Jack Ehnes
Chief Executive Officer

CALSTRS
HOW WILL YOU SPEND YOUR FUTURE?

California State Teachers'
Retirement System
7667 Folsom Boulevard
Post Office Box 15275
Sacramento, CA 95851-0275

916.229.3706 Tel
www.calstrs.com

October 2, 2007

Via Email: rule-comments@sec.gov
Via U.S. Postal Service Certified Mail

Ms. Nancy M. Morris
Secretary, U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File Numbers S7-16-07 and S7-17-07

Dear Secretary Morris:

I am writing this letter on behalf of the California State Teachers' Retirement System (CalSTRS). As you are aware, CalSTRS is the second largest public pension fund system in the United States and the largest teacher retirement system in the United States. At our fiscal year end on June 30, 2007, our assets were valued at $170 billion and we represented 800,000 beneficiaries and plan participants. CalSTRS has long had an interest in the communication between shareholders and the directors and the managements that they hire to run its portfolio companies.

We are disappointed that the Securities and Exchange Commission ("SEC") and Chairman Cox in particular have chosen to roll back the meaningful and beneficial dialog that shareholders have had with boards of directors and executive management over the last several years. A little over three years ago, when Chairman Cox took the oath of office administered by Alan Greenspan, investors were hopeful that the SEC would continue its long-established mission of serving investors. Indeed, we had the Chairman's own words of assurance: "Ladies and gentlemen, the Department of Commerce serves our country's businesses. *We are the investors' advocate*..." Both proposed rules, S7-16-07 and S7-17-07, greatly undercut those assurances and seem to reveal an agency that has thrown overboard its mission to serve investors, and has adopted instead a policy of promoting the interests of corporate management at the expense of shareholders, who are, after all, the providers of capital in these corporations. Rather than serving as the "investors' advocate" through the promulgation of these rules, the Commission serves merely as a mouthpiece of management, wholly ignoring the interests of shareholders and the investing public. Yet the shareholders are the ones who ultimately pay the costs for the integrity of the market system, whether in market value losses or governance failures. Shareholders have not forgotten the lessons of the early part of this decade and one of the most important lessons learned is that governance is a

significant risk factor when investing in public securities; a risk factor that requires the same steps to mitigate as we do in all other facets of investing.

The procedure by which directors are elected at United States corporations has long been a subject of considerable criticism. Due to the costs associated with running an independent proxy solicitation, director candidates are almost always nominated by incumbent management. Shareholders historically have had no meaningful voice in the nomination process, and little choice in voting their shares. "Proxy access," *i.e.*, the publication by a corporation of director candidates nominated by shareholders, has long been a goal for shareholders seeking to have a meaningful choice in exercising their right to vote – the most fundamental right of the shareholder franchise. But whether proxy access is a good idea or a bad idea is an issue that should not be resolved by the Commission, especially in its present form, but should be left to individual companies to decide. CalSTRS has enjoyed remarkable success in the one instance where it participated in the nomination process of a director at a public company, Move, Incorporated, formerly known as Homestore.com. We were commended by both a large private equity investor and the Chairman of Move, for our long-term interest in the health of the asset. This event and other examples of companies that have adopted proxy access make it clear that even companies believe that there are instances when this tool is appropriate for shareholder use.

CalSTRS strongly supports providing greater communication routes between the boards of directors and executive managements that the boards engage to manage our portfolio companies. We believe that proposals that concern this increased communication should be permitted with only the bare minimum of restrictions. In this regard, both proposed rules are counterproductive. The competing rules, S7-16-07 and S7-17-07, seek to resolve the "proxy access" debate by edict, albeit with different results. S7-17-07 would implement a new "interpretation" of Rule 14a-8(i) (8) that would expressly forbid shareholders from making any proposal that would advocate the adoption of "proxy access" procedures for any company. S7-16-07, on the other hand, would permit "proxy access" proposals under a very limited set of circumstances. But the restrictions contemplated by S7-16-07 are onerous and unworkable, and would render meaningless whatever right the proposed rule is supposed to impart. This comment letter is quite long and for ease of reading I have summarized CalSTRS' position on these two proposed rules immediately below.

