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September 18, 2009

Via e-mail to:rule-comments@*sec.gov*

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
Attention: Elizabeth M. Murphy, Secretary

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

Ladies and Gentlemen:

In our comment letter to the Commission dated August 31, 2009 (the "ABA Letter"), the Committee on Federal Regulation of Securities (the "Committee" or "we") of the Business Law Section of the American Bar Association provided a comprehensive discussion and analysis of the Commission's proposals relating to the above release (the "Proposing Release"), bearing in mind the questions raised by the Commission in the Proposing Release. We indicated in the ABA Letter that we would supplement the letter with an appendix identifying our responses to specific questions contained in the Proposing Release.

Attached is our Appendix, which references where applicable the relevant discussion and analysis in the ABA Letter of the Commission's proposals. We trust in this way we will avoid significant redundancy and yet communicate clearly our views for consideration by the Commission and its staff on the proposals overall and in response to specific questions.

By way of summary, the ABA Letter sets forth our view that Rule 14a-8(i)(8) should be amended in a targeted way to permit shareholder proposals related to proxy access and that proposed Rule 14a-11 and any other prescriptive federal access rule would not be workable across the range of situations to which it would have to apply and should not be adopted at this time. Proxy access should be available to shareholders who have a meaningful ownership stake in a company and seek election of a limited number of independent persons they nominate as directors in a manner that has no control effect. We believe this statement of purpose should guide the adoption and interpretation of any access regime. As we explain in detail in our letter, access is most effectively created through private ordering in a bylaw adopted by action of the board of directors or

shareholders under state law on terms that are consistent with the defined purpose for proxy access stated above. The complexity of providing such access right in a clear and workable manner underlies the substance of our discussion and analysis.

Our letter also includes, in the event the Commission should adopt a prescriptive access rule, comments on certain aspects of proposed Rule 14a-11 that we have identified as key to workability and we include below further comments of such nature in answer to certain of the questions. Our response to those questions should not be read as support for the proposed rule discussed, and in particular for a prescriptive federal access rule.

As with the ABA Letter, the comments expressed in this letter represent the views of the Committee only and have not been approved by either the ABA's House of Delegates or Board of Governors, and therefore do not represent the official position of the ABA. In addition, these comments do not represent the official position of the ABA Section of Business Law, nor do they necessarily reflect the views of all members of the Committee.

We appreciate the opportunity to comment further on the Proposing Release. We hope the Commission and its staff find these comments in the form of the attached Appendix helpful. Members of the Committee are available to discuss these comments should the Commission or the staff so desire.

Respectfully submitted,

/s/ Jeffrey W. Rubin
Jeffrey W. Rubin, Chair of the Committee on Federal Regulation of Securities

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APPENDIX
to August 31, 2009 Letter of the American Bar Association,
Section of Business Law, Committee on Federal Regulation of Securities
to the
U.S. Securities and Exchange Commission

September 18, 2009

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

Key: N/R means no response

Comment Number	Question	Response
Introduction		
A.1.	Does the Commission need to facilitate shareholder director nominations or remove impediments to help make the proxy process better reflect the rights a shareholder would have at a shareholder meeting?	As stated in our letter, we support eliminating the exclusion in Rule 14a-8(i)(8) to permit shareholder proposals related to proxy access that are permitted under state law.
A.2.	Should the Commission adopt revisions to the proxy rules to facilitate the inclusion of shareholder nominees in company proxy materials, or are the existing means that are available to shareholders to exercise their rights to nominate directors adequate?	See response to A.1.
	How have changes in corporate governance over the past six years, including the move by many companies away from plurality voting to majority voting, affected a shareholder's ability to place nominees in company proxy materials?	We do not see these changes as affecting shareholder ability to place nominees in company proxy materials; rather, the changes have created a significantly more favorable climate for director responsiveness and accountability that impacts the need for further measures and have demonstrated that meaningful progress can be accomplished through private ordering.
	How have other developments, as well as ongoing developments such as some states adopting statutes allowing companies to reimburse shareholders who conduct director election contests and enabling companies to include in their bylaws provisions for inclusion of shareholder director nominees in company proxy materials, affected a shareholder's ability to nominate directors?	See immediately preceding responses. The state law changes are part of the trend toward promoting greater focus on corporate governance and facilitating private ordering in this area.
	Have other changes in law or practice created a greater or lesser need for such a rule?	See prior responses to A.2.
A.3.	Would the proposed amendments enable shareholders to effect change in a company's board of directors? Please explain and provide any empirical data in support of any arguments or analyses.	N/R.
A.4.	What would be the costs and benefits to companies and shareholders if the Commission adopted new proxy rules that would facilitate the inclusion of shareholder director nominees in company proxy materials? What would be the costs and benefits to companies if the Commission adopted the proposed amendment to Rule 14a-8(i)(8)?	We address cost impact on companies, which can be significant, in our letter.
A.5.	What direct or indirect effect, if any, would the proposed changes to the proxy rules have on companies' corporate governance policies relating to the election of directors?	We are concerned that a prescriptive federal proxy access rule could stifle or defeat other corporate governance initiatives (as an example, an increase in director election contests would undermine majority voting). Instead, companies and their shareholders should be able to design the corporate governance policies relating to the election of directors that work best for them. See Sections I., II.D., E. and F.l and Section III.O of the ABA Letter.

Comment Number	Question	Response
A.6.	Could the proposed amendments to the proxy rules be modified to better meet the Commission's stated intent? If so, how? Please explain and provide empirical data or other specific information in support of any arguments or analyses. Please identify and discuss any other rules that would need to be amended.	Our letter responds to this question in detail and includes our specific recommendations.
A.7.	We note concerns regarding investor confidence. Would amending the proxy rules as proposed help restore investor confidence? Why or why not? Please explain and provide empirical data or other specific information in support of any arguments or analyses.	N/R.
A.8.	We also note concerns about board accountability and shareholder participation in the proxy process. Would the proposed amendments to the proxy rules address concerns about board accountability and shareholder participation on the one hand, and board dynamics, on the other? If so, how? If not, why not? Please explain and provide empirical data in support of any arguments or analyses.	Our support of amending Rule 14a-8(i)(8) addresses concerns about board accountability and shareholder participation. We are concerned about adverse board dynamics as a result of a prescriptive proxy access rule and believe a private ordering approach that can take those concerns into account is the preferable route. See Sections II.D., E. and F. and Section III.O. of the ABA Letter. We also make specific proposals throughout our letter that address concerns over board dynamics should the Commission adopt a prescriptive rule.
A.9.	Would adoption of only proposed Rule 14a-11 meet the Commission's stated objectives? If so, why? If not, why not? What modifications to the proposed rule and related disclosure requirements would be necessary, if any?	Our letter describes the reasons adoption of proposed Rule 14a-11 is undesirable. See Sections I., II. and III. of the ABA Letter. It also identifies substantial modifications to proposed Rule 14a-11 that would be necessary should the Commission proceed. See Section III of the ABA Letter.
A.10.	Would adoption of only the proposed amendment to Rule 14a-8(i)(8) and the related disclosure requirements meet the Commission's stated objectives? If so, why? If not, why not? What modifications to the proposed rule amendment and related disclosure requirements would be necessary, if any?	We believe adoption of amendments to Rule 14a-8(i)(8) and the related disclosure provisions, with the modifications we recommend, would meet the Commission's stated objectives, for the reasons described in Sections I. and IV. of the ABA Letter.
A.11.	Would other revisions to our proxy rules achieve the same or similar objectives as the Commission's proposal? For example, regardless of what other action the Commission may take in this area, should we adopt new disclosure requirements and liability provisions to address recent changes in some state laws concerning the inclusion of shareholder nominees for director in company proxy materials pursuant to a company's governing documents?	We support these revisions in anticipation of company adopted access provisions, whether or not Rule 14a-8(i)(8) is revised. See Section V. of the ABA Letter.
A.12.	Are there any states that prohibit, or permit companies to prohibit, shareholders from nominating a candidate or candidates for election as director?	We are not aware of any states that prohibit or permit prohibition of shareholder nomination of director candidates of public companies. Certainly the major commercial states, like Delaware, do not.

Comment Number	Question	Response
Proposed Exchange Act Rule 14a-11		
B.1.	Would adoption of Rule 14a-11 conflict with any state law, federal law, or rule of a national securities exchange or national securities association? To the extent you indicate that the rule would conflict with any of these provisions, please be specific in your discussion of those provisions that you believe would conflict. How should the Commission address these conflicts?	In our letter, we explain that we do not address the Commission's authority to adopt an access rule in the form proposed. We believe that the nature and extent of such authority will be considered in connection with the evaluation of the proposals. For present purposes, we refer to our letter to the Commission of January 7, 2004 which deals with authority and related matters. In addition, we refer to our letter to the Commission of March 30, 2004 following the March 10, 2004 Roundtable convened by the Commission, which also deals with authority. We have addressed in Section II.D. and elsewhere in the letter the interaction of state law and the proxy rules in the context of access.
	Should the rule also address conflicts with a company's country of incorporation where the company is organized in a non-U.S. jurisdiction but does not meet the definition of foreign private issuer? Should the rule also explicitly refer to conflicts with laws of U.S. possessions or territories?	The rule should address conflicts with any applicable governing law. See Sections II.D. and F. of the ABA Letter.
B.2.	Should Rule 14a-11 apply as proposed? Is it appropriate for proposed Rule 14a-11 to be unavailable where state law or a company's governing documents prohibit shareholders from nominating candidates for director? Would the proposed rule effectively facilitate shareholders' basic rights, particularly the right to nominate directors?	The right to nominate directors should be governed by the applicable law of the jurisdiction of the organization and the company's governing documents and should not be created through the Commission's proxy rules. See Section II.D. of the ABA Letter.
B.3.	As proposed, Rule 14a-11 would apply to all companies subject to the proxy rules, other than companies that are subject to the proxy rules solely because they have a class of debt registered under Exchange Act Section 12. What effect, if any, will this application have on any particular group of companies (e.g., on smaller reporting companies)?	We express our concern regarding the effect on smaller companies in Section III. A. of the ABA Letter.
	Would it instead be more appropriate to exclude from operation of the procedure smaller reporting companies, either on a temporary basis through staggered compliance dates based on company size, or on a permanent basis?	Yes, non-accelerated filers permanently and accelerated filers at least temporarily. See Sections III.A. of the ABA Letter.
	Should any other groups of companies be excluded from operation of the rule (e.g., companies subject to the proxy rules for less than a specified period of time (e.g., one year, two years, or three years))? If so, for what period of time should the companies be excluded from operation of the rule (e.g., one year, two years, three years, permanently)?	Yes, controlled companies and open-end investment companies should be permanently excluded. See Section III.A. and Section X. of the ABA Letter.
B.4.	Should proposed Rule 14a-11 apply to registered investment companies? Are there any aspects of the proposed nomination procedure that should be modified in the case of registered investment companies?	Proposed Rule 14a-11 should not apply to registered investment companies, and certainly not open-ended investment companies, for the reasons set forth in Section X of the ABA Letter.

Comment Number	Question	Response
B.5.	Should companies that are subject to the proxy rules solely because they have a class of debt registered under Exchange Act Section 12 be excluded from application of Rule 14a-11, as proposed? Please explain why or why not.	Yes, they should be excluded because proxy access should be limited to holders of equity securities registered pursuant to the Exchange Act.
B.6.	As proposed, Rule 14a-11 would apply to companies that have voluntarily registered a class of equity securities pursuant to Exchange Act Section 12(g). Should companies that have registered on a voluntary basis be subject to Rule 14a-11?	Yes, if they otherwise meet the requirements.
	If so, should nominating shareholders of these companies be subject to the same ownership eligibility thresholds as those shareholders of companies that were required to register a class of equity securities pursuant to Section 12?	Yes, there should be no distinction.
	Should we adjust any other aspects of Rule 14a-11 for companies that have voluntarily registered a class of equity securities pursuant to Section 12(g)?	No.
B.7.	Should proposed Rule 14a-11 be inapplicable to a company that has or adopts a provision in its governing documents that provides for or prohibits the inclusion of shareholder director nominees in the company proxy materials?	Yes, Rule 14a-11 should be inapplicable in these circumstances. See Section II.E. and Section III.O. of the ABA Letter.
	Should the Commission's rules respond to variations in shareholder director nomination disclosures and procedures adopted, for example, under state corporate laws that specify that a company's governing documents may address the use of a company's proxy materials for shareholder nominees to the board of directors?	Yes. See Sections II.D.,E.and F. and Section III.O. of the ABA Letter.
	Would it be more appropriate to only permit companies to comply with governing document provisions or state laws where those provisions or laws provide shareholders with greater nomination or proxy disclosure rights than those provided under proposed Rule 14a-11?	No. See Sections II.D.,E and F,and Sections III.N. (at note 15) and O. of the ABA Letter.
	Should Rule 14a-11 provide that a company's governing documents may render the rule inapplicable to a company only if the shareholders have approved, as contrasted to the board implementing without shareholder approval, a provision in the company's governing documents addressing the inclusion of shareholder nominees in company proxy materials?	Yes and board action should be effective pending shareholder ratification at the next annual meeting. See Section III.O. of the ABA Letter.
	Should Rule 14a-11 be inapplicable if such shareholder-approved provisions are more restrictive than Rule 14a-11? Should Rule 14a-11 be inapplicable if such shareholder-approved provisions are less restrictive than Rule 14a-11? Or both?	Yes. See Section II. F. and Section III.O. of the ABA Letter.

