

United States Senate

WASHINGTON, DC 20510-2202

August 20, 2009

Sent by electronic mail to rule-comments@sec.gov

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

Re: Comments on File Number S7-10-09
Facilitating Shareholder Director Nominations

Dear Ms. Murphy:

The purpose of this letter is to express support for the Securities and Exchange Commission's adoption of proposed Rule 14a-11 and proposed modifications of Rule 14a-8.

Sound corporate governance is built upon the premise that the members of a company's board of directors are accountable to the company's shareholders and responsive to shareholder interests. Yet, for far too long, inadequate proxy access has allowed corporate board members to escape their shareholders' judgment. The consequences of a board of directors that is too insulated from shareholders and too responsive to corporate management include excessive executive pay, questionable accounting practices that mask poor corporate decisions, and high risk activities that inflate short-term executive pay packages rather than promote long-term corporate development. Improving corporate boards is essential to revitalize investor confidence, end short-sighted management decisions, and renew long-term corporate planning.

In 1991, I introduced the Corporate Pay Responsibility Act (S.1198), which, *inter alia*, would have provided shareholders with the right to nominate board members if they owned at least 3% of the voting power or \$1 million in equity in an issuer. Further, those nominations would have been required to be included on the proxy materials. Unfortunately, that bill was never enacted, and Commission proposals over the years to strengthen shareholder nominations were not finalized. In the meantime, the proxy process has become increasingly important in corporate governance, and it has become increasingly expensive for shareholders denied access to proxy materials to wage a proxy battle. Combined, these factors have skewed the playing field ever more against corporate accountability to shareholders.

The current Commission proposal would dramatically improve proxy access for shareholder nominations by allowing shareholders with significant interests to take advantage of the corporate proxy process. Further, under the proposed modifications to Rule 14a-8(i)(8), shareholders would be able to submit proposals to amend corporate governing documents to

ensure the ability to offer shareholder nominations. Together, these proposals would make great strides towards improved accountability of corporate boards.

That said, some modest changes to the proposed rules could further improve their outcomes.

First, the proposal currently limits shareholder nominations to the greater of one director or 25% of the board of directors at a company. While the shareholder nomination process developed by these rules should not be used as a mechanism to effect a change in control of a corporation, these proposed limitations could undermine the efficacy of the process. As a practical matter, it could significantly restrict the pool of potential board members. Further, even if a shareholder-nominated member were elected, the election could result in a token shareholder director unable to obtain even a second for a motion at a board meeting. To keep the talent pool as wide as possible and to prevent the nomination of isolated shareholder-supported directors, the proposed rule could be altered to allow shareholders to nominate the greater of two directors or up to but less than a majority of the directors on the board.

Second, the proposed rules, as currently drafted, would allow the first nomination to be made by a shareholder to take precedence over later nominations. This “first in” approach runs counter to a thoughtful evaluation of potential shareholder nominations and could invite abuse by shareholders seeking to protect their ability to nominate a director or set up strawman nominations in order to allow a subsequent nomination to succeed. To mitigate some of these concerns, a corporation should instead give priority to director nominations made by the largest shareholders or shareholder groups, as those shareholders could be seen as having the greatest stake in the corporation’s future. Including shareholder nominations in proxy materials should be the product of a deliberative process, and not simply a race to file.

Thank you for this opportunity to comment on this important proposal.

Sincerely,



Carl Levin