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August 17, 2009

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F St. NE
Washington DC 20549-1090

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

Dear Ms. Murphy:

I am writing on behalf of The Colorado Public Employees' Retirement Association ("COPERA"), a pension fund with approximately \$30 billion in assets and a duty to protect the retirement security of 430,000 plan participants and beneficiaries. On behalf of COPERA's plan participants and beneficiaries, I welcome the opportunity to provide comments on the Securities and Exchange Commission's (SEC) proposed rule *Facilitating Shareholder Director Nominations*.

As a long time member and supporter of the Council of Institutional Investors (CII), we join with our colleagues at CII in responding to the proposed rule changes regarding Facilitating Shareholder Director Nominations (File No. S7-10-09). We fully endorse and join in the detailed response by CII in their letter dated August 4, 2009. Due to limited resources COPERA is unable to undertake the task of answering each question posed by the SEC regarding the proposed rule; however we do wish to highlight a few issues of importance to COPERA and its membership.

III. PROPOSED CHANGES TO THE PROXY RULES

A. Introduction

A.1. Does the Commission need to facilitate shareholder director nominations or remove impediments to help make the proxy process better reflect the rights a shareholder would have at a shareholder meeting?

COPERA strongly feels that the Commission should take a stronger hand in facilitating shareowner director nominations. For too long shareowners have not had a viable source for effecting change when companies are unresponsive to concerns raised by shareowners. When all attempts at communication with a board of directors have failed to resolve issues, the only recourse for a shareowner has been the proxy contest. Due to the high cost of mounting a proxy contest far too few shareowners are able to avail themselves of this option. By removing the current roadblocks and allowing reasonable access to the proxy shareowners will have the ability to facilitate change and make a board of directors more responsive and accountable to shareowners. Allowing access to the proxy will help fulfill the SEC's mission of "investor protection" by allowing

shareholders to exercise their rights "without unnecessary obstacles imposed by the federal proxy rules".

B. Proposed Exchange Act Rule 14a-11

2. Application of Exchange Act Rule 14a-11

- B.11. Should companies subject to Rule 14a-11 be permitted to exclude certain shareholder proposals that they otherwise would be required to include? If so, what categories of proposals? For example, should the company be able to exclude proposals that are non-binding, proposals that relate to corporate governance matters generally, proposals that relate to the structure or composition of boards of directors, or other proposals?**

COPERA does not believe that a company subject to Rule 14a-11 should be allowed to exclude any shareowner proposal that would otherwise be included on the company's proxy. The vast majority of shareowner proposals are non-binding. If it is indeed the intent of a board to be responsive to shareowner concerns, then the inclusion of non-binding proposals should be readily accepted by the board as a means of improving shareowner relations. Adoption of Rule 14a-11 should enhance, not be a substitute for, the current shareowner relation methods that are often times employed by shareowners.

- B.13. Should Rule 14a-11 be widely available, as proposed, or should application of the rule be limited to companies where specific events have occurred to trigger operation of the rule? If so, what events should trigger operation of the rule?**

COPERA voices strong opposition to the inclusion of any trigger event. Trigger events suggested in past rule revisions included multi-year time frames which, when met, would all but eliminate any chance for a shareowner to have a viable means to bring about prompt change at an unresponsive board. Including any form of triggering event – director receives a certain percentage of withhold/against votes, restatement of earnings, indictment on criminal charges, etc. – would only create unnecessary obstacles for shareowners in gaining access to the proxy, which will dilute the intent of the SEC's mission of investor protection. The rule as proposed offers necessary safeguards to prevent a change of control by shareowners, thus further eliminating the need for any triggering event.

3. Eligibility to Use Exchange Act Rule 14a-11

- C.2. The proposed eligibility threshold is based on the percentage of securities owned and entitled to vote on the election of directors. This threshold is based on current Rule 14a-8 and reflects our intent to focus on those shareholders eligible to vote for directors. Is the proposed threshold appropriate or could it be better focused to accomplish our objective? For example, should eligibility instead be based on record ownership? Should eligibility be based on the values of shares owned? If so, on what date should the value be measured? What would be an**

appropriate value amount? Is there another standard or criteria? Is submission of the nomination the correct date on which to make these eligibility determinations? If no, what date should be used?

COPERA generally agrees with the eligibility thresholds as outlined in the proposal, and does not view the thresholds as unreasonable or an obstacle to shareowner access. However, we would strongly urge the Commission to carve-out a provision that would allow shares on loan to be counted in the eligibility thresholds. COPERA, along with many other public funds, uses the share lending process as a means of meeting the fiduciary responsibility and obligations owed to our members. Providing a provision which allows for the inclusion of the loan shares in the eligibility thresholds would not, in our view, diminish the intent of the eligibility thresholds. Provisions that require the recall of loaned shares for voting purposes and holding shares past the meeting date adequately address any concerns regarding ownership requirements.

