January 19, 2010

Via Email
Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F St., NE
Washington, DC 20549-1090

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

Dear Ms. Murphy:

We are writing to provide additional comment on the Commission's Proposed Rule *Facilitating Director Nominations* (the "Proposed Rule") as sought in the Commission's Release No. 33-9086. The American Federation of State, County and Municipal Employees ("AFSCME") represents 1.6 million workers who participate in over 150 public pension systems with over $1 trillion in assets. Also, the AFSCME Employees Pension Plan is a long-term shareholder that manages $850 million in assets for its participants, who are staff members of AFSCME and its affiliated subordinate bodies. In our earlier comment letter dated August 7, 2009, we expressed strong support for the Commission's proposed Rule 14a-11 (the "Proposed Rule"), which we believe will allow shareholders to more fully exercise their important state-law right to nominate and elect directors.

In reopening the comment period for consideration of the Proposed Rule, the Commission noted additional data and analyses that had been submitted at or after the close of the initial comment period. The report by NERA Economic Consulting, "Report on Effects of Proposed SEC Rule 14a-11 on Efficiency, Competitiveness and Capital Formation, in Support of Comments by Business Roundtable," appears simply to recapitulate the arguments made by proxy access opponents, rather than presenting any new data or analysis. For example, the NERA report makes the unsupported claim that allowing shareholders access to the proxy to nominate directors will result in less qualified directors being elected. Similarly, the NERA report argues that proxy contests are not now prohibitively expensive. These sorts of claims have been rebutted by comments already submitted to the Commission and we will not repeat these arguments here.

American Federation of State, County and Municipal Employees, AFL-CIO
TEL (202) 429-1000 FAX (202) 429-1293 TDD (202) 659-0446 WEB www.afscme.org 1625 L Street, NW, Washington, DC 20036-5687

The Commission has also invited comment on an unpublished study by Andrea Beltratti and Rene M. Stulz, "Why Did Some Banks Perform Better During the Credit Crisis." The Beltratti & Stulz study concludes that banks with more "shareholder-friendly" boards underperformed banks with less "shareholder-friendly" boards during the period from July 2007 to December 2008. "Shareholder-friendliness" is assessed using subindices of RiskMetrics Group's Corporate Governance Quotient (CGQ) dealing with board attributes, audit function attributes, compensation policy attributes and takeover restrictions.

Although the purpose of the Business Roundtable (BRT) in submitting the Beltratti & Stulz study is unclear, the BRT presumably believes that the Beltratti & Stulz study proves that "shareholder-friendliness" harms firm value; that the Proposed Rule would increase "shareholder-friendliness" at all companies in the U.S. public markets; and that one can thus conclude that proxy access could be harmful to the performance of U.S. companies.

As an initial matter, it is important to note that the Beltratti & Stulz study, to the extent it stands for the proposition that shareholder-empowering governance is linked to lower firm value, is inconsistent with a substantial body of peer-reviewed empirical research, in particular the work of Harvard's Lucian Bebchuk and Paul Gompers. Their work, which measured firm performance for a much larger company universe than only banks and over a much longer time period than the 18 months used in Beltratti & Stulz, found that more shareholder empowerment is associated with better performance.

Moreover, proxy access is very different from the kinds of governance variables used in the Beltratti & Stulz study (as well as other empirical work on governance and performance). Proxy access facilitates shareholders nominating director candidates they believe will represent their interests well, while variables like board independence used in the Beltratti & Stulz study reflect choices made within the self-perpetuating system in which incumbent directors make the key choices, including whether to renominate themselves. For those reasons, we dispute the notion that the Beltratti & Stulz study shows that proxy access would be harmful to U.S. corporations.

We believe that the Commission should carefully consider the implications of the study sponsored by the Council of Institutional Investors (CII) and Shareowner Education Network (SEN), "The Limits of Private Ordering: Restrictions on Shareholders' Ability to Initiate Governance Change and Distortions of the Voting Process." Private ordering has been touted as a way to allow shareholders to choose for themselves whether the companies in which they invest should provide proxy access. But as the CII/SEN study shows, such choice would be illusory at a significant number of U.S. companies which maintain multiple classes of stock with disparate voting rights, place limitations on shareholders' ability to amend company bylaws and/or have supermajority voting requirement for bylaw amendments. We are also concerned that under a private ordering regime boards may, to the extent permissible under state law and their governing documents, further restrict shareholders' power to amend the bylaws and take other similar measures to limit shareholder choice.

The materials on which the Commission has sought supplemental comment do not undermine our support of the Proposed Rule. We continue to believe that shareholders need a uniform federal proxy access rule to facilitate their key state-law right to nominate and elect directors who will robustly represent their interests. We thus urge the Commission to adopt the Proposed Rule without significant modification.

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We appreciate the opportunity to express our views to the Commission on this matter.

Sincerely,

Gerald W. McEntee

GERALD W. McENTEE
International President