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Via E-mail: 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 (June 10, 2009)

Dear Ms. Murphy:

Advance Auto Parts, Inc. welcomes the opportunity to comment on the rules proposed by the Securities and Exchange Commission (the "Commission") regarding the facilitation of shareholder director nominations described in the above-referenced release ("Access Proposal"). Advance Auto Parts, a Delaware corporation, is a retailer in the automotive aftermarket industry with sales of $5 billion in 2008. We currently have 49,000 employees and operate approximately 3,400 stores in 39 states, Puerto Rico and the U.S. Virgin Islands. Advance Auto Parts is a strong advocate and practitioner of good corporate governance principles and practices such as requiring that a supermajority of the members of our board be independent and that directors be elected by a majority vote. All but one of the current members of Advance's board are independent directors.

We request the Commission not to adopt Rule 14a-ll, and we support the amendment of Rule 14a-8, with some suggested modifications, to permit shareholders to propose proxy access bylaws for their respective companies.

Proposed Rule 14a-11

As proposed, new Rule 14a-11 would establish a single mandatory procedure for proxy access that is not appropriate for all public companies. We believe that this "one-size-fits-all" approach would deprive shareholders of the flexibility provided by state law to establish the procedures and standards for director nomination that are properly suited for the circumstances of each company and its respective shareholders. State laws do not prohibit shareholders from nominating director candidates. In addition, Sections 112 and 113 of the Delaware General Corporation Laws, which specifically enable the adoption by shareholders of proxy access bylaws for director nomination, have only recently become effective. Based on historical experience, we would expect other states to adopt similar provisions in the future.

We believe that a company's proxy access procedures should be formulated in a manner designed to balance the interests of all of that company's shareholders. Depending on the circumstances of a given company, its shareholders may prefer to establish criteria other than those contained in the proposed rule. For instance, the shareholders may determine that in order to nominate a director candidate, the nominating shareholder should have a higher minimum shareholding or have held its shares for a longer period of time. In addition, the shareholders may prefer that the nominee be required to meet certain "subjective" criteria to ensure that the nominees possess relevant expertise or experience in order to maintain the effectiveness of the board. Proxy access goes well beyond typical shareholder proposals and often entails a proxy contest, which is generally time-consuming, expensive and disruptive to management and the board of directors.

We believe that federally mandated proxy access rules are not necessary at this time. Over the past several years, gigantic strides have been made in the area of corporate governance practices, due in large part to the willingness of companies and their boards of directors to listen to the concerns of shareholders regarding corporate governance concerns. The proposed proxy access rules may also have the unintended consequence of negating some of this progress, such as triggering a plurality vote for directors where a vote by a majority of the shares voted would otherwise be required for election of directors. We have also seen various state legislatures enact or revise their corporate laws to enable shareholders to exercise greater control over the governance of their respective companies. And we have not yet determined the full impact of the elimination of broker non-votes in director elections.

While many public companies have procedures in place for shareholders to submit recommendations for director nominations to the board of directors or nominating committee, a single mandated procedure is not appropriate for all public companies. We believe the best process for maintaining board effectiveness is for the board's governance committee, which is familiar with the functions, strengths and needs of the company and the board, to establish a recruitment process that takes shareholders' concerns and suggestions regarding director candidate criteria into consideration. The governance committee should also apply the same consideration to shareholder director nominees as they do to board nominees.

In addition, we believe if shareholders have the right to elect their directors (or determine to vote against, or withhold their vote) the same shareholders have the right to determine the appropriate manner and process by which such director-nominees are brought before them for their consideration. Because it is appropriate for shareholders to make choices about the procedures they deem appropriate to permit proxy access, they should be able to choose a form of proxy access that is different than the one mandated by proposed Rule 14a-11.