- C.7. Should groups of shareholders composed of a large number of beneficial holders, but who collectively own a percentage of shares below the proposed thresholds, be permitted to have a nominee included in the company proxy materials? If so, what would be a sufficiently large group? Would a group compose of over 1%, 3%, 5% or 10% of the number of beneficial holder be sufficient? Should there be different disclosure requirements for a large shareholder group?**

As stated, COPERA believes the percentage of ownership thresholds as outlined is an acceptable way to provide for and allow access to the proxy. Allowing for alternate means when the ownership threshold is not met could open the door for abuse of the process. Groups of shareowners who do not hold a significant economic interest in the company or share the same long-term investment goals of shareowners such as COPERA would be provided an opportunity to push an agenda that could be disruptive to the company and have a negative impact on positive financial goals that are sought by shareowners with long-term investment goals.

4. Shareholder Nominee Requirements

- D.3. Should there be requirements regarding independence of the nominee and nominating shareholder or group and the company and its management? If so, are the proposed limitations appropriate? What other or additional limitations would be appropriate? If these limitations generally are appropriate, are there instances where they should apply? Should the fact that the nominee is being nominated by a shareholder or group, combined with the absence of any agreement with the company or its management, be a sufficient independence requirement?**

COPERA believes any director nominee should not be held to any higher standard of non-subjective and relevant independence than those that are defined by stock exchange listing standards. As a long time member of CII, COPERA supports CII's definition of independent director. It is COEPRA's belief that shareowners will generally

adhere to director qualifications that exceed the independent director definitions of the stock exchanges when nominating a director. As such, it should be unnecessary to require any additional independence requirements than those being proposed by the Commission.

- D.13. Should the eligibility criteria include a prohibition on any affiliation between nominees and nominating shareholder or groups? If so, what limitations would be appropriate? For example, should there be a prohibition on the nominee being the nominating shareholder or a member of the nominating shareholder group, a member of the immediate family of the nominating shareholder or any member of the nominating shareholder group, or an employee of the nominating shareholder or any member of the nominating shareholder group? Would such a limitation unnecessarily restrict access by shareholders to the proxy process?**

As long as a director nominee meets the non-subjective and relevant independence standards that are defined by stock exchange listing standards no additional standards of independence should be expected or required. Companies don't limit director nominees based on the suggested criteria, thus any requirement that a shareholder nominee meet the suggested criteria would create a double standard. As long as there is disclosure describing the relationship between the director nominee and the shareholder or shareholder group, family of the shareholder or shareholder group, and employee of the shareowner or shareowner group, shareowners should be able to make an informed decision when voting for director nominees.

5. Maximum Number of Shareholder Nominees to Be Included in Company Proxy Materials

- E.1. Is it appropriate to include a limitation on the number of shareholder director nominees? If not, how would the proposed rules be consistent with our intention not to allow Rule 14a-11 to become a vehicle for changes in control?**

COPERA firmly believes that proxy access should not be used as a means which allows a dissident group to gain control by unseating a majority of directors on a standing board. The intent is not to gain control of a company but to effect change when a board has been unresponsive to shareowner concerns. As such, COPERA does agree with the concept of limiting the number of director nominees allowed on the ballot. However, to ensure that change at the board has a chance to develop, COPERA suggests that at least two director nominees be allowed on the ballot. Doing so will help prevent a single new director from being seated in the corner by the existing board and not allowed opportunities to inject new ideas.

- E.10. We have proposed a limitation that permits the nominating shareholder or group that first provides notice to the company to include its nominee or nominees in the company's proxy materials where there is more than one eligible nominating shareholder or group. Is this appropriate? If not, should there be different criteria for selecting the shareholder nominees (e.g., largest beneficial ownership, length**

of security ownership, random drawing, allocation among eligible nominating shareholders or groups, etc.)? Rather than using criteria such as that proposed, should companies have the ability to select among eligible nominating shareholders or groups? If so, what criteria should the company be required to use in doing so?

COPERA does not believe the 'first-in standard' method is the appropriate determination for which director nominee(s) are placed on the ballot. Shareowner or shareowner groups that hold a large economic interest in a company are generally long-term shareowners with an interest in ensuring the long-term financial health of a company. The director nominee(s) received from such a group should be placed on the ballot first. The second largest group should have their nominee placed on the ballot if any additional ballot positions remain open

6. Notice and Disclosure Requirements

COPERA generally agrees with the Commission's proposals regarding notice and disclosure requirements.

