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Ameriprise Financial

August 17, 2009

Ms. Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: *File No. S7-10-09*
Release No. 34-60089
Facilitating Shareholder Director Nominations

Dear Ms. Murphy:

Ameriprise Financial, Inc. is grateful for the opportunity to offer its comments and suggestions on the Commission's proposing release which would require, among other things, that a company include in its proxy materials a shareholder's, or group of shareholders', nominees for director. We admire the Commission's perseverance in attempting to resolve an issue that has periodically surfaced over the last 70 years. We also appreciate the Commission's recognition of the many difficult and troubling issues that the proposal raises, as evidenced by the approximately 500 questions posed in the release.

We participated in working groups formed by the Business Roundtable, the Securities Industry and Financial Markets Association, and The Financial Services Roundtable to draft and submit comment letters on the proposing release. We wholeheartedly support the views expressed in those comment letters and are certain that the Commission staff will give them the careful consideration that they deserve. We also commend the Society of Corporate Secretaries & Governance Professionals for submitting a thoughtful and very constructive comment letter, and we fully support the views expressed in that letter.

Ordinarily, we would not have submitted our own comment letter, given our confidence in the views expressed in the letters cited above and the significant time our staff has already spent in those industry working groups. We strongly believe, however, that the proper resolution of the proxy access issue is so crucial to the efficient and effective governance of public companies that we wanted to add our individual voice to the debate.

Before drafting this letter, we set the following objectives: present our views and comments concisely and clearly in a letter no longer than 15 pages; focus on the practical, and potentially unintended, consequences of adopting a version of proposed Rule 14a-11; offer a perspective on the proxy access issue from a public company whose board is well-informed and responsive to current corporate governance issues; and, most important, join the other commenters who advocate the amendment of Rule 14a-8(i)(8) as the only practical way for the Commission to cut the Gordian Knot of proxy access once and for all.

Given the reaction to the Commission's 2003 and 2007 proxy access proposals, the Commission will likely receive well in excess of 10,000 comment letters, some of them more than 100 pages in length. The letters will offer, as they must, endless variations and suggestions on triggering events, required minimum stock holding levels, length of time that the stock must be held, aggregation of stockholdings, the maximum number of nominees, the information to be provided by shareholder nominees, first right of nomination, board and management liability for information supplied by a nominee, and on and on. This illustrates why we will suggest later in this letter that the issue of proxy access is best decided by a company's stockholders as a matter of good corporate governance and shareholder choice.

The preparation of the proposing release has already consumed enormous amounts of staff time, and the analysis of the comment letters and preparation of an adopting release will consume still more. The proposal has distracted the Commission from other, more pressing regulatory initiatives, and augurs more of the same if the Commission adopts some form of proposed Rule 14a-11.

ABOUT AMERIPRISE FINANCIAL, INC.

Ameriprise Financial is a Fortune 300 company and a large accelerated filer. We are a relatively new public company, having been spun off from the American Express Company in September 2005, although our corporate lineage stretches back to 1894, when John Tappan founded Investors Syndicate. Our stock is listed and traded on the New York Stock Exchange under the ticker symbol "AMP."

Ameriprise Financial is America's leader in financial planning. Our subsidiaries offer our clients products and services that are designed to be used as solutions for our clients' cash and liquidity, asset accumulation, income, protection, and estate and wealth transfer needs.

Our eight person board of directors includes only one non-independent director, our chairman and chief executive officer. Despite the fact that we have only been a public company since 2005, our board's Nominating and Governance Committee and the board as a whole have always been focused on emerging corporate governance issues.

In 2006, our board amended our bylaws to provide for majority voting for directors in uncontested elections. The board's Compensation and Benefits Committee approved a Compensation Consultant Policy that includes independence standards for the committee's compensation consultant; the policy is posted on our public Web site. In our 2009 annual meeting proxy statement, we informed our shareholders that beginning at our 2010 annual meeting they would be given an annual advisory, non-binding vote on our executive compensation philosophy, objectives, and policies as explained in the Compensation Discussion and Analysis, subject to being superseded by any federal legislation.

