Jack Ehnes
Chief Executive Officer

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November 18, 2009

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

RE: Facilitating Shareholder Director Nominations
File Number S7-10-09

Dear Ms. Murphy:

We are writing to you on behalf of the members of the California State Teachers' Retirement System (CalSTRS). CalSTRS was established for the benefit of California's public school teachers over 96 years ago and is currently the second largest public pension system in the United States. The CalSTRS portfolio is currently valued at approximately $130 billion and serves the investment and retirement interests of 833,000 plan participants. On August 17, 2009, we submitted a letter (see attached) to the Securities and Exchange Commission (Commission) strongly urging the adoption of Proposed Rule 14a-11 and amendments to Rule 14a-8(i)(8). We are writing to reiterate our continued support for the Commission's Proposed Rules and to refute arguments made by some opponents of the rule, otherwise known as proxy access.

Opponents against proxy access have raised four major concerns: the Proposal 1) should not be applied universally, 2) will encourage a more short-term focus, 3) will overly burden small capitalization companies, and finally 4) is unnecessary because of recent governance reforms. We believe these arguments are unfounded and fundamentally flawed as described below.

Universal Rule

The Commission was granted authority over the proxy process and proxy disclosure via Section 14(a) of the Exchange Act of 1934. Along with this authority, the Commission has oversight responsibility over the operation of securities exchanges and therefore has the authority to require exchange listed companies to provide comprehensive disclosure so investors can make informed decisions about their investments. This includes the shareholders' right to submit a nominee for inclusion in the corporate proxy and have that nominee considered by the broad shareholder base. The nomination of directors is a fundamental right that should coincide with shareholders ability to vote "For" or "Against" a proposed nominee. This is what has led to the investor community reasoning that the

Commission should set a minimum standard or universal rule for companies to follow, as laid out in the Proposed Rule.

Currently, if a shareholder is dissatisfied with those agents who act as fiduciaries on the boards of companies that they own, there are few options to effect change at those companies. Shareholder access to the proxy statement is a right that should be afforded to long-term shareholders with significant interest in a company. We believe any approach other than a universal standard set by the Commission would be contrary to this right.

Many opponents to proxy access have presented alternatives to the Commission's Proposed Rule including the use of triggering events in order for a proxy access rule to apply. We believe any type of triggering event other then meeting the requirement described in the currently Proposed Rule would be overly cumbersome to shareholders. Triggering events currently being discussed include a high withhold vote for a director or a shareholder proposal submitted under rule 14a-8, requesting the company to become subject to a shareholder nomination procedure. In both instances, shareholders would have to wait an entire year before nominating a candidate for election to the board. After satisfying the holding requirement and meeting the ownership threshold, shareholders should be able to take swift and prompt action if they are dissatisfied with those directors currently representing their interests at a company. A triggering event implies that proxy access should only apply in limited circumstances and deviates from a universal rule that should apply to all companies.

Some companies and their legal advisors have commented that they favor a much higher ownership threshold, other than the one percent requirement currently being proposed by the Commission for large issuers. Several commentators have suggested an ownership threshold as high as ten percent without the ability to aggregate shareholders. The ten percent threshold is prohibitive given that very few large companies have a single shareholder that meets this threshold. Second, the inability to aggregate shareholders to reach the ownership threshold is unreasonable. A ten percent threshold with no aggregation would essentially make a proxy access rule inapplicable to the majority of publicly traded companies.

On the premise that shareholder access to the corporate proxy should be a fundamental right afforded to long-term shareholders, a ten percent threshold with no aggregation runs in complete opposition to this right. As stated by the Commission in the Proposed Rule, nearly all (above 99 percent) of accelerated filers have at least one shareholder that could meet the one percent ownership threshold proposed and over 99 percent also have two or more shareholders with holdings of at least 0.5 percent, which aggregated together could meet the ownership requirement. This is a more reasonable requirement which would be applicable to the vast majority of companies instead of limiting its applicability to a few select companies.

