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Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549
Via e-mail: rule-comments@sec.gov

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

Dear Ms. Murphy:

PepsiCo, Inc. is submitting this comment letter to the proposed rules set forth in SEC Release No. 33-9046, Facilitating Shareholder Director Nominations, June 10, 2009 (the "Release") in which the Commission solicits comments on the proposed rules relating to shareholders participating in director nominations.

PepsiCo is a Fortune 100 consumer products company that offers the world's largest portfolio of billion-dollar food and beverage brands, including 18 different product lines that each generate more than \$1 billion in annual retail sales. PepsiCo is a North Carolina corporation and employs approximately 200,000 associates worldwide. PepsiCo is proud of its strong corporate governance record and believes that its success depends in large part on effective corporate governance principles and practices – all of which tie in to PepsiCo's overall business mission of "*Performance With Purpose*".

For the reasons set forth below, PepsiCo has several concerns with the proxy access rights as proposed in Rule 14a-11 as well as the significant consequences and issues that would arise if the rule was implemented as proposed. We do, however, support the amendment of Rule 14a-8(i)(8) to permit director nominations through the Commission's established shareholder proposal process.

In general, this letter is not intended to debate in detail the merits or the need for the proxy access rules proposed by the Commission, but instead focuses on several of the practical difficulties created by the rules as written.

Concerns with proposed Rule 14a-11

A “one size fits all” federally mandated rule is not appropriate and does not reflect the variety of companies’ unique circumstances. In fact, many companies that will be affected by the proposed rule amendments did not contribute to the economic crisis and are already accountable to their shareholders in various ways. Many companies like PepsiCo have declassified boards of directors, elect their directors annually and provide their shareholders with channels to communicate with the company’s board of directors and management. Additionally, applicable state law and PepsiCo’s By-Laws currently permit shareholders to nominate candidates for election as directors. Accordingly, for companies such as PepsiCo, the proposed rules add an unnecessary layer of complexity and expense.

To account for the concerns raised by the Commission in the Release, the Commission should consider amending the proposed rule to add specific triggering events before proxy access is required for any company. For example, if a company does not implement a shareholder proposal that received a majority of the votes cast on an issue, then the proposed Rule should apply. Such triggers would ensure that companies with strong director accountability processes would not be unfairly subject to the proposed proxy access rules.

Additionally, the rules, as proposed, may empower special- interest shareholder groups with short-term goals and could result in less qualified director nominees. The new rules would certainly enable special interest groups to further their own agendas if not only to distract management, directors and shareholders. Additionally, shareholder nominees will likely have less relevant business experience and expertise than existing board members, potentially leading to disjointed and inefficient boards of directors.

It is our opinion that the proposed proxy access Rule 14a-11 will not satisfy the Commission’s stated goal of providing shareholders with better disclosure and voting processes in response to the current financial crisis. Unintended consequence of these rules may well include an increased number of costly proxy contests which could raise the risk of encouraging short-term decisions by directors, distracted boards and management from day to day business, and confused shareholders confronted with multiple forms of proxy cards regarding elections. Further, the new rules could deter qualified board nominated candidates from running for election given the pressure and competition from other shareholder candidates.

Suggested Amendments to Rule 14a-11.

In the event that the Commission elects to mandate proxy access through proposed Rule 14a-11, PepsiCo urges it to consider modifying several elements of Rule 14a-11 as proposed. PepsiCo and other corporations will be faced with numerous difficulties in implementing the proposed rules. While we could suggest many more modifications to the proposed rule, set forth below are recommended solutions to a sampling of important issues that will challenge PepsiCo if the proposed were to be implemented as written.

1. Increase ownership thresholds. Given the long-term financial impact on all shareholders from potentially time-consuming, expensive and distracting proxy contests, the proposed rule should contain more rigorous thresholds than a 1% ownership stake required to be held for one year. As such, the ownership threshold for any nominating shareholder should better correspond to the shareholder's economic interest in the company. We believe that an appropriate ownership level would be 5% of the company's securities that are entitled to vote on the election of directors for a single shareholder and a 10% ownership level for a group of shareholders that seek to aggregate their ownership interests. Without a more substantial ownership requirement, activist entities and individuals could easily act alone or in concert to propose nominees each year for a significant number of companies. Even if such nominees are not successfully elected, the process by which companies will have to consider such nominees and decide to oppose or support the nominees will necessarily be a costly distraction and diversion from the company's day-to-day business for multiple months each year.
2. Define beneficial ownership. The Proposal does not define "beneficial ownership". Given the existence and widespread use of derivatives in the equity markets, the Commission should require clear ownership rights though full voting interest in the securities. In order to carry out the intent of the proxy access rules, the nominating shareholder should hold a net long beneficial ownership position during the entire proposed holding period and at least through the initial term of the nominee's board service, if elected.
3. Limit number of candidates for election. The number of candidates to be nominated by shareholders should be limited to one candidate due to the overwhelming burden to a company of vetting multiple nominees in a single year. PepsiCo's board of 13 directors would be significantly burdened if it had to consider up to three potential proxy access candidates in any given year. Furthermore, the addition of multiple new directors who may lack experience in board service or expertise pertaining to the company would certainly disrupt the normal functioning of the board of directors. Additionally, to further reduce the disruptiveness of the proxy access process, the Commission should consider a limit on the ability of a shareholder to resubmit proxy access nominees for a minimum period of three years unless such nominees received a minimum of 25% of the vote. Lastly, a single nominee should not be eligible for re-nomination for a period of two years if he or she did not receive at least 25% of the vote in a given year.

