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

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

Re: Facilitating Shareholder Director Nominations (File No. S7-10-09)

Dear Ms. Murphy:

Teamster-Affiliated Pension and Benefit funds hold approximately $100 billion in equity assets representing the retirement security of roughly 1.4 million active and 500,000 retired members of the International Brotherhood of Teamsters ("Teamsters"). I welcome the opportunity to submit the following comment on the Securities and Exchange Commission's (SEC) proposed rule *Facilitating Shareholder Director Nominations* ("Proposed Rule").

The Teamsters Union strongly supports the Proposed Rule and applauds the SEC for its leadership on this critical—and long overdue—reform. We believe that shareholders' fundamental right to nominate their board representatives is a reform that goes to the heart of the SEC's core mission of protecting investors.

The Need for Proxy Access

The financial crisis has demonstrated with frightening clarity the failure of many corporate boards to act as vigilant, independent checks on management. The boards of directors charged with overseeing Wall Street were led by the banks'

very same chief executives, many of whom enjoyed unprecedented, board-approved payouts while shareholders suffered trillion dollar losses.

As a representative of workers' capital, we are acutely aware of the importance of building and protecting our members' hard-earned investments, and the financial crisis has crystallized the importance of our capital stewardship efforts. With news reports of Wall Street firms handing out bonuses just months after taxpayers spent billions coming to their rescue and while our members make unprecedented sacrifices to stabilize companies, it is clear that the time for reform is now.

We believe that the most meaningful way to empower shareholders is to give us—the company owners—the tools we need to choose our representatives on the board and hold those representatives accountable. Allowing shareholders access to companies' proxy cards to nominate board candidates ("proxy access") is precisely such a reform.

The current system impedes shareholders' fundamental right to nominate directors of corporate boards. Proxy contests are prohibitively expensive and, therefore, not a workable option for most investors. Nominating committees rarely give serious consideration to shareholder nominations, and shareholders often have accountability concerns regarding the very directors who comprise nominating committees.

Proxy access offers a meaningful solution that would facilitate shareholder rights and help rebalance a system that for too long has stifled shareholders' voices and facilitated unresponsive, management-dominated boards.

SEC's Clear Authority to Propose Rules on Proxy Access

We consider proxy access to be fundamental to effectuating the rights shareholders already have under state law to nominate directors, and therefore fundamental to the SEC's role in regulating the solicitation of proxies as necessary for the protection of investors.

Indeed, the SEC has clear authority to propose rules on proxy access under Section 14(a) of the Securities Exchange Act of 1934. Congress gave the SEC explicit "power to control the conditions under which proxies may be solicited." As Chairman Ganson Purcell explained to a committee of the House of Representatives in 1943: "The rights that we are endeavoring to assure to the

stockholders are those rights that he has traditionally had under State law, to appear at the meeting; to make a proposal; to speak on that proposal at appropriate length; and to have his proposal voted on." Proxy access does just that by giving shareholders a meaningful, workable opportunity to nominate directors.

Benefits of Proxy Access

In addition to facilitating shareholders' fundamental rights under state law, we believe proxy access will serve as a powerful incentive for directors to be more responsive to shareholders, more thoughtful about their own nominations to the board, and more vigorous in their oversight of management.

Further, we believe that board diversification potentially arising from proxy access would be a healthy development in the best interests of all shareholders. Too often boards lack the breadth of perspectives necessary to engender vigorous, independent debates that result in more effective oversight and strategic guidance. Shareholders will presumably use proxy access only when unresponsive boards fail to fulfill their responsibility to company owners. It is precisely these kinds of boards, which are seemingly beholden to their own or management's interests, that need fresh, diverging perspectives and dynamic debate to strengthen accountability and realign directors with the shareholders whose interests they are elected to serve. Concerns that shareholder-nominated directors would promote special interests and disrupt business are unfounded—these directors, like all other directors, would be subject to shareholder election and would be bound by fiduciary duty if elected.

Comments on Key Features of Proposed Rule

The following are comments on some of the Proposed Rule's key components, including suggestions that we respectfully offer for your consideration regarding:

- the proposed one-year holding period for shareholder eligibility;
- the limit on the amount of shareholder nominations allowed; and,
- the approach used to determine which nominees are to be included in the company proxy materials when more than one shareholder or group of shareholders seeks to access the proxy.

Uniform Application of the Rule

We particularly support the Commission's proposal to adopt a uniform standard for proxy access that would apply to all companies, with such a rule to serve as a baseline for shareholder-initiated nominations to be included in the company-prepared proxy materials. The right of shareholders to nominate directors is well recognized under state law, yet that right is not often exercised out of proxy contests seeking control, given the expense associated with independent nominations. The fact that most shareholder voting occurs via proxies makes the Commission's proposal to adopt a uniform standard especially important to facilitate this basic shareholder right. Consistent with this position, we support the Commission's proposal to amend Rule 14a-8 as a supplement to an across-the-board Rule 14a-11. Such an amendment would allow shareholders to submit proposals asking individual companies to adopt more generous criteria for proxy access nominations.

Shareholder Eligibility Criteria

We support the tiered approach for eligibility of shareholders to present a director nominee (1%, 3%, or 5% ownership according to company size), and emphasize that shareholders must be allowed to aggregate their holdings in order to meet the ownership eligibility requirements.

However, we have deep concern that the Proposed Rule's one-year holding period would enable short-term investors, such as, hedge funds to use proxy access as a tool for short-term gain at the expense of long-term value creation. We suggest that the Commission adopt a more reasonable holding period of at least two years.

We further suggest that the Commission clarify how it will calculate the percentage of securities owned to address any potential ambiguities that might arise due to common fluctuations in share ownership.

Shareholder Nomination Limits

We also suggest that the Commission ensure that shareholders eligible to use proxy access be able to nominate at least two candidates in all cases. While we strongly agree with the Commission that Rule 14a-11 should not be available for shareholders seeking to gain more than a limited number of board seats and

generally consider the limit of no more than 25% of seats to be reasonable, we have concerns that allowing only one shareholder nominee could result in that director ultimately being shut out of key discussions. Shareholders will presumably use proxy access only in cases where we believe current directors are unresponsive. We, therefore, believe having at least two shareholder-nominated directors joining such a board would foster a more inclusive board dynamic.

First-in Approach

Finally, we oppose the Proposed Rule's first-in approach in cases where more than one shareholder or group of shareholders seeks proxy access. We have concerns that this approach encourages an unnecessary race to file and gives precedence to filers who might not have the greatest investment in the company's long-term success. We believe that the shareholder or group of shareholders with the largest beneficial ownership in the company should be given the opportunity to nominate the maximum number of shareholder-nominated director candidates.

Conclusion

In closing, we strongly support the Proposed Rule, which we believe will be a landmark reform capable of heralding a new era of investor confidence in the capital markets.

If we can be of further assistance please do not hesitate to contact Jamie Carroll, Program Manager, International Brotherhood of Teamsters, Capital Strategies Department, at (202) 624-8100 or **jcarroll@teamster.org.**

Thank you for the opportunity to present our views on this important matter.

Sincerely,

James P. Hoffa

James P. Hoffa
General President

JPH/jc