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17 August 2009

Ms. Elizabeth M. Murphy  
Secretary  
Securities & Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: File No. S7-10-09, *Facilitating Shareholder Director Nominations*,  
Release No 33-9046 *et seq.*

Dear Ms. Murphy:

Amalgamated Bank's LongView Funds are pleased to submit the following comments in response to the Commission's proposed rule to facilitate shareholder director nominees being included in company-prepared proxy materials (the "Release").

The LongView Funds are a family of index funds that are offered by Amalgamated Bank as investment options to pension funds. The Funds currently have approximately \$10 billion under management. Since the first LongView Fund was established in 1992, and as part of an ongoing commitment to enhance shareholder value for their investors, the LongView Funds have pursued a program to enhance corporate governance as a means of improving the performance of portfolio companies. To this end the LongView Funds engage with portfolio companies through a variety of means, including shareholder proposals, direct engagement with management on governance topics and other strategies.

One area where the Funds have not been active is the nomination of director candidates. The reason, as indicated in the commentary accompanying the proposed rule, is the extremely high cost of conducting a director campaign that will be effective. The cost of preparing and distributing proxy materials is disproportionately high for institutional investors such as the LongView Funds, which hold a widely diversified portfolio (over 1500 companies) and own well under 1% of the voting shares of most of these companies. Thus, even if investors such as

the Funds can identify good candidates, run a successful campaign, and get those candidates elected, it is highly unlikely that the gains to the Funds' investors would outstrip the transactional costs of running that candidate through an independent solicitation that is intended to reach enough investors to have a significant chance of victory.

The LongView Funds thus applaud the Commission's initiative in proposing this "proxy access" rule under which shareholder-nominated candidates for the board would, under certain circumstances, be included in company-prepared proxy materials. Although we have long supported such a reform, we believe that the current economic crisis has only underscored the need for shareholders to be able to hold directors accountable not just through such mechanisms as "vote no" campaigns, but by nominating candidates whose merits can be considered by all shareholders when they review the company-prepared proxy materials.

The right of shareholders to nominate candidates for the board of directors is a fundamental, long-standing right under state law, and we are aware of no state law that forbids shareholders from presenting such candidates for consideration by one's fellow shareholders. However, as the Release points out, the right to propose business at a company's annual meeting can be rather hollow, given that virtually all shares are voted via proxy. This means that, absent an independent solicitation, the only way that shareholders can learn of and vote on an item is if that item is included in the company's proxy materials.

The proposed rule would thus enhance shareholder rights that exist under state law in somewhat the same manner that the Commission has protected the right of shareholders to have bylaws and precatory proposals included in company-prepared proxy materials, provided that the proposals meet certain criteria spelled out in SEC Rule 14a-8. The proposed rule is limited to situations where shareholders are nominating only a minority of the board, and we agree with this approach.

We understand that some commentators question the Commission's legal authority to adopt the proposed "proxy access" rule. We respectfully disagree. We believe that the legal analysis set forth in the Release adequately sets forth the legal basis for a proxy access rule under section 14 of the Securities Exchange Act of 1934. As the Commission points out, its rules have long regulated the substance of proxy solicitations, in terms of what must be disclosed to shareholders, as well as the mechanics of such solicitations. Also, as just noted, the Commission has for the past 65 years permitted other types of shareholder proposals to be included in company-prepared proxies, providing that the proponent meets certain eligibility criteria and the topic of the proposal is deemed worthy of consideration by all shareholders (as would surely be the case with respect to a director nominee).

The LongView Funds thus generally support the proposed regulations, and we offer the following comments on specific facets of the proposal.

**1. A uniform baseline standard.** The LongView Funds support the proposal to have a single, uniform proxy access rule that would set a baseline for proxy access at all affected companies. We would oppose a state-law “carve-out” for state-authorized bylaws that limit proxy access rights to higher levels than the eligibility thresholds in the proposed rule. The Commission has, over the years, adopted a single standard for proxy-related disclosures without regard to what state law may or may not permit. The Funds do not believe that departure from this practice would be warranted with respect to proxy access. If proxy access for shareholder-nominated director candidates is warranted, it is warranted across the board.

The recent enactment of proxy access legislation in Delaware and North Dakota does not warrant a different conclusion. Prior to enactment of the 2007 amendment to Rule 14a-8(i)(8), there was no doubt state law allowed shareholders to request and companies to implement a proxy access procedure for shareholder-nominated candidates; the real dispute was whether, under federal law, a company could omit shareholder proposals on that topic from company-prepared proxy materials. Thus, recent state enactments in these two states do not add anything new to the equation; they simply confirm what has long been the case, namely, that shareholders have the right to obtain proxy access rights under state law.

**2. Eligibility criteria.** With respect to the eligibility criteria, the LongView Funds support the tiered one-three-five percent proposal for large accelerated filers, accelerated filers, and non-accelerated filers. The Funds opposed the straight five percent standard that the Commission proposed in 2007. Although the Commission has decided to retain that threshold for non-accelerated filers, we believe that the lower levels for larger companies is warranted.

In reaching this conclusion, the Funds note that the lower one- and three-percent thresholds will apply to larger, widely-held corporations. The Funds believe that this approach is warranted, given that there can be literally billions of shares issued by some companies, and thus it can be difficult amassing even one percent of the shares behind a director candidate.

