated by reference into Securities Act, Exchange Act, or Investment Company Act filings. If such information is incorporated by reference into Securities Act, Exchange Act or Investment Company Act filings, it should still be treated as the responsibility of the nominee, nominating shareholder or group rather than the company. Any provision of the rule that states or implies that companies are responsible for information provided by a nominee, nominating shareholder or group or which deems such information to be incorporated by reference will certainly create a disincentive to incorporation by reference.

Protective appreciates the opportunity to comment on the Proposed Rules. Please feel free to contact me if you have any questions.

Very truly yours,

Alfred F. Delchamps, III

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