Comment Number	Question	Response
B.8.	The New York Stock Exchange has filed with the Commission a proposed rule change to amend NYSE Rule 452 and corresponding Section 402.08 of the Listed Company Manual to eliminate broker discretionary voting for the election of directors. The Commission published the proposed rule change, as amended on February 26, 2009, for comment in the Federal Register on March 6, 2009. If the amendment to Rule 452 is approved, what would be its effect on operation of proposed Rule 14a-11? Would any changes to Rule 14a-11 be required? Please be specific in your response.	The amendment to NYSE Rule 452 to eliminate broker discretionary voting for the election of directors may have an effect on electoral outcomes. The precise effect with respect to a particular company would be dependent on its shareholder population, its voting and board systems and other relevant factors. It could have an effect on the outcome of an uncontested election where majority voting is applicable if its operation were responsible for the failure of candidates to receive a majority vote. In a contested election by reason of access, it should not have an effect on the ability to reach an outcome but may affect which directors are elected. At this juncture, we are not aware of any changes to proposed Rule 14a-11 which should be made because of such amendment, although the change to NYSE Rule 452 is relevant to a decision whether Rule 14a-11 is necessary or desirable at this time.
B.9.	Should proposed Rule 14a-11 exempt companies where state law or the company's governing documents require that directors be elected by a majority of shares present in person or represented by proxy at the meeting and entitled to vote? What specific issues would arise in an election where state law or the company's governing documents provided for other than plurality voting (e.g., majority voting)? What specific issues would arise in an election that is conducted by cumulative voting? Would these issues need to be addressed in revisions to the proposed rule text? If so, how?	Yes, Rule 14a-11 applicability should be subject to appropriate opt-out provisions. See Sections II.E. and F. and Section III.O. of the ABA Letter. One circumstance where Rule 14a-11 should not apply is if the election of directors is required to be by majority vote and there is no carveout for contested election. A majority vote requirement when there is an election contest creates the risk of a failed election and would make it more difficult for a shareholder candidate to be elected. For this reason, proxy advisory firms and most institutional shareholders insist on a carveout from majority voting if there is a contested election so that a plurality rule applies.
B.10.	Should companies be able to take specified steps or actions, such as adopting a majority vote standard or bylaw specifying procedures for the inclusion of shareholder nominees in company proxy materials, to prevent application of proposed Rule 14a-11 where it otherwise would apply? If so, what such steps or actions would be appropriate and why would they be appropriate? For example, should companies that agree with a shareholder proponent not to exclude a shareholder proposal submitted by an eligible shareholder pursuant to Rule 14a-8 be exempted from application of the proposed rule for a specified period of time? Should a company that implements any shareholder proposals that receive a majority of votes cast in a given year be exempted?	Yes, companies should be able to take specified steps to prevent application of proposed Rule 14a-11. See Section II.E. and Section III.O of the ABA Letter.

Comment Number	Question	Response
B.11.	Should companies subject to Rule 14a-11 be permitted to exclude certain shareholder proposals that they otherwise would be required to include? If so, what categories of proposals? For example, should the company be able to exclude proposals that are non-binding, proposals that relate to corporate governance matters generally, proposals that relate to the structure or composition of boards of directors, or other proposals?	N/R.
B.12.	One concern that has been raised about the effectiveness of the present proxy rules is the high cost to a shareholder to conduct a solicitation to nominate a director. Should the proposed rule provide that it does not apply to a company whose governing documents include a provision for reimbursement of expenses incurred by a participant or participants in the course of a solicitation in opposition as defined in Rule 14a-12(c)? If so, should the rule specify what manner of reimbursement would be sufficient for proposed Rule 14a-11 not to apply?	N/R.
B.13.	Should Rule 14a-11 be widely available, as proposed, or should application of the rule be limited to companies where specific events have occurred to trigger operation of the rule? If so, what events should trigger operation of the rule?	In our letter to the Commission of January 7, 2004, we favored triggering events as a condition to the operation of an access rule but found the proposed triggering items unacceptable and made certain recommendations with respect to them. Given the evolution of corporate governance practices and legal and other changes which have taken place since that time, it is our view that a right of access designed to fulfill a specified and limited purpose as discussed in our letter does not require triggering events. In the absence of such defined purpose, we would reconsider the need for triggering events and appropriate triggers.
B.14.	If the Commission were to include triggering events in Rule 14a-11, would either of the triggering events proposed in 2003 and described above be appropriate? In responding, please discuss how any changes in corporate governance practices over the past six years have affected the usefulness of the triggering events proposed in 2003. For example, over the past six years many companies have adopted majority voting. If the triggering events proposed in 2003 are not appropriate, are there alternative events that the Commission should consider in place of, or in addition to, the above events? For example, should application of Rule 14a-11 be triggered by other factors such as economic performance (e.g., lagging a peer index for a specified number of consecutive years), being delisted by an exchange, being sanctioned by the Commission or other regulators, being indicted on criminal charges, having to restate earnings, having to restate earnings more than once in a specified period, or failing to take action on a shareholder proposal that received a majority shareholder vote?	See response to B.13.

Comment Number	Question	Response
B.15.	In the 2003 Proposal, the rule proposed would have been triggered by withhold votes for one or more directors of more than 35% of the votes cast. Is it appropriate to apply such a trigger to current proposed Rule 14a-11? If so, what would be an appropriate percentage and why? Would it be appropriate to base this trigger on votes cast rather than votes outstanding? Please provide a basis for any alternate recommendations, including numeric data, where available. Is the percentage of withhold votes the appropriate standard in all cases? For example, what standard is appropriate for companies that do not use plurality voting? If your comments are based upon data with regard to withhold votes for individual directors, please provide such data in your response.	See response to B.13.
B.16.	If the Commission were to include a triggering event requirement, for what period of time after a triggering event should Rule 14a-11 apply (e.g., one year, two years, three years, or permanently)? Should there be a means other than the adoption of a provision in the company's governing documents for the company or shareholders to terminate application of the requirement at a company? If so, what other means would be appropriate?	See response to B.13.
B.17.	What would be the possible consequences of the use of triggering events? Would the withhold vote trigger result in more campaigns seeking withhold votes? How would any such consequences affect the operation and governance of companies?	See response to B.13.
B.18.	If the proposed requirement applied only after a specified triggering event, how would the company make shareholders aware when a triggering event has occurred? If the rule became operative based on the occurrence of triggering events, should the rule require additional disclosures in a company's Exchange Act Form 10-Q, 10-K, or 8-K or, in the case of a registered investment company, Form N-CSR? For example, the rule could require the following: • A company would be required to disclose the shareholder vote with regard to the directors receiving a withhold vote or a shareholder proposal, either of which may result in a triggering event, in its quarterly report on Form 10-Q for the period in which the matter was submitted to a vote of shareholders or, where the triggering event occurred during the fourth quarter of the fiscal year, on Form 10-K; and • A company would be required to include in that Form 10-Q or 10-K information disclosing that it would be subject to Rule 14a-11 as a result of such vote, if applicable.	See response to B.13.
B.19.	Should the company's disclosure regarding the applicability of Rule 14a-11 be filed or made public in some other manner? If so, what manner would be appropriate?	Disclosure should be made in the company's proxy statement as it is now.

Comment Number	Question	Response
B.20.	Should companies be exempted from complying with Rule 14a-11 for any election of directors in which another party commences or evidences its intent to commence a solicitation in opposition subject to Rule 14a-12(c) prior to the company mailing its proxy materials? What should be the effect if another party commences a solicitation in opposition after the company has mailed its proxy materials?	Yes, Rule 14a-11 should not apply if there is a traditional proxy contest, and it should not matter whether it is commenced before or after the company has mailed its proxy materials. See Section III.H. of the ABA Letter.
B.21.	If a triggering event is required and companies are exempted from complying with Rule 14a-11 because another party has commenced or evidenced its intent to commence a solicitation in opposition subject to Rule 14a-12(c), should the period in which Rule 14a-11 applies be extended to the next year? What should be the effect if another party commences a solicitation in opposition after the company has mailed its proxy materials?	See response to B.13.
B.22.	What provisions, if any, would the Commission need to make for the transition period after adoption of a rule based on this proposal? Would it be necessary to adjust the timing requirements of the rule depending on the effective date of the rule (e.g., if the rules are adopted shortly before a proxy season)?	A transition period of at least one year would be needed—i.e., Rule 14a-11 should not be operative until 2011 at the earliest. See Section I. and Section II.F. of the ABA Letter.
B.23.	Should the Commission consider rulemaking under Section 19(c) of the Exchange Act to amend the listing standards of registered exchanges to require that shareholders have access to the company's proxy materials to nominate directors under the requirements and procedures described in connection with proposed Rule 14a-11 to reflect, for example, changes the Sarbanes-Oxley Act made to director and independence requirements, among other matters?	We do not believe that listing standards should be used to provide eligible shareholders a right of access to a company's proxy materials to nominate directors. Without addressing the authority of the Commission, meaningful issues are raised under The Business Roundtable decision which related to Rule 19c-4. One advantage of using listed standards, limiting an access provision to listed companies, can be handled in a more focused way as suggested in our comment letter. Further, in our comment letter, we explore in detail workability issues in connection with proposed Rule 14a-11. Similar issues would likely be present in connection with a listing standard that provides a right of access. The alternative of enabling private ordering to establish a workable right of access should be pursued. To that end, and as indicated in our comment letter, we are in the process of revising our illustrative bylaw, taking into account all elements of the Proposing Release and comments from interested parties.
Eligibility to Use Exchange Act Rule 14a-11		
C.1.	Are the proposed shareholder eligibility criteria for Rule 14a-11 necessary or appropriate? If not, why not?	No. See Section II.G.3. and Sections III.B.and C. of the ABA Letter.
	Should there be any restrictions regarding which shareholders can use proposed Rule 14a-11 to nominate directors for inclusion in company proxy materials?	Yes. See Sections III.B., C., D. and F. of the ABA Letter.

Comment Number	Question	Response
	Should those restrictions be consistent with the requirements of Rule 14a-8 or should they be more extensive than the minimum requirements in Rule 14a-8?	The restrictions should be more extensive than the minimum requirements in Rule 14a-8. See Sections III.B., C. D. and F. of the ABA Letter.
C.2.	The proposed eligibility threshold is based on the percentage of securities owned and entitled to vote on the election of directors. This threshold is based on current Rule 14a-8 and reflects our intent to focus on those shareholders eligible to vote for directors. Is the proposed threshold appropriate or could it be better focused to accomplish our objective? For example, should eligibility instead be based on record ownership? Should eligibility be based on the value of shares owned? If so, on what date should the value be measured? What would be an appropriate value amount? Is there another standard or criteria? Is submission of the nomination the correct date on which to make these eligibility determinations? If not, what date should be used?	The proposed eligibility thresholds are too low and as proposed are not workable in many capital and board structures. In some capital or board structures the threshold might or should be based exclusively or partially on the voting power of some or all of the classes of stock ordinarily entitled to vote in the election of directors and in other capital or board structures exclusively or partially on the value of shares of some or all classes of stock ordinarily entitled to vote in the election of directors. See Sections II.G.2. and III.B. of the ABA Letter. All eligibility thresholds should be based on "net long" ultimate beneficial ownership of the full voting power and investment power embodied in "physical" securities, not on hedged positions or derivative-based synthetic securities. The term "record ownership" is potentially confusing and should not be used. See Section III.C. of the ABA Letter.
C.3.	For companies that have more than one class of securities entitled to vote on the election of directors, does the rule provide adequate guidance on how to determine whether a shareholder meets the requisite ownership thresholds? Should the rule specifically address how to make this determination if one class of securities has greater voting rights than another class?	Proposed Rule 14a-11 does not provide adequate guidance for all companies with more than one class of securities entitled to vote on the election of directors. To be workable, a prescriptive proxy access rule should deal appropriately with multiple classes of securities with ordinary voting rights for director and with multiple classes of directors. Such a rule should address how to make eligibility determinations for classes of stock having larger or smaller voting power than others, but this is only one of the workability issues inherent in the large variety of capital and board structures utilized by public companies. See Section II.G.2., Section III.A. (with respect to certain types of preferred stock) and Section III. B. (with respect to other capital and board structures) of the ABA Letter.
C.4.	What other criteria or alternatives should the Commission consider to determine the eligibility standards for shareholders to nominate directors?	See our prior responses under this Item C.
C.5.	Is it appropriate to use a tiered approach to the ownership threshold for reporting companies (other than registered investment companies)? If so, is it appropriate and workable to use large accelerated filer, accelerated filer, and non-accelerated filer to define the three tiers?	No. See Section III.B. of the ABA Letter.
	Are there aspects of the definitions of these groups that do not work with the proposed rule?	See response to C.5.

