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via email: rule-comments@sec.gov

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

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

Dear Ms. Murphy:

As Comptroller of the City of New York, I am a trustee of four of the five New York City pension funds (the "Funds"), and the investment adviser to the five Funds, with combined assets of more than $100 billion, invested substantially in the securities of publicly-traded companies.

I would first like to commend the Securities and Exchange Commission for proposing changes to federal proxy rules that would support the rights of shareholders of publicly-traded companies to nominate and elect directors to the respective boards. I would also like to thank the Commission for the opportunity to provide my comments regarding these proposals.

It is critically important that shareholders have an unfettered right to nominate director candidates and to file proposals regarding the processes and criteria for director selection and evaluation. Accordingly, I strongly support the proposed requirement that companies include in their proxy materials shareholder nominees for directors; and shareholder proposals that would amend, or request an amendment to, a company's governing documents regarding nomination procedures or disclosures related to shareholder nominations.

Under the current system, it is quite common for company nominees to be re-elected unchallenged despite their demonstrated lack of independent leadership, effective management oversight, and accountability to shareholders. The ability of shareholders to effectively address this issue is severely limited by the prohibitive costs of presenting a nominee or nominees for election to a corporate board on their own proxy ballot and proxy materials. A mandate requiring companies to include shareholder nominees for a company's board of directors would eliminate this costly impediment and encourage director responsibility and accountability.

Application of the Rule

I strongly urge the SEC to adopt a final Rule 14a-11 that would be broadly applied to all regulated companies regardless of whether these companies attempt to mandate that directors be elected only by a majority of shares present in person or represented by proxy at the meeting and entitled to vote.

In addition, while my office is not aware of any state law allowing companies to prohibit shareholders from nominating candidates for election to their boards of directors, I am concerned that the proposed inapplicability of Rule 14a-11, if state law provides such a prohibition, could be exploited in ways that would effectively undermine this fundamental right of shareholders. I also oppose the exemption of companies incorporated in states such as Delaware that allow companies or shareholders to adopt a proxy access rule.

The adoption of a uniform proxy access rule that excludes private ordering provisions would best strengthen and protect the fundamental right of shareholders to nominate directors.

Shareholder Eligibility Criteria

I generally support the SEC's proposed eligibility threshold that is based on the percentage of shares owned and entitled to vote in the election of directors. However, many public pension funds, as part of their long-term approach to investing, enter into securities lending agreements with their custodians under which securities are loaned to borrowers. Securities lending precipitates fluctuations in the number of shares of affected stocks held in the portfolios of such funds. However, funds generally retain the right to recall shares on loan, primarily to exercise their ownership right of voting proxies. Given a lender's continued ownership right to vote the proxies appurtenant to the loaned shares, the SEC should consider including a provision in the final Rule to allow shareholders to include the number of loaned or recalled shares of an issuer's stock in determining continued ownership eligibility to have a nominee or nominees disclosed in the issuer's proxy materials.

Exclusion of Certain Shareholder Proposals

The SEC has questioned whether companies subject to Rule 14a-11 should be permitted to exclude certain shareholder proposals that they otherwise would be required to include in their proxy materials. I believe Rule 14a-11 should not permit companies to exclude shareholder proposals from their proxy materials that are in compliance with existing requirements of Rule 14a-8. Over the past decades, non-binding shareholder proposals have been an effective driver of meaningful corporate governance and corporate social responsibility reforms in the United States. The adoption and implementation of shareholder-proposed policies and procedures have contributed significantly to sustainable business practices that have benefited companies and their shareholders over the long-term. Accordingly, the exclusion of non-binding proposals would be retrogressive and inimical to the long-term interests of companies and shareholders.

Shareholder Nomination Limits

While I strongly support a proxy access mechanism that precludes shareholders from having their slate of nominees included in a company's proxy materials, if the purpose is to replace the company's entire board or to effect a change in control, I recommend that shareholders be allowed to nominate at least two candidates. The adoption of this "minimum limit" would help to facilitate constructive and productive participation of elected shareholder nominees in board discussion and decision making processes, and reduce the potential for hostility and alienation by incumbent directors.

Conclusion

I urge the SEC to swiftly adopt the proposed Rule 14a-11, including the recommendations presented above, in order to remove existing impediments that hinder shareholders from exercising their fundamental right to nominate and elect directors to corporate boards. The adoption of this Rule would result in much needed improvements in corporate governance, particularly director responsibility and accountability to shareholders, and director leadership and oversight of publicly traded companies.

Once again, I would like to thank the Commission for the opportunity to provide comments regarding this important proposal.

Sincerely,

John C. Liu