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September 18, 2009

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Via e-mail rule-comments@sec.gov and UPS

Re: Facilitating Shareholder Director Nominations - File No. S7-10-09

Dear Ms. Murphy:

I am writing on behalf of Teachers Insurance and Annuity Association of America ("TIAA") and College Retirement Equities Fund ("CREF," collectively, "TIAA-CREF"). On August 17th, we submitted a letter to the Securities and Exchange Commission (the "Commission") strongly urging the adoption of proposed Rule 14a-11 and amendments to Rule 14a-8(i)(8) (the "Proposal") with certain modifications. A copy of the letter is attached. We are writing to reiterate our continued support for the Proposal and to respond to a number of arguments made by commentators against the adoption of Rule 14a-1l. We believe the arguments, which are described below, are fundamentally flawed and if adopted, would be detrimental to the stated objective of the Commission to protect the right of access rooted in state as well as federal law and facilitate the exercise of the right.

Commentators have raised two major objections to proxy access: the Proposal (i) will exacerbate the problems associated with the short-term orientation of markets rather than encourage a longer-term perspective, and (ii) is costly and unnecessary because recent governance reforms are sufficient to safeguard shareholder rights. These commentators typically suggest an alternative of "private ordering", an approach that would allow individual companies to determine their own practices regarding access rights, or the adoption by the Commission of more stringent requirements for the exercise of these rights under Rule 14a-11.

Short-Termism

Some argue against the Proposal by claiming that special interest or short-term investors will "hijack" or abuse the process and nominate candidates who would not serve the interests of long-term shareholders and this would in turn pressure boards to adopt short-term strategies.

We believe the Proposal as a whole includes effective safeguards against use by "special interests" or short-term shareholders. Most importantly, even if such candidates were included on the ballot, they would not be elected unless they received support from a majority of shareholders. Once they are elected, as the Commission points out, they are required to serve the interests of all shareholders, not a particular group or faction. By definition, special interest directors could not be elected because they would not receive the requisite level of votes. We are also skeptical that boards would submit to unreasonable demands made by an investor with little support from other shareholders.

In addition, such abuse has not taken place in foreign markets where access rights are in place. In those markets, the right has rarely been used and its impact has been to increase alignment by shifting some governance power to owners. It is the threat of use at all companies that has had the most beneficial impact and has helped increase dialogue and accountability over director nominations. Moreover, even at companies where shareholder action results in director replacement, the empirical research is encouraging. The IRRC Institute found that companies with "hybrid boards" resulting from successful proxy contests significantly outperformed peer companies over a three-year period.[1]

Finally, we also believe the Commission should consider the source of these criticisms. Most, if not all of the commentators raising this concern, represent the interests of management. While those interests are important, we are institutional investors with a proven commitment to enhancing long-term value for our participants through corporate engagement. We, and many of our institutional colleagues, have concluded based on our factual experience that this concern is not a credible risk relative to the significant benefits the Proposal will provide with appropriate safeguards.

<u>Recent Governance Reforms</u>

Some opponents of proxy access argue that it is unnecessary and that recent reforms such as majority voting and elimination of broker voting should be given time to work before new reforms are adopted.

TIAA-CREF supports the governance reforms that have taken place over the last several years. We believe, however, that the existing reforms are incomplete as long as boards retain the exclusive control of the proxy card and sole discretion over the mechanisms that govern their own elections.

Majority voting is a substantial step forward but should be considered a complement to proxy access, not a substitute. Further, it is important to recognize that majority voting has not been consistently or fully adopted, and has proven to be only a limited success in specific cases. Only about half of S&P 500 companies and a small minority of Russell 3000 companies have adopted this reform[2]. Even where companies have adopted majority voting, directors need not respect the results of votes. In at least one case, Pulte Homes, the board refused to accept the resignation of directors who had failed to receive majority votes.[3] Based on the Corporate Library's data, there

[1] "Effectiveness of Hybrid Boards," IRRC Institute and Proxy Governance, May 2009, http://www.irrcinstitute.org/pdf/IRRC_05_09_EffectiveHybridBoards.pdf
[2] "Majority Voting for Director Elections: Not Yet Standard Practice," The Corporate Library, Analyst Alert, December 2008
[3] Pulte, "Shareowners Clash over Reasons for Low Support for Directors", The Council of Institutional Investors, Council Governance Alert, Volume 14, Number 21, June 11, 2009

are currently over 40 directors at U.S. companies who continue to serve without having received majority support.[4] Similarly, we are concerned that without the direct accountability afforded by proxy access, certain boards may seek to dilute the effectiveness of other governance reforms.

