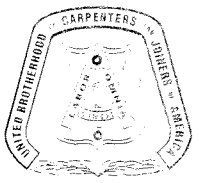

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Douglas J. McCarron

General President

August 17, 2009

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

Re: Release Nos. 33-9046; 34-60089; IC-28765; File No. S7-10-09.

Dear Ms. Murphy:

The United Brotherhood of Carpenters ("UBC") appreciates this opportunity to comment on the Securities and Exchange Commission's (the "Commission") proposed rules regarding shareholder board of director nominations outlined in Release Nos. 33-9046; 34-60089; IC-28765; File No. S7-10-09. We commend the Commission and its staff for the thoroughness of its review and presentation of the proxy access issue. The UBC is an international union representing over 550,000 men and women in the construction and related industries in the United States and Canada. Our members participate in 120 Taft-Hartley pension funds with investment portfolios valued at $40 billion. Carpenter funds have been active owners for nearly three decades, advocating for corporate governance and executive compensation reforms that encourage and enable a long-term management and corporate perspective that aligns with our members' investment interests. UBC funds have aggressively and responsibly advocated for important reforms including director independence, board committee independence, auditor independence standards and disclosure, stock option expensing, and majority voting in director elections. Our advocacy experience generally, and with the proxy access issue specifically, combine with our long-term investment perspective to inform our position on the proxy access issue.

We strongly urge the Commission not to adopt proposed Rule 14a-11 establishing a federal proxy access right for shareholder nominations. Alternatively, we support the Commission's proposed amendment of Rule 14a-8(i)(8) to enable shareholders, under certain circumstances, to require companies to include in company proxy materials proposals that would establish

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or request the establishment of a proxy access right for shareholder director nominees.

Our position against the establishment of a uniform federal proxy access right and in support of a rule change that would facilitate a "private ordering" approach to developing proxy access rights rests on the following: (1) The fact that important governance and disclosure reforms, such as the widespread adoption of a majority vote standard in uncontested director elections, have been implemented that directly address the issue of board accountability and enhance the role of shareholders in the director nomination and election processes; (2) Our belief that clear evidence has not been presented to demonstrate that the likely increase in actual or threatened "short-slate" proxy contests resulting from the proposed access right will advance the goal of enhanced board accountability, without exacerbating short-term pressure on boards of directors that could undermine long-term corporate and shareholder value creation; and (3) Our belief that, given recent board accountability advancements and the uncertain impact of an increase in proxy contests on shareholder value, the more prudent approach to developing a proxy access right would be to enable investors through shareholder proposal initiatives to stimulate debate and collaborations on the best formulations of a proxy access right. Revising Rule 14a-8(i)(8) to allow eligible shareholders to advance the proxy access issue by means of shareholder proposals will facilitate an important debate that has the potential of producing a single or several formulations of a workable proxy access right for shareholders.

Each of the recent Commission proposed rulemakings on the proxy access issue has cited the lack of board accountability to shareholders as the primary impetus behind the proposed access right. The shortcomings of the director election process have been identified as a root cause of poor board accountability. In its 2003 proposed rulemaking release,[1] the Commission cited investor and commentator views on the ineffectiveness of the proxy process and the "rubber stamp" nature of board elections, and in the current rulemaking the Commission raises the question whether the federal proxy rules may be impeding the ability of shareholders to hold boards accountable through the exercise of their fundamental right to nominate and elect members to a company's board of directors. While the current market crisis has heightened concerns about board accountability, many investors, including the UBC, have had longstanding concerns.