The chairman of the board's Nominating and Governance Committee serves as the board's Presiding Director and presides at executive sessions of the independent directors. Executive sessions of independent directors are standard items on each board and board committee agenda, although the independent directors may decide that an executive session is not necessary at that meeting.

The Presiding Director also oversees the annual self-evaluation of the board required by the corporate governance listing standards of the New York Stock Exchange.

The author of this letter has 32 years of experience as a house counsel for Fortune 500 companies, with half of that time devoted to corporate governance matters in the capacity of corporate secretary and chief governance officer.

We hope that this information persuades the Commission that our board is flexible and proactive in corporate governance matters, and that the views expressed in this letter are not an automatic negative reaction to a proposal that is generally opposed by public companies, for very good reasons.

KEY POINTS

(1) The Commission has no statutory authority to adopt Rule 14a-11. We applaud the Commission's candor in recognizing that this is a valid concern. Commissioner Casey, in her May 20, 2009, statement regarding the proposed proxy access rules, noted that "...the Commission's authority to enact [the proxy access rules] is subject to significant doubt."

Also, in the Commission's July 15, 2003, staff report it was noted that "...some commenters...questioned the Commission's authority to adopt shareholder access rules under Exchange Act Section 14(a)." The 2003 staff report posed the following question: "Is a shareholder access rule consistent with Congressional intent regarding Exchange Act Section 14(a)?" For reasons that are not clear to us, the proposing release does not ask that question.

It's worth noting that Congress apparently shares our doubts about the Commission's authority to adopt proxy access rules. Section 4 of the "Shareholder Bill of Rights Act of 2009" (S. 1074), introduced by Senators Schumer and Cantwell on May 19, 2009, would amend the Securities Exchange Act of 1934 to add a section "confirming" the Commission's authority to issue proxy access rules. Without the benefit of a committee report, it's not clear why the bill uses the word "confirming" rather than "authorizing."

In any event, the introduction of this bill clearly shows that there is enough doubt about the Commission's authority under the '34 Act to give the Commission pause about proceeding to adopt a proxy access rule at this time.

It's also worth noting that Section 4 of the bill specifically requires that shareholders hold at least 1% of outstanding stock for two years in order to qualify for proxy access. If Congress intends to legislate the minimum requirement for proxy access, it appears inappropriate for the Commission to issue a proxy access rule before Congress has decided whether to pass the bill and on what terms, and the President has signed the legislation into law.

Although the Commission tries to stretch its authority over the proxy solicitation process to cover the allocation of substantive shareholders' rights to include shareholder nominations in the company's proxy materials, there does not appear to be anything at all in the legislative history cited by the Commission in the proposing release to support that position. It is difficult to see how the lack of proxy access "...frustrates voting rights arising under state law" and thereby fails "...to provide fair corporate suffrage" because "...the federal proxy process may not be adequately replicating the conditions of the shareholder meeting." See, 74 Fed. Reg. at 29027, col. 2.

The Commission's position can be refuted by considering the following hypothetical. A shareholder submits a proposal and supporting statement to Company X for inclusion in the company's annual meeting proxy statement. Company X seeks a no-action letter from the Division of Corporation Finance supporting its contention that the proposal is properly excludable under Rule 14a-8. The Company obtains a favorable no-action letter and excludes the proposal and supporting statement from its annual meeting proxy statement.

Can the disappointed shareholder then claim that his voting rights under state law have been frustrated and he has been denied fair corporate suffrage, due to the Commission's action? Can the shareholder complain to the Commission that its action has prevented an adequate replication of the annual meeting?

Even granting that the shareholder could seek recourse in federal District Court, he would undoubtedly say that legal fees and expenses make that a practical impossibility- just as the proponents of proxy access claim that the costs of mounting a proxy contest under the Commission's current proxy rules make such a contest an impractical option.

We would like to offer this hypothetical regulatory analogy to the Commission's argument that it has the authority under the '34 Act to adopt a proxy access rule. Assume that the Federal Election Commission interprets the authority granted to it under the Federal Election Campaign Act of 1971 to govern campaign financing in federal elections and to require public disclosure of campaign finance information to include the authority to impose standard ballot access rules on each state with respect to each candidate for federal office.

