

June 30, 2009

VIA E-MAIL

Ms. Elizabeth M. Murphy
Secretary
U.S. 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:

The Securities and Exchange Commission (the “Commission”) recently 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”). *See* Facilitating Shareholder Director Nominations; Proposed Rule; Release No. 34-60089, 74 Fed. Reg. 29,024 (2009) (the “Release”).

The Release gives interested parties 60 days from publication in the Federal Register to comment on the Proposed Rules, with comments due by August 17, 2009. This letter is submitted by the organizations listed below to request that the Commission extend the comment period on the Proposed Rules by at least 30 days. As discussed below, the abbreviated 60-day period does not provide sufficient opportunity for the many companies, organizations and other stakeholders that would be impacted by the Proposed Rules to adequately assess and provide thoughtful commentary on the many significant, complex issues raised in the Release, including the more than 500 questions and requests for data and information. The complexity of the Proposed Rules and requests for comment are demonstrated by the fact that the Commission approved the Proposed Rules at an open meeting on May 20, 2009, but the Proposed Rules were not published in the Federal Register until June 18, 2009 – almost one month after the Commission’s open meeting.

As the Release indicates, the Commission previously has considered amendments to the proxy rules and regulations addressing proxy access in 1942, 1977, 1980, 1992, 2003 and 2007. Each of these considerations, including the Proposed Rules, have raised 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. This illustrates not only the significance of the issues raised by the Proposed Rules, but also the substantial record for the public to review and consider before submitting comments on the Proposed Rules. In fact, the Release extensively cites the 2003 rulemaking record.

The 60-day comment period also is insufficient given that the Commission's requests for comments, data and information in the Release will necessitate considerable effort by commenters. For example, the Commission requests comments on proposed eligibility thresholds and possible triggers, the mechanics of proposed Rule 14a-11 and how often shareholders satisfying the proposed Rule 14a-11 thresholds would invoke the rule, as well as quantitative data on the benefits and costs of enhanced shareholder access to company proxy materials and the costs to companies if Rule 14a-8(i)(8) were amended as proposed.

Further, the Release does not include important data or provide a detailed analysis of many issues implicated by the Proposed Rules. Instead, the Commission has shifted the burden of data collection and analysis to the public in many respects. For example, in order to determine some of the costs of adopting the Proposed Rules, the Commission explicitly relies on survey data collected by the Business Roundtable and the Society of Corporate Secretaries and Governance Professionals and submitted in comment letters on the Commission's 2003 proposed proxy access rules. *See* 74 Fed. Reg. at 29,065 & n.311. In order to update this data, commenters will need to once again engage in detailed survey research that takes some time to complete. Similarly, the Release contains extensive references to the analysis and commentary submitted in response to the 2003 proposing release but does not address how the value of this material has been affected by the sea change in corporate governance that has occurred in the last six years.

Moreover, as member organizations with significant interest in the Proposed Rules, we believe the Commission's short 60-day comment period during July and August presents a challenge. While we are particularly well-suited to gather the data and information requested in the Release and to consider thoroughly the myriad of questions raised, it is more difficult to do so over the summer months given member travel schedules and vacation plans. For example, many of our organizations do not meet during July and August, and the responsiveness of our members to surveys and data requests during these months is likely to be lower.

Accordingly, the current 60-day comment period is inadequate under the Administrative Procedure Act ("APA"), 5 U.S.C. § 553(c), and does not provide an opportunity for thorough, well-informed rulemaking in this important area. Interested parties cannot consider and respond meaningfully to all of the questions posed by the Commission within 60 days. *See, e.g., Estate of Smith v. Bowen*, 656 F. Supp. 1093, 1097-99 (D. Colo. 1987) (finding a 60-day comment period to be inadequate where interested parties did not have enough time to consider and comment on the "details" of a proposed rule).

The APA requires the Commission to provide notice of a proposed rulemaking "'adequate to afford interested parties a reasonable opportunity to participate in the rulemaking process.'" *MCI Telecomm. Corp. v. FCC*, 57 F.3d 1136, 1140 (D.C. Cir. 1995) (quoting *Florida Power & Light Co. v. United States*, 846 F.2d 765, 771 (D.C. Cir. 1988)). The notice of a proposed rulemaking is not sufficient where it does not "afford[] interested parties a reasonable opportunity to participate in the rulemaking process." *Am. Radio Relay League v. FCC*, 524 F.3d 227, 236 (D.C. Cir. 2008) (internal quotation marks and citations omitted). Moreover, the length of a comment period must enable "interested parties to comment meaningfully." *Florida Power*, 846 F.2d at 771. This requirement is designed "both (1) 'to reintroduce public

participation and fairness to affected parties after governmental authority has been delegated to unrepresentative agencies’; and (2) to assure that the ‘agency will have before it the facts and information relevant to a particular administrative problem.’” *MCI*, 57 F.3d at 1141 (quoting *National Ass’n of Home Health Agencies v. Schweiker*, 690 F.2d 932, 949 (D.C. Cir. 1982)). These principles are compromised where, as here, a comment period is too short to permit interested parties to provide meaningful comment and to supply the extensive information the agency itself has requested.

Under these circumstances, the APA and principles of sound public administration dictate that the Commission extend the comment period on the Proposed Rules. The Commission has been evaluating the proxy access issue periodically for more than 60 years. There would be no harm, and would be great public benefit, in allowing the public at least an additional 30 days to respond to its current proposal. In this regard, the Release contains no reference to an effective date for the Proposed Rules.

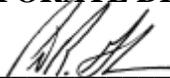
Sincerely,

BUSINESS ROUNDTABLE

By: 

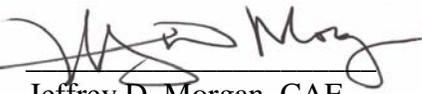
John J. Castellani
President

NATIONAL ASSOCIATION OF CORPORATE DIRECTORS

By: 

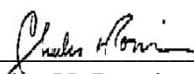
Peter R. Gleason
Managing Director & Chief Financial Officer

NATIONAL INVESTOR RELATIONS INSTITUTE

By: 

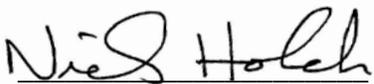
Jeffrey D. Morgan, CAE
President and Chief Executive Officer

SECURITIES TRANSFER ASSOCIATION, INC.

By: 

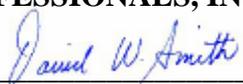
Charles V. Rossi
President

SHAREHOLDER COMMUNICATIONS COALITION

By: 

Niels Holch
Executive Director

SOCIETY OF CORPORATE SECRETARIES AND GOVERNANCE PROFESSIONALS, INC.

By: 

David W. Smith
President

U.S. CHAMBER OF COMMERCE

By: 

David Hirschmann
President and CEO
Center for Capital Markets
Competitiveness

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Kathleen L. Casey, Commissioner
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner
Ms. Meredith B. Cross, Director, Division of Corporation Finance
Mr. David M. Becker, General Counsel and Senior Policy Director