We note too that in the Funds’ experience, many public pension funds – the long-term shareholders most likely to offer a shareholder proposal or nominate a director – hold less than 0.5% (often less than 0.3%) of the shares of a given company. Thus, even with a one percent threshold, it will likely take collective agreement among several large funds in order to qualify under the proposed rule. The proposed threshold therefore appears both feasible and restrictive, requiring investors to judiciously review and nominate candidates when and where there is a

minimal degree of collective concern among multiple long-term investors prompting a shareholder-nominated director.

3. Ownership requirements. The Release contemplates that proxy access would be available only to shareholders who have held the requisite amount of shares for one year. The LongView Funds respectfully suggest that the holding period be extended to two years. The Funds are concerned that a one-year period may be too short a period of time for the Commission to achieve its goal of providing proxy access opportunities to shareholders that are long-term investors in a company. A one-year holding period may facilitate director nominations by hedge funds or other short-term investors whose interests are not allied with long-term holders who are interested in long-term growth and improvement.<sup>1</sup>

4. Disclosures. The LongView Funds generally support the disclosure regime proposed by the Commission. They believe that the proposed rules will provide shareholders with information that will be useful in deciding which candidates to support for election to the board.

There is one point on which the Funds disagree, however, and that is the proposal that nominating groups should disclose their intentions about holding on to stock in the subject company after the annual meeting. The Funds fully support the proposal that nominating shareholders should hold stock during the pre-notification holding period and through the date of the annual meeting. However, they disagree with the requirement to state an intention to hold shares after the meeting. In the first place, much can change between the time that a nominating shareholder files a notice of nominating a shareholder and the date of the annual meeting; even if a nominating shareholder has no intention of selling shares as of the former date, there may be changes in the intervening six months. To take one example, much may depend on whether the nominated candidate is or is not elected. Under the circumstances, the Funds submit that little would be added by requiring nominating shareholders to disclose their intentions after the meeting, although confirmation of ownership through the date of the meeting would be important.

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<sup>1</sup> On a technical point, we agree with commentators who have observed that the holdings of institutional investors will likely vary over time and that it is appropriate to adopt a benchmark that can easily be applied in a given case, such as minimum number of shares held during the one- or two-year period prior to giving notice to a company of an intent to nominate candidates for the board. The Funds also agree with the recommendation that a nominating shareholder's holdings should include any shares that have been lent to another investor, provided that the nominating shareholder has a right to recall those shares, intends to vote them, and provides disclosure of those intentions in the proposed Schedule 14N.

5. Nominee independence. The LongView Funds also agree with the Commission that there should not be a limitation requiring that director candidates be independent of the nominating shareholders, although independence of the company under objective exchange-related criteria should be obligatory.

A requirement that a nominee be independent of the nominating shareholders would place an unreasonable burden on the latter, who may not have the same pool of nominees that companies have in searching for possible management candidates. As a practical matter, many qualified individuals may not want to be “dissident” candidates for fear that it might taint them from being considered as possible management candidates for board service. This problem would persist even if institutional investors were to hire headhunting firms to find suitable candidates (which would only increase the costs).

Moreover, independent board candidates face an uphill battle, regardless of how poorly a company is doing, and there are two practical constraints. First, the company can spend heavily from the corporate treasury. Second, experience suggests that investors look beyond how poorly a given company is doing and ask whether the independent candidate has a credible plan or argument for replacing an incumbent director. Given those constraints, a nominating shareholder is always going to be looking for good candidates, and the existing practical restraints argue against imposing a new one, *i.e.*, that the nominee be independent of the nominator.

6. Competing nominations. With respect to procedural issues, the LongView Funds note that the proposal would use a “first-in” proposal to address multiple nominations. We suggest that the Commission use instead as a criterion the qualifying holdings of the nominating shareholders. We are concerned that a first-in regime could lead to gamesmanship, with shareholders filing early as a placeholder to assure that the company must deal with them. We believe that a rule that looks to the holdings of the nominating shareholder is more consistent with the goals of the proposed rule, namely, to permit access to larger, long-term holders. We also believe that, whatever benchmark the Commission may adopt, the second-place filer should be able to supplement the first-place filer’s slate with one or more of the former’s nominees, assuming that the latter has not nominated the maximum permitted under the applicable threshold (proposed as 25%).

7. Amendment to Rule 14a-8(i)(8). The LongView Funds support the proposal to amend Rule 14a-8(i)(8) to permit shareholder proposals that would have a company go further than the baseline standard in proposed Rule 14a-11 with respect to proxy access criteria. We view this amendment as a supplement to the proposed Rule 14a-11, not as a substitute. While such an amendment may not have much practical effect if the Commission adopts a uniform baseline for proxy access nominations, an amendment to the (i)(8) exclusion would be particularly important

if the Commission were to create a “carve out” for certain companies from an otherwise uniform rule.

The LongView Funds appreciate this opportunity to submit the foregoing comments. Please do not hesitate to contact the undersigned if there is any further information that we can provide.

Very truly yours,

A handwritten signature in black ink that reads "Cornish F. Hitchcock". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Cornish F. Hitchcock