The FEC issues a proposal establishing such standard ballot access rules, arguing that federally-mandated rules are necessary to ensure that candidates for federal office be given ballot access on a uniform basis. Otherwise, the aims of the Federal Election Campaign Act would be frustrated because candidates for federal office would be treated differently, depending upon which state he or she is running in. Would such a rule proposal be supportable?

(2) The world has changed since 1942. Although proponents of proxy access like to focus on the Commission's 2003 and 2007 rule proposals because that makes it appear that proxy access is uniquely suited for today's economic and corporate governance environment, the Commission notes that it first proposed proxy access in 1942. It's worth noting that even though the proposal was issued in the wake of the Great Depression, the rule was proposed to protect the interests of minority stockholders. No mention was made of preventing another depression, or curing systemic financial problems caused by a lack of proxy access. In any event, in the last nearly 70 years there have been numerous recessions and financial crises, and no one has alleged the cause to be a lack of proxy access until now, in the wake of the Great Recession.

In 1944, just two years after the Commission's first proxy access proposal, the Investment Company Institute, or ICI, began its data collection efforts from mutual funds. The ICI collected data from 68 mutual funds managing nearly $900 million in assets. At year-end 2008, the ICI collected data from 16,282 mutual funds, closed-end funds, exchange traded funds, and unit investment trusts managing $10.3 *trillion* in assets. *2009 Investment Company Fact Book, at page 106.* Of course, those numbers don't include the holdings of union and public pension funds.

Although the proponents of proxy access often try to portray proxy access as an essential element of corporate democracy crucial to protecting the individual shareholder, the facts hardly support the image of a yeoman shareholder tilling the fields of capitalism and futilely yearning for a voice in the nomination of directors.

In the case of Ameriprise Financial, institutional investors held 86.13% of our outstanding shares at the time of our 2009 annual meeting record date. These investors certainly have the sophistication, funds, and support from legal counsel and proxy solicitors to mount a proxy fight for board seats if they want to. It's difficult to understand why proxy access is vital to their rights as shareholders.

(3) The Commission is absolutely correct in recognizing the primacy of state law and a company's governing documents. We completely agree with the Commission's position exempting companies from proposed Rule 14a-11 if state law or the company's governing documents prohibit shareholders from nominating directors. We are uncertain, however, as to the intended meaning of the second sentence of footnote 99, 74 Fed. Reg. at 29031, as to the effect of the future adoption of a state law that prohibits shareholders from nominating directors, and respectfully request Commission clarification.

The Commission's position on this point, while laudable, raises some issues regarding the logical consistency of the Commission's proxy access proposal. First, if the Commission respects the integrity of a company's bylaws that *prohibit* shareholders from nominating directors, why would it in effect rewrite the bylaws of other companies by making them subject to Rule 14a-11?

Second, does the Commission believe that shareholders who own stock in a company whose bylaws prohibit shareholder nominations will have their voting rights under state law frustrated and be denied fair corporate suffrage because the company is not subject to proposed Rule 14a-11?

Third, does the Commission intend to create an opt-out right from the application of proposed Rule 14a-11 for companies that amend their bylaws to prohibit shareholder nominations?

(4) ***The concern over the cost of proxy solicitations is disingenuous at best.*** The Commission states that, "The chief complaint from shareholders about the existing options is the high cost involved in mounting a proxy contest under the Commission's proxy rules." 74 Fed. Reg. at 29028, col. 1. Yet as the Commission itself recognizes, proxy costs also include, besides the printing and distribution of proxy statements, "...proxy advisors and solicitors, processing fees, legal fees, public relations, [and] advertising..." 74 Fed. Reg. at 29073, col. 2.

Interestingly, the Commission's cost calculations are based on a study of proxy contests conducted during 2003, 2004, and 2005- before the advent of the Commission's Notice and Access rules. We have used Notice and Access for the distribution of our annual meeting proxy materials for the past two proxy seasons and have experienced very significant cost savings. These cost savings are equally available to shareholders who initiate a proxy contest, although we did not notice this fact cited in the proposing release. The availability of Notice and Access and the short slate rule have significantly undercut the credibility of those who claim that proxy access will remove the cost barrier to nominating *and electing* a director.