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[1] Proposed Rule: Security Holder Director Nominations, [RELEASE NOS. 34-48626; IC-26206; FILE NO. S7-19-03]

As long-term investors with broad investment portfolios (UBC funds currently hold stock in 3,603 US corporations), we are challenged to design and advance governance mechanisms to achieve appropriate levels of board oversight and accountability, without stimulating risky and short-term focused corporate behavior that would undermine our long-term investment interests. Operating on this premise, in 1999 UBC pensions funds and other Building Trades pension funds ("Trades Funds") submitted the first shareholder proposals calling for the establishment of a proxy access right to a company's proxy statement for shareholder director nominations. The proxy access proposals were part of an initiative to advance a series of complementary governance reforms[2] designed to promote long-term corporate value enhancement and board accountability. During 2000, the Trades Funds engaged in months of extensive dialogue with senior corporate executives and board members of thirty-two companies, including ExxonMobil, General Electric, Procter & Gamble, Chevron, Texaco, and others, exploring a range of legal, practical, and strategic issues related to the implementation of a proxy access right for shareholder director nominations. The Trades Funds issued a white paper entitled "A Shareholder – Management Dialogue on Governance Issues and Long-term Corporate Value" in 2001 that summarized these discussions on a range of governance issues including proxy access. These discussions allowed us to explore the complexity of the proxy access issue and raised our concerns that the promotion of "short-slate" proxy contests as a board accountability mechanism could be counterproductive to our long-term investment interests if it exacerbated market short-termism.

As noted above, since the Commission's 2003 proxy access rulemaking, important governance and disclosure reforms have been implemented that heighten board accountability to shareholders. The most important of these reforms, the widespread adoption of a majority vote standard in uncontested corporate elections, directly addresses the root causes of an ineffective proxy process and "rubber stamp" elections. The amendment to the New York Stock Exchange rule 452 to eliminate broker discretionary voting in director elections[3] strengthens the influence of the majority vote standard, as it will make it more difficult for directors to obtain majority votes. Further, the adoption of stock exchange listing standards and Commission rules[4] have established stricter director independence criteria, required that a majority of board members meet the new independence standards, obligated non-management directors to meet

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[2] Shareholder proposals submitted to a diverse group of companies over the course of two proxy seasons addressed a blend of new topics - such as triennial director elections, enhanced stock voting rights, and shareowner proxy access rights - along with familiar issues such as executive compensation, corporate strategic planning, and director independence.

[3] Order Approving Proposed Rule Change to Eliminate Broker Discretionary Voting for the Election of Directors, Release No. 34-60215, 74 Fed. Reg. 33,293 (July 10, 2009).

[4] Order Approving Proposed Rule Changes Relating to Corporate Governance, Release No. 34-48745, 68 Fed. Reg. 64,154 (Nov. 12, 2003) and Executive Compensation and Related Person Disclosure, Release No. 34-56135, 72 Fed. Reg. 42,222 (Aug. 1, 2007).

at regularly scheduled executive sessions, called on independent directors to select board nominees, and provided for greater transparency regarding "related persons" transactions with a corporation. These reforms have been complemented by Commission rules that require proxy statement disclosure of a company's policies and procedures for nominating directors.[5]

The widespread adoption of a majority vote standard in uncontested director elections has stimulated a greater degree of investor attentiveness to board elections and the development of institutional investor voting guidelines that are transforming director elections into meaningful exercises of director accountability. And the full impact of these reforms on director accountability has yet to be felt. Recent corporate elections at financial services corporations, such as Washington Mutual, Citigroup, Bank of America, and other companies illustrate shareholder use of the power afforded by majority voting to change boards and board behavior. In each of these uncontested elections, informed investors, empowered with majority voting rights, have exacted board accountability in a very efficient and effective manner. The broad adoption of a majority vote standard is heightening board accountability by means of a challenging vote threshold for each and every director at each and every board election. By contrast, a proxy access right due to its complexity will likely only be utilized at a small set of companies.