Long-Term Perspective

Some opponents of the proxy access rule claim it will be used by special interest groups or short-term investors that lack a long-term perspective and certain shareholders would nominate candidates who would not serve the long-term interests of a company and its broader shareholder base. First, we believe the proposed rule provides adequate requirements to ensure that only long-term owners are beneficiaries of this right. The one-year holding requirement coupled with a one percent holding is a reasonable threshold to provide long-term owners access to this right. Second, we believe this argument is fundamentally flawed as a majority of the shareholder base must endorse a nominee as a director prior to being elected. Once elected, that director will be required to act as a fiduciary for all shareholders regardless of the nominating group that put the person up for election.

Targets of Proxy Access

Some opponents to the Proposed Rule have raised objections, claiming the Proposed Rule will be overly burdensome to smaller companies. Based on data recently acquired from RiskMetrics Group, we do not believe this is a credible concern. According to the RiskMetrics data, small-cap companies, defined as market capitalizations under $250 million, only received 6.86 percent of all shareholder proposals filed in United States companies during the last three years[1]. It is unlikely, that an inordinate amount of small companies would suddenly become the target of proxy access proposals. Nonetheless, the Proposed Rule incorporates appropriate safeguards for the smaller companies by requiring a higher ownership threshold.

Recent Corporate Governance Reforms

Sound corporate governance is built upon the tenet that the members of a company's board of directors are accountable to the company's shareholders. Yet, for far too long, inadequate governance has allowed company directors to be unresponsive to shareholder criticism or their concerns. It is our view that recent corporate governance reforms, while a positive move, have yet to sufficiently address the disconnect between the shareholders' ability to vote on a director and the limited ability to nominate a candidate of their own.

Some opponents of proxy access argue that it is unnecessary given recent governance reforms, most notably the adoption of a majority director election standard by some companies. Majority voting should be considered a complement to proxy access, not a substitute. Further, this argument is incomplete as several companies have yet to adopt majority voting for their director elections. Although a majority of S&P 500 companies have

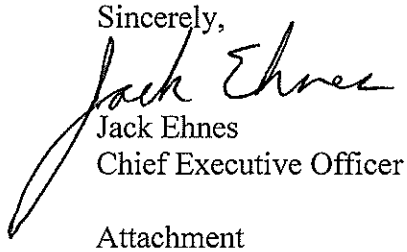
[1] Data provided to CalSTRS by Risk Metrics Group, November 2009

implemented majority vote or a plurality-plus-resignation approach, a significant portion still subscribe to the plurality standard. Even more concerning is that nearly three-quarters (74.9 percent) of the companies in the Russell 3000, still use a plurality voting standard[2].

Even with majority voting in place, some companies still refuse to listen to the will of their shareholders and ignore shareholder votes where directors do not receive a majority of the affirmative votes. This runs in complete conflict with the most important corporate governance premise: Directors should be accountable to their shareholders. Advancements in corporate governance are simply incomplete without shareholder access to the corporate proxy.

For the reasons described above and in our previous letter, we urge the Commission to adopt the Proposed Rule as quickly as possible. Proxy access will finally provide shareholders a meaningful voice in the nomination process and will be the greatest advancement of shareholder rights in decades. Thank you for the opportunity to comment on this very important issue. If you would like to discuss this letter, please feel free to contact me at the number set forth above.

Sincerely,



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Attachment

[2] "Majority Voting for Director Elections: Not Yet Standard Practice," The Corporate Library, Analyst Alert, December 2008

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August 17, 2009

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

RE: Facilitating Shareholder Director Nominations
File Number S7-10-09

Dear Ms. Murphy:

We are writing to you on behalf of the members of the California State Teachers' Retirement System (CalSTRS). CalSTRS was established for the benefit of California's public school teachers over 96 years ago and is currently the second-largest public pension system in the United States. The CalSTRS portfolio is currently valued at approximately $124 billion and serves the investment and retirement interests of over 800,000 plan participants. The long-term nature of CalSTRS' liabilities, and our responsibilities as a fiduciary to our members, makes us keenly interested in the boards of directors that represent our interests as shareholders, therefore we welcome this opportunity to provide comments on the Securities and Exchange Commission's (Commission) Proposed Rule regarding long-term shareholder input on the director nomination process: *Facilitating Shareholder Director Nominations* (Proposed Rule).