There is a valuable purpose served by having someone initiate a proxy contest. The dissident has to be sincere enough about seeking one or more board seats to put up table stakes: footing the costs and assuming the potential liabilities for materially false or misleading disclosures. Simply getting a shareholder candidate included in a company's proxy materials and then doing nothing is akin to the Democratic Party nominating Barack Obama as its presidential candidate and then just waiting for election day to get the voting results- without campaign rallies, telephone banks, speaking engagements, interviews, television and other media advertising, or door to door soliciting by volunteers and other campaign workers.

Large institutional holders and activist shareholders know all of this. Which leads us to ask these questions: Who would benefit the most by the adoption of proposed Rule 14a-11? And what benefits are they seeking by so ardently seeking proxy access? The answers become apparent *once one discards the idea that a shareholder seeking to include a nominee in a company's proxy materials is genuinely interested in seeing that person elected to the company's board.*

First, the shareholders who would benefit most are small shareholders with an activist agenda that have enough shares to aggregate to meet the minimum ownership threshold. As proposed, Rule 14a-11 would permit ten shareholders, each holding one-tenth of 1% of the company's outstanding stock, to aggregate their holdings to meet the 1% ownership threshold set for large accelerated filers.

Second, the benefits they are seeking are not those cited in the proposing release, which we will show shortly are illusory make weights. Proxy access gives certain shareholders a bargaining chip in dealing with a company's board and management while seeking a goal completely unrelated to board representation.

Knowing that adding a shareholder nominee to a company's proxy materials will impose significant legal, proxy solicitation, and due diligence costs on a company, and impose potential liability on management and the board for false or misleading disclosures, a group of nominators will be in a position to offer to withdraw the nomination in exchange for concessions by the board or management relating to some other issue that is of real interest to the group.

If the board and management don't make the concessions, and the nominating group's candidate is defeated, the group really won't care. The group will simply return with a different candidate the following proxy season and the one after that, until the desired concession is made. This will harm all shareholders through the needless expenditure of corporate funds, the distraction of the board and management from focusing on running the company and creating long-term shareholder value, and the discouragement of qualified directors from remaining on boards if they are subjected to a *faux* proxy contest each year.

(5) The potential benefits of proposed Rule 14a-11 are illusory and speculative. Although the Commission begins its proposing release with a discussion of the current economic crisis and its supposed harmful effects on investor confidence in the responsiveness and accountability of public company boards, even the most fervent advocate of proxy access would not dare to argue that the current economic crisis would have been averted if only the Commission had adopted its 2003 proxy access proposal.

The Commission cites commenters who suggest that proxy access will make boards more accountable and responsive to shareholders, while improving corporate governance. This assertion is based on several false assumptions.

First, it assumes that a director nominated by shareholders will be more responsive to the needs of all shareholders than one nominated by the board and that shareholder-nominated directors "...will not lose sight of their proper role as representatives of the company." 74 Fed. Reg. at 29026, col. 2. This does a grave disservice to the thousands of public company directors who work diligently on behalf of shareholders, fully aware of their fiduciary responsibilities and the potential liabilities they face through shareholder lawsuits or regulatory enforcement actions if they violate those responsibilities.

Furthermore, directors are held accountable by their fellow directors, both through the annual self-evaluation processes required for NYSE-listed companies and the decisions made by the members of the Nominating and Governance Committee when recommending the candidates to be nominated by the board. The author of this letter can attest that these processes are substantive, thoughtful, and deliberative.

Second, the Commission speculates that proxy access, by increasing the chance of a shareholder-nominated director being elected to the board, will cause "...incumbent directors [to] work more diligently to signal their value to the company through efforts to improve the performance of the board and, relatedly, the company." 74 Fed. Reg. at 29073, col. 3. This is akin to asserting that lifetime tenure (which corporate directors certainly don't enjoy) for federal judges and justices has produced a federal judiciary, including the Supreme Court, that is slothful, unmotivated, and accountable to no one. Again, the author can attest from his 16 years of experience in Fortune 500 boardrooms that corporate directors are persons who have attained significant success in their chosen fields through diligence and hard work, are motivated by a sense of duty to honor their fiduciary responsibilities to shareholders and contribute to the long-term success of the company, and are keenly aware that their good names and reputations may depend, in part, on how well they serve the best interests of all shareholders and the company.