Summary of CalSTRS' Position on S7-17-07:

CalSTRS is opposed to this amendment and we urge the Commission to reject these substantive and damaging changes. We also believe the Commission's basis for the guidance provided in the release is flawed, and inconsistent with the best interests of shareholders as well as companies. It should be summarily rejected. In this context, it would be more appropriate for the Commission to take the following actions:

1) rectify any "uncertainty" regarding whether a proposal related to election procedures may be excluded by *rejecting* the proposed rule and clarifying that election procedures are not equal to a contested election; and
2) adopting disclosure requirements under the proposed amendments in File S7-16-07 regarding the candidate and nominating shareholder (related to shareholder nominated candidate) in a manner consistent with traditional proxy contests.

Summary of CalSTRS' Position on S7-16-07:

CalSTRS believes the combination of a high ownership threshold and onerous disclosure requirements effectively gut the usefulness of the proposal. These provisions appear to ignore the fact that a shareholder proposal is just that, a proposal that must be approved by at least a majority of the company's owners to be implemented. The onerous requirements placed on shareholders to submit a proposal are inconsistent with a view that the market, meaning the owners of a company collectively, are best suited from an economic and alignment perspective to make significant policy decisions regarding election procedures.

CalSTRS recommends the following in response to the Commission's request for comment:

- The proposed ownership threshold is lowered to a 1 to 3 % range, as the proposed 5% represents too significant a barrier for submitting a shareholder proposal.
- The ownership threshold does not need to be adjusted for company size as long as the high proposed 5% threshold is lowered.
- The proposed requirement that a shareowner (or group) be eligible and file a 13G be removed. CalSTRS supports minimal disclosure requirement for shareholders or groups submitting access proposals, and we believe appropriate disclosure of the shareholder and ownership can be provided in conjunction with the proposal rather than on a separate form.
- CalSTRS supports a one-year holding period requirement as proposed. It is appropriate to apply this holding period requirement to each member of a group aggregating holdings to meet the threshold ownership.

Shareholder Proposals Relating to the Election of Directors, File Number S7-17-07

The Commission has asked for comment on whether it would be appropriate to amend Rule 14a-8(i)(8) to further "clarify" the meaning of its exclusion. The text of Rule 14a-8(i)(8) currently specifies only that a proposal may be excluded if the proposal relates to an election for membership on the company's board of directors or analogous governing body. The Commission is proposing to amend the language in 14a-8(i)(8) to read:

> *If the proposal relates to a nomination or an election for membership on the company's board of directors or analogous governing body or a procedure for such nomination or election.*

CalSTRS is opposed to this amendment and we urge the Commission to reject these substantive and damaging changes. We also believe the Commission's basis for the guidance provided in the release is flawed, and inconsistent with the best interests of shareholders as well as companies.

First, the Commission repeatedly equates a shareholder proposal related to proxy access as relating to a contested election. But this argument makes no sense. Rule 14a-8(i)(8), in its present form, already precludes shareholders from running slates or nominating directors by merely submitting a proposal under Rule 14a-8. We agree that 14a-8 is not the proper means for conducting proxy campaigns, and support exclusion of proposals in this narrow context. However, proposals related to election procedures are not contested campaigns, and we believe the Commission's tenuous link between proposals and the potential for a contested election is insufficient to merit exclusion.

Second, the fundamental basis for the Commission's proposed "interpretation" is flawed. Referring to the Second Circuit's decision in *American Federation of State, County & Municipal Employees, Employees Pension Plan v. American International Group, Inc.*, (*AFSCME*)[1] the Commission would justify its new "interpretation" of Rule 14a-8(i)(8) as follows: "We are concerned that the Second Circuit's decision has resulted in uncertainty and confusion with respect to the appropriate application of Rule 14a-8(i)(8) and may lead to contested elections for directors without adequate disclosure." This purported concern is not well taken and in fact was addressed by the Second Circuit in the *AFSCME* decision. As the *AFSCME* Court observed, if a company publishes the name of a director candidate nominated by shareholders, the company will be required to comply with all of the disclosure requirements applicable to that candidate.[2] There is, therefore, no justifiable "concern" for a lack of disclosure simply by reason of the fact that a director candidate may have been nominated by shareholders.

