



**Alcoa**

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Facilitating Shareholder Director Nominations  
Release Nos. 33-9046; 34-60089

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

Dear Ms. Murphy:

Alcoa Inc. appreciates this opportunity to comment on the Securities and Exchange Commission's ("Commission") proposed rules regarding shareholder director nominations. Alcoa is a New York Stock Exchange listed aluminum manufacturing company which was incorporated in the Commonwealth of Pennsylvania on September 18, 1888. On July 27 this year, we commemorated 50 years as a component of the Dow Jones Industrial Average. We employ about 63,000 people in our manufacturing facilities and offices located in the United States and in 30 other countries. Although the aluminum industry has been hard hit by the economic crisis, Alcoa remains a company that has invested for a long term sustainable future. Our business depends on a long term view, with capital investments in mining and manufacturing facilities that last many generations, providing high quality jobs for many people.

Current shareholder rights at Alcoa regarding the election of directors.

At Alcoa, we regularly reach out to our larger institutional investors and we meet with other investors and potential investors when they identify themselves to us. We believe that good governance is founded on taking into account the viewpoints of all of our stakeholders. Some of the rights our shareholders currently have include:

- The right to propose nominees to our Governance and Nominating Committee. All director candidates, whether they are identified by a search

firm or through the shareholder nomination process, are evaluated by the Governance and Nominating Committee, a committee of independent directors, against criteria approved by the Board of Directors published on our web site and in our proxy statements.

- The right to engage in a proxy contest under current Commission rules which require the proponent to submit its own proxy statement for such nominees. Shareholders who wish to run a proxy contest using their own proxy can now do so by using the Commission's recently adopted notice and access rules whereby expensive printing and mailing costs can be significantly reduced by using the internet.
- The right to withhold votes from director candidates nominated by the board of directors. Under rules voluntarily adopted by our Board of Directors, a director who receives a majority of withhold votes must resign. In consultation with our shareholders, we have agreed to submit a proposal to our shareholders in 2010 to amend our governing documents to provide for majority voting in which shareholders will have an opportunity to vote "no" for directors.

We oppose proposed Rule 14a-11 because it will enhance the influence of the short term view.

As a manufacturing company, we are concerned that proposed Rule 14a-11 will undermine long term investment in manufacturing and other key sectors of the economy precisely at a time when every effort should be made to support industries that create jobs. Proposed Rule 14a-11, as drafted, is likely to become a vehicle for special interest shareholders and event driven hedge funds. Event driven hedge funds typically favor using corporate resources or increasing debt to pay special dividends or buy back shares, or they advocate selling businesses, assets or the company itself, rather than investing in capital projects that will provide jobs and contribute to the long term value and sustainability of the enterprise. Special interest shareholders typically are concerned with issues of importance to them, but not necessarily of importance to the economic well being of the enterprise or to the majority of the shareholders.

There are several features of the proposed Rule 14a-11, as presently drafted, that make it attractive to special interest shareholders and activists to the detriment of long term shareholders:

1. An activist only needs to obtain the voting rights to 1% of the shares of a large company's stock to have the right to nominate candidates constituting

25% of the board. Voting rights can be aggregated by a group working in concert to reach the 1% level. In other words, a 1% minority can impose significant costs on 99% of the shareholders by forcing them to pay for a proxy contest for the election of directors.

2. Proposed Rule 14a-11 requires the company to bear the costs of a contested election for directors yet imposes no obligation on the party bringing the contest to act in the best interest of the company or the other shareholders. Thus, there is no downside risk to launching a proxy contest, although such contests are notoriously expensive and disruptive. This year Target Corporation and activist William Ackman reportedly spent a combined \$21 million in a proxy contest for the election of less than a majority of directors.<sup>1</sup>
3. Proposed Rule 14a-11 does not require a shareholder to hold an economic interest in a company in order to name candidates to the board on the company's proxy. Given the widespread practice of lending shares and swap and hedging arrangements, an activist could even hold a net negative economic interest in a company and still have the right to propose director candidates for up to 25% of the board. Hedges and derivative interests are not required to be disclosed.
4. Proposed Rule 14a-11 does not impose any obligations on nominating shareholders to act in the best interest of the company and the other shareholders when they place director candidates on the company's proxy. In contrast, the directors of a company who nominate director candidates do have fiduciary duties to act in the best interest of the company and all of its shareholders.
5. Significant influence over the management of a company may be acquired by the election of 25% of the directors, given that only 50% is needed for a quorum to take board action.

We urge the Commission not to impose a federally mandated proxy access rule on all public companies that, as noted above, is likely to have adverse economic consequences and will provide a powerful tool to special interest and activist shareholders at the expense of other stakeholders in public companies. If proposed Rule 14a-11 is adopted, the Commission should amend the rule, at a minimum to:

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<sup>1</sup> Kirchen, *Target Proxy Battle Ends in Cordial Fashion*, The Business Journal of Milwaukee, May 28, 2009, available at <http://www.bizjournals.com/milwaukee/stories/2009/05/25/daily70.html>.