Certainly the advocates of Rule 14a-11 can't believe that its adoption will cause the directors of public companies across America to have an epiphany in which they are awakened to the fact that they hold a position of considerable responsibility and obligation, and should try harder to be a good director.

Third, the Commission asserts that proxy access "...may enhance the quality of the shareholders' voice and result in a board whose interests are better aligned with shareholders' interests." 74 Fed. Reg. at 29074, col. 1. This assertion is supported by a footnote referring to a *1999* academic study concerning the adverse effects of the chief executive officer's over involvement in the nomination of independent directors and the importance of "...limiting total management control of the nomination process..." so as to improve accountability. Footnote 351.

It's unclear what relevance the cited study has, as it predates the enactment of the Sarbanes-Oxley Act of 2002 and the issuance of exchange listing standards requiring that a majority of the board be independent and that all members of the nominating committee be independent. As a result, no management director has a vote on the selection of a person to be recommended to the board for nomination, and independent directors will always outnumber management directors on a listed company's board when the vote on director nominees is taken.

The Commission's suggestion that proxy access will improve board accountability and performance rests on three false premises. One, that there is a vast untapped pool of persons who have the education, experience, judgment, independence, and risk management skills required to be the director of a public company and to contribute significantly to the effectiveness of the board and its committees. This just isn't true. It has become increasingly difficult to find persons who are both qualified and willing to sit on a public company board. Due to the increased time commitment associated with board service, restrictions placed by companies and proxy advisory firms on "overboarding", or serving on too many boards at once, and the perceived increased risk associated with board service, it is not an easy matter to identify, recruit, and persuade a qualified candidate to join a public company board.

The task of recruiting directors is especially difficult because a board is often seeking someone with a strong background in the firm's industry or a specific set of skills that will serve a particular committee well. The process of recruiting a new director can take months and involves interviews with multiple potential candidates, due diligence, and board consideration of the respective skills and strengths of several potential candidates.

Two, that any nominee put forth by a shareholder will always be superior to the incumbent director the candidate would replace, and would increase board accountability and effectiveness. The advocates of proxy access appear to view incumbent directors as being "tainted" simply by virtue of the fact that they have been nominated or appointed by the board of directors.

Three, that shareholders who wish to nominate a candidate have no viable way to do so. Our shareholders can nominate a candidate for director for the cost of a postage stamp, by submitting a recommendation in the manner described in our annual meeting proxy statement. No shareholder of Ameriprise Financial has chosen to do so. The Commission acknowledges this option, but goes on to state that, "...we understand that these recommendations are rarely accepted by nominating committees." 74 Fed. Reg. at 29028, col. 3.

The Commission fails to analyze the reasons *why* such recommendations are rarely accepted and doesn't acknowledge that the nominating committee may have had perfectly valid reasons for rejecting the nomination. Speaking from experience, the author has had only two instances of shareholders exercising this option. In both cases, the shareholder nominated himself or herself, even though neither had a day of experience in the professions or business. Each did, however, express the view that after reading the company's annual report and proxy statement, it appeared that service on a public company board would be "very interesting." Not surprisingly, the nominating committee did not recommend either person to the board for appointment or election as a director.

Finally, the Commission implies that proxy access would be helpful in restoring investor confidence in United States companies in the wake of the financial crisis and would improve the competitiveness of United States companies in the global markets. Certainly, there are any number of factors that will determine whether a company can sustain or regain the confidence of investors or be globally competitive, but it's very difficult to believe that a company that provides proxy access will have any competitive advantage over one that does not.

Some of the firms involved in the financial crisis will have a very difficult time regaining the confidence of investors. Regaining that confidence will depend on consistent performance, effective risk management, and the effective implementation of a sound business strategy. We have a difficult time imagining an investment analyst's report that rates a company's stock as a "Buy" based on whether it has proxy access.

