Office DEPOT

August 10, 2009

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

Re: File No. S-7-10-09
Rel. No. 34-60089
Facilitating Shareholder Director Nominations

Dear Ms. Murphy:

This letter is submitted on behalf of Office Depot, Inc., a company that provides office products and related services to its customers through 1,593 worldwide retail stores, a dedicated sales force, catalogs and a $4.3 billion e-commerce operation. Office Depot has annual sales of approximately $14.5 billion, and employs about 42,000 associates around the world. The Company provides more office products and services to more customers in more countries than any other company, and currently sells to customers directly or through affiliates in 47 countries. We appreciate the opportunity to comment on The Commission's proposed rule to require companies to include shareholder nominees for director in company proxy materials.

We oppose the federal proxy access right in proposed Rule 14a-11. The correct manner to implement proxy access would be to amend Rule 14a-8(i)(8) to permit proxy access shareholder proposals, so long as other criteria are met and certain other amendments adopted (e.g. higher ownership thresholds). Delaware recently amended its laws to authorize proxy access by-laws, thereby enabling shareholders of Delaware companies to submit shareholder proposals regarding proxy access, which, if implemented by Boards, would provide for the relief the Commission appears to be seeking. When a Board implements a proxy access by-law, it should be able to do so in a manner that is consistent with its own capital structure, size and other characteristics. A one-size-fits-all approach to proxy access is inappropriate because shareholders and companies would be deprived of the choices *(e.g.* ownership thresholds and holding periods) that a company and its shareholders should consider and institute.

Concerns that Boards will ignore shareholder input is unwarranted, especially in light of the movement to majority voting in uncontested director elections and the recent amendments to Rule 452 prohibiting discretionary broker voting in uncontested director elections.

The Sarbanes-Oxley Act has focused boards and company management on governance and has caused many positive changes in board practices, mitigating the need for proxy access. Many companies, including Office Depot have majority voting in uncontested director elections and have abolished staggered boards—two actions that provide greater shareholder accountability. Office Depot is a leader in good corporate governance. Twelve of the

6600 North Military Trail | Boca Raton, FL 33496 | T + 561.438.4800

Company's 13 directors are independent, as defined by the New York Stock Exchange listing standards and each of the Audit Nominating and Corporate Governance and Compensation committees consist of only independent directors. The Corporate Governance and Nominating Committee is responsible for nominating candidates for election to the Board and in doing so, as set forth in our Governance Guidelines, may consider recommendations offered by shareholders.

The proposed rules would lead to the election of "special interest" directors that will represent the shareholders that nominated them. Any nominee for the board must be independent of any interests in or relationships with the company as well as any shareholder that may nominate them. Independent nominating committees should be directed to consider shareholder nominations of qualified directors, that if elected would qualify as independent under listing standards, and such nomination should be integrated with the board's nominating process.

The proposed rules would also promote a more short-term focus, divert the attention of management and the board from responding to the current financial crisis, discourage board service, and lead to instability of Boards that will make it more difficult to oversee management. Management and Boards need to agree on long-term strategies for the Company. Change and revolving directors lead to strategic inconsistency, which will result in chaos and short-termism. The proposed rules could lead to a revolving door of directors that would upset board dynamics (which, given the accomplishments of most director candidates is no small issue), require considerable management time to orient new board members to the business and cause the board to be less effective. Moreover, the more experienced directors are the ones that provide the best oversight (they know what the issues are and what questions to ask).

The proposed proxy access rules would not improve corporate governance but would further enhance the influence of proxy advisory firms. Risk Metrics Group (RMG) and to a lesser extent other proxy advisory firms wield a considerable amount of power over corporate boards. As you likely know, RMG issues a report at the end of the year that includes its policies with respect to proxy voting recommendations. It is natural to expect that they will issue guidelines as to when they will support shareholder nominated directors if these proposed changes go into effect. RMG applies these policies to the performance of a company and the actions of its directors in the prior year, in determining how it will recommend its subscribers vote. RMG is an unregulated body (that perhaps should be regulated) that has conflicts and is focused on narrow issues rather than long term shareholder value creation, and as such, the Commission should not be doing anything to increase their influence.

We are also concerned that the current proxy system cannot handle the increasing number of election contests that would occur if the proposed proxy access rules are adopted. In addition, companies will be burdened with additional costs which will diminish shareholder value.

If the Commission chooses to proceed with adoption of Rule 14a-11, significant changes are needed. Triggers are essential so that the federal proxy access right applies only to companies with a demonstrated need for greater director accountability—for example, if a shareholder proposal receives a majority vote and the board does not act on the proposal, or where a director fails to receive a majority of votes cast or receives a majority of withhold votes and the director does not resign or the board does not accept the directors resignation.

Shareholders should be eligible to nominate directors only if they hold a significant percentage of a company's shares (e.g. 10%) for a significant period of time (e.g. two years). In addition, the shareholder that nominates a director that is elected should be required to continue to own the shares for two years post election. The Commission's proposed 1% threshold of outstanding shares for one year would result in Office Depot having 16 individual shareholders that could nominate directors under the proposed rules.

The Commission should also consider limiting the number of proxy access directors to one director per year to support some Board stability and, in the case of multiple nominating shareholders, the shareholder that owns the largest number of shares, followed by the longest time held should have access, as opposed to the first one to give the company notice as the Commission has proposed. Also, the Commission should prohibit the proxy access nominee from being affiliated with the nominating shareholders and require that such nominee satisfy the company's director qualification/independence standards.

If proposed Rule 14a-11 is adopted we strongly urge the Commission to delay applicability to the 2011 proxy season to allow companies to amend their by-laws and take other preparatory actions.

Very truly yours,

Elisa D. Garcia C.
Executive Vice President
& General Counsel