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August 17, 2009

Jack VanWoerkom
Executive Vice President
General Counsel and Corporate Secretary

Via Email: rule-comments@sec.gov

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

Re: Facilitating Shareholder Director Nominations
Release Nos. 33-9046; 34-60089; IC-28765
File No. S7-10-09

Dear Ms. Murphy:

I am submitting these comments on the above-referenced release (the "Proxy Access Proposal") on behalf of The Home Depot, Inc. We urge the Commission not to adopt the federal proxy access system embodied in proposed Rule 14a-11, for the reasons discussed below. If the Commission determines that some portion of the Proxy Access Proposal will be adopted, we believe that shareholders should be allowed to determine the appropriate proxy access regime at their companies through the proposed amendment to Rule 14a-8(i)(8), as opposed to the mandated approach proposed in Rule 14a-11. If the Commission does adopt Rule 14a-11, substantial changes to the proposed rule are necessary to better align the interests of shareholder nominees with the interests of a company's shareholders as a whole. Further, companies that adopt their own proxy access regime should be exempt from Rule 14a-11.

The Home Depot has made a concerted effort to maintain the highest standards in corporate governance, as validated by GovernanceMetrics International, which recently named us one of only 42 companies (out of 4,162) to receive its highest overall governance rating of 10.0, and RiskMetrics Group, whose CGQ rating system indicates that we outperformed 100% of the companies in its Retailing group and 98.2% of the S&P 500. Eight of our nine directors are independent, and all of our directors were elected by a majority of the shares voted at our most recent annual meeting of shareholders. Our Board's Nominating and Corporate Governance Committee is composed entirely of independent directors, and that Committee undertakes a careful and deliberate process to ensure that our Board is composed of individuals with the diversity of skills and experience appropriate to meet the specific needs of our Company. We also have a longstanding practice of open communications with our shareholders, through frequent discussions with both our directors and management, and we adopted many of our governance policies after dialog with and input from shareholders.



The Proxy Access Proposal, if adopted, would represent a step backwards in corporate governance for The Home Depot, for the reasons discussed below.

A. Retreat from a Majority Voting Standard.

The Home Depot has a majority voting standard for the election of directors. Majority voting is widely acknowledged as one of the more significant governance reforms in recent years. Requiring a majority of voting shares to approve director nominees is a critical safeguard to ensure that nominees represent the shareholders' interests as a whole. We adopted the standard following a non-binding vote of our shareholders indicating a desire for adoption of the standard. We believe that the Proxy Access Proposal, and proposed Rule 14a-11 in particular, would effectively bring an end to this good governance practice.

If Rule 14a-11 is adopted, notwithstanding our best in class governance practices, we expect that we will regularly receive director nominations from shareholders for inclusion in our proxy statement just as we now receive shareholder proposals to be voted on at our annual meetings. Our size and public prominence make us an inviting target for activist groups with narrow agendas, particularly given the low eligibility thresholds under the proposed rules. Like most companies, the majority voting provisions in our By-Laws default to plurality voting in contested elections. Consequently, we believe that plurality voting will apply frequently under the rules as proposed, effectively depriving our shareholders of a key positive governance practice that they approved.

B. Negative Impact on Shareholder Communications.

The Proxy Access Proposal would discourage open communications with shareholders with respect to nominees for board membership. This is because the proposed rules do not allow any shareholder candidate who is ultimately nominated by the company through mutual discussion and agreement with a nominating shareholder to be counted for purposes of the 25% limit on shareholder nominees that may be included in the company's proxy statement.

Constructive communications with shareholders can be a very effective means of identifying a qualified shareholder nominee who allays both shareholder concerns about board representation and company concerns about board experience, diversity and composition, and should therefore be encouraged. For example, the director who serves as our current audit committee chairman and financial expert was initially proposed by an activist shareholder. Company management and our Board engaged in discussions with the nominating shareholder and, as a result, the Company's Board appointed this director to the Board in 2007. The Company's shareholders have approved his re-election at each annual meeting since.

The proposed rules, by contrast, would discourage such a positive result for our Company and shareholders. If the proposed rules are adopted, there will be a strong disincentive to work pro-actively with a shareholder to reach mutual agreement about a nominee. The rule provides for no consultation between the Company and a nominating shareholder, but instead calls for a race to be first to file for

inclusion in the proxy statement. Furthermore, if a company should engage in discussions with a nominating shareholder and reach agreement as we did, it would not be counted against the 25% cap, allowing other shareholders, without any communication or cooperation with the company, to place a nominee on the proxy.

