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August 17, 2009

Via electronic mail: rule-comments@sec.gov

Elizabeth M. Murphy

Secretary

U.S. Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C. 20549

Re: File S7-10-09

Release Nos. 33-9046; 34-60089; IC-28675

Facilitating Shareholder Director Nominations

Dear Ms. Murphy:

Headwaters Incorporated is a New York Stock Exchange-listed company with its headquarters in Utah. Our business is diversified in the building products, coal combustion products, and energy industries, and we have more than 2500 employees. Seven of our eight directors are independent and our Audit Committee, Compensation Committee, and Nominating and Corporate Governance Committee consist solely of independent directors.

Our Nominating and Corporate Governance Committee reviewed the Commission's proposal to facilitate stockholder nominations for director elections and asked me to provide a comment on behalf of our company. For policy and practical reasons, we believe that the proposed Exchange Act Rule 14a-11 should not be adopted because it will not help companies attract and retain qualified directors and it would impose an unworkable "one-size-fits all" model on all public companies. Based on our experience with director and officer communications with stockholders, including the adoption of majority voting under a bylaw amendment approved by our Board of Directors as a recent example, we believe our company is responsive to stockholders' concerns and that stockholder and company dialogue, together with an active and independent board of directors, provide the best way to adopt governance changes.

However, if the Commission decides to adopt proxy access in a form similar to the proposal, we believe several items need to be addressed:

- **Holding period eligibility:** We believe that a one-year holding period does not constitute meaningful long term ownership. At least two years of ownership should be required. We also believe that the stockholders should be required to hold their shares at least through the date of the annual meeting.

10653 S. River Front Parkway
Suite 300
South Jordan, UT 84095
P: 801.984.9400
F: 801.984.9410

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- **Ownership eligibility threshold:** We believe that the right to nominate a director should only be available to a stockholder who has (i) the right to vote the shares, (ii) the right to dispose of the shares, and (iii) the full economic interest in the shares for the entire holding period. We also believe the ownership threshold should be at least 5%.
- **Resubmission threshold:** If the nominee fails to receive 25% of the vote at the annual meeting, the nominating stockholders should be prohibited from submitting another nominee for two years, because the nominating stockholders have not demonstrated sufficient support to justify the expense to the company and its stockholders of the continued use of the company's proxy materials. In addition, the person nominated should not be eligible for re-nomination for two years.
- **Percentage of the board:** The requirement that stockholder-nominated directors constitute 25% of the board is too high, and can have a strong influence on control. Stockholder nominations should constitute no more than 15% of the board members, and it should be made clear that in the case of staggered boards, the elected stockholder nominee is considered to satisfy the requirement for the multi-year term that he or she serves.
- **Independence:** To reduce the likelihood that a director nominated pursuant to Rule 14a-11 is promoting the personal agenda of the nominating stockholders, we believe that the nominee should be independent of the nominating stockholders. We also believe that the nominee should meet all non-discriminatory director nomination requirements set forth in a company's bylaws and other governance documents.

We appreciate this opportunity to comment and your consideration of them.

Very truly yours,

Headwaters Incorporated



William S. Dickinson
Chairman, Nominating and Corporate Governance Committee

cc: Headwaters Incorporated Board of Directors