Comment Number	Question	Response
	Should we instead define the tiers strictly by public float or strictly by market capitalization? If so, what should the public float or market capitalization thresholds be (e.g., 5% for companies with less than $75,000,000 in public float; 3% for companies with more than $75,000,000 but less than $700,000,000 in public float; 1% for companies with greater than $700,000,000 in public float)?	See response to C.5.
C.6.	Is the 1% standard that we have proposed for large accelerated filers appropriate? Should the standard be lower (e.g., $2,000 or 0.5%) or higher (e.g., 2%, 3%, 4%, 5%, 6%, 7%, 8%, 9%, 10%, 15%, 20%, or 25%)? Is the 3% standard that we have proposed for accelerated filers appropriate? Should the standard be lower (e.g., 1% or 2%) or higher (e.g., 4%, 5%, 6%, 7%, 8%, 9%, 10%, 15%, 20%, or 25%)? Is the 5% standard that we have proposed for non-accelerated filers appropriate? Should the standard be lower (e.g., 1%, 2%, 3%, or 4%) or higher (e.g., 6%, 7%, 8%, 9%, 10%, 15%, 20%, or 25%)?	The standard should be 5% for large accelerated filers and for accelerated filers, the same standard as the Commission proposed in its 2003 proxy access rule making proposal. If the Commission does not accept our recommendation to exclude non-accelerated filers from the application of a prescriptive proxy access rule, these smaller companies should have a higher than 5% threshold. See Section III.B. of the ABA Letter.
C.7.	Should groups of shareholders composed of a large number of beneficial holders, but who collectively own a percentage of shares below the proposed thresholds, be permitted to have a nominee included in the company proxy materials? If so, what would be a sufficiently large group? Would a group composed of over 1%, 3%, 5% or 10% of the number of beneficial holders be sufficient? Should there be different disclosure requirements for a large shareholder group?	Groups of shareholders composed of a large number of beneficial holders who own less than the threshold should not be entitled to proxy access, as this would not be consistent with the purpose of the proxy access rule. See Section II.A. of the ABA Letter.
C.8.	Is it appropriate to use a tiered approach to the ownership threshold for registered investment companies?	No. See Section X of the ABA Letter.
	Should the tiers and ownership percentages for registered investment companies be similar to those for reporting companies other than registered investment companies, as proposed, or should they be different?	No. See Section X of the ABA Letter.
	Is it appropriate and workable to base the tiers on a registered investment company's net assets? Should another measure be used instead?	No. See Section X of the ABA Letter.
	Should the determination of which tier a series investment company belongs to be made on a series by series basis, rather than for the company as a whole?	No. See Section X of the ABA Letter. However, if the SEC were to adopt such a requirement, determinations should be made on the basis of the company as a whole.
	Should the levels of net assets for each category be higher or lower? If so, why?	For the reasons discussed in Section X of the ABA letter, thresholds should be higher.
C.9.	Should the determination of which tier a series investment company is in be based on the company's net assets as of June 30 of the calendar year immediately preceding the calendar year of the meeting, as disclosed in a Form 8-K filed in connection with the meeting at which directors are to be elected?	No. See Section X of the ABA Letter. A uniform requirement may not be reasonable with respect to some funds, whose net assets may vary significantly between June 30 and the date of the meeting, if required.
	Should the determination of which tier other registered investment companies are in be based on the net assets of the company as of the end of the company's second fiscal quarter in the fiscal year immediately preceding the fiscal year of the meeting, as disclosed in the company's Form N-CSR? If not, as of what date should net assets be determined for these purposes?	See prior response.

Comment Number	Question	Response
	Should all registered investment companies use a single date for purposes of making this determination?	No. See Section X of the ABA Letter.
C.10.	Should a registered investment company that is a series company be required to file a Form 8-K disclosing the company's net assets as of June 30 of the calendar year immediately preceding the calendar year of the meeting and the total number of shares of the company that are entitled to vote for the election of directors (or if votes are to be cast on a basis other than one vote per share, then the total number of votes entitled to be voted and the basis for allocating such votes) at the annual meeting of shareholders (or, in lieu of such an annual meeting, a special meeting of shareholders) as of the end of the most recent calendar quarter? If not, how should shareholders of a series company determine whether they meet the applicable ownership threshold?	No. See Section X of the ABA Letter.
C.11.	Is the 1% standard that we have proposed for registered investment companies with net assets of $700 million or more appropriate? Should the standard be lower (e.g., $2,000 or 0.5%) or higher (e.g., 2%, 3%, 4%, 5%, 6%, 7%, 8%, 9%, 10%, 15%, 20%, or 25%)? Is the 3% standard that we have proposed for registered investment companies with net assets of $75 million or more, but less than $700 million, appropriate? Should the standard be lower (e.g., 1% or 2%) or higher (e.g., 4%, 5%, 6%, 7%, 8%, 9%, 10%, 15%, 20%, or 25%)? Is the 5% standard that we have proposed for registered investment companies with net assets of less than $75 million appropriate? Should the standard be lower (e.g., 1%, 2%, 3%, or 4%) or higher (e.g., 6%, 7%, 8%, 9%, 10%, 15%, 20%, or 25%)?	No. See Section X of the ABA Letter. If the Commission were to adopt such a standard, a higher standard would be appropriate.
	Should the determination of whether a shareholder or shareholder group beneficially owns a sufficient percentage of a series company's securities to nominate a director be made on a series by series basis, rather than for the company as a whole (i.e., should a shareholder be permitted to take advantage of the nomination process contained in proposed Rule 14a-11 if he or she owns the applicable percentage of shares of a series of the company, but does not own the applicable percentage of the company as a whole)?	Such a determination should be made on the basis of the company as a whole.
	Should closed-end investment companies be subject to the same standards as open-end investment companies?	No. See Section X of the ABA Letter.
	As proposed, business development companies would be treated in the same manner as reporting companies (other than registered investment companies). Should business development companies be subject to the same tiered approach as reporting companies (other than registered investment companies)? Why or why not?	No. See Section X of the ABA Letter.

Comment Number	Question	Response
C.12.	In determining the securities that are entitled to be voted on the election of directors of a registered investment company for purposes of establishing whether the applicable threshold has been met, should the nominating shareholder or group be permitted to rely on information set forth in a Form 8-K filed in connection with the meeting where directors are to be elected (in the case of a series company) or the company's most recent annual or semi-annual report filed with the Commission on Form N-CSR (in the case of other investment companies), unless the nominating shareholder or group knows or has reason to know that the information contained therein is inaccurate?	Yes, recognizing that information can become inaccurate very quickly.
C.13.	Voting rights for some registered investment companies are based on the net asset value of the shareholder's securities rather than the number of securities. Does the rule provide adequate guidance on how to determine whether a shareholder meets the requisite ownership threshold in such a case?	More guidance would be appropriate.
	Should the rule specifically address how to make the ownership threshold determination in cases where different securities of the same investment company have different voting rights on a per share basis?	Yes.
C.14.	Should there be a restriction on shareholder eligibility that is based on the length of time securities have been held? If so, is one year the proper standard? Should the standard be longer (e.g., two years, three years, four years, or five years)?	There should be a minimum continuous holding period, preferably of two years (particularly if the threshold is set below 5%), and in no event less than one year. See Section III.B. of the ABA Letter.
	Should the standard be shorter (e.g., six months)? Should the standard be measured by a different date (e.g., one year as of the date of the meeting, rather than the date of the notice)?	The minimum holding period should be determined as of date of filing of the Schedule 14N. In addition, the nominating shareholder or shareholder group should be required to maintain continuous "net long" beneficial ownership of at least the threshold amount through the date of the shareholder meeting; an intent to maintain the holding should not be sufficient. See Section III.B. of the ABA Letter.
C.15.	Should eligibility be conditioned on meeting the required ownership threshold by holding a net long position for the required time period? If the Commission were to adopt such a requirement, would this require other modifications to the proposal?	Yes, the eligibility threshold should require continuous beneficial ownership of a net long voting and investment position in the "physical" securities. Synthetic economic or voting positions and hedged ownership positions should not be counted for eligibility purposes. See Section III.C. of the ABA Letter.
C.16.	As proposed, a nominating shareholder would be required to represent its intent to hold the securities until the date of the election of directors. Is it appropriate to include such a requirement?	No. Actual continuous "net long" beneficial ownership should be required to exist through the date of the shareholder meeting. See Section III.B. of the ABA Letter.

Comment Number	Question	Response
	What should be the remedy if the nominating shareholder or group represents its intent to hold the securities through the date of the meeting for the election of directors and fails to do so? Should the company be permitted to exclude any nominations from that nominating shareholder or member of a group for some period of time afterward (e.g., one year, two years, three years)?	If a nominating shareholder does not meet the requisite continuous beneficial ownership requirement at the date of the meeting (or at any sooner point in time), its nominee should be disqualified and any purported nomination at the meeting disregarded. See Section III.B. of the ABA Letter.
	If the nominating shareholder or group fails to hold the securities through the date of the meeting, what, if anything, should the effect be on the election? Should the nominee submitted by the shareholder or group be disqualified?	As noted immediately above, the nominee should be disqualified.
C.17.	We are proposing that a nominating shareholder represent an intent to hold through the date of the meeting because we believe it is important that the nominating shareholder or group have a significant economic interest in the company. Is it appropriate to require the shareholder to provide a statement regarding its intent with regard to continued ownership of the securities beyond the election of directors?	N/R.
	Should a nominating shareholder be required to represent that it will hold the securities beyond the election if the nominating shareholder's nominee is elected (e.g., for six months after the election, one year after the election, or two years after the election)?	N/R.
	Would the answer be different if the nominating shareholder's nominee is not elected?	N/R.
C.18.	In the 2003 Proposal the Commission solicited comment on whether the rule should include a provision that would deny eligibility for any nominating shareholder or group that has had a nominee included in the company materials where that nominee did not receive a sufficient percentage of the votes. Commenters were mixed in their responses so we have not proposed a requirement in this regard, but are again requesting comment as to whether the rule should include a provision denying eligibility for any nominating shareholder or group who has had a nominee included in the company materials where that nominee did not receive a sufficient percentage of the votes (e.g., 5%, 10%, 15%, 25%, or 35%) within a specified period of time in the past (e.g., one year, two years, three years, four years, five years).	There should be a provision disqualifying a nominating shareholder if its nominee did not receive affirmative votes from at least 25% of the shares present and eligible to vote in director election within the prior three years This bar should also apply to the larger members of a shareholder nominating group if its nominee did not receive the affirmative votes of at least 25% of the shares present and eligible to vote in a director election within the prior three years (e.g., those whose ownership exceeds a threshold percentage, such as 10%). See Section III.J. of the ABA Letter.
	If there should be such an eligibility standard, how long should the prohibition last (e.g., one year, two years, three years)?	Three years. See Section III.J. of the ABA Letter.
	Similarly, we are again requesting comment (see also Request for Comment D.16.) as to whether the rule should include a provision that would deny eligibility for any nominee that has been included in the company proxy materials within a specified period of time in the past (e.g., one year, two years, three year, four years, five years) where that nominee did not receive at least a specified percentage of the votes (e.g., 5%, 10%, 15%, 25%, or 35%).	Yes, any prescriptive proxy access rule should deny eligibility to any candidate who receives less than the affirmative vote of at least 25% of the shares present and eligible to vote in the nominee's second successive candidacy. There should be no required vote for the nominee's first candidacy. See Section III.J. of the ABA Letter.

