

Elizabeth M. Murphy  
Secretary  
Securities & Exchange Commission  
100Fst. NE  
Washington DC 20549-1090

By email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

24 August 2008

Dear Ms Murphy,

**Support of the proposal: Facilitating Shareholder Director Nominations  
(File Number S7-10-09)**

We are writing to you, in support of the above proposal.

The Labour Union Co-operative Retirement Fund (LUCRF) is an Australian pension fund established in 1978, and is recognised as Australia's first industry superannuation fund when it pioneered a revolutionary new superannuation system that focussed on the rights and benefits of employees in Australia. Today we have over A\$2.2 billion in funds under management on behalf over 170,000 members.

LUCRF is a member of the Australian Council of Superannuation Investors (ACSI), an organisation comprising some 40 pension funds collectively managing A\$250 billion, who also support the above proposal. As a signatory to the UN Principles for Responsible Investment (UNPRI), LUCRF has a strong focus on and commitment to dealing with environmental, social & corporate governance (ESG) issues by incorporating the principles into our investment decisions. And with US stocks making up a significant proportion of our members portfolios, corporate governance standards in US companies are of material interest to LUCRF. Hence LUCRF, as a UNPRI signatory, along with its fellow ACSI members, strongly support your proposal to facilitate shareholder nominations to the board of directors in US companies.

Our support for the proposed rule derives from our experience in our own local market, and from the principle that the owners in a company (i.e. the shareholders) should have the right to nominate their agents to the board.

In Australia, directors may be nominated by shareholders or proposed to shareholders by the board. In either case, candidates have "access to the proxy" and are elected/appointed by a system of majority voting, where shareholders may vote *for* or *against* any candidate, or they may *abstain* (i.e. voting is not compulsory).

Shareholder candidates may be nominated by 100 shareholders, or shareholders possessing 5% of the votes eligible to be cast at a general meeting of the company. There are no minimum holding periods required to make shareholders eligible to make a nomination. None of these are new provisions. It is quite rare for shareholders to use these provisions to nominate candidates who do not have the support of the board. It is rarer still for such candidates to be successful.

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"Access to the Proxy" makes candidature of a shareholder-nominated candidate a factor the board must consider and deal with transparently. The possibility of defeat or replacement of a board-recommended candidate has led to better functioning board nominating committees, who take into account not only the skills and experience of potential candidates, but their likely acceptability to shareholders.

The result generally is that boards are able to recruit new members with whom they can work collegially, whilst satisfying shareholders that the new members is truly independent, competent, knowledgeable in the areas required and has a satisfactory record in other endeavours. Most frequently, when a director is seen to have lost the confidence of a significant section of shareholders, or has stayed on a board too long, his/her chair or colleagues will suggest he/she stand down or not re-nominate, allowing for a "peaceful" transition to a new board member. So the right of shareholders to nominate candidates who receive "access to proxy" precisely equal to that received by candidates recommended by the board, has in no way been destabilising.

Specific comments on the proposal:

#### **Ownership threshold requirements**

We accept that frivolous or vexatious nominations should be avoided. This can be achieved by requiring nomination by shareholders owning not less than 3% of the common stock (as supported we note, by the CII). We do not support a minimum holding period, but if one is to be imposed, we believe it should be no longer than 12 months.

#### **Equal treatment of investor nominations**

It is essential to the operation of a new rule that where investors are able to nominate board candidates, that they be accorded space and treatment in the Company proxy materials and related documentation equal to all other candidates.

#### **Nominee eligibility criteria**

We support the approach adopted by the SEC as outlined in the Proposed Rule, that would regard shareholder nominees for a directorship as independent directors in the context of the various standards emanating from relevant stock exchanges.

#### **Interrelationship with Regulation FD**

It has been reported to us that critics of the Proposal allege that shareholder-nominated candidates, if elected, would act exclusively in the interests of those who proposed them, at the expense of the interests of the company and shareholders as a whole, as their fiduciary duty would dictate. Alternatively, such critics apparently allege that such board members would provide information to those who proposed them in conflict with Regulation FD. In our view, the obligations of directors are the same and we are unaware of any evidence of such breaches of fiduciary or statutory duties in jurisdictions which allow "access to the proxy" for nominees.

#### **Allow for the minimum of two board member nominees**

We support submissions that call for shareholders to have the capacity to nominate at least two board members, as long as this does not result in a change of control in the interests of promoting suitable support for dissident directors, who may in certain circumstances require another director to second on matters to be considered at the board.

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### First-in approach

We do not support a proposal that the first to file should be accorded priority. We support the CII submission that provides that the nomination from the representatives of the largest beneficial ownership be accorded priority and the right to nominate the maximum number of director candidates.

### Summary of position

LUCRF supports ACSI's assertion that an effective proxy access regime, where it is subject to reasonable threshold limits provides a basis for responsible shareholder empowerment.

In summary, LUCRF and ACSI support:

1. Ongoing regulatory framework reforms that encourages or facilitates board accountability through reasonable shareholder empowerment provisions;
2. The urgent introduction of the SEC's proxy access proposal;
3. Proxy access is underpinned by reasonable threshold requirements that do not make it overly prohibitive for genuine shareholder involvement on these issues;
4. The introduction of majority voting in director elections.

If you have any queries, please contact myself on +61 3 9320 5332 or at [Greg.Sword@lucrf.com.au](mailto:Greg.Sword@lucrf.com.au)

Yours sincerely,

**Greg Sword**  
Chief Executive Officer  
LUCRF Super



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