While access rights will have a direct cost where they are employed, we believe that both company specific and market wide benefits will prove the costs to be a worthy investment of shareholder resources.

Private Ordering and Triggers

Some opponents have argued that rather than adopt Rule 14a-11 the Commission should provide proxy access provisions that fall short of a universal right and require specific action to bring into effect.

One alternative offered by opponents is "private ordering," which would allow companies to develop their own approach to proxy access or opt out if shareholders approve. Supporters assert that private ordering is preferable to a consistent federal rule because it will encourage innovation and experimentation and best practices will evolve over time. They argue that there is not a need for a single rule which would not provide the desired flexibility and "upset the balance between state and federal law." Another alternative is that access rights should be triggered by certain events, such as a majority vote of shareholders or a significant withhold vote against directors.

We believe that these approaches would diminish the effectiveness of proxy access and make its implementation difficult and its application inconsistent. The ability to nominate directors is a basic right rooted in state law that should be available at all companies as a matter of principle. It should not be subject to certain events or conditions or available only at underperforming companies. It should be viewed as a right, not a form of punishment. Shareholders should have broad discretion to use the right as they see fit.

We agree that shareholders should have the ability to tailor access rights to the specific situations of individual companies, *as long as the right is assured and there are reasonable means of exercising the right*. The Proposal avoids being overly "prescriptive" by allowing states and shareholders to adopt different formulations of access depending upon the circumstances, once minimum standards are met. This approach will allow flexibility without threatening the right of shareholders to nominate directors to boards.

Private ordering could result in a systematic denial of the right by shareholders to nominate directors at the companies they own. In fact, companies currently are able to grant access rights, but almost none have chosen to do so. Even if companies do provide the right, they may adopt insurmountable hurdles to exercising the right, making it practically impossible to use. For example, some companies and their advisers have indicated in their comments that they favor setting the ownership threshold at levels such as 10% while prohibiting aggregation of shares. This would mean that a significant number of large companies that lack even one such holder

[4] Available through The Corporate Library's subscription service "Board Analyst."

would be shielded from access. In addition, most diversified investors would be unlikely to hold such a large stake in a single company and would be barred from using the rule.

As a practical matter, we oppose triggers because they would make the mechanism unduly complex and would prevent shareholders from taking prompt action where necessary. If a shareholder vote were a triggering event, for example, the vote would have to take place in the first year and implementation by the company would take place in the second year. For some companies, circumstances may deteriorate over a period much shorter than two years, during which time shareholders would be unable to act. The delay could undermine the goals and intent of the Commission to give shareholders a meaningful right of nomination to address governance and performance problems at companies.

A universal rule would also address concerns of the corporate community that “first movers” who adopt access policies may face a competitive disadvantage. This concern has been a significant obstacle to the voluntary adoption by companies of an advisory vote on executive compensation. Fewer than 30 companies, other than those that were required to do so under the Troubled Asset Relief Program, have adopted the reform despite significant shareholder support.[5] We believe very few companies would voluntarily adopt proxy access, even under shareholder pressure, under the argument of being disadvantaged in the marketplace. We are especially concerned that companies that are in need of greater director accountability would be the most likely to resist shareholder nominees through an access regime. For these reasons, private ordering is unlikely to bring about the broad market changes that we believe are critical to improving corporate governance and director accountability.

Since 1934 the Federal securities laws have recognized the importance of a fair proxy process to the protection of shareholder interests. The Commission has sought to adopt some form of access since 1942 and more recently in 2003 and 2007.[6] There is no justifiable reason to further delay implementation.

For the reasons discussed above and in our previous letter, we urge the Commission to adopt the Proposal as expeditiously as possible. Proxy access will protect investors in a cost-effective manner while at the same time enhancing competition and capital formation by providing for more effective corporate governance.