Amendments to Proposed Rule 14a-11

If the Commission decides to adopt a federal proxy access right, we recommend that proposed Rule 14a-11 should, at a minimum, be modified to permit companies and their shareholders to "opt out" of proposed Rule 14a-11 by adopting and implementing their own form of proxy access and that companies and their shareholders be afforded some time to adopt their own form of proxy access. A company could propose a proxy access procedure to its shareholders, or shareholders could propose a proxy access procedure pursuant to the proposed amendment to Rule 14a-8. In either case, if such proxy access proposal receives the affirmative vote of a majority of the shares of stock present in person or by proxy and entitled to vote on the proposal, the proxy access proposal would apply in place of proposed Rule 14a-11. It is even possible for shareholders to vote affirmatively that they do not want proxy access, or they could vote on procedures that would provide a level of proxy access that is more or less restrictive then under proposed Rule 14a-11, and they would be free to make that decision. We believe shareholders should be permitted to suggest the type of shareholder proxy access that is appropriate to their company—regardless of whether that level is more or less restrictive than under proposed Rule 14a-11. Accordingly, we believe that the Commission should provide in its final rules that a shareholder proposal submitted under Rule 14a-8(i)(8) should not be limited as currently proposed.

If adopted, proposed Rule 14a-11 should be revised as follows:

(1) To require that shareholders wishing to nominate proxy access directors own a meaningful percentage of a company's shares for a significant period of time. We recommend a minimum ownership level of 5% for individuals and 10% for multiple shareholders acting together. We believe a 5% threshold for a single nominating shareholder and a 10% threshold for a group of nominating shareholders provides the appropriate balance between permitting shareholders who have a substantial economic interest in the company to utilize proxy access while limiting the potential cost and disruption to companies and their shareholders.

(2) To require that nominating shareholders, or each member of a nominating shareholder group, have owned their shares for at least two years and that the nominating shareholder be required to hold the shares through the date of the shareholder meeting. We believe that shareholders who have held their shares for at least two years are truly long-term shareholders who are more likely to have interests that are aligned with other shareholders and are more likely to take a long-term view of the company and its operations.

(3) To require that shareholders not be allowed to be a member of more than one shareholder group. In the absence of such a prohibition, shareholders could form multiple groups, claiming that so long as the identity of each group was not precisely identical each group was a different proponent.

(4) To require that beneficial ownership should be clearly defined as ownership of the actual company securities. Because derivatives are so prevalent in the equity markets and there is the ability to de-couple economic interest from voting rights, we believe proposed Rule 14a-11 should require that nominating shareholders possess the full voting interest in the securities and should specify that the nominating shareholder have a net long beneficial ownership position during the entire two-year holding period for the purpose of submitting a nominee. The nominating shareholder should also be required to produce evidence from its broker-dealer or custodian that the continuous net long position requirement has been met.

(5) To require a certification that a nominating shareholder is not attempting to effect a change in control, and to limit the number of proxy access nominees to one director each annual meeting season. Simultaneously adding multiple directors with little or no experience with their new company could greatly disrupt board functions. In addition, we believe that the right to nominate a director is very different from nominating a "bloc" of directors through the company's proxy materials because dissident shareholders often seek to influence or affect the company's business and operations by the nomination of short slates consisting of less than a majority of the board membership. Accordingly, we believe that shareholders who intend to nominate a bloc of directors should be required to conduct a proxy contest pursuant to the Commissions existing rules and regulations.

(6) To give priority for nominating directors to shareholders with a greater ownership interest in the company rather than establishing a race to be the first to submit a nomination. The largest shareholder has a greater economic interest and the interests of the largest shareholder are more likely to be aligned with the interests of other shareholders.

(7) To provide that shareholders would not be permitted to nominate proxy access directors for some period of time (e.g., three years) if their prior proxy access director nominee fails to obtain a significant percentage of votes cast such as 25%. The resubmission threshold would ensure that other shareholders would be given a chance to suggest nominees who may be more satisfactory to the company's shareholders.