Comment Number	Question	Response
	How long should any such prohibition last (e.g., one year, two years, three years)?	Three years. See Section III.J. of the ABA Letter.
C.19.	As proposed, shareholders may aggregate their holdings in order to meet the ownership eligibility requirement. The shares held by each member of a group that are used to satisfy the ownership threshold must meet the minimum holding period. Should shareholders be allowed to aggregate their holdings in order to meet the ownership eligibility requirement to nominate directors?	Shareholders should be allowed to aggregate their holdings in order to form a qualifying nominating group. However, no shareholder should be permitted to be a member of more than one nominating group and there should be restrictions on the manner by which shareholders are solicited to form a group and on the size of the group to prevent abuse of the proxy access regime, including a limitation on the number of members of a group and/or on the aggregate holdings of a group. See Section III.D. In addition, the Commission should not adopt proposed Rule 14a-2(b)(7) or, if it does, should limit the use of the new rule. Finally, the Commission should require that all solicitations to form a nominating group under the proxy rules, or any exemption from the proxy rules, be in writing and filed on the day of first use. No oral solicitation to form a nominating group should be permitted under any circumstance. See Section VI. A. of the ABA Letter.
C.20.	If shareholders should be able to aggregate their holdings, is it appropriate to require that all members of a nominating shareholder group whose shares are used to satisfy the ownership threshold to meet the minimum holding period individually?	Yes.
	If aggregation is not appropriate, what ownership threshold would be appropriate for an individual shareholder?	5%. See Section III.B. of the ABA Letter.
C.21.	If a nominating shareholder sells any shares of the company that are in excess of the amount needed to satisfy the ownership threshold, should that shareholder not be eligible under the rule? Would it matter when the nominating shareholder sold the shares in relation to the nomination process?	A nominating shareholder and each member of a shareholder group should lose its eligibility to make an access nomination and its candidate should be disqualified if it ceases to beneficially own continuously the requisite "net long" amount of securities through the shareholder meeting for the election of directors. See Sections III.B and C. of the ABA Letter.
C.22.	Would shareholder groups effectively be able to form to satisfy the ownership thresholds? If not, what impediments exist? What, if anything, would be appropriate to lessen or eliminate such impediments?	N/R, except that, as discussed in Section VI.A. and Section VII of the ABA Letter, we believe the existing proxy solicitation and beneficial ownership reporting rules provide sufficient flexibility for the formation of nominating shareholder groups.

Comment Number	Question	Response
C.23.	What would be an appropriate method of establishing the beneficial ownership level of a nominating shareholder or group? What would be sufficient evidence of ownership? For example, if the nominating shareholder is not the registered holder of the securities, should the nominating shareholder be required to provide a written statement from the "record" holder of the securities (usually a broker or bank), verifying that at the time the nominating shareholder submitted its notice to the company, the nominating shareholder continuously held the securities for at least one year?	Each nominating shareholder (including members of a nominating group) should be required to establish the requisite continuous beneficial "net long" ownership requirement through a certification by the shareholder if it has held some or all of the stock in its own name for the portion of the holding period it has done so and/or through certificates from its immediate custodians with respect to the balance of the required holding period. Use of the term "record" holder should be avoided because it is easily confused with the state law concept of "holder of record." See Section III.C. of the ABA Letter.
C.24.	Should the Commission limit use of the rule, as proposed, to shareholders that are not seeking to change the control of the company or to gain more than a limited number of seats on the board of directors? Why or why not?	The Commission should limit use of a prescriptive proxy access rule to nominating shareholders that are not seeking to change or affect control of the company or to gain more than a limited number of board seats. See Sections II.A.B. and C. of the ABA Letter.
	Would it be appropriate to require the shareholder to represent that it will not seek to change the control of a company or to gain more than a limited number of seats on the board for a period of time beyond the election of directors?	Yes.
	How should the rules address the possibility that a nominating shareholder's or group's intent may change over time?	If the change of intent occurs prior to election of the candidate, the nominating shareholder or shareholder group should lose its eligibility to make the nomination and the nominee should be disqualified. See Sections III.K. of the ABA Letter.
Shareholder Nominee Requirements		
D.1.	Is it appropriate to use compliance with state law, federal law, and listing standards as a condition for eligibility?	Yes. See Section III.F. of the ABA Letter.
D.2.	Should there be any other or additional limitations regarding nominee eligibility? Would any such limitations undercut the stated purposes of the proposed rule? Are any such limitations necessary? If so, why?	Yes. The recommended additional limitations regarding nominee eligibility (including independence of the nominee from the nominating shareholder or shareholder group) will further, not undercut, the purpose of the proposed rule. See Section II.A. and Section III.F. of the ABA Letter.
D.3.	Should there be requirements regarding independence of the nominee and nominating shareholder or group and the company and its management? If so, are the proposed limitations appropriate? What other or additional limitations would be appropriate?	Independence from the company of the nominee and nominating shareholder or shareholder group should be required. However, the independence standards in a prescriptive access rule should be broadened to include all of the director independence listing standards, including, where appropriate, the heightened standard for independence for audit and compensation committee service. See Section II.C. and Section III.F. of the ABA Letter.

Comment Number	Question	Response
	If these limitations generally are appropriate, are there instances where they should not apply? Should the fact that the nominee is being nominated by a shareholder or group, combined with the absence of any agreement with the company or its management, be a sufficient independence requirement?	No.
D.4.	How should any independence standards be applied? Should the nominee and the nominating shareholder or group have the full burden of determining the effect of the nominee's election on the company's compliance with any independence requirements, even though those consequences may depend on the outcome of any election and may relate to the outcome of the election with regard to nominees other than shareholder nominees?	The nominee and nominating shareholder or group should have responsibility to satisfy the nominee eligibility requirements subject to challenge by the company.
	Should the rules specify that the nominating shareholder or group may rely on information disclosed in the company's Commission filings in making this determination?	Information in the company's filings should be one source of information but not the sole source.
	How should the independence standards be applied when the entity is not a corporation – for example, a limited partnership?	The standards should be the same as appropriate.
D.5.	Where a company is subject to an independence standard of a national securities exchange or national securities association that includes a subjective component (e.g., subjective determinations by a board of directors or a group or committee of the board of directors), should the shareholder nominee be subject to those same requirements as a condition to nomination?	Yes. See Section III.F. of the ABA Letter.
D.6.	As proposed, a nominating shareholder or group would be required to represent that the shareholder nominee satisfies generally applicable objective standards of a national securities exchange or national securities association that are applicable to directors of the company generally and not any particular definition of independence applicable to members of the audit committee of the company's board of directors. Should the proposal clarify that the nominee must meet the applicable objective standards of the company's primary listing exchange?	The nominee should be required to meet all applicable independence standards of the company's primary listing exchange, including so-called subjective standards, and, where applicable, the heightened independence standards required for audit and compensation committee service. See Section III. F. of the ABA Letter.
D.7.	Should the company or its nominating committee have any role in determining whether a shareholder nominee satisfies the generally applicable objective standards for director independence of any exchange on which the company's securities are listed?	The company should be entitled to obtain such information from the nominating shareholder and from the nominee as it may reasonably require and to challenge whether the nominee satisfies the eligibility requirements. See Section III.F. of the ABA Letter.
D.8.	If a company has more stringent independence requirements than the listing standards applicable to the company, should the company's requirements apply? Or should the listing standards apply?	The company's more stringent independence standards should apply. See Section III.F. of the ABA Letter.

Comment Number	Question	Response
D.9.	If a company is not subject to an independence standard, should shareholder nominees to the board of directors under Rule 14a-11 be required to provide disclosure concerning whether they would be independent? If so, what standard should apply? Should the nominating shareholder or group be able to select the standard?	The nominee should be required to meet default independence standards (e.g., those of the NYSE, Nasdaq or of a national securities exchange or association selected by the company and announced in advance consistent with the disclosures required by paragraph (a)(1) of Item 407 of Regulation S-K).
D.10.	Should we apply the "interested person" standard of Section 2(a)(19) of the Investment Company Act with respect to the representation that a shareholder nominee be independent from a company that is a registered investment company?	Yes. See Section X of ABA Letter.
	Should the "interested person" standard also apply to shareholder nominees for election to the board of directors of a business development company?	Yes. See Section X of the ABA Letter
	Should we instead apply a different independence standard to registered investment companies or business development companies, such as the definition of independence in Exchange Act Rule 10A-3?	No.
D.11.	As proposed, the rule includes a safe harbor providing that nominating shareholders will not be deemed "affiliates" solely as a result of using Rule 14a-11. This safe harbor would apply not only to the nomination of a candidate, but also where that candidate is elected, provided that the nominating shareholder or group does not have an agreement or relationship with that director otherwise than relating to the nomination. Is it appropriate to provide such a safe harbor for shareholder nominations? Should the safe harbor continue to apply where the nominee is elected? If so, should the nomination and election of the shareholder's nominee be a consideration in determining whether the shareholder is an affiliate, or should the safe harbor be "absolute"?	The rule should not provide a safe harbor from affiliate status. See Section IX of the ABA Letter.
D.12.	Should the Commission include a similar safe harbor provision for nominating shareholders that submit a nominee for inclusion in a company's proxy materials pursuant to an applicable state law provision or a company's governing documents rather than using proposed Rule 14a-11? Why or why not?	No. See Section IX of the ABA Letter.
D.13.	Should the eligibility criteria include a prohibition on any affiliation between nominees and nominating shareholders or groups? If so, what limitations would be appropriate? For example, should there be a prohibition on the nominee being the nominating shareholder or a member of the nominating shareholder group, a member of the immediate family of the nominating shareholder or any member of the nominating shareholder group, or an employee of the nominating shareholder or any member of the nominating shareholder group? Would such a limitation unnecessarily restrict access by shareholders to the proxy process?	The nominee should be required to be independent from the nominating shareholder or shareholder group, as initially proposed by the Commission in its 2003 proxy access rule proposal. See Section III.F. of the ABA Letter.

Comment Number	Question	Response
D.14.	Should eligibility criteria include a prohibition on agreements between companies and its management and nominating shareholders, as proposed? Would such a prohibition inhibit desirable negotiations between shareholders and boards or nominating committees regarding nominees for directors?	There is no need for such a prohibition because any such agreement would be disclosed and a nominating shareholder can take any such agreement into account in determining its course of action and shareholders can take any such agreements into account in their voting decisions. Such a prohibition could inhibit desirable negotiations between nominating shareholders and the board or board committee.
	Should the prohibition provide an exception to permit such negotiations, as proposed? If so, what should the relevant limitations be?	See prior response.
D.15.	Should the nominee be required to make any of the representations (e.g., the independence representation), either in addition to or instead of, the nominating shareholder or group? If so, should these representations be included in the shareholder notice on Schedule 14N or in some other document?	Yes, the nominee should make these representations since he or she will have peculiar knowledge and should accept responsibility.
D.16.	Should there be a nominee eligibility criterion that would exclude an otherwise eligible nominee where that nominee has been included in the company's proxy materials as a candidate for election as director but received a minimal percentage of the vote?	Yes. See response to Question C.18 above.
	If so, what would be the appropriate percentage (e.g., 5%, 10%, 15%, 25%, or 35%)?	See response to Question C.18 above.
	If so, for how long should the nominee be excluded (e.g., 1 year, 2 years, 3 years, 4 years, 5 years, permanently)?	See response to Question C.18 above.
Maximum Number of Shareholder Nominees To Be Included in Company Proxy Materials		
E.1.	Is it appropriate to include a limitation on the number of shareholder director nominees? If not, how would the proposed rules be consistent with our intention not to allow Rule 14a-11 to become a vehicle for changes in control?	It is appropriate to include a limitation on the number of shareholder director nominees under a proxy access rule. See Section III.E. of the ABA Letter.
E.2.	If there should be a limitation, is the proposed maximum percentage of shareholder nominees for director that we have proposed appropriate? If not, should the maximum percentage be higher (e.g., 30%, 35%, 40%, or 45%) or lower (e.g., 10%, 15%, or 20%)?	25% is too high to avoid affecting control of the company. Instead of a percentage test, a prescriptive proxy access rule should utilize the scaled number of directors included in the Commission's 2003 proxy access proposal. See Section III.E. of the ABA Letter.
	Should the percentage vary depending on the size of the board?	Yes. The scaled number of directors included in the Commission's 2003 proxy access proposal would be appropriate. See Section III.E. of the ABA Letter.
	Should the limitation be the greater or lesser of a specified number of nominees or percentage of the total number of directors on the board?	See prior response.
	Is it appropriate to permit more than one shareholder nominee regardless of the size of the company's board of directors?	No. See Section III.E. of the ABA Letter.