Sincerely,

Hye-Won Choi

Cc: Hon. Mary L. Schapiro, Chairman
Hon. Louis A. Aguilar, Commissioner

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[5] RiskMetrics Group's Governance Database, based on proxies filed as of September 16, 2009

[6] The history of the Commission’s efforts with respect to proxy access is discussed in: J. Robert Brown, Jr., *The SEC, Corporate Governance, and Shareholder Access to the Board Room*, 2008 Utah 1339, *reprinted at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1095032

Hon. Kathleen Casey, Commissioner
Hon. Tory A. Paredes, Commissioner
Hon. Elisse Walter, Commissioner
Meredith B. Cross, Director, Division of Corporation Finance
David M. Becker, General Counsel and Senior Policy Advisor, Office of the General Counsel

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August 17, 2009

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Re: Facilitating Shareholder Director Nominations - File No. S7-10-09

Dear Ms. Murphy:

I am writing on behalf of Teachers Insurance and Annuity Association of America ("TIAA") and College Retirement Equities Fund ("CREF," collectively, "TIAA-CREF"). TIAA-CREF is a national financial services organization and the leading provider of retirement services in the academic, research, medical and cultural fields with $363 billion in combined assets under management as of December 31, 2008. CREF, one of the largest institutional investors, holds shares in approximately 5,500 publicly traded companies. For more than 30 years, we have been a leading advocate on behalf of shareholder rights and good corporate governance.

We strongly urge the Securities and Exchange Commission ("Commission") to adopt proposed Rule 14a-11 and amendments to Rule 14a-8(i)(8) ("Proposal") with the modifications suggested below. TIAA-CREF's support for the current Proposal (with consideration of our modifications suggested herein) is consistent with our comments related to the Commission's previously issued releases in 2003[1] and 2007.[2] The Proposal is one of the most significant governance improvements to be considered by the Commission in recent years, and is therefore of strategic importance to TIAA-CREF.

The active monitoring and engagement with portfolio companies has long been an important strategic element of TIAA-CREF's investment management philosophy. As a large institutional investor that invests for the long-term financial security of over 3.5 million individuals, we take seriously our responsibility to monitor the activities of the companies in which we invest. We firmly believe that sound governance practices contribute significantly to the long-term performance of public companies.

[1] Letter from Peter C. Clapman to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission app. (Dec. 17, 2003), http://sec.gov/rules/proposed/s71903/pclapman121703.htm.

[2] Letter from John C. Wilcox and Hye-Won Choi to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission app. (Sept. 20, 2007), http://sec.gov/comments/s7-16-07/s71607-199.pdf.

When we perceive shortcomings in the governance or performance of a portfolio company, we have used methods inside and outside of the proxy process to effectuate change (*e.g.*, intelligent, case-by-case proxy voting, participating in proxy contests, submitting shareholder proposals on important governance problems, participating in "withhold votes" or "vote no" campaigns against one or more directors and engaging in dialogue with management).[3] We commit substantial resources to making informed voting decisions and conducting constructive engagements in furtherance of our mission and in compliance with the securities laws and other applicable regulations. Proxy voting, in particular, is an important mechanism by which we and other shareholders, particularly institutional investors, provide oversight and monitoring of boards. If the Proposal is adopted, the monitoring and oversight activities that we and other institutional investors employ will be substantially enhanced. Additionally, as stated below, the Proposal will eliminate some of the impediments to achieving effective corporate democracy that shareholders have faced for more than three generations.

We agree with the Commission's determination that, in light of the current economic crisis and the continued question of whether boards need to be more accountable for their decisions, the Commission should "revisit whether and how the federal proxy rules may be impeding the ability of shareholders to hold boards accountable through the exercise of their fundamental right to nominate and elect members to company boards of directors."[4] This review and reform is aptly timed to assist in restoring integrity and trust into our capital markets.

The Proposal attempts to correct a practical procedural deficiency that has existed for decades – the basic fact that shareholders have not had an effective manner in which to express their state law right to nominate and elect directors. The Commission's recognition of this deficiency is not new. Less than a decade after the enactment of the Securities Exchange Act of 1934 (the "Exchange Act"), the Commission proposed to amend the proxy rules to require names of shareholder nominees to be included in the corporate proxy.[5] The Commission has considered the lack of meaningful opportunity for shareholder suffrage periodically since its initial proposal in 1942, including the Commission's proxy access proposals issued in the beginning of this decade.[6]

While some have questioned whether the Commission has the authority to address this deficiency, we view this action as a natural step under Section 14(a) of the Exchange Act. Section 14(a) provides that the Commission may prescribe rules and regulations related to proxies that are

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[3] Facilitating Shareholder Director Nominations, Release No. 33-9046; 74 Fed Reg. 29024, 29027 (June 18, 2009) (noting the various options currently available to shareholders when they are dissatisfied with their company's performance and believe that the problem lies with the ineffectiveness of the company's board of directors).

[4] *Id.* at 29025, col 1.

[5] *See* Securities Exchange Act 1934 Release No. 3347 (1942).