Above all, the plain fact is that a very small percentage of public companies were or are viewed as contributing to the current financial crisis. There are thousands of public companies that have maintained the confidence of investors because of the quality of their boards and management, without those investors giving a thought to the availability of proxy access.

As we pointed out in Section (2), the United States economy has weathered numerous economic cycles and financial crises since proxy access was first proposed in 1942, and this is the first time the Commission has suggested that proxy access is necessary to restore investor confidence or assure sound corporate governance at every public company.

(6) ***Proposed Rule 14a-11 allows nominating shareholders to shift not only costs but liability to the company.*** We appreciate the Commission's recognition that including information in our proxy materials supplied by a nominator or shareholder nominee will expose our board and management to potential liability. 74 Fed. Reg. at 29061, col. 2. Nevertheless, we wish to emphasize two points. First, the proposal that the company would not be responsible for information that is provided by the nominating shareholder and then repeated by the company in its proxy statement "...except where the company knows or has reason to know that the information is false or misleading" does not provide adequate protection to the company. If Rule 14a-11 is adopted, we strongly urge that liability attach only in those cases where "the company knows or is grossly negligent in not knowing that the information is false or misleading."

Second, if the company adopts that information as its own, the Commission would consider the company's disclosure of that information as its own statement for purposes of the antifraud and civil liability provisions of the federal securities laws. Assume that a shareholder nominee is elected and stands for reelection at the following year's annual meeting. The company discloses the candidate's biographical information, as supplied when the candidate was nominated, in its proxy statement. A shareholder discovers that the shareholder director was convicted five years ago under a different name of securities fraud or dropped out of college in his freshman year instead of graduating from Wharton. Why impose liability on a company for statements made by a nominator or nominee when the company is forced to include them in its own proxy statement in the first place?

In any event, the company will be forced to expend significant time and money performing due diligence on any shareholder nominee for these reasons, among others: disclosure of related person transactions; compliance with the independence and other standards required by exchange corporate governance rules and federal tax and securities laws; in opposing the candidate, disclosure to shareholders of any false or misleading statements made by the nominating shareholder; and certification by the company's chief executive officer to the NYSE that he or she is not aware of any violation by the company of the Exchange's listing standards, other than as disclosed.

Why allow nominating shareholders to shift this liability and the potential costs of legal fees and expenses and civil fines and penalties to the company's board, management, and other shareholders? This is a strong argument for requiring nominating shareholders to file and distribute their own proxy materials, *and assume the liability for any false or misleading statements they make in those materials.*

(7) *The proposal would further increase the power of proxy advisory services and distort the voting results for directors.* Incumbent directors who face a challenge from shareholder nominees included in the company's proxy materials will frequently be at a disadvantage for reasons completely unconnected to their fitness to serve as a director. Proxy advisory services such as RiskMetrics and Glass Lewis, which are unregulated by the Commission, wield enormous influence over the votes of institutional holders. In our case, approximately 72% of our institutional vote is affected to some degree by the recommendations of proxy advisory firms.

This influence can distort the vote for incumbent directors. For example, RiskMetrics maintains its own standards for determining the independence of a director. RiskMetrics applies these standards, which have absolutely no legal or regulatory significance, regardless of whether the board has affirmatively determined the director to be independent or whether the director is independent under the relevant federal securities and tax laws. If RiskMetrics classifies an incumbent director serving on the Audit Committee as an "Affiliated Outsider", RiskMetrics will recommend that its clients vote against the director. The author experienced this situation at another company, and the director, who was highly effective, respected, and an audit committee financial expert, received 16% fewer votes that he would have if RiskMetrics had issued a favorable voting recommendation.

Similarly, Glass Lewis will recommend votes against compensation committee members if it concludes, based on its proprietary and nonpublic compensation models, that a company's executive compensation exceeds a level it deems reasonable.

A shareholder nominee does not face these issues during his or her initial election to the board. This is all the more motivation, as we discussed earlier, for a shareholder group to use a potential nomination as a bargaining chip, since even without an active solicitation campaign, the group's candidate may have an advantage over an incumbent director standing for election.