Comment Number	Question	Response
E.3.	In instances where 25% of the board does not result in a whole number, the maximum number of shareholder nominees for director that a registrant will be required to include in its proxy materials will be the closest whole number below 25%. Is it appropriate to round down in this instance? Should we instead round up to the nearest whole number above 25%? Is a rounding rule necessary?	Rounding down is appropriate if a percentage test is used, as rounding up would increase the risk that election of all of the access nominees would impact control of the company. See Section II.B. and Section III.E. of the ABA Letter.
E.4.	Should the proposed rule address situations where the governing documents provide a range for the number of directors on the board rather than a fixed number of board seats? If so, what changes to the rule would be necessary?	The relevant number should be the number of directors giving effect to the election rather than the permissible number of directors.
E.5.	The proposal contemplates taking into account incumbent directors who were nominated pursuant to proposed Rule 14a-11 for purposes of determining the maximum number of shareholder nominees. Is that appropriate? Should there be a different means to account for such incumbent directors?	It is appropriate to take into account incumbent directors originally nominated pursuant to a proxy access rule for a period of three years following the initial election. See Section III. E. of the ABA Letter.
E.6.	Should the procedure address situations in which, due to a staggered board, fewer director positions are up for election than the maximum permitted number of shareholder nominees? If so, how?	A proxy access rule should limit the number of access directors that can serve in any class to the percentage of the class equal to the percentage that all potential access directors bears to the entire board. See Section III.E. of the ABA Letter.
	Should the maximum number be based on the number of directors to be elected rather than to the overall board size?	Yes. See Section III.E. of the ABA Letter.
E.7.	Should any limitation on shareholder nominees take into account incumbent directors who were nominated outside of the Rule 14a-11 process, such as pursuant to an applicable state law provision, a company's governing documents, or a proxy contest? If so, should such directors be counted as "shareholder nominees" for purposes of determining the 25%?	Yes, nominees pursuant to an applicable state law or governing document provision, as well as nominees pursuant to a conventional proxy contest should be treated as proxy access candidates for purposes of the limit on the number of proxy access candidates. In addition, incumbent directors, elected within the preceding three years under an applicable state law or governing document provision or in a conventional proxy contest, whether serving a greater than one year term or having been re-elected, should count as proxy access directors for purposes of the limit on the total number of proxy access directors. See Sections III.E and H. of the ABA Letter.
E.8.	Should any limitation on shareholder nominees take into account shareholder nominees for director that a company includes in its proxy materials other than pursuant to Rule 14a-11 (e.g., voluntarily)?	Yes, if a proxy access nominee is elected to a one year term and is renominated by the board and re-elected in the succeeding year or succeeding two years, the person should be deemed a proxy access director for the succeeding years. See Sections E. and H. of the ABA Letter.

Comment Number	Question	Response
E.9.	Should Rule 14a-11 provide an exception for controlled companies or companies with a contractual obligation that permits a certain shareholder or group of shareholders to appoint a set number of directors?	A proxy access rule should not be applicable to a controlled company. See Section III.A. The question concerning treatment of a group of shareholders with contractual rights to designate directors or nominees for directors is far more complicated and does not have a single answer that would be appropriate under all variations of this common board structure. Moreover, this question is part of much larger group of issues that arise from capital and board structures involving multiple classes of securities with different voting rights for director or with different economic values per vote and multiple classes of directors in terms of how they are designated or elected and occasionally in terms of voting power as directors. It is not practicable to provide appropriate treatment for all the variations in a prescriptive rule. See Sections II.G.1 and 2 and Sections III.B. and E. of the ABA Letter.
	Should a nominating shareholder or group only be permitted to submit nominees for director based upon the number of director seats the nominating shareholder is entitled to vote on? For example, if a board consists of 10 directors and the company is contractually obligated to permit a certain shareholder or shareholders to appoint five directors to the board, should shareholders entitled to vote on the remaining five director slots be limited to submitting nominees based on a board size of five rather than 10, meaning that a nominating shareholder may submit one nominee for inclusion in the company's proxy materials?	In the context of the board structure outlined in the opposite question, basing the number of access nominee slots on the number of directors to be elected by the common shareholders is the appropriate outcome. See Section III.E. of the ABA Letter.
E.10.	We have proposed a limitation that permits the nominating shareholder or group that first provides notice to the company to include its nominee or nominees in the company's proxy materials where there is more than one eligible nominating shareholder or group. Is this appropriate? If not, should there be different criteria for selecting the shareholder nominees (e.g., largest beneficial ownership, length of security ownership, random drawing, allocation among eligible nominating shareholders or groups, etc.)?	Giving priority to the nominating shareholder or shareholder group that first provides notice of an intent to nominate a proxy access candidate would create the wrong dynamics and fails to relate to the purpose for proxy access. See Section II.A. (regarding the purpose of a prescriptive proxy access regime) and Section III.L. of the ABA Letter. An appropriate priority structure would be to limit each nominating shareholder or shareholder group to a single nomination, to preclude shareholder participation in more than one nominating group and to accord priority in terms of the largest qualifying shareholdings, provided there is a limit on the number of shareholders in a nominating group or on the aggregate holdings of the group. See Section III.L. of the ABA Letter.

Comment Number	Question	Response
	Rather than using criteria such as that proposed, should companies have the ability to select among eligible nominating shareholders or groups? If so, what criteria should the company be required to use in doing so?	No. See Section III.L. of the ABA Letter.
E.11.	If the Commission adopts a "first-in" approach, should the first shareholder or group get to nominate up to the total number of nominees required to be included by the company or, where there is more than one nominating shareholder or group and more than one slot for nominees, should the slots be allocated among proposing shareholders according to, for example, the order in which the shareholder or group provided notice to the company?	Each nominating shareholder or shareholder group should be limited to a single nominee, regardless of how priority is determined. Moreover, shareholders should be eligible to participate in only one nominating group. See Section III.L. of the ABA Letter.
E.12.	Under the proposal, where the first nominating shareholder or group to deliver timely notice to the company does not nominate the maximum number of directors allowed under the rule, the nominee or nominees of the next nominating shareholder or group to deliver timely notice of intent to nominate a director pursuant to the rule would be included in the company's proxy materials, up to and including the total number of shareholder nominees required to be included by the company. Should the rule specify how to determine which of a second nominating shareholder's or group's nominees are to be selected where there are more nominees than available spots under the rule?	See responses to E.10 and E.11.
	Should Rule 14a-11 provide that only one nominating shareholder or group may have their nominee or nominees included in the company proxy materials, regardless of whether they nominate the maximum number allowed under the rule?	No. See Section III.L. of the ABA Letter.
E.13.	Would the "first-in" approach result in an undue advantage to the first shareholder or group to submit a nomination?	Yes. See Section III.L. of the ABA Letter.
	Would such an approach result in a race to be the first in?	Yes. See Section III.L of the ABA Letter.
Notice and Disclosure Requirements		
F.1.	Are the proposed content requirements of the shareholder notice on Schedule 14N appropriate? Are there matters included in the notice that should be eliminated (e.g., should the nominating shareholder be required to provide disclosure of its intention with regard to continued ownership of the shares after the election, as is proposed)?	Generally, yes. See Section V.D of the ABA Letter.
F.2.	Are there additional matters that should be included? For example, is there additional information that should be included with regard to the nominating shareholder or group or with regard to the shareholder nominee?	Yes. See Section V.D of the ABA Letter.

Comment Number	Question	Response
F.3.	Are the required representations appropriate?	In general, the required representations are appropriate to confirm satisfaction of the eligibility criteria for using Rule 14a-11 as far as they go. Our comments on the eligibility criteria are set forth in Section III. of the ABA Letter. We recommend revisions in Schedule 14N, among other things, to provide increased disclosure. See Section V.D. of the ABA Letter. Our comments in Section V.D. on the format and mechanics of Schedule 14N apply equally to the extent the Commission adopts Rule 14a-18.
	Should there be additional representations (e.g., should the nominee be required to make a representation concerning their understanding of their duties under state law if elected and their ability to act in the best interest of the company and all shareholders)?	Yes. See Section III.G. and Section V.D. of the ABA Letter.
	Should any of the proposed representations be eliminated?	No.
F.4.	Is five years a sufficient time period for information about whether the nominating shareholder or member of a nominating shareholder group has been involved in any legal proceeding? Should it instead be ten years?	The information requirements should conform with those that would be provided in a contested solicitation. See Section V.D of the ABA Letter.
F.5.	What should be the consequence of a nominating shareholder or group including materially false information or a materially false representation in the nominating shareholder's or group's notice on Schedule 14N to the company, whether before inclusion of a nominee in the company's proxy materials, after inclusion of a nominee in the company's proxy materials but before the election, or after a nominee has been included in the company's proxy materials and elected?	Discovery of any materially false representation prior to the vote, whether before or after the distribution of the company's proxy material, should be treated as a loss of eligibility by the nominating shareholder and a disqualification of the candidate. See Section III.K. of the ABA letter.
	Should it make a difference whether the false information or representation was provided knowingly?	No.
	Should it make a difference whether the false information or representation was material?	If the nominating shareholder or the nominee knew of the falsity, it should be deemed to be material and result in a loss of eligibility to make the nomination and disqualification of the candidate. If there were no knowledge of the falsity and it is not material (an "innocent, non-material" mistatement or omission), there should be no adverse consequences.
F.6.	What should be the consequence to the nominating shareholder or group of submitting the notice on Schedule 14N to the company after the deadline?	Loss of eligibility for the nominating shareholder and disqualification of the candidate for the upcoming election. See Section III.K. of the ABA letter.
	What should be the consequence of filing the notice on Schedule 14N with the Commission after the deadline?	The filing should be regarded as a nullity and result in loss of eligibility for the nominating shareholder.

Comment Number	Question	Response
	Should a late submission to the company or late filing with the Commission render the nominating shareholder or group ineligible to have a nominee included in the company's proxy materials under Rule 14a-11 with respect to the upcoming meeting, as is currently proposed?	Yes.
F.7.	The proposed instructions to Rule 14a-11 address how to provide disclosure where the nominating shareholder is a "general or limited partnership, syndicate or other group." Is this sufficiently broad to address any nominating shareholders that may use the rule?	Yes, except that the disclosure intended to be required with respect to a trust, including an employee benefit trust, should be specified.
F.8.	Should a company's advance notice provision govern the timing of the submission of shareholder nominations for directors? If not, should the Commission adopt a specific deadline instead?	The Company's advance notice provisions should not govern the timing for submission of shareholder nominations under a prescriptive proxy access rule. Instead, the Commission should adopt a single formula to determine a deadline that would be applicable to all nominating shareholders. See Section III.M. of the ABA Letter.
	Should the Commission make no reference to advance notice provisions as they may apply to proxy solicitations and adopt a generally applicable federal standard? Would such an approach better enable consistent exercise by shareholders of their voting and nominating rights across public companies?	The Commission should make no reference to advance notice provisions in the context of establishing a mandatory time frame for submission of access nominations. See Section III.M. of the ABA Letter.
	Should it be longer (e.g., 150 or 180 calendar days before the date that the company mailed its proxy materials for the prior year's annual meeting), or shorter (e.g., 90 calendar days before the date that the company mailed its proxy materials for the prior year's annual meeting)?	If a proxy access rule retains the no-action dispute resolution process set forth in proposed Rule 14a-11, the last date for submission of proxy access nominations should be 120 days before the date that the company mailed its proxy materials for the prior year's annual meeting. See Section III.M. of the ABA Letter.
F.9.	In the absence of an advance notice provision, the nominating shareholder or group would be required to submit the notice to the company and file with the Commission no later than 120 calendar days before the date that the company mailed its proxy materials for the prior year's annual meeting. Is this deadline appropriate and workable? If not, what should be the deadline (e.g., 80, 90, 100, 150, or 180 calendar days before the date that the company mailed its proxy materials for the prior year's annual meeting)?	The proposed 120 day deadline is appropriate so long as the proxy access rule retains the no-action dispute resolution process set forth in proposed Rule 14a-11. See Section III.M. of the ABA Letter.
F.10.	Should there be a specified range of time in which a shareholder is permitted to submit a nominee (e.g., no earlier than 150 days before and no later than 120 days before the date the company mailed its proxy materials the previous year)?	Yes. The absence of a reasonably short (e.g., 30 day) window for proxy access nominations encourages a "race to the courthouse" dynamic that will be very adverse to the company, its board, its corporate governance dynamics and other potential nominating shareholders or shareholder groups. See Section III.L. of the ABA Letter.

Comment Number	Question	Response
	Should a different range be used (e.g., should the submission of nominations be limited to no earlier than 120 days and no later than 90 days; no earlier than 180 days and no later than 150 days; or no earlier than 180 days and no later than 120 days before the date the company mailed its proxy statement the previous year)?	No, the 120-150 day range is appropriate so long as the no-action dispute resolution process is retained in the proxy access rule. See Section III.L. of the ABA Letter.
	Does permitting submission of a nominee at any time prior to 120 days before the company mailed its proxy materials the previous year skew the process in favor of certain shareholders? If so, why? If not, why?	Yes, among other reasons, by creating an advantage for the earliest filer that can be used to undermine the board's credibility or to improperly influence the board's decision making, by creating a priority for the first-mover that can be used as a bargaining chip with the board or with other potential nominating shareholders and, if priority is based on size of holdings, by creating an incentive for later filers to amass larger nominating groups. See Section III.L. of the ABA Letter.
	If a different date range would be more workable, please tell us the range and why.	120-150 days prior to the date of first mailing of the prior year's proxy material is an appropriate range if the no-action dispute resolution process is retained. It's workability is, however, significantly impaired by the discontinuity of the proxy access nomination deadline and the typical nominating and board committee process of determining their nominees for director which typically is not completed until much later in the proxy season calendar. See Sections III.L., M. and N. of the ABA Letter.
F.11.	The proposed notice requirements address both regularly scheduled annual meetings and circumstances where a company may not have held an annual meeting in the prior year or has moved the date of the meeting more than 30 days from the prior year. Under these circumstances, what is the appropriate date by which a nominating shareholder must submit the notice to the company?	We recommend deletion of the "reasonable" time standard and substitution of a specific time standard, such as the later of 160 days before the date of the meeting and 20 days following the company's earliest announcement of the meeting date.
	Should the Commission adopt a specific deadline for non-regularly scheduled meetings, or rely on a "reasonable time" standard? If a "reasonable time" standard is adopted, should the company be required to file the Form 8-K announcing the deadline any minimum number of days in advance of the deadline?	See response to immediately preceding question. The proposed Form 8-K report filing deadline is appropriate.
	If so, how many days notice should the company provide and why?	See response to second preceding question.
	What deadline should apply when a company holds a special meeting in lieu of an annual meeting?	The same standard should apply as for annual meetings that are not regularly scheduled.