[6] *See* Security Holder Director Nominations, Release No. 34-48626 (October 14, 2003); Shareholder Proposals, Release No. 34-56160 (July 27. 2007); and Shareholder Proposals Relating to the Election of Directors, Release No. 34-56161 (July 27, 2007);

"necessary or appropriate in the public interest or for the protection of investors…"[7] The legislative history of this section clearly shows its genesis to be related to various abuses arising from the use and control of proxies; the intent of the drafters was clearly to give the Commission broad authorization to deal with such proxy issues.[8]

In addition to providing shareholders with options to vote on shareholder nominees for directors, the Proposal also provides a much needed fix to the current frustrating and inefficient use of multiple proxy cards when there are more director candidates than available seats. Under the Proposal, the company would be required to provide a "universal" proxy card that lists both management and shareholder director nominees to the extent proxy access is utilized. This procedural change will provide much needed clarity and efficiency to the electoral process.

As a voter of proxies at several thousand companies, we have experienced a great deal of frustration related to the use of separate proxy cards for management and shareholder nominees during proxy contests. Shareholders typically cannot avail themselves of voting for candidates of their choice if candidates are on separate proxy cards without having to obtain a legal proxy and/or physically attend a company's annual meeting. The use of proxies was intended, among other things, as an efficient way for shareholders to cast their ballots without having to incur the costs associated with annual meeting attendance. The Proposal, if adopted, would eliminate this impediment by giving shareholders something they would otherwise lack – the opportunity to choose the best among all of the candidates, rather than between two slates of candidates. We believe this would also result in the most qualified candidates being elected.

Although we believe proxy access will be used infrequently, the Proposal will likely increase the competition for board seats. Unlike some commentators who believe such competition will distract boards and management from their oversight and managerial duties, we view this as a positive development for the market. We recognize that any new regulation imposes some level of additional burden and cost. However, our extensive experience of engaging with corporations and exercising our proxy votes for several thousands of companies within our portfolio indicates that contests for board seats typically generate more meaningful discussions with companies regarding director qualifications and alignment with corporate strategy. In fact, when we consider the recent proxy contests where we have engaged with both the company and the shareholder proponents, we have often sided with the company. We believe that result was due to the fact that competition for board seats forced the company to better explain why its director candidates were better qualified than the shareholder candidates.

Some commentators believe that the Proposal will invite abuse by "special interests" and unnecessarily burden companies (and their shareholders) with the expense of battling contested elections. As discussed in our suggested modifications, a well-crafted proxy access rule should prevent abusive repeated use by shareholders whose interests are unrelated to increasing and maintaining shareholder value over the long term. We also believe that the mere existence of the proxy access right should increase accountability by fostering productive dialogue about the

[7] 15 U.S.C 78n(a).

[8] *See*, H.R. REP. NO. 1383, 73d Cong., 2d Sess. 13-14 (1934); *see* also S. REP. NO. 792, 73d Cong., 2d Sess. 12, 77 (1934).

director selection process. This prospect of enhanced dialogue should be dispositive evidence that any burden on competition imposed by the Proposal is necessary and appropriate in furtherance of Section 14(a)'s purpose of ensuring that fair corporate suffrage inures to the benefit of all shareholders.

We note that other recent corporate governance changes and proposed enhancements (*e.g.*, majority voting, e-proxy, enhanced disclosure requirements on director nominees) are complimentary to, and not substitutes for, proxy access. Proxy access is necessary to achieve a fair and workable procedure for nominating and electing directors. Institutional investors will be empowered with the tools to effectively participate in the nomination of directors.

Proxy access will work best, however, if it is properly structured to encourage shareholder participation as needed while guarding against abuse and undue disruption. The Proposal should not be used or provide an opportunity to seek a change of control (through "back door proxy contests") or to gain more than a limited representation on the board of directors. The Commission has taken these matters into account although, as discussed below, we have a number of recommendations to more thoroughly address these issues.

Our recommendations are presented below:

1. Stock Ownership Requirements

The Commission has proposed tiered stock ownership requirements in order for shareholders to be eligible to nominate director candidates under new Rule 14a-11. As proposed, shareholders must beneficially own 1% of outstanding voting securities for companies that are "large accelerated filers," 3% of such securities for "accelerated filers" and 5% of such securities for "non-accelerated filers." We recommend that the Commission adopt a 5% ownership requirement across the board regardless of the company's size. As a matter of principle, we believe that in order to use company resources to nominate a director, a significant amount of capital must be represented and 5% is an acceptable threshold. With respect to investment companies, we recommend that the 5% requirement be applied at the fund complex level rather than at the individual fund level.