---

[1] 462 F.3d 121 (2d Cir. 2006)

[2] 462 F.3d at 130 n.9 ("As AFSCME points out, if shareholders were to adopt a proxy access bylaw, and if, subject to that bylaw, the company included certain shareholder-nominated candidates in the company's proxy statement, the company's entire proxy, including those portions dealing with shareholder-nominated candidates, would be subject to all of the existing proxy solicitation rules. To be sure, if the shareholders did not subsequently solicit proxies in favor of the candidates they nominated, and therefore there was no solicitation in opposition to the company's solicitation, then no party (neither the nominating shareholder nor the company) would be obligated to make the disclosures required by Rule 14a-12(c). However, it is unclear what disclosures required by Rule 14a-12(c) would not already be made by the company under the other proxy rules to which its proxy solicitation would be subject.")

Third, because there are no justifiable disclosure concerns, the only apparent reason for the Commission to adopt an "interpretation" that would bar shareholders from introducing proposals that would establish *internal procedures* by which the companies *they own* will conduct director elections is to discriminate against director candidates based *not* on what disclosures may be provided to the corporation's shareholders, but upon the identity of the individual who nominated the candidate. In other words, the only justification for the Commission's adoption of the "interpretation" set forth in S7-17-07 is that it simply disfavors shareholder-sponsored candidates

And in this regard, any decision by the Commission to make it more difficult for one kind of candidate to be elected simply because of who nominated that individual for election would well exceed the Commission's statutory authority. "That proxy regulation bears almost exclusively on disclosure stems as a matter of necessity from the nature of proxies. Proxy solicitations are, after all, only communications with potential absentee voters. *The goal of federal proxy regulation was to improve those communications and thereby to enable proxy voters to control the corporation as effectively as they might have by attending a shareholder meeting*." *Business Roundtable v. S.E.C.*, 905 F.2d 406 (D.C. Cir. 1990) (emphasis supplied). The Exchange Act, quite simply, does not permit the Commission to adopt rules that are deliberately designed to *inhibit* shareholders' ability to freely exercise their right to vote. Yet by permitting the exclusion of "proxy access" proposals simply because it might result in corporations publishing the names of candidates nominated by shareholders, this is exactly what the Commission is doing.

Any "uncertainty" created in the wake of the Second Circuit's decision has *not* resulted from the decision itself, but from certain members of the business community complaining that the historically inconsistent interpretation advanced by the Division of Corporation Finance should be formally adopted. Yet the Division's interpretation, which was by its terms unofficial and nonbinding, was flatly rejected by the Second Circuit based on its own reading of the federal securities laws. That members of the business community were unhappy with the Second Circuit's decision does not render the Court's decision in any respect "uncertain."

The proposal contained in S7-17-07 is fatally flawed, contrary to the Commission's statutory authority, and contrary to Commissioner Cox's commitment to ensure that the SEC functions as the "investors' advocate." It should be summarily rejected. In this context, it would be more appropriate for the Commission to take the following actions: 1) rectify any "uncertainty" regarding whether a proposal related to election procedures may be excluded by *rejecting* the proposed rule and clarifying that election procedures are not equal to a contested election; and 2) adopting disclosure requirements under the proposed amendments in File S7-16-07 (above) regarding the candidate and nominating shareholder (related to shareholder nominated candidate) in a manner consistent with traditional proxy contests.

Shareholder Proposals and Electronic Shareholder Communications, File Number S7-16-07

Section II. A. 2.
Proposed amendments to rule 14a-8(i)(8) concerning bylaw amendments on procedures for shareholder nominations of directors.

CalSTRS is strongly supportive of providing greater ability for shareholders to nominate directors for election to corporate boards utilizing the company's proxy material. We believe the ability to sponsor shareholder proposals suggesting election procedures, such as the so-called access proposal, is distinct from a contested election. In this regard, CalSTRS supports the premise behind the proposal set forth in S7-16-07. However, the specific proposals contained in S7-16-07 would impose onerous and unworkable requirements on shareholders to sponsor proposals.