7. Requirements for a Company That Receives a Notice from a Nominating Shareholder or Group

- G.1. Under proposed Rule 14a-11(a) a company would not be required to include a shareholder nominee where: (1) applicable state law or the company's governing documents prohibit the company's shareholders from nominating a candidate for director; (2) the nominee's candidacy or, if elected, board membership, would violate controlling state law, federal law or rules of a national securities exchange or national securities association; (3) the nominating shareholder or group does not meet the rule's eligibility requirements; (4) the nominating shareholder's or group's notice is deficient, (5) any representation in the nominating shareholder's or group's notice is false in any material respect, or (6) the nominee is not required to be included in the company's proxy materials due to the proposed limitation on the number of nominees required to be included. Proposed Rule 14a-11(f)(1) provides that the company shall determine whether any of these events have occurred. Will companies be able to make this determination? Why or why not?**

We can think of no reason why a company would not be able to determine a candidate's eligibility. The required disclosure and a statement of support by the nominating shareholder or group should provide adequate information for a company to determine the eligibility of a director nominee candidate. It is interesting to note that when voting for a company's slate of directors, shareowners often times resort to outside sources when considering how to vote. The vote decision reached is not necessarily based wholly on the information provided by the company. It is hard to imagine that there is a gap in the disclosure requirements or that a company would not have resources available to adequately vet a director nominee when determining eligibility.

- G.4. Under the proposal, companies would not be able to provide a shareholders the option of voting for the company's slate of nominees as a whole. Should we allow companies to provide that option to shareholders? Are any other revisions to the form of proxy appropriate? Would a single ballot or "universal ballot" that includes both company nominees and shareholder nominees be confusing? Would a universal ballot result in logistical difficulties? If so, please specify.**

COPERA agrees with the Commission companies should not be allowed to provide an option that allows shareholders to vote the company's slate of directors as a block. It should not be difficult for a company to identify each director on the ballot as a company nominee or a shareholder nominee and state the maximum number of candidates that can be voted. Allowing shareholders to individually vote 'for', 'against', or 'withhold' on each candidate prevents any appearance of unduly trying to influence the outcome of the vote. Many companies already provide the individual vote for each nominee on the ballot. As such, it shouldn't be difficult for any company to provide the same vote method.

8. Application of the Other Proxy rules to Solicitations By the Nominating Shareholder or Group

- H.3. What requirements should apply to soliciting activities conducted by a nominating shareholder or group? In particular, what filing requirements and specific parameters should apply to any such solicitations? For example, we have proposed a limited content exemption for certain solicitations by shareholders seeking to form a nominating shareholder group. Is this content-based limitation appropriate? Should shareholders, for example, also be permitted to explain their reasons for forming a nominating shareholder group? Should shareholders be permitted to identify any potential nominee, as proposed, and why that person was chosen? If not, what, if any, limitations would be more appropriate? For example, should an exemption for certain solicitations by shareholders seeking to form a nominating shareholder group be limited to no more than a specified number of shareholders, but not limited in content (e.g., fewer than 10 shareholders, 10 shareholders, 20 shareholders, 30 shareholders, 40 shareholders, more than 40 shareholders)?**

It is COPERA's belief that shareowners considering nominating a board candidate should be exempt from all pre-filing communication requirements regardless of the size of a group. It is possible that the decision reached by the group of shareowners is to not place a director nominee on a ballot. Any prior communication disclosure requirements from a group of shareowners would place an unfair disadvantage on their process of first determining if a nomination is the right course of action, and if so, who the nominee would be.

- H.11. Should solicitations by the nominating shareholder or group be limited or prohibited? If so, why?**

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COPERA strongly believes that there should be no limitations on solicitations made by the nominating shareholder or group. Once a director nominee has been placed on the ballot, the nominating shareholder or group should be afforded the same opportunities to promote their candidate, just as the company is allowed to promote their candidates.

C. Amendments to Exchange Act Rule 14a-8(i)(8)

COPERA generally agrees with the Commission's proposals regarding amendments to Exchange Act Rule 14a-8(i)(8).

D. Other Rule Changes

There are no areas of special concern in the proposals submitted by the Commission for Other Rule Changes. As stated previously, COPERA endorses the comments and suggestions provided in the CII comment letter.

In summary, COPERA thanks the Commission for the time, hard work, and great effort that has gone into developing the proposal, and the opportunity to comment regarding the many aspects of the proposal. For far too long shareowners have been blocked from exercising what should be considered a basic right -- the right to nominate director candidates. COPERA urges the SEC to consider all aspects when crafting the final rules for facilitating shareholder director nominations. To that end the proposed rule should help restore investor confidence and enhance the SEC's ability to protect investors.

Sincerely,



Meredith Williams
Executive Director