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Comment Letter – Empirical Evidence on the Costs of Impediments to Director Removal

January 19, 2010

VIA E-MAIL
Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
rule-comments@sec.gov

Re: File No. S7-10-09
Release No. 33-9086
Facilitating Shareholder Director Nominations

Dear Ms. Murphy:

I welcome the additional opportunity to provide comments on the Securities and Exchange Commission's proposal, *Facilitating Shareholder Director Nominations*; Proposed Rule; Release No. 34-60089, 74 Fed. Reg. 29,024 (2009).[1]

[1] I am submitting this comment in my individual capacity; my institutional affiliation is indicated for identification purposes.

In response to the proposal, I would like to draw the attention of the Commission to a significant body of empirical work indicating that reducing incumbent directors' insulation from removal is associated with improved value for shareholders. In particular, I would like to add to the record the following empirical studies:

1. Paul Gompers, Joy Ishii & Andrew Metrick, *Corporate Governance and Equity Prices*, 118 Q.J. ECON. 107, 136–37 (2003), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=278920 .

2. Lucian A. Bebchuk & Alma Cohen, *The Costs of Entrenched Boards*, 78 J. FIN. ECON. 409, 430 (2005), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=556987 .

3. Olubunmi Faleye, *Classified Boards, Firm Value, and Managerial Entrenchment*, 83 J. FIN. ECON. 501, 503 (2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=877216 .

4. Re-Jin Guo, Timothy A. Kruse & Tom Nohel, *Undoing the Powerful Anti-Takeover Force of Staggered Boards*, 14 J. CORP. FIN. 274, 275 (2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=891534 .

5. Lucian Bebchuk, Alma Cohen & Allen Ferrell, *What Matters in Corporate Governance?*, 22 REV. FIN. STUDS. 783, 785 (2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=593423 .

The above studies indicate that arrangements making it difficult to remove directors are associated with lower firm value, poorer operating performance (including lower profit margins, return on equity, and sales growth), worse acquisition decisions, lower sensitivity of compensation to performance, and lower sensitivity of CEO turnover to performance.[2] On the whole, the above body of empirical evidence provides strong support for the view that reducing the extent to which directors are insulated from removal would be value-enhancing.

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[2] I am aware of only one study identifying a beneficial aspect of arrangements making it difficult to replace directors – the study by Bates, Becher and Lemmon, *Board Classification and Managerial Entrenchment: Evidence from the Market for Corporate Control*, 87 J. FIN. ECON. 656 (2008), which reports that staggered boards are associated with higher takeover premia. Even this study, whoever, shows that staggered boards are associated with a lower likelihood of an acquisition and, more importantly, it confirms that, overall, staggered boards are associated with lower firm value.

In case any additional information about this body of empirical evidence could be useful in any way to the deliberations of the Commission or the staff, please contact me at the above email or phone number.

Sincerely yours,

Lucian Bebchuk

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Lucian A. Bebchuk

cc: Chairwoman Mary L. Schapiro
Commissioner Luis A. Aguilar
Commissioner Kathleen L. Casey
Commissioner Troy A. Paredes
Commissioner Elisse B. Walter
Division of Corporation Finance Director Meredith B. Cross