CalSTRS wholeheartedly endorses the Commission's Proposed Rule and believes a mechanism to provide shareholders a meaningful voice in the nomination process, otherwise known as proxy access, is long over due. The Commission's leadership on this matter is both an appropriate exercise of the agency's responsibilities and is a welcome advent to shareholders who have suffered because of a lack of accountability at some corporate boards. We do not suggest that granting long-term shareholders, such as CalSTRS, access to the corporate proxy ballot will solve all the instances of excessive risk-taking in the market place, but its existence will give shareholders, at minimum, an important and necessary negotiating tool at the corporate governance table. We agree with the Commission that "the proposed rule changes will provide shareholders with a greater voice and an avenue to exercise the rights they have to effect change on the

boards of the companies in which they invest . . ."[1] In 2003 and again in 2007, CalSTRS emphatically supported a structured process for shareholders to nominate candidates to boards of directors. The current economic crisis has highlighted the need for directors to be more accountable to shareholders and underscored the need for the Proposed Rule.

We commend the Commission for once again, considering a proposed rule to facilitate director nominations by shareholders. CalSTRS fully recognizes the Commission's authority over the regulation of the proxy process and proxy disclosure. Congress assigned the Commission its authority via Section 14(a) of the Exchange Act of 1934 and the Commission has overseen the proxy process ever since. Subsequently, the Commission has considered changes over the years to effectively serve as an advocate for investors. A major oversight responsibility of the Commission is the operation of securities exchanges; in this regard, the Commission has required those companies listed on exchanges to provide fuller disclosure so investors can make informed decisions related to their investments. The natural evolution of this disclosure is an effective means for shareholders to have their director nominees included in a company's proxy statement and considered by the broad shareholder base. CalSTRS believes Rule 14a-11 would generally accomplish this and be the greatest advancement of shareholder fundamental rights in decades.

The Teachers' Retirement Board acts as a fiduciary to all the public school teachers in California. Currently, if we are dissatisfied with those agents who act as our fiduciaries on the boards of directors of companies in which we invest, we have few options to effect change at those companies. In 1992, then Chairman of the SEC, Richard Breeden proposed and successively provided a means for shareholders to contest the elections of directors. Although a monumental advancement for investors, proxy contests under the current rules are extremely costly and out of the question for an investor like CalSTRS who must constantly weigh the cost-benefit of all its expenses. CalSTRS prefers to engage under-performing companies in its portfolio in the hopes of adding value through governance and strategic improvements. We see the use of proxy access as a "last resort" after all other engagement techniques have been exhausted. For example, CalSTRS submits on average only 6 proposals a year and those proposals are only submitted after several communications with the company. In fact, a significant portion of our proposals are withdrawn after we have engaged with the company and together have come up with a mutually agreeable solution.

Eligibility to Use Exchange Act Rule 14a-11

We support the Commission's goal to allow "only holders of a significant, long-term interest in a company be able to rely on Rule 14a-11."[2] We support the minimum

[1] Securities and Exchange Commission, Release Nos. 33-9046; 34-60089; IC-28765, File No. S7-10-09, pg. 42-43

[2] Securities and Exchange Commission, Release Nos. 33-9046; 34-60089; IC-28765, File no. S7-10-09, pg. 42-43

ownership threshold proposed and the tiered structure according to the company's size. Although we are highly critical of triggering events, we want to refute those arguments by corporations that, if the proposed rule is implemented, they will be overly burdened by "surprise" submissions by shareholders. We can assure those critics of proxy access that long-term investors such as CalSTRS will use the Proposed Rule responsibly and in only those cases where engagement efforts have not reached a mutually agreeable solution. Additionally, CalSTRS would be highly skeptical of any proposed nominee by any shareholder/group that was not preceded by active engagement and communication with the company.

The long-term nature of CalSTRS liabilities means we are long-term owners of all the securities we own in our portfolio. In the public equity markets, our average holding period is 13 years. CalSTRS will easily meet the one year holding requirement that has been proposed by the Commission. While we are supportive of the Commission's proposed one year requirement we are certainly open to a longer time frame if the Commission felt it was necessary to ensure that truly long-term shareholders are the beneficiaries of this right.

