

July 14, 2009

Ms. Elizabeth M. Murphy, Secretary
United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549-1090

RE: File No. S7-10-09
Release Nos. 33-9046
Facilitating Shareholder Director Nominations

Dear Ms. Murphy:

The Securities and Exchange Commission (the "Commission") has recently published proposed rules that would require reporting companies to include director nominees proposed by shareholders in the company's proxy materials, subject to certain eligibility, qualification and procedural requirements. SEC Release No. 33-9046, Facilitating Shareholder Director Nominations, June 10, 2009 (the "Release"). This letter is provided in response to the Commission's request for comments in the Release.

This letter does not address the merits of or the need for the rules proposed by the Commission, but instead addresses one significant technical deficiency that we believe exists within the proposed rules. The technical deficiency addressed in this letter relates to Request for Comment F.8. on page 93 of the Release.

Proposed Rule 14a-11 sets forth specific deadlines applicable to shareholders that submit director nominations and the companies that receive such nominations. We believe these deadlines conflict with the deadlines for director nominations that are included in the "advance notice" provisions contained in the by-laws or code of regulations of many reporting companies. The conflict between these deadlines would cause many of these reporting companies to lose their opportunity to challenge shareholders' nominations through the Commission's proposed "no action" process.

Proposed Rule 14a-11 provides for the following process and deadlines:

Due Date	Action Required
Date set by the company's advance notice provision or, in the absence of such a provision, 120 days before the anniversary of the date that the company mailed the prior year's proxy materials	Nominating shareholder must provide to the company and file with the Commission notice of the shareholder's director nominations on Schedule 14N.
Within 14 calendar days after the company's receipt of the nominating shareholder's notice on Schedule 14N	Company must notify the nominating shareholder of any determination not to include the nominees (a "deficiency notice").

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July 14, 2009

Page 2

Within 14 calendar days after the nominating shareholder's receipt of the company's deficiency notice	Nominating shareholder must respond to the company's deficiency notice.
No later than 80 calendar days before the company files its definitive proxy statement and form of proxy with the Commission (but after providing the requisite notice of and time for the nominating shareholder to remedy the deficiencies) (with "good cause" exceptions in the Commission's discretion)	Company must provide notice of its intent to exclude the nominating shareholder's nominees and the basis for its determination to the Commission (simultaneously providing a copy of the notice to the nominating shareholder).
Within 14 calendar days of the nominating shareholder's receipt of the company's notice to the Commission	Nominating shareholder may submit a response to the company's notice to the Commission's staff (simultaneously providing a copy of the notice to the company).
As soon as practicable	Commission's staff would, at its discretion, provide an informal statement of its views to the company and the nominating shareholder.
No later than 30 calendar days before the company files its definitive proxy statement and form of proxy with the Commission	Company must provide the nominating shareholder with notice of whether it will include or exclude the shareholder's nominees.

The Commission's 120-day default period for filing Schedule 14N is logical since it matches the Rule 14a-8 deadline for notifying a company of a shareholder proposal to be included in the company's proxy statement and gives the proposing shareholder, the company and the Commission sufficient time to resolve any issues. "Advance notice" by-law provisions (which almost always involve periods shorter than 120 days before the mailing of the proxy statement) do not reduce the Rule 14a-8 deadline with respect to shareholder proposals, and we submit that it should be the same result under proposed Rule 14a-11. "Advance notice" provisions were never intended to shorten the Commission's regular notification deadlines for proposals to be included in a company's proxy statement, and the Commission should eliminate that unintended consequence of the proposed rule.

As compared to the Commission's proposed 120-day default period within which a director nomination may be made by a shareholder, many reporting companies' "advance notice" by-law provisions allow shareholders to make director nominations as late as 90, 60 or even 45 days prior to the company's annual meeting of shareholders. If a company with such "advance notice" provisions wishes to challenge a shareholder's director nomination, these later deadlines would prevent the company from utilizing the Commission's proposed "no action" process. The deadline for the "no action" process is 80 calendar days prior to the date the company files its definitive proxy statement. However, a company with an "advance notice" deadline as late as 90, 60 or 45 days prior to the company's annual meeting of shareholders would not necessarily have received a shareholder's director nomination by the 80th calendar day prior to the

July 14, 2009

Page 3

date it files its definitive proxy statement, which would commonly be as long as 110-125 days prior to its annual meeting.

As an example, Company X has an "advance notice" by-law provision permitting shareholders to submit director nominations until the 90th day prior to its annual meeting. Company X typically files and mails its proxy materials 45 days prior to the annual meeting. Therefore, Company X may receive a shareholder proposal as late as the 45th day prior to the date it files its definitive proxy statement. In such circumstances, Company X would be precluded from participating in the Commission's "no-action" process. Proposed Rule 14a-11 requires Company X to provide a notice to the Commission of the company's intent to exclude a shareholder's nominations no later than 80 days prior to the filing date of its proxy statement, which would be approximately 125 days prior to Company X's annual meeting.

The Commission should eliminate this conflict in the proposed rules by applying the same timeline to all reporting companies. The 120-day deadline for the submission of director nominations (measured against the date that the company mailed the prior year's proxy materials) and 80-day deadline for appeals (measured against the date the company files its definitive proxy statement) should apply to all reporting companies, regardless of whether a company has "advance notice" by-law provisions with a different timeline.

Some might argue that a company facing this dilemma could simply amend its by-laws. However, this is not a realistic solution for the many companies whose by-laws can only be amended by shareholder action. Shareholder approval could not be obtained in time for 2010 annual meetings. Even with respect to subsequent years, it would seem unfair to impose on companies the significant cost of explaining to shareholders and obtaining shareholder approval of a technical by-law amendment.

We appreciate this opportunity to comment on this important issue and urge the Commission to correct this technical deficiency in the proposed rule.

Respectfully,



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