C. Encouraging Short-Term Mentality.

Short-term thinking and emphasis on near term results and rewards, as opposed to long-term strategic value creation, has been denounced as a key contributor to the current financial crisis. The primary focus of a board of directors should be on longer-term value creation for shareholders. Once again, the Proxy Access Proposal would yield a result that is contrary to good corporate governance. With our current Board size, proposed Rule 14a-11 would allow an activist investor with a short-term return horizon and a limited agenda to purchase a small percentage of our stock and include up to two nominees in our proxy statement. Due to the low proposed thresholds for eligibility, those nominees are less likely to represent the interests of a majority of shareholders or reflect a broad-based consensus among holders as to who would be an effective director. Instead, the nominees are most likely to represent the special, short-term interests of individual shareholders. This problem is exacerbated by the fact that the proposed rules maintain the same low thresholds for groups of shareholders. Specifically, several shareholders with no lasting financial, legal or other commitment to each other could form a "group" for the sole purpose of meeting the threshold requirements to advance narrow interests held by certain members of the group then quickly and easily disband after an election.

D. Circumvention of Pro-Shareholder Nomination Procedures.

Because the Proxy Access Proposal limits the information that can be requested from a nominee regarding economic interests and intent, the company and its shareholders would be deprived of key information needed for a thorough consideration of the nominee. For example, under the rule as proposed, a shareholder or group could use the proxy access process to fill 25% of the board seats under a purported lack of control intent, and the day after the election change its intent and instigate a takeover attempt. Also, the rules would not require shareholder nominees to meet company-specific standards required of all other nominees. As part of The Home Depot's governance best practices, our Board of Directors has adopted independence standards that are more stringent than the objective New York Stock Exchange standards that would apply under the proposed rule. For our Board to consider a shareholder nominee independent, he or she must also meet those standards. Under the rule, not only would a shareholder nominee be excused from these additional standards, a proposing shareholder would not be obligated to disclose whether or not the standards have been met.

E. Our Recommendations.

For the reasons stated above, we do not believe that the adoption of the Proxy Access Proposal is in the best interests of our shareholders as a whole. However, if some portion of the Proxy Access Proposal is adopted, we strongly believe that the shareholders should be allowed to decide what works best for their respective companies. Working cooperatively with management, they can approve a proxy access regime, if they believe it is necessary or appropriate, that is tailored to fit the particular circumstances of their company. We therefore respectfully request that the SEC not adopt the mandated access provisions of proposed Rule 14a-11. If anything, the SEC should instead only adopt the proposed changes to Rule 14a-8. Amended Rule 14a-8, as proposed, would permit shareholders to submit an access proposal if they believe it is appropriate for their company, and would give all of the shareholders, through the proxy process, the opportunity to weigh in on that proposal. Alternatively, we believe that issuers who adopt their own proxy access regime, tailored to fit their particular circumstances and approved by their shareholders, should be exempted from proposed Rule 14a-11.

If Rule 14a-11 is adopted as proposed, we would suggest the following changes to address the governance concerns discussed above:

- The ownership threshold for an individual shareholder should be higher—at least 5%—to better align potential nominees with the interests of a larger percentage of shareholders. The ownership threshold for groups should also be higher (i.e., 10% for large companies).
- For the same reason, the required holding period for ownership of those shares should be increased to at least two years.
- The requirements with respect to the control intent (or lack thereof) of a nominating shareholder should be more stringent to avoid exploitation of the rules by a shareholder with a hidden agenda. The rules should at a minimum require a year long “standstill” to prevent abuse of the access process.
- Any shareholder nominee elected to the board, whether through proxy access or a company’s internal shareholder nominations process, should be counted for purposes of the 25% limit. Furthermore, that individual should continue to be counted for purposes of the 25% limit for at least five years, even if the board determines after the first year to re-nominate the individual. These changes would minimize the impact of proxy access on majority voting, expand the opportunities for collaborative selection of nominees and, at the same time, accomplish the goal of shareholder representation on the board.
- Finally, shareholder nominees should be required to satisfy any company-specific qualifications to which all nominees are subject. Even if the rules do not require compliance with such company-specific standards, however, a nominating shareholder should at least be required to disclose whether or not its nominee meets those standards and provide any other

information required of other nominees generally to better enable a fully informed shareholder vote.

The issues addressed above are the key features under the Proxy Access Proposal that The Home Depot views as detrimental to our corporate governance best practices. We appreciate the opportunity to comment on the Proposal and express our concerns.

Sincerely,



Jack VanWoerkom

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
Bonnie G. Hill, Lead Director & Chair-Nominating & Corporate
Governance Committee of The Home Depot Inc.