Comment Number	Question	Response
F.12.	As proposed, an instruction to Form 8-K would specify that a company would be required to file a report pursuant to Item 5.07 within four business days of determining the anticipated meeting date if the company did not hold an annual meeting the previous year or if the annual meeting has been changed by more than 30 calendar days from the date of the previous year's meeting. Is such an instruction necessary?	Yes.
	Should the company be required to file the Item 5.07 Form 8-K in less than four business days (e.g., two business days) or more than four business days (e.g., seven business days, 10 business days)?	No.
F.13.	Should a registered investment company be required to disclose on Form 8-K the date by which a shareholder or shareholder group must submit the notice to the company of its intent to require its nominees on the company's proxy card?	No. See Section X of the ABA Letter.
	Should this date also be required to be disclosed on the company's Web site, if it has one?	No. See Section X of the ABA Letter.
	Should registered investment companies instead be permitted to provide this disclosure in a different manner?	Yes.
F.14.	As proposed, a shareholder's or group's notice of intent to submit a nomination for director is required to be filed with the Commission on Schedule 14N. Is such a filing appropriate? Should additional or lesser information be filed with the Commission? Should a shareholder or group be required to send the notice to the company without filing the notice on Schedule 14N?	Yes, the public disclosure is appropriate. The contents of Schedule 14N should be revised in a number of respects. See Section V.D of the ABA Letter. The nominating shareholder should not be permitted to send a notice of nomination without filing the notice on Schedule 14N.
F.15.	When should the notice on Schedule 14N be filed with the Commission? Is it sufficient to require the Schedule 14N to be filed at the time it is provided to the company? Should an abbreviated version of the Schedule 14N be filed sooner, before the nominating shareholder or group provides notice to the company, such as at the time a shareholder or group first decides to make a nomination, when the nominating shareholder first identifies a nominee for director, or some other time? Should it be filed later?	Filing concurrently with providing notice to the company is acceptable. See Section V.D of the ABA Letter.
F.16.	The notice on Schedule 14N would be required to be amended promptly for any material change in the facts set forth in the originally-filed Schedule 14N. Should the nominating shareholder or group be required to amend the Schedule 14N for any material change in the facts? Why or why not?	Yes, the rules should require accurate information throughout the solicitation period. The rules should also address responsibility if any other development occurs as a result of which the information in the Schedule 14N is materially false or misleading or omits information necessary to prevent the Schedule 14N from being materially false or misleading. See Section V.D of the ABA Letter.

Comment Number	Question	Response
F.17.	The nominating shareholder or group would be required to file a final amendment to the Schedule disclosing, within 10 days of the final results of the election being announced by the company, the nominating shareholder's or group's intention with regard to continued ownership of their shares. Should the nominating shareholder or group be required to amend the Schedule 14N to disclose their intent regarding continued ownership? Why or why not?	Yes, this is important information for shareholders to receive.
F.18.	In situations where a nominating shareholder or group beneficially owns more than 5% of the company's securities, should we permit a combined Schedule 13G/Schedule 14N filing? Should we permit a combined Schedule 13D/Schedule 14N filing? Why or why not?	Schedules 13D and 13G should not be combined with Schedule 14N. See Section VII.D. of the ABA Letter.
F.19.	Should a nominating shareholder or group be required to file Schedule 14N on EDGAR, as proposed?	Yes, the process should conform to that which would apply in a contested election.
F.20.	Should the notice be required to include a description of the following items that occurred during the 12 months prior to the formation of any plans or proposals with respect to the nomination, or during the pendency of any nomination:	We generally support the disclosures required for proposed Schedule 14N, with revisions as suggested, and otherwise believe that standards for the notice to a company should be controlled by state law or a company's governing documents. See Sections V.D and III.B. of the ABA Letter.
	(i) any material transaction of the shareholder with the company or any of its affiliates,	See the immediately preceding response.
	and (ii) any discussion regarding the nomination between the shareholder and a proxy advisory firm?	See the second preceding response.
F.21.	Should the nominating shareholder or group and/or nominee be required to disclose any holdings of more than 5% of the securities of any competitor of the company (i.e., any enterprise with the same SIC code)?	The nominating shareholder or group should be required to disclose any financial interests they have that are material to shareholders. See Section V.D. of the ABA Letter.
F.22.	Should the nominating shareholder or group and/or nominee be required to disclose any meetings or contacts, including direct or indirect communication by the shareholder, with the management or directors of the company that occurred during the 12-month period prior to the formation of any plans or proposals with respect to a nomination?	We generally support the disclosures required for proposed Schedule 14N, with revisions as suggested, and otherwise believe that standards for the notice to a company should be controlled by state law or a company's governing documents. See Sections V.D and III.B. of the ABA Letter.
Requirements for a Company That Receives a Notice From a Nominating Shareholder or Group		
G.1.	Under proposed Rule 14a-11(a) a company would not be required to include a shareholder nominee where: (1) applicable state law or the company's governing documents prohibit the company's shareholders from nominating a candidate for director; (2) the nominee's candidacy or, if elected, board membership, would violate controlling state law, federal law or rules of a national securities exchange or national securities association; (3) the nominating shareholder or group does not meet the rule's eligibility requirements; (4) the nominating shareholder's or group's notice is deficient, (5) any representation in the nominating shareholder's or group's notice is false in any material respect, or (6) the nominee is not required to be included in the company's proxy materials due to the proposed limitation on the	Companies will be able to make many, but not all, of the determinations with regard to the identified qualifications for proxy access nominations.. For example, a company normally would be able to determine whether a nominee's candidacy would violate controlling state law, federal law or listing rules of its primary listing organization. On the other hand, a company would usually not have knowledge if a continuous beneficial ownership certification were incorrect, nor in many circumstances would it have knowledge of the veracity of a nominating shareholders disclaimer of a control motive. See Section III.N. of the ABA Letter.

Comment Number	Question	Response
	number of nominees required to be included. Proposed Rule 14a-11(f)(1) provides that the company shall determine whether any of these events have occurred. Will companies be able to make this determination? Why or why not?	
G.2.	As proposed, neither the composition of a nominating shareholder group nor a shareholder nominee could be changed as a means to correct a deficiency identified in the company's notice to the nominating shareholder or group. Should we permit the nominating shareholder group to change its composition to correct an identified deficiency, such as a failure of the group to meet the requisite ownership threshold?	No. See Section III.J. of the ABA Letter.
	Should the nominating shareholder or group be permitted to submit a replacement shareholder nominee in the event that it is determined that a nominee does not meet the eligibility criteria?	No. See Section III.J. of the ABA Letter.
G.3.	As proposed, inclusion of a shareholder nominee in the company's proxy materials would not require the company to file a preliminary proxy statement provided that the company was otherwise qualified to file directly in definitive form. In this regard, the proposed rules make clear that inclusion of a shareholder nominee would not be deemed a "solicitation in opposition." Is this appropriate or should the inclusion of a nominee instead be viewed as a solicitation in opposition that would require a company to file its proxy statement in preliminary form?	Inclusion of a shareholder nominee should not require filing of a preliminary proxy statement.
	Should we view inclusion of a shareholder nominee as a solicitation in opposition for other purposes (e.g., expanded disclosure obligations)?	We recommend revisions in Schedule 14N to provide increased disclosure. See Section V.D. of the ABA letter.
G.4.	Under the proposal, companies would not be able to provide shareholders the option of voting for the company's slate of nominees as a whole. Should we allow companies to provide that option to shareholders?	Yes. See Section V.B. of the ABA Letter.
	Are any other revisions to the form of proxy appropriate?	Yes. See Section V.B. of the ABA Letter.
	Would a single ballot or "universal ballot" that includes both company nominees and shareholder nominees be confusing?	No, not if Rule 14a-4 is amended as suggested in Section V.B. of the ABA Letter.
	Would a universal ballot result in logistical difficulties? If so, please specify.	Yes, in the case of contested elections. See Section III.H. of the ABA Letter.
G.5.	Is it appropriate to require that the company include in its proxy statement a supporting statement by the nominating shareholder or group?	Yes, subject to the discussion in Sections II.E. and F. and Section III.O. of the ABA Letter.
	If so, should this requirement be limited to instances where the company wishes to make a statement opposing the nominating shareholder's nominee or nominees or supporting company nominees?	No.
	Is it appropriate to limit the nominating shareholder's or group's supporting statement to 500 words? If not, what limit, if any, is more appropriate (e.g., 250, 750, or 1000 words)? Should the limit be 500 words per nominee, or some other number (e.g., 250, 750, or 1000 words)?	Yes, subject to the discussion in Sections II.E. and F. and Section III.O. of the ABA Letter.
	Should the company's supporting statement be similarly limited? Why or why not?	No, the company should be able to provide to its shareholders such information as it considers necessary.

Comment Number	Question	Response
G.6.	Should the rule explicitly state that the nominating shareholder's or group's supporting statement may contain statements opposing the company's nominees?	No, such a statement is unnecessary.
	Would it be appropriate to require a company to include a nominating shareholder's or group's statement of opposition in its proxy materials?	Companies should be required to include only the limited supporting statement (including lawful statements of reasons for proposing candidates in opposition to board nominees) as contemplated by proposed Rule 14a-11, subject to the discussion in Sections II. D. and E. and Section III.O. of the ABA Letter.
G.7.	Is the 14-day time period for the company to respond to a nominating shareholder's notice or for the nominating shareholder to respond to a company's notice of deficiency sufficient? Should the time period be longer (e.g., 20 days, 25 days, 30 days) or shorter (e.g., 10 days, 7 days, 5 days)?	The proposed no-action letter based dispute resolution process creates significant timing issues in relation to typical nominating committee and board determinations about candidates for re-election to the board that could be largely alleviated if the no-action letter based dispute resolution process were eliminated from the proxy access rule. See Section III.M. of the ABA Letter.
	Should the rule explicitly set out the effect of a company providing the notice late (e.g., the company may not exclude the nominee) or of a shareholder responding to this notice late (e.g., the nominee may be excluded)?	No, the consequences of such late submissions should be left for determination in the dispute resolution process based on the particular facts.
G.8.	Is the 80-day requirement for submission of the company's notice to the Commission sufficient? If not, should the requirement be increased (e.g., 90 days, 100 days, 120 days, or more) or decreased (e.g., 75 days, 60 days, or less)?	Yes, if there is to be a no-action letter based dispute resolution process, but see Sections II.M. and N. in the ABA Letter.
	Is the proposed provision under which the staff could permit the company to make its submission later than 80 days before filing its definitive proxy statement where the company demonstrates good cause appropriate? If not, why not?	Yes.
	Should the rule more explicitly discuss the effect of such a late filing?	See response to G.7.
G.9.	Is the 14-day time period for the nominating shareholder to respond to the receipt of a company's notice to the Commission of its intent to exclude the nominee sufficient? Should it be longer (e.g., 20 days, 25 days, 30 days) or shorter (e.g., 10 days, 7 days, 5 days)?	14 days is sufficient, but see response to G.7.
	Should the rule explicitly set out the effect of a shareholder responding to the company's notice late (e.g., the nominee may be excluded)?	See response to G.7.
G.10.	Is the requirement that the company notify the nominating shareholder or group of whether it will include or exclude the nominating shareholder's or group's nominee or nominees no later than 30 calendar days before the company files its definitive proxy statement and form of proxy with the Commission appropriate and workable? If not, what should the deadline be (e.g., 40 calendar days before filing definitive proxy materials, 35 days before filing definitive proxy materials, 25 calendar days before filing definitive proxy materials, 20 calendar days before filing definitive proxy materials)?	30 calendar days is appropriate for this purpose, subject to Section III.M. of the ABA Letter.