The Commission has proposed the following specific requirements:

> *The Shareholder (or group of shareholders) that submits the proposal must be eligible to file a schedule 13G, which must include specified public disclosures regarding its background and its interaction with the company.*
> *The proposal must be submitted by a shareholder (or group of shareholders) that has continuously beneficially owned more than 5% of the company's securities entitled to be voted on the proposal at the meeting for at least 1 year by the date the shareholder submits the proposal.*

CalSTRS believes the combination of a high ownership threshold and onerous disclosure requirements effectively gut the usefulness of the proposal. These provisions appear to ignore the fact that a shareholder proposal is just that, a proposal that must be approved by at least a majority of the company's owners to be implemented. The onerous requirements placed on shareholders to submit a proposal are inconsistent with a view that the market, meaning the owners of a company collectively, are best suited from an economic and alignment perspective to make significant policy decisions regarding election procedures.

CalSTRS recommends the following in response to the Commission's request for comment:

- The proposed ownership threshold is lowered to a 1 to 3 % range, as the proposed 5% represents too significant a barrier for submitting a shareholder proposal.
- The ownership threshold does not need to be adjusted for company size as long as the high proposed 5% threshold is lowered.
- The proposed requirement that a shareowner (or group) be eligible and file a 13G be removed. CalSTRS supports minimal disclosure requirement for shareholders or groups submitting access proposals, and we believe appropriate disclosure of the

shareholder and ownership can be provided in conjunction with the proposal rather than on a separate form.

- CalSTRS supports a one-year holding period requirement as proposed. It is appropriate to apply this holding period requirement to each member of a group aggregating holdings to meet the threshold ownership.

We do not believe instances when a shareholder may acquire shares with the intent to propose a bylaw amendment (related to access or other issues) constitutes intent to influence control of the company. Again, we strongly believe that submitting a proposal is separate and distinct from submitting director nominations, and should not be burdened with the same disclosure and reporting requirements. We are sympathetic to distinctions between proposals calling for shareholder access to nominate a short slate versus a potential control slate. It is our preference that shareholder access proposals be limited to proposals to suggest procedures for nominating only a short slate.

Communications between any number of shareholders seeking partnership to satisfy threshold ownership requirements should not trigger any reporting requirements. Rather, shareholders submitting a proposal related to access should be required to disclose the name of the institution or individuals in the group, and the holdings of each member satisfying the holding period and ownership requirements. We strongly believe shareholders will support the proposal based on the merits and the company's circumstances, and the additional disclosures proposed by the Commission are onerous and not meaningful in deciding the course of a vote.

Section II. A. 3.
Proposed disclosure requirements related to shareholder proponents and nominating shareholders:

CalSTRS is a major institutional investor, and we have a well developed, respected corporate governance program. A major component of our program includes voting proxies for our domestic and international portfolios. On average, CalSTRS votes approximately 3,000 proxies and over 7,000 issues per year. In fact, CalSTRS is far more "active" in voting proxies than submitting proposals as voting proxies is a daily responsibility. By comparison, we submit on average approximately four proposals per year. Many of these are withdrawn after conversations are conducted with the companies involved.

We believe the Commission's rationale for proposing onerous disclosure requirements on shareholder proponents is flawed. The Commission states the information (proposed requirements) "includes background information on the shareholder proponent that other shareholders ordinarily would find to be important and relevant to a decision when asked to consider a proposed bylaw amendment setting forth procedures for director nominations." As a major institutional shareholder with a fiduciary duty to vote our proxies in the best interests of our beneficiaries, let us assure you that our decisions are based on the merits of the

proposal and the circumstances at the company, not the background information of who submitted the proposal or the other superfluous information the Commission proposes to require.[3]

[3] The Commission has proposed the following specific requirements:

Any shareholder (or group of shareholders) that forms any plans or proposals regarding any amendment to the company's bylaws concerning shareholder director nominations, file or amend Schedule 13G to include:

The shareholder proponent's relationship with the company, which includes:

- *any direct or indirect interest in any contract with the company;*
- *any pending or threatened litigation involving the company in which the shareholder is a party or material participant;*
- *any other material relationship between the shareholder and the company;*
- *any material transaction between the shareholder and the company during the 12 months preceding the submission of the proposal; and*
- *any discussion regarding the proposal between the shareholder and a proxy advisory firm during the 12 months preceding the submission of the proposal.*
- *Disclosure of any holdings of more than 5% of the securities of any competitor of the company, and any material relationship with a competitor other than as a security holder;*
- *if the proponent is not a natural person, the identity of the natural person associated with the entity responsible for the formation of any plans or proposals;*
- *the manner in which such persons were selected, including a discussion of whether or not equity holders or beneficiaries played a role in the decision;*
- *any fiduciary duty to the equity holders or other beneficiaries of the entity the person or persons associated with the entity responsible for the formation of plans or proposals have in forming such plans or proposals;*
- *the qualifications and background of such person or persons relevant to the plans or proposal;*
- *any interests or relationships of such person or persons, and of the entity, that are not generally shared by the other shareholders of the company and could have influenced the decision by such person or persons and the entity to submit a proposal;*
- *Disclosure regarding any meetings or contacts, including direct or indirect communication by the shareholder proponent, with management or directors of the company that occurred during the12 month period prior to the formation of any plans or proposals, or during the pending of any proposal. This includes:*
- *a description of the content of such direct or indirect communication;*
- *a description of the action or actions sought to be taken or not taken;*
- *the date of the communication;*
- *the person or persons to whom the communication was made;*
- *whether that communication included any reference to the possibility of such a proposal; and*
- *any response by the company or its representatives to that communication prior to the date of filing the required disclosure;*

- *Additional relevant background information on the shareholder proponent, including:*

CalSTRS believes the proposed level of required disclosures is inappropriate, and would place significant undue burden on shareholders and companies, while providing no useful information supporting investors' decision making process related to the proposal.

CalSTRS would support disclosure of the proponent and the proponent's (or group) holdings within the proposal. We do not believe a separate form or disclosure process is necessary for submitting a shareowner proposal of any kind.

Disclosure by nominating shareholders.

As previously noted, CalSTRS believes the act of submitting a shareholder proposal is distinct from nominating a director under a shareholder access procedure. Accordingly, we believe it is appropriate to provide disclosure regarding the candidate and nominating shareholder in a manner consistent with traditional proxy contests. We do not believe the additional, burdensome disclosures, as proposed, are appropriate or meaningful in the decision making process.

> *The Commission is proposing Rule 14a-17, which would provide that the existing disclosure requirements for solicitations in opposition (either for a short*

- *if the proponent is a natural person, the qualifications and background of such person or persons relevant to the plans or proposal; and*
- *any interests or relationships of such person or persons, and of the entity, that are not generally shared by the other shareholders of the company and could have influenced the decision by such person or persons and the entity to submit a proposal.*

Companies would also be required to disclose the nature and extent of the relationship between the shareholder proponent, any affiliate, executive officer or agent of the shareholder proponent, or anyone acting, or agreeing to act, in concert with the shareholder proponent with respect to the proposed bylaw amendment. These disclosure requirements are largely duplicative of the requirements proposed for the shareowner proponent, and include:

- *any direct or indirect interest of the shareholder proponent in any contract with the company or any affiliate of the company;*
- *any pending or threatened litigation in which the shareholder proponent is a party or material participant;*
- *any other material relationship between the shareholder proponent and the company or any affiliate of the company not otherwise disclosed;*
- *any material transaction of the shareholder proponent with the company or any affiliate of the company in the preceding 12 months; and*
- *any meetings or contact between the shareholder proponent and management or directors of the company.*

> *slate or a majority of board seats) would apply to nominating shareholders and their nominees under any shareholder nomination procedure*.

CalSTRS supports this provision to the degree it provides symmetry with existing disclosure rules, and provides similar disclosures in cases of either a traditional proxy contest or shareholder access candidate. We do not support additional disclosures proposed related to the proponent of the access proposal, or the application of those disclosures on the nominating shareholder. The additional information (meaning the information proposed beyond the current disclosures in any proxy contest, or 14a-17(b)) proposed by the Commission is not needed for investors to make an informed decision, and places significant additional burden on nominating shareholders.

Section II. B.
Electronic shareholder forums

CalSTRS is generally supportive of the Commission's goal to facilitate greater online interaction among shareholders and between shareholders and companies. We support the Commission's effort to remove obstacles to the development of shareholder forums.