The Council of Institutional Investors (Council), of which CalSTRS is a member, raised some important issues about defining the "percentage of securities owned."[3] Although a large portion of CalSTRS holdings are relatively stable due to our board approved investment management plan, share levels can fluctuate slightly, just as a company's shares outstanding can fluctuate. We therefore agree with the Council and encourage the Commission to better define the computation of the percentage of securities owned.

Finally, related to shareholder eligibility, we want to reiterate that we agree with the Commission's Proposed Rule that in order to submit a nominee for inclusion on a company's proxy the shareholder or group of shareholders must meet the ownership requirements. We do not believe the Commission should make any exceptions to the rule for "large" shareholder groups who do not meet the minimum requirements.

Furthermore, a company is capable of determining when to seek exclusion of a shareholder nomination. The Proposed Rule sets forth clearly defined criteria stating who is eligible to be a nominator and nominee. For years, companies have made similar determinations on whether a shareholder was qualified to submit a proposal under Rule 14a-8.

The procedures to exclude a nomination from the proxy materials mirror Rule 14a-8 and are not likely to cause confusion. Under the Proposed Rule, the company would have to give a shareholder a chance to cure the defect in the nomination and seek a no-action

[3] See Comment of the Council of Institutional Investors filed August 4, 2009

letter from the Commission. Further, the Proposed Rule would enable a shareholder to seek judicial review if a company improperly excluded a shareholder-nominee. *See* Proposed Rule at 105 n.235.

Similarly, under Rule 14a-8, the company must (1) notify the shareholder of a defect and give the shareholder an opportunity to cure the defect (Rule 14a-8(f)) and (2) seek no-action relief from the Commission (Rule 14a-8(j)).

First-In Approach

Continuing with the eligibility requirements enclosed in the Proposed Rule, we respectfully disagree with the Commission's proposal to use a "first-in" approach if a company is the subject of multiple nominees by shareholders. Alternatively, we would propose allowing the shareholder/group with the largest economic interests to proceed. This is a similar approach to the Private Securities Litigation Reform Act (PSLRA) for determining lead plaintiff in securities class action suits. We believe this is a more suitable approach and will eliminate a "rush to the courthouse" like that witnessed prior to the PSLRA.

Shareholder Nominee Requirements

We support the Commission's decision to require any shareholder's nominee to meet the objective listing standards under the applicable national securities exchange. CalSTRS believes independent directors are the very foundation of a well-governed company. In addition, the Proposed Rule addresses potential conflicts of interests by requiring all relevant relationships to be disclosed. Independence coupled with comprehensive disclosures will allow shareholders to make informed decisions about which directors will best serve their interests.

We applaud the Commission for eliminating the limitations on relationships between a nominating shareholder group and their director nominee. As stated previously, we believe there should be a clear independence standard that applies to potential nominees. We oppose any arbitrary independence standards, especially those set by a company to thwart potential shareholder nominees. Company specific independence standards would be overly burdensome to a nominating shareholder group.

Critics of the Proposed Rule have generally supported additional independence standards as a way to eliminate "special interest" nominees from being included in the company's proxy. CalSTRS adamantly disagrees with this argument as the nominee will ultimately have to win the contested election; that means a majority of the broad shareholder base of a company must endorse that person as a director. Once elected, that director will be required to act as a fiduciary for all shareholders regardless of the nominating group that put the person up for election.

Disclosure

As stated above, CalSTRS is a firm supporter of full and comprehensive disclosure. This philosophy carries over to specific statements required as part of Schedule 14N. CalSTRS is a long-term shareholder; therefore, we have no concerns with providing a written statement about our intent to hold the required number of shares through the company's annual meeting or stating our intent regarding ownership once the meeting has concluded. In the event that CalSTRS avails itself of the Proposed Rule, CalSTRS will file a supporting statement detailing its long-term investor profile and announcing its intention to hold the shares beyond the election of the proposed candidate.

Solicitation Exemption

The Commission should provide a new exemption for soliciting activities undertaken by shareholders seeking to form a group pursuant to Rule 14a-11. Such a new rule would be consistent with the overall purpose of the Proposed Rule of reducing shareholder expenses to nominate directors. Further, such an exemption would enable shareholders to gauge the popularity of their nominees without incurring the prohibitive expenses of engaging in a proxy solicitation.