Comment Number	Question	Response
	Should the rule explicitly set out the effect of a company sending this notice late?	See response to G.7.
G.11.	Would the timing requirements overall allow a company to comply with the requirements of e-proxy?	N/R
G.12.	Do the proposed timing requirements, in the aggregate, allow sufficient time for the informal staff review process?	See Section III.M. of the ABA Letter.
	How far in advance of filing definitive proxy materials do companies typically begin printing those materials?	This varies with the company's circumstances.
	If the proposed timing requirements do not allow sufficient time for the informal staff review process, please tell us specifically which timing requirements pose a problem and suggest a specific alternative time that would be sufficient.	See Sections III.M. and N. of the ABA Letter.
G.13.	What should happen if one of the deadlines specified in the proposed process in Rule 14a-11(f) falls on a Saturday, Sunday, or federal holiday? Should the deadline be counted from the preceding or succeeding federal work day?	The normal rule of looking to the next working day should apply.
G.14.	Should the informal staff review process be the same for reporting companies (other than registered investment companies), registered investment companies, and business development companies?	See Sections III.M. and N. of the ABA Letter.
	Should there be unique procedures for different types of entities? If so, what is unique to a particular type of entity that would require a unique process?	See immediately preceding response.
G.15.	Should there be a method for a company to obtain follow-up information after a nominating shareholder or group submits an initial response to the company's notice of determination? If so, should that follow-up method have similar time frames as those related to the initial request and response?	Yes, consistent with the notice of objection deadline, subject to Sections III.M. and N. of the ABA Letter.
	What adjustments to timing might be required for the nominating shareholder or group to respond to any such follow-up request?	See immediately preceding response.
G.16.	The proposed requirement for a legal opinion regarding state law is modeled on the requirement in Rule 14a-8. Is such a requirement necessary and appropriate in the context of proposed Rule 14a-11?	Yes, if there is to be a no-action dispute resolution process, but see Section II.D. and Sections III.M. and N. of the ABA Letter.
	Should it be changed in any way (e.g., should it be revised to require a legal opinion regarding foreign law for those instances where there may be a conflict with a company's country of incorporation where the company is organized in a non-U.S. jurisdiction but does not meet the definition of foreign private issuer)?	Subject to the preceding response, it should cover foreign law issues in the same way as U.S. state law issues.
G.17.	What process would be appropriate for addressing disputes concerning a company's determination? Is the proposed staff review process an appropriate means to address disputes concerning the company's determination?	Dispute resolution with regard to a prescriptive proxy access rule should not rely on an informal staff no-action process. Rather, state and federal courts should be the primary arbiters of disputes arising under the Commission's proxy access regime. See Sections III.M. and N. of the ABA Letter.
	If not, by what other means should a company's determination be subject to review? Exclusively by the courts? Are there other processes we should consider?	See immediately preceding response.

Comment Number	Question	Response
G.18.	In the absence of a staff review process, what would be the potential litigation cost associated with the resolution of disputes concerning company determinations?	The staff no-action review process, in all probability, will not significantly reduce the litigation cost associated with dispute resolution under proposed Rule 14a-11. See Section III.N. of the ABA Letter.
	Would shareholder meetings be delayed due to such litigation or threat of litigation?	Not frequently. The Delaware courts have demonstrated repeatedly their ability to resolve legal issues surrounding shareholder meetings in a timely fashion such that there is rarely a need to delay the meeting. See Section III.N. of the ABA Letter.
G.19.	Are there certain types of company determinations that should or should not be subject to the staff review process (e.g., whether a nominating shareholder or group meets the required ownership threshold)? Please provide specific examples in your response.	The staff does not necessarily possess the experience, knowledge and tools for effective dispute resolution under proposed Rule 14a-11. See Section III.N. of the ABA Letter.
G.20.	How should we address the situation where a nominating shareholder qualifies, provides its notice, and submits all of the nominees a company is required to include, then becomes ineligible under the rule?	The nominee should be disqualified. See Section III.K. of the ABA Letter.
	Under what circumstances should a second shareholder or group be able to nominate directors? If the second nominating shareholder or group provided a notice before the first shareholder became ineligible?	If a nominee becomes unable to serve or is disqualified after the deadline for submission of nominations, no replacement nominee should be permitted. See Section III.K. of the ABA Letter.
	Should it matter whether a company had notified the second nominating shareholder or group that it intended to exclude their nominee or nominees?	No.
Application of the Other Proxy Rules to Solicitations By the Nominating Shareholder or Group		
H.1.	Should the Commission provide a new exemption for soliciting activities undertaken by shareholders seeking to form a nominating shareholder group pursuant to Rule 14a-11? If so, is the proposed exemption appropriate? If not, why not?	No, this exemption is not necessary given the existing exemptions available to a person seeking to form a nominating group. See Section VI.A.1 of the ABA Letter.
	What specific changes to the exemption would be appropriate? Should the rule require that a shareholder meet any of the requirements of Rule 14a-11 to rely on the exemption (e.g., have held the securities they seek to aggregate for the required holding period)?	If the exemption is adopted, it should require the provision of additional information as described in Section VI.A.1 of the ABA Letter, and be limited as described in Section VI.A.2 of the ABA Letter.
	Is it appropriate to require filing with the Commission on the date of first use, as proposed?	If the exemption is adopted, then filing with the Commission on the date of first use is appropriate.
H.2.	Should the Commission expand the proposed exemption for soliciting activities undertaken by shareholders seeking to form a nominating shareholder group pursuant to Rule 14a-11 to apply also to oral communications? If so, what amendments to the proposed exemption would be necessary?	We agree that the exemption, if adopted, should not apply to oral communications. See Section VI.A.2 of the ABA Letter.

Comment Number	Question	Response
H.3.	What requirements should apply to soliciting activities conducted by a nominating shareholder or group? In particular, what filing requirements and specific parameters should apply to any such solicitations? For example, we have proposed a limited content exemption for certain solicitations by shareholders seeking to form a nominating shareholder group. Is this content-based limitation appropriate? Should shareholders, for example, also be permitted to explain their reasons for forming a nominating shareholder group? Should shareholders be permitted to identify any potential nominee, as proposed, and why that person was chosen? If not, what, if any, limitations would be more appropriate? For example, should an exemption for certain solicitations by shareholders seeking to form a nominating shareholder group be limited to no more than a specified number of shareholders, but not limited in content (e.g., fewer than 10 shareholders, 10 shareholders, 20 shareholders, 30 shareholders, 40 shareholders, more than 40 shareholders)?	If the exemption is adopted, it should require the provision of additional information as described in Section VI.A.1 of the ABA Letter, and be limited as described in Section VI.A.2 of the ABA Letter.
H.4.	Should communications made to form a group be permitted to identify a possible or proposed nominee or nominees, as proposed?	Yes, if the nominee has agreed to be named.
H.5.	Is the requirement that the nominating shareholder or group provide a description of his or her direct or indirect interests, by security holdings or otherwise, sufficiently clear? Do we need to provide additional guidance as to what interests would be required to be disclosed?	See Section VI.A.1 of the ABA Letter for a discussion of additional information that should be required.
H.6.	Should all written soliciting materials be filed with the Commission on the date of first use? If not, how much later should they be filed (e.g., two business days after first use; four business days after first use, some other date)? Should the materials be filed before the date of first use?	Filing on the date of first use is consistent with the existing filing requirement for proxy materials.
H.7.	Should we provide a similar exemption for soliciting activities undertaken by shareholders seeking to form a nominating shareholder group other than in connection with Rule 14a-11 (e.g., in connection with a nomination under applicable state law provisions or a company's governing documents)?	No. See Section VI.A.3 of the ABA Letter.
H.8.	Should solicitations by or on behalf of a nominating shareholder or group in support of a nominee included in the company's proxy statement and form of proxy pursuant to Rule 14a-11 be exempt? Why or why not?	Yes. See Section VI.B.1 of the ABA Letter.
H.9.	Should the exemption be conditioned on the soliciting materials including a legend about the shareholder's nominee being included in company proxy materials and a statement about where shareholders can find the proxy statement, soliciting material, and other relevant documents, as proposed? Should any other conditions be included in the exemption?	Yes, this legend is appropriate. See Section VI.B of the ABA Letter for additional conditions that should apply.
H.10.	Should a nominating shareholder or group be required to file any soliciting material published, sent or given to shareholders in accordance with the exemption no later than the date the material is first published, sent or given to shareholders, as proposed?	Yes.

Comment Number	Question	Response
H.11.	Should solicitations by the nominating shareholder or group be limited or prohibited? If so, why?	See Section VI.B of the ABA Letter for additional conditions that should apply.
H.12.	Should we provide a similar exemption for soliciting activities undertaken by a nominating shareholder or group in support of their nominee or nominees, where those nominees are included in a company's proxy materials pursuant to applicable state law provisions or a company's governing documents?	Yes. See Section VI.B.3 of the ABA Letter.
Amendments to Exchange Act Rule 14a-8(i)(8)		
I.1.	Should the Commission amend Rule 14a-8(i)(8), as proposed, to allow proposals that would amend, or that request an amendment to, a company's governing documents regarding nomination procedures or disclosures related to shareholder nominations, provided the proposal does not conflict with proposed Rule 14a-11?	Yes, we support the Commission's proposal to authorize proxy access shareholder proposals pursuant to Rule 14a-8 provided that the rule change is accompanied by amendments to other proxy rules to explicitly address and accommodate the operation of an access regime implemented under state law or a company's governing documents. We advocate this approach to implementing access rather than a prescriptive rule, like Rule 14a-11. See Sections I. and IV. of the ABA Letter.
	Should the rule instead require such proposals to be included only in particular circumstances? For example, should inclusion of such proposals be required only when a company already has a provision in place regarding the inclusion of shareholder director nominees, or disclosure about those nominees, in company proxy materials?	At least initially, only precatory proposals should be permitted. See Section IV.A. of the ABA Letter. Of course, any other applicable basis for exclusion under Rule 14a-8 should continue to apply to such proposals.
I.2.	Should the Commission amend Rule 14a-8(i)(8) to allow proposals that would amend, or that request an amendment to, a company's governing documents to provide for or prohibit inclusion of shareholder nominees for director in company proxy materials?	See our response to Comment I.1. At least initially, only precatory proposals should be permitted. See Section IV.A. of the ABA Letter.
	Should such an amendment operate separately from proposed Rule 14a-11?	If the Commission adopts Rule 14a-11, we believe it important for shareholders to have the ability to vary in any way the proxy access regime for their particular company or to decline to have a proxy access regime at their company. See Section II.E. and Section III.O. of the ABA Letter.
	Should such an amendment be adopted regardless of whether proposed Rule 14a-11 is adopted?	We believe that, in lieu of Rule 14a-11, access should be implemented solely through private ordering under a state law regime, including pursuant to Rule 14a-8 amendments. See Section IV. of the ABA Letter. If the Commission adopts Rule 14a-11, we believe it important for shareholders to have the ability to alter the terms of proxy access as implemented at their particular company or to "opt out" entirely from the prescriptive rule. See Section II.E. and Section III.O. of the ABA Letter.

Comment Number	Question	Response
	If so, under what circumstances should such proposals be permitted? For example, should shareholder proposals be included where they propose or request amendments to provisions in the company's governing documents to address the inclusion of shareholder nominees for director in the company's proxy materials so long as such amendments are not prohibited under state law? Should such proposals instead be included only if the law of the company's state of incorporation explicitly authorizes a company to have a provision in its governing documents that permits the inclusion of shareholder nominees in the company's proxy materials?	We recommend that the Commission include a meaningful ownership threshold for shareholder proposals on proxy access that is higher than that currently provided (for example, 1% of the total voting power of the class eligible to elect directors) and that, at least initially, only non-binding proposals be permitted under amended Rule 14a-8(i)(8). See the bullet points in Section IV.A. of the ABA Letter.
	Should such proposals instead be limited under Rule 14a-8 to instances when a company already has a provision in its governing documents that addresses the inclusion of shareholder nominees in the company's proxy materials?	No, a better way of promoting conformity with state law is to allow only precatory proposals so that companies can address the nuances of exactly how to implement an access regime.
I.3.	Should companies be required to include non-binding proposals regarding procedures to include shareholder nominees for director in company proxy materials, as proposed? Should the requirements instead be limited to binding proposals?	At least initially, only precatory proposals should be permitted. See Section IV.A. of the ABA Letter.
I.4.	Should proposed Rule 14a-8(i)(8) operate independently, even if proposed Rule 14a-11 were not adopted or not in effect? Why or why not?	Any amendment to Rule 14a-8(i)(8) to allow access proposals should be accompanied by amendments to other proxy rules to explicitly address and accommodate the operation of an access regime implemented under state law or a company's governing documents. See Section IV. of the ABA Letter.
	Are there changes or additions to Rule 14a-8(i)(8) as proposed that can or should be made so that it would be better suited or able to operate independently? Please give specific recommendations.	Yes, the proposed amendments to Rule 14a-8(i)(8) could have adverse consequences on proposals not relating to access and should not be adopted as proposed. See Section IV.B. of the ABA Letter.
I.5.	Is it sufficiently clear that shareholders would have the ability under proposed Rule 14a-8(i)(8) to propose nomination procedures that are different from proposed Rule 14a-11 provided that such procedures would serve as additional methods of accessing the proxy and would not preclude a shareholder or group or shareholders who satisfied the Rule 14a-11 requirements from using the Rule 14a-11 method? If not, what clarification should be made?	No, the scope of what would be viewed as conflicting with a prescriptive Rule 14a-11 regime is not clear from the terms of the proposed rule or from the proposing release. See Section II.E., note 15 and Section III.O. of the ABA Letter. Moreover, we do not believe shareholder proposals and/or company action to vary the terms of a prescriptive proxy access rule should be limited to only those that do not "conflict" with the prescriptive rule. See Sections II.E and Section III.O of the ABA letter.
I.6.	As proposed, a shareholder proposal under Rule 14a-8(i)(8) would supplement proposed Rule 14a-11, not replace it. Should shareholders instead be permitted under Rule 14a-8(i)(8) to propose governing document amendments that would conflict with proposed Rule 14a-11? Please explain how and why.	Yes, see Section III.O. of the ABA Letter.