The private ordering process by which the majority vote standard has been adopted is also instructive in determining the best means by which to advance the proxy access issue. Starting at the time of the Commission's first proxy access rulemaking in 2003, the UBC submitted non-binding shareholder proposals to twelve companies calling on their boards to establish a majority vote standard in director elections. Several different formulations of a majority vote standard were included in the initial proposals. No-action letter requests by several companies failed and the proposals received average support of approximately 12%. The following season, the proposal was revised to include a majority of the votes cast standard and to limit applicability to uncontested elections. UBC and Trades Funds submitted 57 proposals which received 44% support. A Majority Vote Work Group was formed with labor investors and corporate representatives from thirteen leading companies, including JPMorgan Chase, ChevronTexaco, and Intel Corporation. The members of the Work Group issued a joint report that examined various technical and legal issues related to the adoption of a majority vote standard, including the issue of "holdover directors" under state law. In 2006, Intel Corporation was the first corporation to adopt a combined majority vote standard and a director resignation policy in its bylaws to address those situations where a candidate fails to receive majority vote support. The combination of a majority vote standard in corporate

[5] Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors, Release No. 33-8340, 68 Fed. Reg. 69,204 (Dec. 11, 2003).

governing documents and a post-election director resignation policy has produced a powerful and practical director election standard that has significantly enhanced director accountability to shareholders. UBC and Trades Funds have submitted over 470 majority vote shareholder proposals since 2003, and as of today, companies representing almost 70% of the total market cap of the S&P 500 have adopted a majority vote standard in their governing documents, with hundreds of other companies adopting the standard as well, including an increasing number of mid and small cap companies. It is interesting to note that not a single corporation's adoption of a majority vote standard was the result of a binding bylaw proposal; rather non-binding proposals drove the debate and led to subsequent adoption actions by corporate boards.

The shareholder activism that was critical to the widespread adoption of a majority vote election standard in uncontested elections should be encouraged by the Commission with regard to the proxy access issue. The Commission's 2007 action to amend Rule 14a-8(i)(8) to expressly permit the exclusion of shareholder proposals seeking to establish a proxy access right has impeded constructive debate on the multi-faceted aspects of the proxy access issue. We encourage the Commission to amend Rule 14a-8(i)(8) to require companies to include in company proxy materials proposals that would amend, or that request an amendment to, a company's governing documents regarding nomination procedures. We believe that mandatory and non-binding proposals on the nomination issue should be permitted and prohibited only when prohibited by state law. The eligibility standards for submission of a shareholder proposal relating to the nomination process should be the same as the present eligibility standards under Rule 14a-8, with a periodic inflation adjustment. There should be no additional disclosure requirements established under Rule 14a-8 for shareholders that file nomination related proposals. A simple straightforward amendment of Rule 14a-8(i)(8) should be adopted promptly by the Commission to allow for the submission of proxy access shareholder proposals in the 2010 proxy season.

The financial market collapse and related economic crisis that are cited as the bases for the proposed proxy access right have had a devastating impact on individual and institutional investors, and the retirement income of millions of Americans. The process of identifying causes for these crises will undoubtedly continue for years. And while the failure of board oversight was clearly a root cause in the financial services sector, the vast majority of corporate boards have been executing their responsibilities as stewards of shareholder interests in a positive, engaged manner. In recent years, most have implemented important governance reforms advanced by regulation and private ordering actions. As a long-term investor, we believe that a mandated and highly complex proxy access right is an accountability mechanism that will exact accountability at a very high price for investors. Proxy contest events, or threatened contests, will be both more common and potentially destructive of long-term corporate value.

Greater shareholder monitoring of corporate board actions, with particular focus on a board's oversight of business strategy development and implementation, is a vitally important component of preventing future corporate and market-wide failures. Effective shareholder monitoring requires effective board accountability mechanisms. We believe much of the foundation of such a system is already in place. The foundation includes enhanced corporate disclosure, improved board independence, a functional shareholder proposal process, the recent widespread adoption of majority voting, and the end of discretionary broker voting in director elections. In addition, many large public pension funds have invested billions of dollars in relational funds that directly challenge boards and seek director seats. It would be imprudent for the Commission to mandate the proposed proxy access right without clear evidence of the effectiveness of an access right. The better course of action would be for the Commission to immediately confirm the right of shareholders to submit proxy access proposals and allow the private ordering process to develop a new and effective accountability mechanism.

Thank you for the opportunity to present our views on the important matters addressed in this proposed rulemaking.

Sincerely,

Edward J. Durkin
Director, Corporate Affairs Department
United Brotherhood of Carpenters