4. Fix timing issues associated with advance notice by-laws. Under many companies' advance notice by-law provisions such as PepsiCo's, the prescribed window period to receive the Schedule 14N notification of a director nominee is too short to allow the company to effectively engage the SEC to seek to challenge the shareholder's nomination through the Commission's "no action" process and too short to afford the company the ability to incorporate the shareholder nominee information in the company's proxy materials. The Commission's 120-day default period for filing Schedule 14N is an acceptable alternative because it matches the Rule 14a-8 deadline for notifying a company of a shareholder proposal to be included in the company's proxy statement and gives the shareholder and company additional time to resolve any issues. Currently, PepsiCo's by-laws allow shareholders to make director nominations as late as 90 days prior to the company's annual meeting of shareholders. This time frame would not allow PepsiCo to utilize the Commission's no-action process to challenge a director nomination that was received close to this 90-day deadline. Advance notice by-law provisions were never intended to shorten the Commission's regular notification deadlines for proposals to be included in a company's proxy statement and the Commission should seriously consider this consequence of the proposed rule.
5. Reduce proxy confusion. Questions may arise regarding whether a "proxy-access director" should change that status if re-nominated by the board for an additional term, and whether traditional election contests will take place simultaneously with "proxy access" election contests, and will there be confusion created with the possibility of multiple proxy cards circulating to shareholders.
6. Eliminate the "first in line" rule. The language regarding the "first-in" standard regarding receipt of shareholder nominee proposals is ambiguous in the event a company receives multiple proposals on the first day of the window period to receive shareholder nominations. One possible solution is to link first priority to the highest percentage ownership as an indicator of economic interest in the company and an assumption that the interests of such shareholders are more likely to be aligned with the interests of the company's other shareholders. To further elucidate the proposed rule, the Commission should also define a specific window within which nominating shareholders can make nominations.
7. Require director nominees to meet subjective criteria and complete the company's standard directors' and officers' questionnaire. Because a company will be required to at all times comply with legal and listing standards applicable to its board and its committees as well as comply with its own corporate governance guidelines, the director nominee should be required to meet the qualification and independence standards applicable to all other directors of the company. In addition, if a company, pursuant to the law of its state of incorporation, establishes qualifications for its directors such as a mandatory retirement age and share ownership requirements, those qualifications should also apply to any and all nominees proposed through proxy access during the nomination process and throughout the nominee's term as director, if elected.

A company itself is best suited to determine the qualifications and make-up of its board members that will serve the best interests of the company and its shareholders and, therefore, it is appropriate that such eligibility standards apply equally to shareholder nominees and current directors. An easy way to judge the nominee's qualifications and independence is to require the nominee to complete the company's D&O questionnaire prior to the mailing of the company's proxy statement. The information gained from the questionnaire could prove important in notifying the company's shareholders of the candidate's qualifications or independence status.

Amended Rule 14a-8(i)(8) should be adopted to permit proxy access through the shareholder proposal process

For the reasons enumerated above, PepsiCo does not support the adoption of proposed Rule 14a-11; however, PepsiCo does support the right of shareholders to have an effective vote in the election process and the ability to recommend persons for nomination to a company's board of directors. Accordingly, the use of amended Rule 14a-8 as a vehicle to provide shareholders a voice in the director election process is a more appropriate way for companies and their shareholders to establish procedures that take into consideration the unique circumstances of a company and the best interests of the shareholders. It is important to note that because of the potentially significant impact of a proxy access proposal on the composition of a company's board of directors, the Commission should consider raising the existing \$2,000 ownership threshold for other shareholder proposals to a minimum of 1% of the company's voting stock.

We urge the Commission to proceed only with the amendment of Rule 14a-8(i)(8) as discussed above to allow companies and shareholder to tailor the most appropriate proxy access procedures that serve the best interests of companies and their shareholders.

Lastly, we request that the Commission make any final rules adopted by it effective for the 2011 proxy season in order to provide companies adequate time to take necessary action such as amending their by-laws and other governing documents.

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PepsiCo appreciates the opportunity to comment on the proposed rules and respectfully submits its comments.

Respectfully submitted,

PepsiCo, Inc.

By: /s/ Thomas H. Tamoney
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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
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