Under the Proposed Rule, shareholders are exempted from certain proxy rules if the content of a written solicitation is limited to categories listed in the Proposed Rule. *See* Proposed Rule at 115.[4] Specifically, the shareholder need not distribute a proxy statement to all solicited shareholders pursuant to Rule 14a-3. However, the nominating shareholder must file the written solicitation with the SEC no later than the date that the material is first published or given to shareholders. *Id*. at 116.

We believe that there is no need to file such an exempt solicitation with the Commission at the time such solicitation is made because, in the event that a group is eventually formed that has the power to nominate a director, it is likely that any arguments in favor of such nomination would be made public and fully vetted in a contested election.

To the extent that a filing requirement is deemed beneficial, such filing should be triggered by the date the shareholder proposes a nominee, not on the date of solicitation. This would ensure that shareholders are not burdened at the initial stages of determining

[4] The Proposed Rule states: "Each written communication includes no more than: [1] A statement of the shareholder's intent to form a nominating shareholder group in order to nominate a director under the proposed rule; [2] Identification of, and a brief statement regarding, the potential nominee or nominees or, where no nominee or nominees have been identified, the characteristics of the nominee or nominees that the shareholder intends to nominate, if any; [3] The percentage of securities that the shareholder beneficially owns or the aggregate percentage owned by any group to which the shareholder belongs; and [4] The means by which shareholders may contact the soliciting party."

the feasibility of forming a group, while ensuring that shareholders are fully informed about the nominator's motives at the time of voting for a nominee.

Maximum Number of Shareholder Nominees

CalSTRS agrees with the Commission in that the Proposed Rule should not be used to facilitate a change in control at a company. A shareholder conducting an election contest to seek control of a company should bear the costs associated with that election contest. On the other hand, shareholders merely seeking minority representation on the board should be able to take advantage of the Proposed Rule. We believe the proposed nominee limitations up to 25 percent of the company's board is appropriate. We believe the cost of placing a shareholder/group's nominee on the ballot are minimal and will be borne by all the shareholders. We disagree with those opponents of the Proposed Rule who state the costs associated with proxy access will be exorbitant. The actual cost of placing a name in the proxy is minuscule. Large costs will only be endured by those companies who try to litigate potential nominees as opposed to allowing shareholders to make an informed decision about who they think will best serve their interests.

Triggering Events

The Proposed Rule currently provides for every company to be subject to Rule 14a-11. We applaud the Commission for setting this standard and removing certain triggering events that have been proposed in previous rules. We believe triggering events are fundamentally unfair and cumbersome to shareholders, along with raising a myriad of complications as to when a triggering event has occurred and when the rule would apply. First and foremost, CalSTRS believes that shareholders have the right to nominate and elect directors that will serve as our representatives on the companies we own. In the 2003 Proposed Rule, directors who received a high withhold vote would be allowed to continue to serve for an entire year until an eligible shareholder submitted a nominee for election at the following annual meeting. The second triggering event required a shareholder proposal submitted under Rule 14a-8 requesting the company to become subject to a shareholder nomination procedure. Under both triggering events shareholders would be required to wait another year before submitting a qualified candidate to be included in the company's proxy.

We believe the SEC's Proposed Rule adequately sets a minimum standard that applies to all companies without complicated triggering events. The Proposed Rules currently allows only long-term shareholders with significant holdings to nominate directors. Whether a nomination is beneficial to the company should be left to the discretion of such shareholders.

We further believe that proxy access can improve corporate governance in companies regardless of whether a triggering event occurred. A number of empirical studies show

that companies that enact corporate governance measures that prevent board entrenchment provide superior returns.[5]

Beneficial Ownership – Schedule 13G and 13D

The approach outlined in the Proposed Rule is warranted. The purpose of the Proposed Rule is to help foster shareholders to nominate directors to improve corporate governance without causing a change in control of the company. *See* Proposed Rule at 26-7 ("We are proposing amendments to the proxy rules to require companies to include disclosures about shareholder nominees for director in the companies' proxy materials, under certain circumstances, so long as the shareholders are not seeking to change the control.").

