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August 17, 2009

Via electronic delivery: *rule-comments@sec.gov*
Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: File No. S7-10-09

An Ameritas Acacia Company

Dear Ms. Murphy:

We are writing on behalf of Calvert Group, Ltd. (Calvert)[1] to provide comments on the Securities and Exchange Commission (Commission) Rule Proposal on "Facilitating Shareholder Director Nominations."[2] Calvert supports the Commission's efforts to enhance investor oversight and involvement in corporate governance through expanded shareholder participation in board elections.[3] The election of directors is an important factor in shareholder rights, recognizing that "[d]irectors have authority over the most fundamental issues of corporate governance today, while investors, regulators, courts and others have all recognized the critical role directors play in the life of a corporation."[4] Thus, the Rule Proposal provides additional effective tools to enhance corporate governance by granting shareholders a voice in the governance of their own companies.

The stated intent of the rule amendments is "to facilitate the rights of shareholders to nominate directors on corporate boards" by "provid[ing] shareholders with a

[1] Calvert is a financial services firm that offers mutual funds and separate accounts to institutional investors, retirement plans, financial intermediaries and their clients. We offer more than 50 equity, bond, cash, and asset allocation investment strategies, many of which feature integrated corporate sustainability and responsibility research. Founded in 1976 and based in Bethesda, Maryland, Calvert has approximately $13.5 billion in assets under management.

[2] Shareholder Proposal, SEC Rel. No. 33-9046; 34-60089; IC-28765; File No. S7-10-09 (June 18, 2009).

[3] Calvert has a wealth of history in working with the Commission for the continued improvement and enhancement of the Proxy Rules. Of particular relevance to the current Rule Proposal, see Calvert letter dated July 23, 2007 regarding File Nos. S7-16-07 and S7-17-07 ("Shareholder Proposals Relating to the Election of Directors" and "Shareholder Proposals" respectively); and Calvert letter dated June 12, 2003 regarding File No. S7-10-03 ("Notice of Solicitation of Public Views Regarding Possible Changes to the Proxy Rules").

[4] Report and Recommendations of The Proxy Working Group to the New York Stock Exchange (NYSE), June 5, 2006.

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meaningful ability to exercise their state law rights to nominate the directors of the companies that they own" by having their "nominees included in the company proxy ballot that is sent to all voters." Accordingly, the Rule Proposal will provide those shareholders who evidence a significant, long-term interest in a company, with two ways to exercise their rights to nominate directors. The first avenue is through the creation of new Rule 14a-11 under the Securities Exchange Act of 1934 (Exchange Act), which will generally require companies to include disclosures about the board nominee in the company's proxy materials. The second avenue is by way of proposed amendments to Rule 14a-8(i)(8) of the Exchange Act, which will generally allow the inclusion of a shareholder proposal regarding board elections in a company's proxy materials. Specifically, a permissible shareholder proposal would seek to amend, or request an amendment to, a company's governing documents regarding nomination procedures or disclosures related to shareholder nominations.

Accordingly, Calvert endorses both aspects of the Rule Proposal that will allow proxy access to shareholders, and thereby provide a voice for long-term shareholders who are committed to the health of the company, and who are not pursuing a personal agenda. To assist the Commission in carrying out its mandate to foster greater corporate accountability and to help restore investor confidence, Calvert offers its comments on the Rule Proposal, as follows:

Intent of Ownership. Any rule designed to develop a more meaningful role for investors in board of director elections should also seek to protect the long-term health of the corporation and therefore long-term investors. Providing investors proxy access must not contribute to short-term agendas. Thus, it is paramount that a nominating shareholder's purpose in seeking access to the proxy is not to further a personal agenda, or to "effect control" of the company. The rule must include safeguards to ensure that proxy access is not used as a takeover device by short-term profit seekers.

Minimum Beneficial Ownership Threshold. Recognizing that the threshold for submitting a shareholder resolution under the existing eligibility requirement of Rule 14a-8(a)(1) is that a shareholder own at least 1% or $2,000 market value of securities entitled to be voted at the meeting, a relatively higher threshold of a set, non-tiered three percent (3%) ownership interest is appropriate for board nominations under both new Rule 14a-11 and amended Rule 14a-8(i)(8). Though not based on any scientific or numeric modeling, it is our view that a threshold higher than 1% is merited in allowing proxy access in this manner. In reaching the three percent threshold, we have targeted the mid point in the Commission's proposed tiered approach, which ranges from 1% to 5% based on a company's capitalization.[5]

[5] In essence, proposals for higher thresholds would make meeting the requirement so onerous that the average shareholder would not be able to utilize the rule. For instance, the five hundredth company in

Though some commenters have expressed a preference that the threshold is established at an even higher percentage rate (such as at 10%), we believe that this would set the bar at an unattainable level. Based on anecdotal experience, a shareholder with a 10% interest in a company already has influence with the management of that company, and may already be able to influence board elections without need for either of these proposed rules.