We also support the Commission's proposal to permit accumulation of shares to reach the required ownership thresholds. If accumulation is not permitted and ownership thresholds are sufficiently high, proxy access would be available only to a few large institutions. Achieving 5% of IBM, for example, would be extremely difficult without accumulation, thus insulating the largest companies from proxy access. Accumulation also will help ensure better coordination and communication among shareholders early in the process, which should increase the efficiency of the access process.

2. Stock Holding Requirements

We believe that the Commission should adopt a two-year holding period requirement rather than the one-year period as proposed. In our view, a two-year period strikes the right balance between limiting the right to longer-term holders that are not attempting to use the rule for inappropriate purposes and avoiding a requirement that is too onerous on shareholders seeking to use the right for valid purposes. In addition, two years is sufficiently more onerous than the one-year holding period currently required to submit shareholder proposals under Rule 14a-8.[9] We also agree with the Commission's proposal that there should not be a holding requirement beyond the date of a company's annual meeting.

The Commission should also develop and adopt reasonable provisions that require full disclosure of the nominating shareholder's economic interests in its shares, from the time just before the nomination through the date of the annual meeting, and for a limited time thereafter, such as 20 days. Such disclosure should include provisions that require immediate or advance disclosure of any activity (e.g., hedging) that reduces the economic risk to the nominating shareholders, or meaningfully alters their shareholdings. These suggestions are based on our belief that it is helpful to long term investors such as TIAA-CREF to know whether nominating shareholders have real "skin in the game."

3. Standards Regarding Multiple Nominations

The Commission has proposed a "first in" approach to address the possibility of multiple submissions of nominees by different shareholder groups. We have reservations about this proposal. Although this approach may be easier to administer and provide the target company with a degree of certainty, the "first in" approach is problematic because it may result in a "race to file." Rather, we believe the best option is to grant priority to shareholders representing the greatest amount of capital and therefore having the most significant economic interest in the company. This approach was recommended by the Commission in its 2003 proxy access release.[10] Another reasonable option would be to grant priority to those shareholders who have held the securities for the longest period of time.

4. Opt-Out Provisions

We do not believe the Commission should adopt any of the opt-out provisions to Rule 14a-11 discussed in the release. Our view is that the Commission should adopt Rule 14a-11 based on its own merits. In addition, as mentioned earlier in this letter, majority voting should not be viewed as a substitute for access; majority voting and proxy access are complimentary, not mutually exclusive. In addition, we would prefer adoption of an access right to reimbursement of expenses for dissident campaigns. Reimbursement of expenses could be used to facilitate the election of special interest directors. Reimbursement also encourages fighting and proxy contests to achieve representation at the distraction of directors rather than dialogue and productive change.

In order to make access more collaborative, we recommend that the Commission provide incentives for a meeting between shareholders and the board in order to identify director candidates who are acceptable to both parties. The board also could enlarge its size rather than sacrifice an incumbent director. Ultimately, the best possible outcome is to avoid a proxy contest altogether

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[9] 17 C.F.R. 240.14a-8(b)(1).

[10] Security Holder Director Nominations, Release No. 34-48626 (October 14, 2003), 68 Fed. Reg. 60784.

and to agree on candidates that are suitable from the perspectives of both shareholders and management.

5. Adoption of Triggers

We do not believe the Commission should adopt any "triggers" or "pre-conditions" to the operation of Rule 14a-11. This was the approach taken by the Commission in 2003 and was deemed by both companies and shareholders as unworkable and cumbersome.[11] We believe that shareholders should be provided with a broad level of discretion to decide if and when access is the appropriate method to deal with an underperforming or poorly governed company. The U.S. market is not completely analogous to other markets, but experiences in foreign markets such as the United Kingdom[12] and Canada[13] reveal that the right has been used rarely and yet has increased dialogue on director nominations.

6. Number of Shareholder Nominated Directors

We agree with the Commission's proposal to limit the number of director nominees to the greater of one nominee or 25% of the board, whichever is greater. We believe this approach strikes the right balance between providing shareholders a meaningful ability to bring significant change to a board and ensuring that access is not used as a "back door proxy contest". In addition, the 25% limitation should apply to the full board, not the number of directors up for election (*e.g.*, classified boards). Using 25% rather than a flat number makes it clear that change of control should not be an intended consequence.