Under the Exchange Act Rules, "Schedule 13G, a short-form filing, may be filed in lieu of a Schedule 13D, a long-form filing, by a person beneficially owning 5 percent or more of an issuer's securities if the securities have been acquired in the ordinary course of business and 'not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect.'" *Levy v. Oz Master Fund, Ltd.*, 2001 WL 767013, at *2 (S.D.N.Y. 2001) (quoting Rule 13d-1(b)(1)(i), (c), 17 C.F.R. § 240.13d-1(b)(1)(i), (c)).

While a long form filing, with detailed information about a 5% holder, is appropriate where a person is seeking a change in control of the company, such a long form filing places a needless burden on shareholders seeking merely to improve the corporate governance of a company.

Amendments to Exchange Act 14a-8(i)(8)

As stated previously, CalSTRS believes adoption of the Proposed Rule 14a-11 would be the greatest advancement of shareholder rights and would finally pair a shareholder's right to vote for elected representatives with a mechanism to nominate candidates. We

[5] *See,e.g.*, Lucian Bebchuk, Alma Cohen and Allen Ferrell: *What Matters in Corporate Governance*, REVIEW OF FINANCIAL STUDIES, Vol. 22, No. 2, 783-827 (September 2004) (finding "staggered boards, limits to shareholder bylaw amendments, poison pills, golden parachutes, and supermajority requirements for mergers and charter amendments" were "associated with economically significant reductions in firm valuation"); B. Lawrence Brown and Marcus Caylor, *The Correlation Between Corporate Governance and Company Performance*, Research Commissioned Institutional Shareholder Services (2004) ("[F]irms with weaker governance perform more poorly, are less profitable, more risky, and have lower dividends than firms with better governance."); Paul A. Gompers, Joy L. Ishii and Andrew Metrick, C*orporate Governance and Equity Prices*, QUARTERLY JOURNAL OF ECONOMICS, Vol. 118, No. 1, 107-155 (Feb. 2003) ("We find that firms with stronger shareholder rights had higher firm value, higher profits, higher sales growth, lower capital expenditures, and made fewer corporate acquisitions."); *see also* B. Lawrence Brown and Marcus Caylor, *The Correlation Between Corporate Governance and Company Performance*, Research Commissioned by Institutional Shareholder Services (2004) ("[F]irms with weaker governance perform more poorly, are less profitable, more risky, and have lower dividends than firms with better governance."

believe the Proposed Rule 14a-11 appropriately sets a minimum federal standard for all companies to follow and can work in conjunction with the proposed amendment to Rule 14a-8. Like the right to nominate directors, the right to propose changes to a company's governing documents is a fundamental right of shareholders. Shareholders should be able to propose those changes and have those changes considered by the broad shareholder base. This includes any changes related to a company's procedures for nominating directors and disclosures related to those nominations. We believe it is the Commission's responsibility to set a minimum standard for companies to follow, and Rule 14a-8 would allow shareholders to expand that minimum as necessary.

CalSTRS sees Rule 14a-8 as the Commission's way to correct the wrong visited upon shareholders when the SEC amended Rule 14a-8 to reverse the decision of the Second Circuit Court of Appeals in the *AFSCME vs. American International Group, Inc.* decision. We believe the Commission made a critical mistake in its decision to allow companies to exclude the American Federation of State, County, and Municipal Employees (AFSCME) proposals that sought implementation of a proxy access procedure at certain companies. Even after AFSCME challenged the Commission's decision, and ultimately prevailed at the U.S. Court of Appeals, the Commission amended Rule 14a-8, specifically the election exclusion, to exclude proposals related to shareholder access to the proxy. We believe the Commission made a grave error in that rule amendment and believe the Proposed Rule 14a-11 and amendment to Rule 14a-8 will finally give shareholders a mechanism to exercise their rights.

Once again, we applaud the Commission for considering this very important issue. Thank you for the opportunity to comment on the Proposed Rule. If you would like to discuss this letter, please feel free to contact me at the number set forth above.

Sincerely,

Jack Ehnes
Chief Executive Officer