August 17, 2009

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-1090

Re: File Number S7-10-09

Dear Ms. Murphy,
Thank you for the opportunity to provide comments to the Commission related to proposed changes to the proxy access rules. I commend the SEC for seeking to address this important issue of board nominations once again and, as in 2003, I support the SEC's proposal to broaden proxy access.

Attached are my specific comments. If you have any questions, please let me know.

With best regards,
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I was pleased to see the SEC re-iterate its central mission in the current proposal, and I support the SEC's proposal to broaden proxy access.

Here below are specific comments based on my experience working with boards and providing education and analysis of governance matters.

Issue: Impact on US Competitiveness and Restoration of Trust.

I believe that proxy access is an issue of global and capital markets competitiveness as outlined on page 11 of your proposal. If U.S. governance does not keep pace, I believe we will see shareholder dollars move at an even greater rate offshore and into different asset classes.

Further, as recognized by other SEC initiatives, I do not think it can be denied that the internet has created an increasingly participatory society, one in which participants expect to have the ability to participate. Thus, I believe the pressure for meaningful participation will only increase and be required in order to encourage participation at all.

In addition, I believe restoring trust will require a more participatory stance on the part of corporations. "Public trust in business has plunged during the current economic crisis, as a new report by the Arthur Page Society and the Business Roundtable points out ... given the grievous errors many bosses have made, and the public's loss of faith in them, it would do them no harm to pay a bit more attention to what their critics say." ("Coffee and pastries but no debate: Bosses ought to listen to investors' gripes," *Economist.com,* June 16, 2009.)

Issue: Impact on Corporate Performance.

A recent study indicates that opening up proxy access could have favorable performance benefits. A study by the Investor Research Responsibility Center of 120 boards shows that having one dissident director with sizable holdings can dramatically improve shareholder returns; having a larger dissident group on the board, did not produce such favorable returns according the study. ("FAIR GAME: Elect a Dissident, and You May Win a Prize", *The New York Times*, Gretchen Morgenson, May 23, 2009) This study suggests that having an orderly, ongoing process for shareholders to nominate directors may produce improvements in shareholder returns. Certainty, competition in the process for board seats could, I believe, produce better candidates.

Issue: Overuse by Shareholders.

I believe the fears by corporations of overuse by shareholders are likely to be overblown. Despite huge valuation losses over the past year, this proxy season, "Only nine directors at five companies have failed to get shareholder support, Risk Metrics found." ("Where's the shareholder backlash over CEO pay?", Associated Press, Rachel Beck, May 24, 2009)

Issue: Diversity in Pool of Board Candidates.

While it was widely anticipated that, following Enron and WorldCom, the diversity of candidates filling board seats would increase, this has not been the case. A lack of diversity in the types of candidates on boards suggests what appears to be the case: there continues to be a relatively small pool of candidates from which board nominees are drawn. The small pool of candidates from which boards are drawn creates talent gaps on boards. (By talent gaps, I mean gaps between the needed and the available skills and energy required for a director to make a positive contribution.) These talent gaps helped to contribute to the failure to anticipate and stem the financial crisis at the corporate level and to provide effective oversight of investments in illiquid and unsuitable assets. Thus, making the process of nominations more open to sources outside the existing board may help to make the board nominations process more competitive and benefit board performance as well. While some have expressed concern that a broader election process could deter existing qualified candidates from seeking to serve as board members, I believe a greater problem we face today is the number of qualified candidates who would enhance corporate performance, but given the existing structures are never considered for nomination. In addition, if the fears of some were realized and the existing pool of directors chose not sit on certain boards, that could provide beneficial impacts as well by decreasing the number of boards on which they serve, allowing them more time to focus on each one.

Issue: Affiliation and Loyalties of Shareholder Nominees.

An important principle for all boards is that directors should act in the best interests of <u>all</u> shareholders. “Board members should act ...in the best interest of the company and the shareholders" and "where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly." (OECD Principles of Corporate Governance: 2004, p.24) “Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress." (OECD Principles of Corporate Governance: 2004, p.40)

In other countries, where it is commonplace for the board to be composed of directors nominated directly by shareholders and where more of the directors, in fact, are large shareholders, there can indeed be issues that arise with respect to the loyalty of the director to the company, all shareholders and stakeholders. We have seen similar issues in this country where there are different classes of shares, with different voting rights.

Similarly, the issues of loyalty can arise when directors are nominated based on a selection process heavily driven (in substance if not form) by the Chief Executive Officer -- or by a governance committee that has not established a solid director succession program to ensure that the skill sets and energies of the board match the changing circumstance of the corporation. No “refreshment” in the pool of director candidates may provide stability on the board, but given the fast pace of change can indicate a failure of the board nominations process -- a failure that results in board composition which doesn’t match the current environment and corporate needs.

To address these issues, which I believe apply to all board nominees, I would propose that all directors nominated (whether nominated by the existing board or by shareholders) who wish for their names to go forward in nomination, be required to prepare a statement for shareholders as part of the proxy process that would stipulate that *the candidate understands that* as *a director, if chosen, their* *obligations are to act in the best interests of all shareholders, including minority shareholders, and to act without preferential treatment related to who may have nominated them*.

In sum, I believe proxy access and shareholder participation are very important for the future of our capital markets. If there is a failure to enact meaningful proxy access, which, in fact, provides shareholders with a greater level of participation, I believe more investors will vote with their feet.

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