7. Independence of Nominees

We support the Commission's proposal to require the shareholder sponsor to certify that the nominee meets the objective but not the subjective criteria for director independence. Companies are in a better position to determine compliance with subjective criteria than shareholders. Companies, therefore, should disclose in their proxy materials whether the nominee meets the subjective criteria, thereby permitting shareholders to make voting decisions based on full disclosure. If this approach were to be adopted, the Commission should provide a safe harbor in order to not penalize the company if it runs afoul of applicable independence requirements because a shareholder nominee who the company did not believe met the subjective criteria is elected to the board.

8. Disclosure and Notice Requirements

We support the Commission's proposal to require nominating shareholders to provide disclosure of the details regarding their ownership. In addition, we recommend requiring shareholders to certify

[11] *See* Letters to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission regarding Security Holder Director Nominations, Release No. 34-48626, http://sec.gov/rules/proposed/s71903.shtml.

[12] Companies Act, 2006, Ch. 46, Part 13, ¶¶ 338-340.

[13] Canada Business Corporations Act, R.S. 2009, c. C-44 s. 137(4)-(5.1)

that they are not proposing nominees with the purpose of effecting a change of control, and will not attempt to do so for at least a year following the successful election of its nominee. This would help ensure that the nominating shareholder is not seeking to advance a short-term agenda that is not in the best long-term interest of the company and other shareholders.

9. Relationship between Sponsor and Nominee

We support the Commission's proposal not to require independence between the nominating shareholder and its director nominees. The Commission's rationale for this position is that the nominee must receive a broad level of support in order to be elected and if elected, would be subject to fiduciary requirements to represent the interests of all shareholders. We agree that existing fiduciary duty is an adequate safeguard against special interest directors. We also believe that such a limitation could result in well-qualified director candidates not being nominated. In this connection, we also agree with the Commission that the nominating shareholder should represent that neither the nominee nor the shareholder has an agreement with the company regarding nominations. This would ensure that the sponsor is not acting on the company's behalf.

10. Resubmission Thresholds

The Commission should adopt rules to ensure that proxy access is used only for candidates that receive a broad level of support. We recommend a resubmission threshold that is sufficiently more onerous than the resubmission requirements applicable under Rule 14a-8 for shareholder resolutions.[14] We believe that the nominee should receive at least 20% of the vote in order to be re-nominated in subsequent years. The Commission's objective should be to avoid unnecessary proxy expenses to the detriment of shareholders where it has been illustrated that support of a candidate is lacking.

11. Majority versus Plurality Voting

The Commission has asked for comment on whether plurality or majority standards should apply in contested elections. We believe plurality rather than majority voting should apply as a matter of principle. It would be difficult for any candidate to receive 51% support in a contested election where votes are spread across multiple slates of director nominees. Therefore, under a majority vote standard, it is likely that none of the candidates would receive 51% of the vote. In this case, none of the candidates would be elected and the incumbents would remain on the board by default because of the holdover rule.

[14] 17 C.F.R. 240.14a-8(i)(12).

For the reasons articulated above, TIAA-CREF strongly supports the Proposal with the modifications suggested in this letter. We believe that the Proposal will help further the statutory objectives of the federal securities laws by enhancing the ability of investors to effectuate the proxy protections specified in those laws. The Proposal also will help restore confidence and trust in the U.S. capital markets.

In addition, the Proposal strikes a proper balance between providing shareholders with an economically feasible means to participate more fully in the nomination process while safeguarding against potential abuse. If adopted, we believe the existence of an access right will improve significantly the proxy protections in the federal securities laws and thereby strengthen corporate governance and accountability at U.S. companies. We urge the Commission to adopt the Proposal as expeditiously as possible, with the goal of having the Proposal in place in time for the 2010 proxy season.

We thank the Commission for its leadership on this very important issue and appreciate the opportunity to provide our thoughts on the Proposal. If you would like to discuss any of the issues raised in our letter, please do not hesitate to contact me by telephone at 212.916.5647 or by email (hchoi@tiaa-cref.org).

Sincerely,

Hye-Won Choi

Cc: Hon. Mary L. Schapiro, Chairman
Hon. Louis A. Aguilar, Commissioner
Hon. Kathleen Casey, Commissioner
Hon. Tory A. Paredes, Commissioner
Hon. Elisse Walter, Commissioner
Meredith B. Cross, Director, Division of Corporation Finance
David M. Becker, General Counsel and Senior Policy Advisor, Office of the General Counsel