(8) To prohibit proxy access nominees from being affiliated with the nominating shareholder or shareholder group. This requirement should help ensure that director candidates are not chosen based on their allegiance to the narrow interests of a particular shareholder to the possible detriment of others and that the proxy access process is not used as part of a control contest.

(9) To require that proxy access nominees must satisfy the non-discriminatory director independence and qualification requirements adopted by the board of directors and set forth in a company's governing documents. In addition, we believe that the shareholder nominee, once elected to the board, should be required to comply with a company's non-discriminatory board service guidelines, such as mandatory retirement age, share ownership requirements and the maximum number of other boards and board committees on which directors may serve because a shareholder-nominated director has the same fiduciary obligations to the company's shareholders as any other director. Further to this point, we believe that proxy access shareholder nominees should be required, at the request of the company, to complete the company's standard "director and officer questionnaire" prior to the printing and mailing of the proxy statement in order to provide the company with information to help the company determine if the nominee is independent based upon the stock exchange rules and the company's corporate governance guidelines.

We believe there is a significant possibility of shareholder confusion in any election in which a shareholder nominee is included in the company's proxy materials and by the use of a universal ballot, which will contain the names of both the company's nominees and shareholder's nominees. For instance, shareholders, relying on common practice, may execute a blank proxy card without checking the boxes for any of the nominees, which may now result in an invalid proxy card and have the unintended consequences of a company failing to obtain a quorum for the shareholders meeting or perhaps disenfranchising these shareholders. We recommend requiring a clear delineation in the proxy statement and in the proxy card of the company slate and the shareholder nominees. In addition, shareholders should be permitted to vote for the company's nominees as a group if they so desire. For this reason, we recommend that the Commission provide that any proxy that includes shareholder nominees voted in blank (that is, without checking the boxes for the nominees) continue to be deemed to be a vote for the entire board-nominated slate.

Finally, we recommend that the effective date of proposed Rule 14a-11, if any, should be delayed until the 2011 proxy season in order to allow time for companies to amend their bylaws, educate their shareholders, "opt out" or take other preparatory actions.

Proposed Amendments to Rule 14a-8

If the Commission determines that federal action is needed at this time, we ask that you consider adopting revised amendments to Rule 14a-8(i)(8) to permit shareholders to make proposals regarding the election of directors. We believe that the use of amended Rule 14a-8(i)(8) to allow shareholders to propose and adopt procedures for access to the company's proxy materials is an appropriate way for companies and their shareholders to determine a proxy access procedure that is tailored for the particular circumstances of the company.

Because we believe that shareholders should have the full range of options available to them regarding the nature of proxy access at their companies, and, as such, the requirement to include proposals under the proposed amendments to Rule 14a-8(i)(8) should not be limited only to those proposals that would not conflict with proposed Rule 14a-11.

If a company is subject to proposed Rule 14a-11 or has "opted out" of the Rule 14a-11 proxy access procedure, it would be inappropriately disruptive to require a company thereafter to include in its proxy materials shareholder proposals that seek only incremental changes to that procedure. Accordingly, we recommend that a Rule 14a-8(i)(8) shareholder access proposal should be properly excludable unless it is designed to materially amend the company's current procedure.

We believe that the Commission should specifically permit companies to exclude from their proxy materials any shareholder proposal that would create a proxy access procedure that could result in the election of shareholder nominees to more than a majority of a company's board of directors. We believe this is consistent with the Commission's intended goal that proxy access through a company's proxy materials should not be used by shareholders who are seeking control of a company.

We believe that the current ownership threshold of Rule 14a-8 is inadequate in the context of a proxy access proposal which may significantly impact a company's long-term operations. We recommend that amendments to Rule 14a-8(i)(8) include an ownership threshold for the shareholder proposing a shareholder access proposal of at least one percent (1%) of the company's voting stock.

We appreciate the Commission's invitation to submit these comments on the Access Proposal.

Respectfully submitted,

Sarah E. Powell
Senior Vice President
General Counsel & Corporate Secretary