However, CalSTRS believes electronic forums, while they have great potential, are not a substitute for the existing proxy rules and process. As such, electronic forums should be considered supplemental to the existing proxy process, and not as a means to reduce or eliminate shareholder's ability to submit proposals, gain access to the proxy, or nominate candidates.

We believe the Commission's proposal related to electronic forums provides adequate flexibility to deal with a broad array of topics, and offers the opportunity for non-binding referenda of forum participants. It is clear within the proposal that the company or shareholder who establishes and maintains the forum will not be liable for any statements or information provided by another person. Clearly, this is fundamental if electronic forums are to succeed.

CalSTRS supports the proposed exemption for solicitations on an electronic forum. We suggest, consistent with our view that forums are supplemental to the proxy process, that they be shut down during a short period prior to an annual or special meeting. We believe the complications of policing forums and the potential for unregulated solicitations may impede the development of this tool. We recognize that as forums develop this may be an issue the Commission should reconsider. However, in the developmental stage, we believe it is best to keep the forums simple and straightforward, and removing the onus of this as a solicitation tool is consistent with this view.

Section II. C
Request for comment on proposals generally

The Commission is requesting comment on whether a company or its shareholders should have the ability to propose and adopt bylaws that would establish the procedures that the company will follow for including non-binding proposals in the company's proxy materials.

CalSTRS is opposed to this concept. We believe one of the strengths of the current 14a-(8) rules are that they provide at least some degree of consistency in the proxy process. While the rule is clearly challenging for the SEC staff to manage, we believe the process works generally well, and has been a net benefit to the U.S. corporate governance system. By contrast, the concept of increasing the ability of companies, and shareholders, to set varying standards for non-binding proposals will reduce consistency and unnecessarily increase the complexity of non-binding proposals. Non-binding proposals play a vital role in an investor's relationship with and oversight of portfolio companies. These proposals are a minimally intrusive means of facilitating input on key governance issues affecting the long-term value of our investments. We do not believe companies would favor having investors rely more heavily on binding proposals, and we believe this would increase the tension between companies and owners, not decrease it.

Clearly, the Commission's proposed rule regarding access proposals includes a great degree of flexibility in the details of an access procedure, which may result in a variety of nomination procedures. CalSTRS would prefer greater consistency in nomination procedures that result from access proposals under the Commission's proposed rule; however, we recognize the limitations of the Commission in this regard.

The Commission also asks for comment regarding whether a company should be able to adopt a bylaw that establishes a procedure for non-binding proposals that supersedes the operation of Rule 14a-(8). CalSTRS would oppose any proposal to provide greater flexibility for companies to unilaterally adopt provisions limiting non-binding proposals. We do not believe companies taking such action would be deemed to comply with Rule 14a-8.

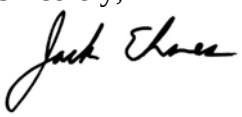
* * *

Any substantive changes to Rule 14a-8 should be carefully considered and not rushed through the Commission at a time when the membership of the Commission is in a state of flux. Many of the substantive changes in the proposed rules and discussed above, if adopted, would suspend the existing rules and assign shareholders to being no more than sources of funds for corporations with no possibility for meaningful communication. We do not believe that such enormous changes should be decided during a time when the SEC is decidedly partisan and resistant to shareholder and investor interests. The Commission will soon be down to only

four members, three Republicans and one Democrat. Further, it has been reported that the lone democrat will be leaving the Commission shortly after Commissioner Campos leaves and that means a three-person Commission. Surely, the makeup that Congress put in place was designed to have the benefit of argument from both sides of the aisle and that is not possible in the current formation. We believe that the Commission should refrain from taking any action on these proposals until the Commission has a full body. Indeed, it would be unfortunate if certain partisan interests see the current transition in membership of the Commission as an opportunity to push through radical amendments designed to impair the interests of shareholders. Such action would only serve to compromise the integrity of the Commission itself and raise significant doubt among the investing public regarding whether the Commission still sees itself as the "investors' advocate," or whether it has chosen a new role significantly adverse to shareholder concerns.

Thank you for the opportunity to comment on this matter.

Sincerely,



Jack Ehnes
Chief Executive Officer