Further in recognizing the difficulty that most shareholders would face in meeting even the 3% threshold, Calvert strongly agrees that shareholders should be permitted to aggregate their holdings with those of other shareholders to meet the minimum beneficial ownership threshold.

Lastly, as we engage in this discussion about the appropriate threshold, let us remember that the threshold only serves to allow proxy access. The nomination must then receive widespread support amongst the entire shareholder base in order to be effectuated. A shareholder who meets the 3% ownership threshold and one year holding period (discussed further below) has demonstrated its commitment to the long-term health of a company, and should have its voice heard in nominating an individual to the board.

Holding Period. A uniform one-year ownership threshold is reasonable for establishing that only shareholders with a significant stake in a company are eligible to nominate board candidates. Though one year may at first glance appear to be on the short-term horizon, in the financial world, an investment that is held for at least one-year reflects a substantial commitment to the company.

We also note that this time period is consistent with the existing eligibility requirement of Rule 14a-8(a)(1) that a shareholder hold the securities for at least one year. Additionally, Congress in amending the Internal Revenue Code, has determined that "[i]f you hold the asset for more than one year before you dispose of it, your capital gain or loss is long-term."[6]

Post-Election Holding Period. It would be inappropriate and inordinately restrictive to require a nominating shareholder to continue ownership after the election. Although the more immediate assumption is that a true long-term shareholder would continue to hold the security, especially after a shareholder meeting in which they

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the Russell 1000 Index, Ralcorp Holdings, has a market cap of $3.429 billion, and a 5% interest represents a $171 million dollar investment. Any shareholder with this size of an investment must be similarly capitalized in order to be able to make such a large investment in just one holding. Such a level of investment is not a reality for the majority of shareholders. Adopting a higher threshold would potentially mean that the Commission's new rules would effectively have had no real positive effect on "moving the bar" on shareholder participation in the proxy process.

[6] I.R.C. Sec. 1222.

had actively participated, it is not feasible to mandate that a nominating shareholder continue to hold the security for an additional period of time.

Disclosure Requirements for Shareholder Proponents. If the Commission determines that it will require notice by the nominating shareholder on the new Schedule 14N, disclosing the details of the shareholder's beneficial interests in the company, it would be most efficient to provide for a written statement to the nature and context of all communications that occurred between the shareholder and the company over the past year, as opposed to the production of a log of each communication, which may pose burdensome and difficult to track.

No Relationships Between the Nominee, Nominating Shareholder and the Company. The nominating shareholder should be required to represent that no relationships or agreements exist between it and the company and its management, or between the nominee and the company and its management. These representations are necessary to prevent management or the incumbent board from seeking to pre-empt a nominating shareholder's effort to nominate directors by, for example, colluding with a friendly shareholder group to nominate directors who are in effect the company's own nominees.

Priority of Nominee Submissions. With respect to the timing of submitting nominees, "first in" is the most appropriate and fair manner to handle such submissions. We understand concerns about this causing a "rush to the courthouse," but we counter that this is not necessarily the case as the "first" proponent may have sufficiently prepared beforehand for the nomination process. Allowing the largest shareholder group to essentially "trump" the first smaller, but no less committed or relevant shareholder submission, is not good governance.

In addition, with respect to "priority access", it is important to note that although Calvert supports the adoption of restrictions effectuated to prevent opportunists or persons with a personal agenda from accessing the proxy in this manner, we want to emphasize that the small size of a nominating shareholder group does not necessarily equate to a "self-interested" shareholder whose proxy should be excluded. Such a lone minority shareholder or shareholder group may in fact be "ahead of the curve" in understanding an emerging sensitivity that underlies the nomination.

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Proxy access ensures that long-term shareholders have a voice in nominating the individuals that serve on the boards of the companies they own and support meaningful elections. Enhancing the investor role in board of director elections will incentivize directors to prioritize investor interests, which in turn, will also help to restore investor confidence. In proposing these rule amendments, the Commission

should not give into the hysterics promoted by some that allowing proxy access will result in the abdication of control over a company, but rather, it must remain focused on establishing a usable framework that will allow a long-term shareholder access to the corporate proxy … and then allow the shareholder base to vote in favor of or against the nomination as it sees fit. In striking the exact balance that is needed for setting the ownership thresholds that shareholders will need to meet, the Commission must remain vigilant to not adopt a rule with requirements so insurmountable that they would effectively preclude proxy access.

Despite Calvert's strong support for the Rule Proposal, as a sponsor of registered investment companies, Calvert urges the Commission to take a closer look at the differences between investment companies and operating companies as other commenters have specifically highlighted substantive differences, which may necessitate particularized treatment. Absent such a review, we would be supportive of the Commission not including investment companies under the rule amendments until further analysis is conducted on the appropriate applicability of the rule amendments to investment companies.

Should you like to further discuss the points raised in this letter, please feel free to contact William M. Tartikoff or Ivy Wafford Duke at 301-951-4881.

Sincerely,

/s/ William M. Tartikoff

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Senior Vice President and
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/s/ Ivy Wafford Duke

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