State of Connecticut

DENISE L. NAPPIER
TREASURER

Hartford

January 19, 2010

Via Email

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

Re: Facilitating Shareholder Director Nominations (File No. S7-10-09)

Dear Ms. Murphy,

As principal fiduciary of the $23.3 billion Connecticut Retirement Plans and Trust Funds ("CRPTF"), I am writing to provide supplemental comment on the Commission's Proposed Rule *Facilitating Director Nominations* (the "Proposed Rule"). As I stated in my comment letter dated August 17, 2009,[1] I strongly support the Proposed Rule as an effective means of enhancing corporate boards' accountability to shareholders and increasing investor confidence in our markets.

The Commission is seeking supplemental comments concerning several papers submitted during the initial comment period.

I am aware that the Commission may consider amending the proposed rule by permitting companies to "opt-out" of or requiring companies to "opt-in" to the proxy access procedure through a shareholder vote of some kind. I strongly oppose this approach (private ordering) since I believe it would undermine both the intent and the implementation of the proxy access process. The principle of private ordering may work well among parties (shareholders and publicly-held companies) with equal positions or power. With respect to shareholder access to the ballot, the balance of power is decidedly skewed in favor of the publicly-held companies. At one point in history, dissatisfied shareholders had the option of selling shares and investing elsewhere. In this day and age of long-term investing in well diversified global portfolios, this option is impractical, if not imprudent.

[1] Comment letter is available at http://www.sec.gov/comments/s7-10-09/s71009-210.pdf.

Attached are my supplemental comments on the Proposed Rule on the issues outlined above. I would also like to associate myself with the comments submitted by the Council of Institutional Investors, of which I am a member.

I urge the Commission to adopt the Proposed Rule, with the minor changes set forth in my earlier comment letter.

I appreciate the opportunity to express my views to the Commission on this important initiative. If you have any questions, please do not hesitate to contact Meredith Miller, Assistant Treasurer for Policy, at (860) 702-3294 or meredith.miller@ct.gov.

Sincerely,

Denise L. Nappier

Denise L. Nappier
Treasurer

Supplemental Comments of Connecticut State Treasurer
Denise L. Nappier
Facilitating Shareholder Director Nominations (File No. S7-10-09)

The new materials on which the Commission has sought comment do not call into question the core principles behind my support of the Proposed Rule. Shareholders' power to nominate and elect directors who will vigorously and faithfully represent their interests is of critical importance. The current system of proxy regulation frustrates the exercise of this power and leaves boards less accountable to shareholders. The Proposed Rule strikes the appropriate balance: it would facilitate nominations by long-term significant shareholders—whose nominees would need to garner support from a large proportion of shareholders—but would not introduce excessive cost or disruption into the system. Accordingly, I urge the Commission to adopt the Proposed Rule, with the minor changes set forth in my earlier comment

The piece by NERA, Economic Consulting, "Report on Effects of Proposed SEC Rule 14a-11 on Efficiency, Competitiveness and Capital Formation, in Support of Comments by Business Roundtable," rather than presenting any new data or analysis, is no more than a rehash of arguments made by opponents of proxy access: existing mechanisms are adequate for shareholders, proxy access will lead to poorer firm performance and less capable boards and proxy access will impair the competitiveness of the U.S. markets, to name a few. Commenters favoring access have already addressed these issues at some length.

The exact significance of the Business Roundtable's ("BRT's") submission of the study by Andrea Beltratti and Rene M. Stulz, "Why Did Some Banks Perform Better During the Credit Crisis," is not clear because the BRT simply submitted the study without further elaboration. The Beltratti & Stulz study purports to find that banks with more "shareholder-friendly" boards underperformed banks with less "shareholder-friendly" boards during the crisis period. "Shareholder-friendliness" is determined by reference to constructed subindices of Riskmetrics Group's Corporate Governance Quotient (CGQ) reflecting board attributes, audit function attributes, compensation policy attributes and takeover restrictions.

Possibly, the BRT believes that the Beltratti & Stulz study proves that "shareholder-friendliness" harms firm value and that the Proposed Rule would increase "shareholder-friendliness" at all companies in the U.S. public markets. But the 44 governance factors used in rating shareholder-friendliness bear no clear relationship to proxy access. For example, a more "independent" board—one of the factors used by Beltratti & Stulz--may be viewed as better than a less independent one by shareholders and influential advisors, but at the end of the day nearly all independent directors are nominated by the incumbent board. For that reason, board independence does not necessarily increase board accountability. Proxy access, by contrast, would facilitate the nomination of directors by shareholders. Other factors, such as the presence of takeover defenses and the role of auditors, are even further afield from proxy access. Accordingly, I do not believe that the Beltratti & Stulz study furnishes evidence that proxy access would lead to underperformance.

Finally, the study sponsored by the Council of Institutional Investors (CII) and Shareowner Education Network (SEN), "The Limits of Private Ordering: Restrictions on Shareholders' Ability to Initiate Governance Change and Distortions of the Voting Process," only strengthens my conviction that using a private ordering approach to proxy access would be a mistake. Allowing companies to opt-out of proxy access, or requiring them to opt-in, is inconsistent with the mandatory nature of our securities regulation, which creates a market-wide disclosure floor. Of course, companies may go beyond the required minimum, but in no other area do the Commission's rules allow companies—with or without shareholder approval—to decide not to be bound, or to be bound on different terms.

Further, as the CII/SEN study shows, a private ordering approach would leave out shareholders at a significant proportion of U.S. companies. In my view, a company where shareholders cannot amend the bylaws may well benefit more from having a shareholder-nominated candidate on its board than a company where holders of a majority of shares can amend bylaws; under private ordering, perversely, shareholders of the first company would face substantial obstacles in promoting the reform. In addition, as I stated in my earlier comment letter, because the Connecticut Retirement Plans and Trust Funds (CRPTF) is an extremely well-diversified institutional investor, a private ordering approach would create a great deal of additional complexity.