The role of proxy advisory firms in director elections illustrates the wisdom of those who urge the Commission to take a holistic view of changing the proxy system, rather than changing the rules for proxy access as a separate regulatory initiative that will have unintended consequences for the governance of public companies.

(8) ***Finally, the proposal leaves unanswered the most crucial question of all.*** We respectfully request the Commission directly answer this question: "How does the proposal prevent proxy access from being used as part of a coordinated strategy to effect the gradual transfer of control of a board of directors to a group of directors who each represented that they had no such intent at the time of their nomination or election?"

The Commission proposes that a company would not be required to include more than one shareholder or the number of nominees that represents 25% of the company's board of directors, whichever is greater. 74 Fed. Reg. at 29043, col. 3. Where a company has a director (or directors) currently serving on its board who was elected as a shareholder nominee pursuant to Rule 14a-11, "*...and the term of that director extends past the date of the meeting of shareholders for which the company is soliciting proxies for the election of directors* the company would not be required to include in its proxy materials more shareholder nominees than could result [in shareholder-nominated directors exceeding the limit explained above]." (emphasis added) *Ibid.*

We are not certain of the intended application of this rule. Assume that two shareholder-nominated directors are elected at a company's annual meeting in April 2011 to an eight-person board for a one-year term that expires as of the date of the company's April 2012 annual meeting. May the same nominating group, or a different group, use Rule 14a-11 to include additional candidates in the company's proxy materials for the 2012 annual meeting? Are the two shareholder-nominated directors "tagged" as filling all of the board seats available to directors nominated by shareholders, whether through Rule 14a-11, a proxy contest, or a settlement with a shareholder that is threatening a proxy contest unless it receives one or more board seats?

The adoption of Rule 14a-11 would open the door to endless ways for shareholders or groups of shareholders to game the proxy system in order to gradually acquire control of a board, while disclaiming any intent to do so. Why introduce this possibility when the rules for conducting a contest for control are so clearly defined now?

CONCLUSIONS AND RECOMMENDATIONS

The Commission does not have the statutory authority to adopt Rule14a-11. If it does adopt the proposed rule, it will likely face litigation challenging the validity of the rule. This will slow efforts to allow shareholders to have a greater voice in nominating directors, *assuming that they even want that right at a company in which they hold stock.*

Furthermore, assuming Rule 14a-11 is eventually found to be valid, the Commission staff will have to devote considerable time and resources to reviewing filings, resolving challenges to shareholder nominees, and issuing interpretive guidance and no-action letters under the rule.

Because Rule 14a-11 will not deliver the benefits its proponents describe, for the reasons we explain in this letter, it is difficult to justify the numerous problems and unintended consequences that it will cause.

We believe the proper course of action is to reject the adoption of Rule 14a-11 absolutely. Instead, we support the amendment of Rule 14a-8(i)(8) to permit shareholders to propose proxy access bylaws. After all, 99% of a company's shareholders may not be in favor of giving special proxy access rights to 1% of their fellow shareholders.

A company's board may also decide that it is appropriate to adopt a proxy access bylaw, upon such terms as it decides, and thus make a shareholder proposal unnecessary.

We strongly urge the Commission not to require any specific terms or conditions for either a shareholder proposed proxy access bylaw or a bylaw approved by a company's board of directors. Each company should be free to adopt a proxy access regime that it deems to be best suited to its needs. We nevertheless urge the Commission to make it clear under Rule 14a-8(i)(10) that if a company has a proxy access bylaw, whether approved by the board or its shareholders, that permits any shareholder owning 5% or more of the company's outstanding stock to have proxy access, the company will be deemed to have substantially implemented a proxy access bylaw.

We again thank the Commission for the opportunity to express our views on this important issue. We would be happy to discuss our views with the staff at any time.

Respectfully submitted,

Thomas R. Moore

Thomas R. Moore
Vice President, Corporate Secretary and Chief Governance Officer

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Kathleen L. Casey, Commissioner
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A Paredes, Commissioner
Meredith B. Cross, Director, Division of Corporation Finance
David M. Becker, General Counsel and Senior Policy Director
Kayla J. Gillan, Senior Advisor to the Chairman