Comment Number	Question	Response
	Are there different limitations on such proposals that we should consider? If so, what are they?	The Commission should include a meaningful ownership threshold that is higher than that currently provided under Rule 14a-8 and, at least initially, only non-binding proposals should be permitted under amended Rule 14a-8(i)(8). See the bullet points in Section IV.A. of the ABA Letter.
I.7.	What would be the costs to companies if Rule 14a-8(i)(8) were amended as proposed?	N/R
I.8.	Rule 14a-8 currently requires that a shareholder proponent have held continuously at least $2,000 in market value or 1% of the company's securities entitled to be voted on the proposal at the meeting for at least one year as of the date of submission of the proposal. Are these thresholds appropriate? Should the minimum ownership threshold be higher than $2,000 in market value of the company's securities entitled to be voted on the proposal? Should the minimum ownership threshold be periodically adjusted for inflation? Should these eligibility determinations be made on the date of submission of the proposal, as proposed? If not, what date should be used?	The Commission should raise the ownership requirements for Rule 14a-8 proposals, both in the context of access proposals and generally. See Section IV. A. and note 16 of the ABA Letter.
I.9.	Are there alternative thresholds that would be more appropriate for purposes of submitting a proposal under Rule 14a-8(i)(8) (e.g., 1%, 2%, 3%, 4%, or 5% of the company's securities)? If so, please explain.	Yes, 1% is an appropriate ownership level. See Section IV.A. of the ABA Letter.
I.10.	We are not proposing any requirements to disclose information about a shareholder proponent who submits a proposal that seeks to establish a procedure for nominating one or more directors. Should the rule require disclosure about a shareholder proponent who submits a proposal that relates to procedures for nominating directors but does not nominate a director? If so, what disclosures would be appropriate? The disclosures required in a contested election? Disclosure about the proponent's motives and interactions with the company leading up to the proposal?	Disclosure requirements should apply to persons who utilize an access regime implemented under Rule 14a-8. See Section V.D. of the ABA Letter.
	With respect to requiring disclosure from shareholder proponents, should our rules make a distinction between a proposal relating to a procedure for nominating directors and other proposals on other unrelated subjects?	We have not addressed this and believe it should be considered in the context of a general review of Rule 14a-8.
I.11.	Should disclosure consistent with that required in an election contest as defined in Rule 14a-12 be required for shareholder nominations pursuant to applicable state law provisions or a company's governing documents, as proposed? Why or why not?	Yes. See Section V.D. of the ABA Letter.
	What additional disclosures should be required, if any?	See Section V.D. of the ABA Letter.
	Which of the proposed disclosure requirements, if any, should be deleted or revised?	See Section V.D. of the ABA Letter.

Comment Number	Question	Response
I.12.	As proposed, the disclosures required for a nomination pursuant to an applicable state law provision or a company's governing documents do not include all of the disclosures that would be required for a Rule 14a-11 nomination. Would any of the additional disclosures required under Rule 14a-11 be appropriate with regard to a nomination under an applicable state law provision or a company's governing documents? If so, which ones in particular?	Disclosures that would required under proposed Rule 14a-18 differ from those that would be required under proposed Rule 14a-19 only by addressing satisfaction of the standards under Rule 14a-11. See note 24 of the ABA Letter. Eligibility standards under a proxy access regime pursuant to state law or a company's governing documents should not be addressed under Commission rules. See Sections. II.D., E. and F. and Section III.B. of the ABA Letter.
	Should a nominating shareholder or group submitting a nomination pursuant to an applicable state law provision or a company's governing documents be required to provide a statement regarding the nominating shareholder's or group's intent to continue to hold the securities through the date of the meeting?	Eligibility standards should be determined by state law or the company's governing documents. See Sections II.D., E. and F and Section III.B. of the ABA Letter.
	Should the rules require a statement regarding the nominating shareholder's or group's intent with respect to continued ownership of the shares after the election?	See response to immediately preceding question.
I.13.	Should Rule 14a-8(i)(8) be amended to codify the prior staff interpretations of the election exclusion, as proposed? Why or why not?	No, the proposed amendments to Rule 14a-8(i)(8) could have adverse consequences on proposals not relating to access and should not be adopted as proposed. See Section IV.B. of the ABA Letter.
	Does the proposed new language best describe the category of proposals that companies should be permitted to exclude?	No. See Section IV.B. of the ABA Letter.
	Are there other examples or categories or proposals that should be included in the revised rule (that do not restrict the ability of shareholders to propose nomination procedures)?	The rule should continue to operate by setting a general standard, in the same manner as all the other provisions under Rule 14a-8, and should not try to enumerate specific examples of proposals that have in the past been found to be outside the scope of the rule. See Section IV.B. of the ABA Letter.
I.14.	Is the proposed new language of Rule 14a-8(i)(8) sufficiently clear? In particular, would the proposed language "or otherwise could affect the outcome of the upcoming election of directors," achieve its goal? Would there be unintended consequences of revising the language as proposed?	The language is not clear, could have adverse consequences on proposals not relating to access and should not be adopted as proposed. See Section IV.B. of the ABA Letter.
Beneficial Ownership Reporting Requirements		
J.1.	The proposal would provide that a shareholder or shareholder group would not, solely by virtue of nominating one or more directors under proposed Rule 14a-11, soliciting on behalf of that nominee or nominees, or having that nominee or nominees elected, lose their eligibility to file as a passive or qualified institutional investor. This provision would then permit those shareholders or groups to report their ownership on Schedule 13G, rather than Schedule 13D. Is this approach appropriate?	No. The Schedule 13G eligibility standard should not change. See Sections VII.A and B of the ABA Letter.

Comment Number	Question	Response
	Should other conditions be required to be satisfied? If so, what other conditions? For example, should a nominating shareholder or group cease to qualify as a passive or qualified institutional investor where the nominee is the nominating shareholder or a member of the group, a member of the immediate family of the nominating shareholder or any member of the group, an employee of the nominating shareholder or any member of the group, or is in any way controlled by the nominating shareholder or any member of the group?	The Schedule 13G eligibility standard should not change. See Sections VII.A and B of the ABA Letter.
J.2.	Should nominating shareholders or groups be required to comply with the additional Schedule 13D filing and disclosure requirements under the Exchange Act beneficial ownership reporting standards?	The existing Schedule 13D filing and disclosure requirements should apply for a 5% shareholder or group. See Section VII.A and B of the ABA Letter.
J.3.	Should we provide a similar provision for nominating shareholders or groups submitting a nomination pursuant to an applicable state law provision or a company's governing documents? Why or why not?	No. See Section VII.C of the ABA Letter.
Exchange Act Section 16		
K.1.	Would it be a disincentive to using proposed Rule 14a-11 if shareholders forming a group to nominate a director could become subject to Section 16 once the group's ownership exceeds 10% of the company's equity securities? Why or why not?	No. See Section VIII of the ABA Letter.
K.2.	Are there any specific reasons why shareholders forming a group solely to nominate a director pursuant to proposed Rule 14a-11 should not be subject to Section 16 once the group's ownership exceeds 10% of the company's equity securities? If so, should the Commission adopt an exclusion from Section 16? Why, or why not?	Nominating shareholders and groups should be subject to the same Section 16 analysis as other shareholders and groups. See Section VIII of the ABA Letter.
K.3.	If we should amend Rule 16a-1(a)(1), the rule that defines who is a 10% owner for Exchange Act Section 16 purposes, to exclude a Rule 14a-11 nominating shareholder group from the definition, how should such an exclusion be structured? For example, these groups could remain subject to the general condition of the rule that they not have the purpose or effect of changing or influencing control of the issuer, but a note to Rule 16a-1(a)(1) could provide an exception for members of nominating shareholder groups formed solely for the purpose of using proposed Rule 14a-11. Should these conditions or other conditions apply?	There should be no exclusion.
K.4.	Should the Commission consider providing an exclusion to the existing Rule 13d-5 definition of "group" that applies to both the Section 13(d) beneficial ownership reporting requirements and the Section 16 reporting requirements?	No. See Sections VII and VIII of the ABA Letter.
K.5.	If the Commission adopts any such exclusion, should it be based on additional or different conditions? For example, should the Commission provide an exclusion from the definition of "group" in Rule 13d-5(b) for shareholders that agree to act together solely for the purpose of holding their securities in accordance with proposed Rule 14a-11(b)(2)?	There should be no exclusion.

Comment Number	Question	Response
K.6.	Are there reasons that members of nominating shareholder groups formed under proposed Rule 14a-11 should be treated differently than shareholder groups permitted to form and formed to nominate directors under an applicable state law provision, or under provisions in a company's governing documents? If so, why? What distinctions ought to be drawn between groups formed under proposed Rule 14a-11 and an applicable state law provision or a company's governing documents in terms of Rule 13d-5(b) and Rule 16a-1(a)(1)?	No. There should be no exclusion in either context.
K.7.	Should there be a prohibition on any affiliation between nominees and nominating shareholders or groups? If so, what limitations would be appropriate?	The nominee should be independent of the nominating shareholder or shareholders. See Section III.F of the ABA Letter.
	Would any such prohibitions or limitations make it less likely that in Section 16(b) cases courts would find nominating shareholders to be "deputized" directors in circumstances where liability should not apply? Would the lack of any such prohibitions or limitations increase the likelihood that courts would find nominating shareholders to be "deputized" directors?	If the nominee is independent of the nominating shareholders, then as a general matter it is less likely that the nominating shareholders would be deputized directors. However, the Commission should not propose any standards for determining whether a director nominee is a deputized director, as this will be a matter for courts to determine. See Section VIII of the ABA Letter.
Application of the Liability Provisions in the Federal Securities Laws to Statements Made By a Nominating Shareholder or Nominating Shareholder Group		
L.1.	Is an amendment to Rule 14a-9 the appropriate means to assign liability for materially false or misleading information provided by the nominating shareholder or group to the company that is included in the company's proxy materials? If not, what would be a more appropriate means?	Rule 14a-9 and proposed Rule 14a-19 should address liability standards. See Section V.C and D. of the ABA Letter.
	Should we characterize the disclosure provided to the company by the nominating shareholder or group and included in the company's proxy materials as soliciting material of the nominating shareholder or group, as we proposed in 2003? Why or why not?	Yes, nominating shareholders and companies may disclose such information to shareholders and should be responsible for its accuracy. See Section V.D and VI.B of the ABA Letter.
	Is it appropriate for proposed Rule 14a-9(c) to apply to nominations made pursuant to Rule 14a-11, an applicable state law provision, and a company's governing documents?	Yes.
L.2.	Does the language of proposed new paragraph (c) of Rule 14a-9 make clear that the nominating shareholder or group would be liable for any information included in its Schedule 14N or notice to the company that is included in the company's proxy materials? If not, what specific changes should be made to the proposed rule text?	Yes, but the rules should also address responsibility if any other development occurs as a result of which the information in the Schedule 14N is materially false or misleading or omits information necessary to prevent the Schedule 14N from being materially false or misleading. See Section V.D of the ABA Letter.
L.3.	Does the proposal make clear the company's responsibilities when it includes such information in its proxy materials?	The Company should not have any responsibility for such information. See Section V.C of the ABA Letter.
	Should the proposal include language otherwise addressing a company's responsibility for repeating statements that it knows or has reason to know are not accurate?	The Company should not have any responsibility for such information. See Section V.C of the ABA Letter.

Comment Number	Question	Response
	Are there situations where a company should be responsible for repeating statements of the nominating shareholder or group?	The Company should not have any responsibility for such information. See Section V.C of the ABA Letter.
	Should the proposal treat disclosure provided in connection with a nomination pursuant to Rule 14a-11, an applicable state law provision, or a company's governing documents differently?	No.
L.4.	Should information provided by nominating shareholders or groups be deemed incorporated by reference into Securities Act, Exchange Act, or Investment Company Act filings? Why or why not?	No.
L.5.	Should information, if incorporated by reference into Securities Act or Exchange Act filings, still be treated as the responsibility of the nominee rather than the company?	Yes.
	As proposed, are we creating a disincentive to incorporation by reference?	N/R

NOTE: Please refer to the ABA Letter generally for responses to the questions posed in subsequent sections of the Proposing Release.