- Increase the threshold for proxy contests at large companies from 1% to 5% for an individual shareholder and 10% for shareholders aggregating their shares.
- Reduce the number of directors that can be elected to the lower of one director or 10%.
- Require disclosure of all positions and derivative arrangements in the company's stock, not just long positions.
- Require a stock holding period of two years prior to a nomination and require maintenance of the position for the duration of the director's term. The shares should be required to be held in a net long position during these periods.
- Require shareholders who propose nominees for election to the board to act in the best interest of the company as a whole in proposing such nominees. Provide for a private right of action if they do not.
- Require shareholders who wish to propose a nominee to first bring the candidate to the attention of the Governance and Nomination Committee and provide a reasonable period for vetting the candidate before allowing a shareholder to launch a proxy contest at the company's expense.
- Only impose the mandatory federal proxy access on companies that have not been responsive to shareholders or that do not provide a meaningful right for shareholders to reject board nominated candidates. That is, exempt companies that have adopted some form of majority voting and that have taken action in response to shareholder proposals that have won a majority of votes cast. This change would reduce the number of costly and unnecessary proxy contests.
- Require shareholder nominees to comply with the same director criteria with which the board's nominees are required to comply.
- Provide for a proxy card that clearly distinguishes the board's nominees and the shareholder's nominees and, in addition to voting for individuals, permit voting for all nominees recommended by the board with one vote and for all nominees of the shareholder proponent with one vote. Shareholders want an internet and phone option that is efficient.
- Preclude shareholders who have lost a proxy contest from bringing another one at the company's expense for a period of five years. (This recommendation would not preclude bringing a proxy contest using the proponent's own proxy and at the expense of the proponent, under current rules.)

Timing issues regarding adoption of Rule 14a-11 for the 2010 proxy season.

There are practical timing issues we would like to highlight that we believe make adoption of proposed Rule 14a-11 unworkable for the 2010 proxy season, in its current form.

Proposed Rule 14a-11 requires notice to the company of a shareholder nominee at the time the company requires advance notice of nominations made in person at the meeting. Alcoa's Articles of Incorporation provide that shareholders must give the company 90 days advance notice of a nominee for nomination from the floor of the meeting. The 90-day advance notice period is too short to put a nominee on in the proxy statement, yet the advance notice provision can only be changed by a vote of the shareholders, and the first meeting of shareholders at which this could be accomplished is the 2010 meeting. Proposed Rule 14a-11 requires a company to notify the Commission of its intent to exclude a nominee at least 80 days before the company files its proxy statement. Alcoa typically files its proxy statement at least 45 days before its annual meeting, and needs this time in order to use the notice and access rules. Proposed Rule 14a-11 would require the company to notify the Commission of its intent to exclude a proposal before the advance notice deadline for receipt of a proposal. Moreover, it takes significant time to vet a nominee to make a determination whether to exclude a candidate. These regulatory compliance reviews are time-consuming undertakings that do not fit within the timeframe contemplated under the Commission's proposed Rule 14a-11. For example, under Section 8 of the Clayton Act<sup>2</sup> directors are prohibited from serving as a director or officer of two competing companies unless they meet certain *de minimis* safe harbors. The process of analyzing whether the safe harbor has been met often takes one or two months because it requires gathering financial data often not publicly available regarding overlapping lines of business. Before a director can be nominated to our board, we also must ensure the director complies with certain laws and regulations. It is not sufficient for us to rely on the proponent stating that the nominee complies with state and federal laws if the proponent does not know which state and federal laws are required to conduct the company's business. Alcoa is subject, for example, to laws regarding our Department of State export license, which is critical to our ability to do business. There are certifications required of directors regarding this license. Furthermore, shareholder nominees may not be in a position to certify that they comply with related party rules, for example, if they do not know the amount of the company's sales to and purchases from every other company with which the nominee and his or her extended family are associated. This is not public information. The

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<sup>2</sup> Clayton Antitrust Act of 1914, 15 U.S.C. §19.

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same is true of charitable contributions made by Alcoa or the Alcoa Foundation to organizations with which the nominee and his or her extended family are affiliated. We believe that nominees by shareholders should be submitted to the company at least six months before an annual meeting so that this process can be undertaken with the same care and due diligence as we apply to vetting nominees identified by the board or by an independent search firm.

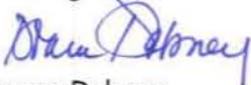
We support amending Rule 14a-8(i)8.

We support the Commission's proposal to amend Rule 14a-8(i)8 to permit companies and their shareholders to formulate rules appropriate to them for shareholder access to the company's proxy statement for the purpose of nominating directors.

We agree with Commissioner Paredes' proposed alternative under which Rule 14a-8(i)(8) would be amended to permit proxy access shareholder proposals only if the law of the company's state of incorporation expressly authorizes a company to have a proxy access provision in its governing documents.<sup>3</sup> This alternative would remove the Commission from being in the position of interpreting state law. In addition, given the fundamental importance to corporate governance of the process for nomination of director candidates, we urge the Commission to increase the share ownership required to submit such a proposal from \$2000 to at least 1% of a company's outstanding shares. As of June 30, 2009, Alcoa had 974,372,426 shares outstanding. Assuming a share price of \$13.00, the \$2,000 threshold would permit a shareholder holding only 154 shares to propose governing document amendments establishing rules for nominating directors. For a company the size of Alcoa, there is simply not enough economic interest at stake in the company at the \$2,000 threshold level to propose such significant governance rules. We believe the threshold rules should be established on a percentage of outstanding shares basis.

We respectfully submit these comments and appreciate your attention to them.

Best regards,



Donna Dabney

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<sup>3</sup> SEC Commissioner Troy A. Paredes, Statement at Open Meeting to Propose Amendments Regarding Facilitating Shareholder Director Nominations (May 20, 2009), available at <http://www.sec.gov/news/speech/2009/spcho52009tap.htm>.

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